

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

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

7 APPLICATION OF BURNETT OIL CO., Docket No. 24-11  
8 INC., FOR COMPULSORY POOLING, Consolidated Cases  
9 EDDY COUNTY, NEW MEXICO 14673, 14674, and  
10 14706-14718

11 TRANSCRIPT OF PROCEEDINGS

12 EXAMINER HEARING

13 BEFORE: RICHARD EZEANYIM, Technical Examiner  
14 DAVID K. BROOKS, Legal Examiner

15 August 29, 2011

16 Santa Fe, New Mexico

17 This matter came on for hearing before the New  
18 Mexico Oil Conservation Division, RICHARD EZEANYIM,  
19 Technical Examiner, and DAVID K. BROOKS, Legal  
20 Examiner, on Monday, August 29, 2011, at the New  
21 Mexico Energy, Minerals and Natural Resources  
22 Department, 1220 South St. Francis Drive, Room 102,  
23 Santa Fe, New Mexico.

24 REPORTED BY: PAUL BACA, CCR #112  
25 PAUL BACA COURT REPORTERS  
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1 HEARING EXAMINER EZEANYIM: All right.

2 This hearing will come to order.

3 Before we start, if you have a business  
4 card, please give it to the court reporter so that  
5 we can, you know, pronounce your name correctly,  
6 because this is a hearing of record.

7 As you all know, today is on off-docket  
8 hearing. This is not a hearing date. This is an  
9 off-docket hearing, Docket Number 24-11, which are  
10 consolidated cases today.

11 But before I do, I find something  
12 interesting, and I have a comment.

13 I don't know whether most of you -- as the  
14 operators, you know about the multiple-operator  
15 spacing units. When I went through the cases, I  
16 found out that using that 19.15.15.12 NMSE, it's  
17 really a win/win situation in this case.

18 Now, I see almost 20 people in the room  
19 for these cases. If I look at this line issue --  
20 I'm not a lineman -- but I see that using that rule  
21 that I cited, you guys who have noticed it, I  
22 shouldn't be here, you shouldn't be here. You  
23 should be doing your business, and I think that's a  
24 win/win situation.

25 However, anyway, you have the right to go

1 to a hearing on these issues themselves. That is  
2 why we're here. I know you are here because you  
3 couldn't come to an agreement, whatever it is in the  
4 case, and that's why you are here. That's okay.

5 Now, you're putting me in a position like  
6 King Solomon. You-all know about King Solomon. You  
7 want me to divide the baby. I have been in this  
8 position before. If you want me to divide the baby,  
9 I'll do that.

10 Remember my obligation, the obligation of  
11 OCD, is to prevent waste and protect correlative  
12 rights. If I have to divide the baby to do that,  
13 I'll do that. But if I have to award the baby in  
14 whole to one of you, then that will bring another  
15 cause to us, since you guys cannot come to an  
16 agreement.

17 I can't overemphasize the power of  
18 litigation in the industry. You could really  
19 eliminate a lot of hassles and headaches and  
20 hearings by doing so.

21 But in this case, it appears that it is  
22 not. I have another case that is between the two  
23 operators, and most cases are coming between the  
24 operators. I really encourage you to negotiate so  
25 that we can simplify the process.

1 Well, like I said, we're here now. We're  
2 going to hear the case. We're going to come to a  
3 ruling. But if all of you go back to the drawing  
4 board and come to an agreement, that trumps any  
5 order that's issued by the division, because that's  
6 going to overrule whatever we said.

7 So I wanted to make these comments here  
8 for you, to have it in the back of your mind as you  
9 present your evidence today.

10 Well, before we go there, I would really  
11 like to see if any of you have any comments on what  
12 I just said.

13 MR. GRABLE: Mr. Ezeanyim, I will speak  
14 briefly, because I think I have been involved in  
15 that part of these proceedings for the last several  
16 months, more than Mr. Bruce.

17 But without getting to where and when and  
18 who met, we have made efforts to try to come to an  
19 agreement. It's still conceivable that we could.  
20 We are willing to sit down anytime, anywhere with  
21 this side and try to come to a reasonable agreement,  
22 and I appreciate your comments.

23 And it's difficult, because these two  
24 operators have some disagreements on some bedrock  
25 issues and how this reservoir can best be developed,

1 but we're trying to bridge that gap.

2 And we have made legitimate efforts at the  
3 very highest levels of both companies, and that's  
4 really -- all three companies: Hudson, Burnett, and  
5 COG. And I am hopeful that may still bear fruit.  
6 But so far it has not, so we've got to proceed.

7 But I appreciate your comments. I think  
8 they were well taken.

9 HEARING EXAMINER EZEANYIM: Thank you,  
10 Mr. Grable.

11 Any other comments?

12 MS. MUNDS-DRY: Mr. Ezeanyim, I would echo  
13 what Mr. Grable said, without getting into any  
14 specifics. But COG has certainly made tremendous  
15 efforts to try to reach an agreement. And we do,  
16 also, remain hopeful that we can. But at this  
17 point, we're just so far apart.

18 But we do appreciate your comments and do  
19 take them to heart.

20 HEARING EXAMINER EZEANYIM: Any other  
21 comment?

22 Okay. Thank you very much for that.

23 It's really very good to hear that I see  
24 negotiations going on, but you're not getting  
25 anywhere. Anyway, that's why we're here.

1 Therefore, we're going to proceed with this docket,  
2 Docket Number 24-11. I have put it on the record.

3 And as of those 16 cases, one of them is  
4 dismissed. And I'm going to -- Case Number 14691 is  
5 dismissed.

6 Are there any other ones dismissed?  
7 Continuing?

8 As agreed by the parties we have, then,  
9 remaining on the docket 15 cases. Those 15 cases  
10 are of the same type, for the purpose of the  
11 hearing.

12 So what I will do, for the record, is to  
13 read all the 15 cases, so that the court reporter  
14 will get them in the record that, you know, this is  
15 a hearing for that, and I don't have to muddle them  
16 up. I'm going to read them one by one so that we  
17 can record it. It's going to take me some time to  
18 read it.

19 Case Number 14673. This is the  
20 application of Burnett Oil Company, Inc., for  
21 compulsory pooling and an unorthodox oil well  
22 location, Eddy County, New Mexico.

23 Case Number 14674: Application of Burnett  
24 Oil Company, Inc., for compulsory pooling and an  
25 unorthodox location, Eddy County, New Mexico.

1 That's on page 1.

2 Then on page 2, Case Number 14706:

3 Application of COG Operating, LLC, for a nonstandard  
4 spacing and proration unit, a nonstandard location  
5 and compulsory pooling for Eddy County, New Mexico.

6 Case Number 14707: Application of COG  
7 Operating, LLC, for a nonstandard spacing and  
8 proration unit, a nonstandard well location and  
9 compulsory pooling, Eddy County, New Mexico.

10 Case Number 14708: Application of COG  
11 Operating, LLC, for a nonstandard spacing and  
12 proration unit, a nonstandard location and  
13 compulsory pooling, Eddy County, New Mexico.

14 Case Number 14709: Application of COG  
15 Operating, LLC, for a nonstandard spacing and  
16 proration unit, a nonstandard location and  
17 compulsory pooling, Eddy County, New Mexico.

18 Case Number 14710: Application of COG  
19 Operating, LLC, for a nonstandard spacing and  
20 proration unit and compulsory pooling in Eddy  
21 County, New Mexico.

22 Case Number 14711: Application of COG  
23 Operating, LLC, for a nonstandard spacing and  
24 proration unit, nonstandard location and compulsory  
25 pooling, Eddy County, New Mexico.

1 Case Number 14712: Application of COG  
2 Operating, LLC, for a nonstandard spacing and  
3 proration unit, a nonstandard location and  
4 compulsory pooling, Eddy County, New Mexico.

5 Case Number 14713: Application of COG  
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7 proration unit, a nonstandard location and  
8 compulsory pooling, Eddy County, New Mexico.

9 Case Number 14714: Application of COG  
10 Operating, LLC, for a nonstandard spacing and  
11 proration unit, a nonstandard location and  
12 compulsory pooling, Eddy County, New Mexico.

13 Case Number 14715: Application of COG  
14 Operating, LLC, for a nonstandard spacing and  
15 proration unit, a nonstandard location and  
16 compulsory pooling, Eddy County, New Mexico.

17 Case Number 14716: Application of COG  
18 Operating, LLC, for a nonstandard spacing and  
19 proration unit, a nonstandard location and  
20 compulsory pooling, Eddy County, New Mexico.

21 Case Number 14717: Application of COG  
22 Operating, LLC, for a nonstandard spacing and  
23 proration unit, a nonstandard location and  
24 compulsory pooling, Eddy County, New Mexico.

25 On page 4, Case Number 14718: Application



1 of COG Operating, LLC, for a nonstandard spacing and  
2 proration unit, a nonstandard location and  
3 compulsory pooling, Eddy County, New Mexico.

4 For the purpose of testimony, we're going  
5 to combine all of these 15 cases together.

6 At this point, I call for appearances,  
7 please.

8 MR. BRUCE: Mr. Examiner, Jim Bruce, of  
9 Santa Fe, representing Burnett Oil Company, Inc.,  
10 and Hudson Oil Company of Texas. And I'm appearing  
11 here in association with Robert Grable, of the law  
12 firm of Kelly Hart & Hallman, of Fort Worth.

13 MS. MUNDS-DRY: Good morning,  
14 Mr. Ezeanyim. Ocean Munds-Dry, with the law firm  
15 Holland & Hart, LLP.

16 Appearing with me today is Adam Rankin.  
17 We represent COG Operating, LLC. We have six  
18 witnesses.

19 MR. BRUCE: And we have five possible  
20 witnesses, Mr. Ezeanyim.

21 HEARING EXAMINER EZEANYIM: Any other  
22 appearances? Okay.

23 At this point, all of the probable, you  
24 know, witnesses, everybody that is supposed to  
25 testify, stand up, whoever for.

1 State your names, and then you'll be  
2 sworn.

3 Starting from here, state your name.

4 THE WITNESS: John Haiduk.

5 THE WITNESS: David Rhodes.

6 THE WITNESS: Mark Jacoby.

7 THE WITNESS: John Rodgers.

8 THE WITNESS: Randall Hudson.

9 THE WITNESS: Harvin Broughton.

10 THE WITNESS: David Evans.

11 THE WITNESS: Ryan Dehnad.

12 THE WITNESS: Carl Bird.

13 THE WITNESS: Ken Craig.

14 THE WITNESS: Noel Olivas.

15 HEARING EXAMINER EZEANYIM: As I said  
16 before, if you have your business card -- I don't  
17 know if you have got them -- if you will give them  
18 to the reporter before you leave today, so he can  
19 get your name correctly.

20 You may swear them in, please.

21 (Witnesses sworn by the court reporter.)

22 Any opening statements?

23 Mr. Bruce, any opening statements?

24 MR. BRUCE: Yes. I have a very short one,  
25 Mr. Examiner.

1 I'll hand out our exhibits first.

2 HEARING EXAMINER EZEANYIM: Okay. You may  
3 continue.

4 Do you have an opening statement, too?

5 MS. MUNDS-DRY: I do.

6 MR. BRUCE: Mr. Examiner, we're here  
7 today, ultimately involving three sections of land,  
8 although Burnett only has pooling applications for  
9 two quarter quarter sections. The ultimate issue is  
10 who should operate this acreage and the wells to be  
11 drilled on this acreage.

12 Insofar as operatorship, Burnett believes  
13 that it should operate because it owns or controls  
14 two-thirds of the working interest; whereas, COG  
15 owns or controls one-third of the working interest.

16 Obviously, Burnett will be responsible for  
17 the lion's share of costs; and, therefore, should  
18 operate.

19 The second issue in determining  
20 operatorship, we believe, is engineering, who gets  
21 better recoveries, who gets better results.

22 We will present testimony today that  
23 Burnett's plan of development will result in  
24 recovery of more reserves than COG's plan and will  
25 also result in orderly development of the unit.

1           Burnett and Hudson have operated on these  
2   three sections of land and in this area for anywhere  
3   from 40 to 60 years, and Burnett has 10 years of  
4   experience in drilling into the Yeso. And it  
5   believes that the techniques it has developed over  
6   this period of time are superior to those of the  
7   other operators.

8           In fact, there are other operators in this  
9   area who are now copying Burnett's method of  
10  drilling and completing these wells.

11           COG, on the other hand, has recently  
12  proposed 13 -- actually 17, I believe at this point,  
13  triple lateral horizontal wells to Burnett and to  
14  Hudson to the tune of approximately \$160 million,  
15  and they want approval to drill right now.

16           These types of wells have never been  
17  drilled in New Mexico. We believe it is unproven at  
18  this point, and Burnett's techniques of drilling  
19  vertical wells to define the reservoir and then  
20  subsequently drilling single horizontal laterals is  
21  far superior.

22           We believe that approving Burnett as  
23  operator of this three-section area will prevent  
24  waste, will protect driller rights, and we ask that  
25  COG's applications be denied in total and that you

1 grant Burnett's applications.

2 Thank you.

3 HEARING EXAMINER EZEANYIM: Thank you.

4 Before you begin, we're talking about  
5 three sections. In those three sections, Burnett  
6 owns two-thirds?

7 MR. BRUCE: Roughly two-thirds, yes.

8 HEARING EXAMINER EZEANYIM: 12, 13, and  
9 24, right? Is that what you are talking about?  
10 Okay. Not those, the 12, 13, and 24 but the whole  
11 19 -- 1,930 acres?

12 MR. BRUCE: The owner controls two-thirds  
13 of the working interest.

14 HEARING EXAMINER EZEANYIM: Okay. Thank  
15 you.

16 Go ahead.

17 MS. MUNDS-DRY: Thank you, Mr. Ezeanyim.

18 As you know, and as you reminded us this  
19 morning, Mr. Examiner, the pooling statute in the  
20 Oil and Gas Act, 70-2-17, requires you, if a party  
21 seeks to pool parties, to pool if you find it will  
22 prevent waste and protect correlative rights and  
23 avoid the drilling of unnecessary wells.

24 You will hear testimony today that the  
25 leases at issue in these cases in 12, 13, and 24 --

1 and there's -- just so you know, for your reference,  
2 there is another section involved, but it's really  
3 just three sections that are at issue today. All  
4 have difficult surface conditions, in that this is  
5 lizard habitat.

6 Concho first proposed a vertical well  
7 program on this acreage. But it quickly realized,  
8 after working and consulting with the BLM, that that  
9 would not be possible due to the difficult surface  
10 conditions; i.e., the presence of the lizard  
11 habitat.

12 So what Concho did was work very closely  
13 with the BLM to come up with a program to maximize  
14 production from this acreage while minimizing the  
15 surface impact, and that's what we are presenting to  
16 you today, and that is the key thing to focus on  
17 today.

18 The BLM agrees, and Concho is pleased to  
19 see that Burnett and Hudson both now agree that a  
20 horizontal well program is the best way to proceed  
21 with developing this acreage. In fact, you'll see  
22 today that their proposed plan of development is  
23 very similar to Concho's plan of development.  
24 However, only one party before you today has a  
25 proposed horizontal well program.

1               Burnett has two -- only two well  
2     applications for vertical wells. We are proposing,  
3     in these cases, horizontal wells that cover those  
4     three sections.

5               Burnett/Hudson still appears to be  
6     adhering to the idea that they should drill vertical  
7     wells first, and then perhaps move to horizontal  
8     wells.

9               You will hear testimony today that those  
10    Burnett/Hudson proposed wells will cause waste and  
11    will interfere with the horizontal well program  
12    which, again, maximizes production and minimizes  
13    surface disturbance.

14              Burnett/Hudson also proposes a unit, an  
15    exploratory unit, and has received preliminary  
16    approval from the BLM.

17              Concho will show you why there are serious  
18    flaws and barriers to them receiving final approval  
19    of this unit, and there will be absolutely no  
20    advantages gained by forming that so-called  
21    exploratory unit here, other than the Burnett/Hudson  
22    goal of, frankly, slowing play development and  
23    trying to kick Concho out.

24              Burnett/Hudson will also argue that Concho  
25    wells are -- that we propose, these triple

1 laterals -- are too risky.

2 We will give you testimony today that  
3 strongly refutes this assertion. These wells have  
4 been successful and will be successful here.

5 Burnett/Hudson will claim that they're a  
6 better operator due to their science with how they  
7 perform and log their wells and their completion  
8 methods.

9 Our experts will show you that although  
10 Concho still does routinely run logs, Concho already  
11 has done its homework. It already knows how to  
12 develop the Yeso. It has over 1,500 wells in the  
13 Yeso shelf that it operates -- that it has drilled  
14 and operated. Concho already has a firm grasp on  
15 how to develop this acreage.

16 Further, we will show you that the  
17 Burnett/Hudson completion methods are really no  
18 better in obtaining greater reserves at the end of  
19 the day and, frankly, are not as likely to be as  
20 effective in the horizontal wells that we now agree  
21 that should be drilled on this acreage.

22 Yes, Burnett/Hudson has approximately a  
23 two-thirds working interest and Concho has or  
24 controls the remaining of that, the third. But for  
25 some reason, the Hudsons had these leases for



1 generations and did nothing, even back in 2005, when  
2 the Yeso proved to be productive. It was not until  
3 Concho showed interest in this acreage and proposed  
4 to develop the acreage that Hudson and Burnett  
5 decided to do something with the Yeso.

6 That, if you look at the division's  
7 precedent, is not something that you can give them  
8 as a weighty factor of this majority interest, when  
9 they sat on their interest for so long until Concho  
10 showed interest.

11 Plus, it's not like a split like you had  
12 in past precedent, where you had 90/10 or 80/20.  
13 It's a much more even split. So we would argue to  
14 you, and we will show you today, that that is not  
15 the most important factor. It's a factor you can  
16 look at, but not the most important factor.

17 Let's clarify about what is before you.  
18 Concho is requesting that the interests be pooled  
19 for a total of 14 horizontal wells in its  
20 applications today.

21 Burnett/Hudson has before you two vertical  
22 wells covering 40-acre sections, or units.

23 Concho is capable and is ready to drill  
24 every one of those 14 wells as soon as possible. So  
25 it's not a fool's errand to consider the large plan

1 of development, the master plan of development, and  
2 to anticipate that Concho will, in fact, develop  
3 this acreage in a timely manner, and doing so in a  
4 way that will have the least surface impact;  
5 certainly, less than Burnett/Hudson has proposed,  
6 even under its proposed unit plan.

7           What is not before you is any request for  
8 approval of the unit or future Burnett/Hudson  
9 horizontal drilling plans. It is your duty to pool  
10 if you find the applications before you prevent  
11 waste and protect correlative rights, and Concho  
12 submits that they do.

13           There are a variety of factors the  
14 division has looked at over the years to determine  
15 who should be awarded operations when you have these  
16 sorts of competing applications. We can look at  
17 whatever factors you want, but the Oil and Gas Act  
18 requires you to judge applications based on whether  
19 they prevent waste and protect correlative rights.

20           Concho's applications, we submit to you,  
21 will be in the best interest of conservation,  
22 prevent waste, and protect correlative rights and  
23 ensure, as the language in the pooling statute  
24 requires, that each owner has the opportunity to  
25 produce his just and equitable share of the oil in

1 the Yeso.

2 Therefore, Mr. Ezeanyim, we respectfully  
3 request that you grant Concho's applications and  
4 deny Burnett's.

5 Thank you.

6 HEARING EXAMINER EZEANYIM: Thank you.

7 Any rebuttal? Anything you want to say  
8 before we continue?

9 MR. BRUCE: No. I would just rather get  
10 to the testimony, Mr. Ezeanyim.

11 HEARING EXAMINER EZEANYIM: Okay. I don't  
12 know. It appears the witnesses in the room looks to  
13 be larger today.

14 In looking at the prehearing statements,  
15 it appears to me that you will take about -- maybe  
16 two hours. Is that...

17 MR. BRUCE: I think that's about right.

18 HEARING EXAMINER EZEANYIM: Two hours, and  
19 three?

20 MS. MUNDS-DRY: We think approximately  
21 three for direct.

22 HEARING EXAMINER EZEANYIM: Okay. So are  
23 we going to finish today?

24 MS. MUNDS-DRY: Oh, I hope so.

25 HEARING EXAMINER EZEANYIM: If we're going

1 to finish today, then we are not going to divide the  
2 time. But if we're not, I might -- I might take a  
3 recess and then try to see if I can appoint some  
4 time. So -- but since you say we are going to  
5 finish, I want you to be done today, because we have  
6 something else tomorrow. There are a lot of things  
7 to be done, you know.

8 So if you think we're going to finish  
9 today we're not going to divide time.

10 LEGAL EXAMINER BROOKS: Well, it's -- I  
11 would remind you that it's really hard to divide  
12 time fairly once the testimony is started.

13 HEARING EXAMINER EZEANYIM: Yeah. That's  
14 why I wanted to establish that. You be the boss.

15 Let me take you at your word that you guys  
16 will make it so that -- I mean two and a half, two  
17 and a half, I think, you know, we can finish the  
18 job. I think what we're going to do is -- I don't  
19 want to make you guys -- these guys have come from  
20 all over the state.

21 About 10:15 we will take a 10-minute  
22 break. And then from 10:30 to 11:30, we'll take a  
23 lunch, and then complete after lunch. I think  
24 that's good.

25 MS. MUNDS-DRY: Can you tell me the timing

1 again? I'm sorry, Mr. Ezeanyim.

2 HEARING OFFICER EZEANYIM: Maybe 10:15 we  
3 will take a break. And then from 10:30 to 11:30,  
4 we'll take a lunch break.

5 MS. MUNDS-DRY: 10:30?

6 LEGAL EXAMINER BROOKS: What you mean is  
7 you'll take a lunch break at 11:30.

8 HEARING EXAMINER EZEANYIM: 11:30.

9 MS. MUNDS-DRY: Oh, I see.

10 LEGAL EXAMINER BROOKS: What you were  
11 saying is that you would take a break at 10:15 and  
12 then you would take lunch at 10:30 to 11:30.

13 HEARING OFFICER EZEANYIM: No, no. We  
14 will take a break -- I mean it might change,  
15 depending on what happens. And then we'll go --  
16 have one and a half hours and then come back, and we  
17 will complete. I'm happy we're going to do it today  
18 and not tomorrow, because tomorrow I have other  
19 engagements, and I can't afford it tomorrow. So  
20 we'll try to do it today.

21 Okay. So that's what we're going to do.

22 Now, at this point, do you want to go  
23 first?

24 MR. BRUCE: Yes.

25 HEARING EXAMINER EZEANYIM: Okay. Now,

1 I'm going to have you present your witness, please.

2 MR. BRUCE: Okay. I call Mr. Rhodes to  
3 the stand.

4 DAVID S. RHODES,  
5 after having been first duly sworn under oath,  
6 was questioned and testified as follows:

7 EXAMINATION

8 BY MR. BRUCE:

9 Q. Where do you reside, Mr. Rhodes?

10 A. In Fort Worth, Texas.

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

12 A. Burnett Oil Company, Inc., as land  
13 manager.

14 Q. Have you previously testified before the  
15 division?

16 A. Yes, I have.

17 Q. Were your credentials as an expert landman  
18 accepted as a matter of record?

19 A. Yes, they were.

20 Q. Are you familiar with the land matters  
21 involved in these applications?

22 A. Yes, I am.

23 MR. BRUCE: Mr. Examiner, I tender  
24 Mr. Rhodes as an expert petroleum landman.

25 MS. MUNDS-DRY: No objection.

1                    HEARING EXAMINER EZEANYIM: The Examiner  
2 will so find.

3            Q.        (By Mr. Bruce) Mr. Rhodes, let's go over  
4 in general what Burnett is seeking in these cases  
5 and has sought in the past.

6                    And I've marked your first package of  
7 exhibits, the slides, as Exhibit 1. And this is the  
8 first slide in that package.

9                    What does this reflect?

10            A.       This reflects the three-section area,  
11 Sections 12, 13, and 24, and also shows the two  
12 previously-heard pooling applications, the ruling of  
13 which we are still waiting on.

14                    And then it also reflects the two 40s that  
15 we are here for this hearing this morning, the  
16 southeast southeast of 13 and the southeast  
17 southeast of 24.

18            Q.       Now, this plat also shows the proposed  
19 Taylor Draw unit outline?

20            A.       That is correct.

21            Q.       Now, we're not here today seeking approval  
22 of the unit, correct?

23            A.       No. That's correct.

24            Q.       Is it fair to say we're here simply to  
25 show how the unit works with Burnett's plan of

1 development in this area?

2 A. That's correct.

3 This plan also reflects that we have six  
4 approved APDs, indicated by the red diamonds.

5 Q. And this is all federal land?

6 A. That's correct.

7 Q. And the APDs have been approved by the  
8 BLM?

9 A. That's correct.

10 Q. Now, what is the zone that -- the interval  
11 that Burnett seeks to force pool in these cases?

12 A. The Glorieta-Yeso.

13 Q. What does this slide reflect?

14 A. This shows the working interest in the two  
15 40s that we're -- at the hearing today. It shows  
16 the Burnett Oil Company with 46.28 percent, and  
17 Javelina partners and Zorro partners, which are the  
18 Hudson interests, with 16 and 4 respectively, and  
19 then Concho with 33.71.

20 Q. And have the Javelina and Zorro partners'  
21 interests been committed to Burnett?

22 A. Yes, they have. They're supporting us as  
23 operator.

24 Q. And what is this next slide?

25 A. This, basically, just states the -- shows



1 the working interests that are supporting Burnett as  
2 operator, Burnett Oil Company, Zorro, and Javelina,  
3 totaling 66.28 percent, and COG with 33.7.

4 Q. What is this next slide?

5 A. That is a listing of the record title  
6 holders. We have letters of support for us as  
7 operator from all record title holders, showing 100  
8 percent.

9 Q. The record title owners of the federal  
10 leases in this three-section area?

11 A. Yes.

12 Q. What does this map reflect, Mr. Rhodes?

13 A. This is showing the current surface  
14 development. The Hudson Oil Company of Texas  
15 operates 100 percent of the current surface  
16 development. And this shows the various locations  
17 that we have the approved APDs for.

18 Q. And so this area has been substantially  
19 developed by Hudson Oil for the Grayburg-San Andres.  
20 Is that correct?

21 A. That's correct.

22 Q. What is this next exhibit?

23 A. This outlines the Taylor Draw unit,  
24 Sections 12, 13, and 24, that we have made  
25 application for with the BLM and received

1 preliminary approval from them.

2 Q. And is the next slide the letter of  
3 preliminary approval from the BLM?

4 A. Yes, it is.

5 Q. Now, did you meet with the BLM and propose  
6 the unit to them?

7 A. Yes, we did.

8 Q. And met with them in Carlsbad, I believe?

9 A. We met with them in Carlsbad. That's  
10 correct.

11 Q. Now, again, this is just preliminary  
12 approval so that you can go forward to seek final  
13 approval of the unit agreement, correct?

14 A. That's correct.

15 Q. As part of that -- and this would be an  
16 exploratory unit?

17 A. That's correct.

18 Q. And would you have to go out and seek  
19 approval from the various record title owners,  
20 working interest owners, and overriding royalty  
21 interest owners, and included -- in addition to the  
22 BLM?

23 A. That's right.

24 Q. Have letters been sent out to those  
25 interest owners?

1           A.     Yes, they have. They just went out last  
2 week.

3           Q.     Seeking their ratification?

4           A.     Seeking ratification, correct.

5                   HEARING EXAMINER EZEANYIM: Mr. Bruce,  
6 your pages are not numbered. So if I want to  
7 comment, I don't know what exactly -- can you number  
8 them so that we'll know what we're talking about?

9                   All the exhibits here, there are no  
10 numbers on them. I know it's a mistake. Could you  
11 number them, so that when we talk about it -- like  
12 I'm trying to make notes here. I don't know what to  
13 call them. They're not numbered.

14                  MR. BRUCE: Okay. These are,  
15 Mr. Examiner.

16                  HEARING OFFICER EZEANYIM: Okay. These  
17 ones are not, so you might want to do it.

18                  THE WITNESS: Let me just clarify one  
19 thing.

20                  The letters have gone out to the working  
21 interest owners and the title owners.

22                  HEARING EXAMINER EZEANYIM: Excuse me.  
23 Let's get them numbered before you go on, because I  
24 have to listen to what you're saying.

25                  THE WITNESS: Okay.

1 MR. BRUCE: What I have done,  
2 Mr. Examiner, is just identified each slide from A  
3 through to the end, either N or O.

4 HEARING EXAMINER EZEANYIM: Okay. Yes.  
5 You may proceed.

6 MR. BRUCE: Okay, Mr. Examiner.

7 Q. (By Mr. Bruce) And one point of  
8 clarification.

9 Mr. Rhodes, under these three sections of  
10 land, it's all federal minerals, correct?

11 A. That's correct.

12 Q. Now, insofar as surface, what is the  
13 situation with the surface?

14 A. The surface is all federal with the  
15 exception of the east half of 12, which is a private  
16 landowner. But it's my understanding that the BLM  
17 exerts control over that east half of Section 12.

18 Q. Okay.

19 A. In fact, they have control of all of it.

20 Q. Okay. Now, Mr. Rhodes, next -- and I  
21 noted this is Exhibit 1J on the Hearing Examiner's  
22 document.

23 What is -- what does this slide reflect?

24 A. That's 3183.4 of the regulations, BLM  
25 regulations, and is talking about approval of

1     executed agreement. It says that "A unit agreement  
2     shall be approved by the authorized officer upon the  
3     determination that such agreements necessary or  
4     advisable in the public interest and is for the  
5     purpose of more properly constructed natural  
6     resources."

7           Q.     In Burnett's opinion, will this help  
8     conserve the natural resources?

9           A.     We think it will, yes.

10          Q.     Now, you were here and listened to  
11     Ms. Munds-Dry make her opening statement about  
12     surface use issues.

13                   Burnett has been fully aware of those  
14     issues for some time, has it not?

15          A.     Yes, we have.

16          Q.     And will other witnesses comment on the  
17     surface usage?

18          A.     Yes, they will.

19          Q.     The final area talks about reasonably  
20     effective control of the operations.

21                   Is it your opinion that if Burnett is  
22     granted operations in this area it would have a  
23     reasonably effective control of operations?

24          A.     Yes, it is.

25          Q.     And next, which I've marked K for the

1     Hearing Examiner, what does that reflect?

2           A.     This is a lease map of the Taylor Draw  
3     unit area showing Sections 12, 13, and 24.  It's  
4     made up of five different tracts.  The ownership is  
5     different in each tract.

6           The BLM has the royalty under all of it,  
7     but the overrides and working interests are  
8     different in each tract.

9           Q.     And has Burnett had a title opinion  
10    prepared so that it could determine the ownership of  
11    the interest in these lands?

12          A.     It's -- we have a working interest title  
13    opinion that's -- we had working interests that have  
14    been submitted to us by our title attorney.

15          The overriding royalties, apparently, are  
16    very complicated, and they are still working on  
17    that, and so I don't actually have a copy of that.

18          Q.     And what is this slide?

19          A.     This is the --

20          MR. BRUCE:  And, Mr. Examiner, I must  
21    mention this was finalized last night, and I didn't  
22    get it into the exhibit package.

23          HEARING EXAMINER EZEANYIM:  Oh, okay, so  
24    it's not in here?

25          MR. BRUCE:  It's not in there.

1 But, Mr. Rhodes, go ahead.

2 HEARING EXAMINER EZEANYIM: Okay.

3 A. This reflects -- this is a slide that our  
4 title attorney provided to us showing the working  
5 interest ownership that would be across the  
6 three-section unit area.

7 Q. (By Mr. Bruce) And, again, it shows  
8 roughly the same thing, that it's approximately  
9 two-thirds Burnett and its working interest partners  
10 and approximately one-third --

11 A. That's correct.

12 MS. MUNDS-DRY: Mr. Bruce, could we get a  
13 copy of that slide at some point?

14 MR. BRUCE: Yes.

15 MS. MUNDS-DRY: Thank you. Ask and ye  
16 shall receive.

17 HEARING EXAMINER EZEANYIM: I would also  
18 like to have a copy of that.

19 MR. BRUCE: It's been marked M-1 for you.

20 HEARING EXAMINER EZEANYIM: Thank you.

21 MR. BRUCE: One thing I did include in the  
22 exhibit package is -- although we don't need to go  
23 into it, Mr. Examiner -- is we have included the  
24 proposed Exhibit B to the Taylor Draw unit. And  
25 that's marked exhibit pages M, N, O, P.

1 And this is page Q.

2 Q. (By Mr. Bruce) What does this reflect,  
3 Mr. Rhodes?

4 A. It just gives us sort of a summary of the  
5 Taylor Draw, plus Section 25.

6 It shows that Burnett Oil Company and  
7 Javelina and Zorro effectively control 66.28 percent  
8 of the working interest in the Yeso.

9 Burnett Oil Company, Inc., is supported  
10 for operations by 100 percent of the record title  
11 owners.

12 Burnett Oil Company, Inc., has applied for  
13 and been granted a preliminary federal unit by the  
14 BLM, and it has been designated as the Taylor Draw  
15 unit. The unit includes all of Sections 12, 13, and  
16 24 of 17/31, Eddy County, New Mexico.

17 Burnett Oil Company, Inc., has an ongoing  
18 Yeso drilling program near the Maljamar leases and  
19 has contracted a rig to begin development of this  
20 property.

21 Burnett Oil Company, Inc., has six  
22 approved APDs.

23 And Burnett Oil Company, Inc., is a member  
24 company in the Candidate Conservation Agreement,  
25 CCA.



1 Q. And the CCA reflects -- that pertains to  
2 surface use, does it not?

3 A. That's correct.

4 Q. Of the people on the slide M-1, shown on  
5 this slide, which are the only parties Burnett seeks  
6 to enforce pool at this time?

7 A. COG and Concho.

8 Q. All of the other interests are committed  
9 in writing to Burnett's proposals, correct?

10 A. That is not correct. The Pam Burke  
11 trustee -- now, this is a unit we are --

12 Q. Oh, this is a working unit?

13 A. We are actually just here today to force  
14 pool the two --

15 Q. Okay.

16 HEARING EXAMINER EZEANYIM: Let me get  
17 this straight. COG and Concho, are they two  
18 different operators?

19 THE WITNESS: No, they're the same.

20 HEARING EXAMINER EZEANYIM: You said COG  
21 and Concho, so I'm beginning to wonder. I thought  
22 they were the same operator. Maybe I'm not  
23 understanding.

24 MR. BRUCE: Mr. Examiner, if I may -- and  
25 Ms. Munds-Dry can correct me -- COG Operating, LLC,

1 filed its applications. It is the operator. It has  
2 a sister, or a subsidiary corporation, called Concho  
3 Oil & Gas, which also owns working interests in  
4 these leases.

5 HEARING OFFICER EZEANYIM: Oh, okay.

6 MS. MUNDS-DRY: That's correct.

7 HEARING EXAMINER EZEANYIM: So when you  
8 say COG and Concho -- I used to equate COG as  
9 Concho. Do you see what I mean?

10 MR. BRUCE: A lot of us still do that.

11 HEARING OFFICER EZEANYIM: Okay. I'm  
12 sorry.

13 MS. MUNDS-DRY: If you asked the COG guys  
14 here today, they would call themselves Concho.

15 HEARING OFFICER EZEANYIM: Okay.  
16 Whatever.

17 Q. (By Mr. Bruce) Let's move on to the hard  
18 copy exhibits, Mr. Rhodes.

19 What are Exhibits 2 and 3?

20 A. Exhibit 2 is the proposal letter written  
21 February 7 of 2011 to COG Operating, LLC, proposing  
22 the Nosler Fed Number 3 well in the southeast  
23 southeast of Section 24, and proposed the drilling  
24 of the well to the Yeso, and attached AFE.

25 Q. And also attached to that is the letter to

1 Concho Oil & Gas, correct?

2 A. That's correct, yes.

3 Q. What is Exhibit 3?

4 A. Exhibit 3 is a letter dated February 7,  
5 2011, from me to Concho Oil & Gas and to COG  
6 proposing the Partition Fed Number 2 well in the  
7 southeast southeast of Section 13 of Eddy County,  
8 New Mexico.

9 Q. And let's -- I don't want to go into great  
10 detail, Mr. Rhodes, but skip over to Exhibit 5.

11 Just briefly inform the Hearing Examiner,  
12 what is that?

13 A. This is a chronology of the dates and  
14 contacts that we've had with the Concho  
15 representatives trying to find some common ground so  
16 that we could move forward with drilling this  
17 four-section area. And it starts back in  
18 November -- November 11 of 2010 was the first  
19 contact that we had. And it was -- as you can see,  
20 we've had multiple contacts up until just recently.

21 Q. Okay. So to address one of the Hearing  
22 Examiner's concerns, there have been contacts for,  
23 at this point, nine months between the parties,  
24 correct?

25 A. Yes.

1 Q. And you just have not been able to reach  
2 terms?

3 A. That's correct.

4 Q. And without getting into them, there have  
5 been other confidential contacts between the parties  
6 that are not listed herein, correct?

7 A. That's correct.

8 Q. Okay. A couple of things. I don't think  
9 we need to point out a lot in here, since it's  
10 pretty self-explanatory, Mr. Rhodes.

11 But when this first started in early this  
12 year, how many vertical well proposals did Burnett  
13 and Hudson receive from COG?

14 A. We received 47 vertical proposals,  
15 vertical well proposals, from Concho.

16 Q. And have those ever specifically been  
17 retracted?

18 A. No, not to my knowledge.

19 Q. And then recently, you've received how  
20 many horizontal well proposals?

21 A. 14 wells.

22 Q. Anyway, quite a few?

23 A. Yes, a number. I don't know. They're  
24 listed in here. 14 -- 17, perhaps.

25 Q. Were they all for triple lateral

1 horizontal?

2 A. Triple lateral horizontal.

3 Q. In your opinion, has Burnett made a good  
4 faith effort to obtain the voluntary enjoiner of the  
5 interest owners in the wells?

6 A. Yes.

7 Q. And do you request that Burnett be  
8 appointed operator of the wells?

9 A. Yes.

10 Q. Do you have a recommendation for the  
11 amounts which Burnett should be paid for the  
12 supervision and administrative expenses?

13 A. Yes, I do. They're 5750 on the producing  
14 overhead and 575 -- I'm sorry. On the drilling well  
15 overhead -- and 575 on the producing overhead.

16 Q. Are these amounts equivalent to those  
17 normally charged by Burnett and other operators in  
18 this area for wells of this type?

19 A. Yes, they are.

20 Q. Do you request that the overhead rates be  
21 adjusted periodically as required by the appropriate  
22 accounting procedures?

23 A. I do.

24 Q. And does Burnett request the maximum cost  
25 plus 200 percent risk charge, if any interest owner

1 goes nonconsent in a well?

2 A. Yes, we do.

3 Q. Now, we skipped over one exhibit,  
4 Exhibit 4, Mr. Rhodes. What does that reflect?

5 A. These are letters from the record title  
6 holders and the other -- and two of the working  
7 interest owners supporting Burnett as operator. The  
8 two working interest owners are Javelina and Zorro,  
9 which are Hudson entities.

10 Q. And so the large majority of interest  
11 owners support Burnett operating this acreage?

12 A. Yes.

13 MR. BRUCE: Mr. Examiner, Exhibits A and B  
14 are merely my affidavits of notice to the parties  
15 being pooled.

16 HEARING OFFICER EZEANYIM: Okay.

17 Q. (By Mr. Bruce) Mr. Rhodes, were Exhibits  
18 1 through 5 prepared by you or under your  
19 supervision?

20 A. They were.

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

24 A. They are.

25 Q. And you also request that COG's

1 applications be denied?

2 A. I do.

3 MR. BRUCE: Mr. Examiner, I would move the  
4 admission of Burnett Exhibits 1 through 5, and then  
5 A and B, the notice exhibits.

6 HEARING OFFICER EZEANYIM: Do you have  
7 objection?

8 MS. MUNDS-DRY: No objection.

9 HEARING EXAMINER EZEANYIM: Exhibits 1  
10 through 5 and Attachments A and B will be admitted.

11 MR. BRUCE: I have no further questions of  
12 the witness, Mr. Examiner.

13 HEARING OFFICER EZEANYIM: Ms. Munds-Dry?

14 MS. MUNDS-DRY: Thank you, Mr. Examiner.

15 EXAMINATION

16 BY MS. MUNDS-DRY:

17 Q. Good morning, Mr. Rhodes.

18 A. Good morning.

19 Q. If you could turn to your first slide that  
20 shows the approved APDs.

21 Thank you, Mr. Rhodes.

22 Mr. Rhodes, if I understand correctly, you  
23 show six approved well locations, in that you have  
24 six APDs approved by the BLM. Is that correct?

25 A. Uh-huh.

1 Q. And I understand that you have submitted  
2 a -- that Burnett has submitted a plan of  
3 development under the proposed Taylor Draw unit. Is  
4 that correct?

5 A. Uh-huh.

6 Q. How do these six vertical well locations  
7 fit into your plan of development?

8 A. I am going to defer that question to one  
9 of our later witnesses, Mr. Jacoby.

10 Q. Mr. Jacoby?

11 A. He's our engineer that was responsible for  
12 actually preparing that plan of development.

13 Q. I think I know this as well, but I want to  
14 ask, just in case.

15 Mr. Rhodes, are you familiar with the  
16 efforts that went into attaining or becoming an  
17 enrolled member in the Candidate Conservation  
18 Agreement program? Is that Mr. Jacoby?

19 A. I was not involved with that personally.

20 Q. And I believe you've told me before,  
21 Mr. Jacoby may have more knowledge about that?

22 A. Yes, ma'am.

23 Q. Do you know if -- and I just want to make  
24 sure that you don't have any knowledge of this.

25 Do you know that -- now that you are a



1 member of CCA, whether these APDs comply with that  
2 agreement?

3 A. I don't know the answer to that.

4 Q. Do you think Mr. Jacoby might know that?

5 A. Perhaps.

6 Q. And let me just ask you this.

7 Do you plan -- or does Burnett plan to  
8 drill these APDs, as they have been approved, given  
9 that you're a member of the CCA?

10 A. That would be another question related to  
11 the plan of development.

12 Q. Okay. We don't necessarily need to turn  
13 to this slide, Mr. Rhodes.

14 Do you know why Burnett has not requested  
15 that Section 25 be included in the proposed Taylor  
16 Draw unit?

17 A. It's my understanding this really is more  
18 of a geologic question. But those are the primary  
19 sections for the Yeso. When we get down into  
20 Section 25, the Yeso is not prospective -- or as  
21 prospective.

22 Q. And you understand this is an exploratory  
23 unit?

24 A. That's correct.

25 Q. Maybe Mr. Haiduk could answer that

1 question?

2 A. Perhaps.

3 Q. Mr. Rhodes, I'm looking at the slide -- I  
4 didn't catch the lettering, I'm sorry, of the  
5 preliminary approval letter.

6 A. Yes, ma'am.

7 MR. BRUCE: That's H and I.

8 MS. MUNDS-DRY: Thank you.

9 Q. (By Ms. Munds-Dry) Mr. Rhodes, were you  
10 responsible for drafting the application letter to  
11 the BLM for the proposed unit?

12 A. I was a participant in drafting that  
13 letter, yes. But it was primarily started by Mary  
14 Starkey, who's no longer with our company.

15 Q. And what did Ms. Starkey do for your  
16 company?

17 A. She was in charge of our regulatory  
18 matters in New Mexico.

19 Q. And when did you first meet with the BLM  
20 to discuss this proposed unit?

21 A. We had a meeting with them in Carlsbad  
22 on -- July 14 was the first physical meeting that we  
23 had.

24 Q. And at that time, as I understand it, you  
25 submitted the formal application packet for the

1 unit. Is that correct?

2 A. Yes.

3 Q. I'm curious why you marked all of those  
4 documents confidential.

5 A. We wanted to make sure that we had the --  
6 all of our information in front of the BLM without  
7 having any interference from Concho. We wanted to  
8 be able to have our hearings in front of the BLM and  
9 discuss the formation of this Taylor Draw unit.

10 And they informed us that we could mark  
11 any of our exhibits confidential, so that we could  
12 keep it just between ourselves, for the preliminary  
13 process of getting the approval letter.

14 Q. Mr. Rhodes, have you ever been responsible  
15 for forming an exploratory unit before?

16 A. No, I have not.

17 Q. Do you know if Burnett has ever -- anyone  
18 in Burnett, or Burnett, has been an operator in an  
19 exploratory unit?

20 A. We have not.

21 Q. You said that you were concerned about  
22 interference from Concho. What do you mean by that?  
23 What kind of interference?

24 A. Well, we wanted to just make sure that --  
25 it seems like all the way through this process,

1 whenever we've made an agreement with someone -- in  
2 particular, I think back to the term assignments  
3 that we got from some of our parties that we got  
4 term assignments from. As soon as Concho got wind  
5 or found out about an agreement that we made, or  
6 that we were in the process of negotiating, they  
7 would immediately go and try to overturn that  
8 agreement.

9 This happened to us with a company out of  
10 Galveston called Moore & Shelton, where we had a  
11 signed letter of intent with them for a term  
12 assignment, and we informed COG that we had that  
13 term assignment. Even -- or that we had that letter  
14 of intent.

15 But because we didn't actually have the  
16 final term assignment, they physically went to that  
17 office and ended up costing us quite a bit more  
18 money to finalize that agreement.

19 So we didn't want to run the risk of  
20 having that happen to us again.

21 Q. You understand, Mr. Rhodes, that an  
22 exploratory unit is a voluntary agreement?

23 A. Yes.

24 Q. Are you aware whether you can force a  
25 party into an exploratory unit?

1           A.     I'm not aware of that.

2           Q.     Did you discuss with any of the other  
3     working interest owners this -- this proposed idea  
4     of an exploratory unit before going to the BLM?

5           A.     Other than the Hudson entities, no.

6           Q.     In your proposed plan of development,  
7     Mr. Rhodes, you indicate -- and this is also  
8     reflected in the letter here -- that this unit will  
9     employ reasonable measures to minimize surface use.

10                   How is this unit better in minimizing  
11     surface use?

12           A.     Well, I'll have to defer that, again, to  
13     Mr. Jacoby, on the plan of development.

14                   I think the thing that we wanted to point  
15     out here is Burnett/Hudson are the current operators  
16     on the three-section area. We have the BLM that  
17     we've talked to that supports us as operator of that  
18     three-section area, and it would keep the operator  
19     shift down to just those two companies, instead of  
20     having a third with Concho in there. So that...

21           Q.     The BLM has stated to you they would  
22     rather have just two companies there and not Concho  
23     as an operator?

24           A.     They have not said that specifically, but  
25     they have told us that they would like us to operate

1 it.

2 Q. They would like you to operate these three  
3 sections?

4 A. Yes.

5 Q. Have you presented us any evidence of that  
6 today?

7 A. I think that's what this letter, giving us  
8 preliminary approval for the unit, would do.

9 Q. Doesn't this letter also state that this  
10 is a preliminary approval, and that they have the  
11 right to deny approval if there are such things as  
12 objections or other issues that they're not aware of  
13 at this time?

14 A. That's correct.

15 Q. Particularly if you do not have the full  
16 commitment of sufficient lands to afford control?

17 A. That's correct.

18 Q. Mr. Rhodes, are you aware that the BLM  
19 requires 85 percent control in order to form a  
20 voluntary agreement?

21 A. I'm aware that that is a percentage that  
22 is a rule of thumb percentage. It's not a  
23 hard-and-fast number, according to what we have been  
24 told by the BLM.

25 It does show up in their handbook, but

1     that's a draft BLM handbook.  It's not even a final  
2     handbook.  And it's -- as I said, it's a general  
3     rule of thumb that they use.

4             And we -- when we went to them, this is  
5     what they told us that they wanted to do.  So we --  
6     and they did indicate that this would be a unit  
7     situation, and that that 85 percent rule may not  
8     necessarily apply.

9             Q.     You're not a lawyer, are you, Mr. Rhodes?

10            A.     No, ma'am.

11            Q.     So are you not aware of what effect that  
12     handbook may have or impact on their  
13     decision-making?

14            A.     No, ma'am, I'm not.

15            Q.     They told you they would treat it as a  
16     general rule of thumb?

17            A.     They told us that the 85 percent was not a  
18     hard-and-fast percentage.

19            Q.     And you can tell me if this is a question  
20     for Mr. Jacoby.

21                    In your plan of development, in your  
22     preliminary letter, you indicate you'll be using a  
23     combination of vertical and horizontal Yeso wells.  
24     Is that correct?

25            A.     That's correct.

1 Q. Does Burnett feel that horizontal wells  
2 are the best way to develop these properties?

3 A. I think that it -- I think we do. There  
4 again, that's going to be a question for Mr. Jacoby.  
5 I think we want to drill the vertical wells because  
6 it gives us information about the -- where to land  
7 our horizontal wells.

8 We, to date, have drilled 15 horizontal  
9 wells in the township just west. They have all been  
10 very successful wells in the Yeso, and we're only  
11 six or seven miles away from this, so we feel like  
12 we have a good handle on how to do that properly.

13 Q. In your meeting on July 14, I believe you  
14 said, did the BLM indicate that they did not want  
15 Concho to operate these properties?

16 A. No, they did not say that.

17 Q. Did they indicate to you that the unit may  
18 only be approved if Burnett is successful at the  
19 forced pooling?

20 A. They did not say that in the meeting. I  
21 don't recall that being said.

22 Q. What did the BLM tell you about the  
23 existing JOA for the Knockabout well?

24 A. They didn't really have much -- well, in  
25 fact, I don't think they had anything to comment



1 on -- about the existing JOA for the Knockabout  
2 well. I don't remember that subject area coming up.

3 Q. So as I understand it, this letter is  
4 dated July 18?

5 A. July -- yes, 18th, I'm sorry.

6 Q. And you didn't notify Concho until  
7 August 25th that they were planning to form this  
8 preliminary approval letter -- or form a unit,  
9 sorry. Is that correct?

10 A. Well, until what was the date? I'm sorry.

11 Q. August 25th.

12 MR. GRABLE: Pardon me, Ms. Munds-Dry.

13 May I make a statement for the record?

14 The reason Mr. Rhodes is hesitating is  
15 that we had a confidential meeting with Concho's  
16 management in Midland substantially earlier than  
17 that. And prior to that, we did submit to them  
18 certain things regarding the proposed unit.

19 MS. MUNDS-DRY: Under that agreement, can  
20 Mr. Rhodes give the date of when that meeting was?

21 MR. GRABLE: It was August 4.

22 MS. MUNDS-DRY: It was August 4 or 5,  
23 wasn't it?

24 MR. GRABLE: I believe it was Friday,  
25 August 4.

1 Q. (By Ms. Munds-Dry) That's still after the  
2 July 18 letter, correct?

3 A. That's correct, yes.

4 Q. Mr. Rhodes, let's turn to your slide M-1,  
5 the working interest ownership.

6 LEGAL EXAMINER BROOKS: Actually, I think,  
7 Mr. Grable, that August 4 was a Thursday. I think  
8 August 4 was a Thursday, if we are talking about --

9 MR. GRABLE: Well, then, it was August 5.  
10 My memory has been refreshed.

11 LEGAL EXAMINER BROOKS: I remember we had  
12 a hearing here on August 4 to --

13 MR. GRABLE: You are absolutely right. It  
14 was Friday, the 5th.

15 Q. (By Ms. Munds-Dry) Mr. Rhodes, I'm  
16 looking at the slide that shows the working interest  
17 ownership breakdown.

18 A. Is that for the unit?

19 Q. For the unit, yes. And I'm really looking  
20 at that in tandem with this Exhibit B that you have  
21 included that's to the unit agreement.

22 My understanding is you have some initial  
23 working interest ownership title work completed but  
24 you're still waiting on a few override title --

25 A. That's correct, yes.

1 Q. Why didn't Burnett do the title work  
2 before proposing the unit?

3 A. Well, it was in the process, but it had  
4 not been finalized. We had ordered it before we  
5 formed the unit, but we just didn't have it.

6 Q. I believe your testimony is that you have  
7 term assignments with certain parties, Moore &  
8 Shelton being one of them?

9 A. That's correct.

10 Q. When does that term assignment expire?

11 A. Oh, gosh. I may have to get that date for  
12 you. It's -- I believe it was a two-year term  
13 assignment, and it would have been dated probably  
14 November or December. I should know that, but I  
15 just don't recall it off the top of my head.

16 Q. I'm sorry. November or December of...

17 A. Of -- let's see. It would have been just  
18 before the meeting that we had -- 2010.

19 Q. And what about the term assignment with  
20 the Bank of America?

21 A. That's the same date, roughly.

22 Q. Mr. Rhodes, I don't want to spend too much  
23 time on this. But Exhibit Number 5, your  
24 chronology?

25 A. Yes, ma'am.

1 Q. If you could turn to that, please.

2 A. (Witness complies.)

3 Q. Before Concho contacted Mr. Hudson to  
4 discuss development of this property, did Burnett  
5 have a plan of development for these leases?

6 A. No. We had talked to the Hudsons about  
7 developing the Yeso. We had no formal plan at that  
8 time, because up until that point the offsetting  
9 wells were not encouraging to us. And we were  
10 developing our leasehold over to the west in the  
11 Grayburg-Jackson area with the idea that we would  
12 eventually come over and drill these Yeso wells.

13 We didn't have term assignments for those  
14 Yeso wells at that point. In fact, the Concho  
15 interest was owned by Marbob at that time, and we  
16 were waiting on the Hudsons to decide when they  
17 wanted to develop that.

18 In other words, we didn't have an interest  
19 in the Yeso until we got our term assignments.

20 Q. On March 3, on the second page,  
21 Mr. Rhodes, you had a meeting with Concho?

22 A. Yes, ma'am.

23 Q. I believe those folks came to see you-all  
24 in Fort Worth?

25 A. That's correct.

1           Q.     Why did Burnett condition that support in  
2     the allowables hearing on getting operations in what  
3     you call the Maljamar area?

4                   MR. BRUCE:  Mr. Examiner, we object,  
5     insofar as there were some confidential meetings  
6     that we don't want to get into.

7                   MS. MUNDS-DRY:  That was not a  
8     confidential meeting on March 3.  There was no  
9     agreement, there was absolutely no understanding  
10    that it was confidential.

11                  MR. BRUCE:  Well, I don't recall the dates  
12    because I wasn't involved in that phase, but there  
13    were some confidential agreements.

14                  Other than that, Mr. Rhodes can answer the  
15    questions.

16                  THE WITNESS:  Okay.

17                  I'm sorry.  Would you ask the question  
18    again?

19           Q.     (By Ms. Munds-Dry)  Sure.  Your entry here  
20    shows that Concho came to Burnett to ask them to  
21    support their position in the allowable case.

22                  Mr. Pollard, Bill P., I believe that's the  
23    reference, asked, and they wanted an agreement from  
24    Concho to support Burnett as the operator for the  
25    wells in the Maljamar.

1                   Why was Burnett conditioning support in  
2     the allowables case in getting operations in  
3     Maljamar?

4           A.     We were having -- as you can tell from the  
5     previous notations in my chronology, we were having  
6     a problem with COG, Concho, agreeing to allow us to  
7     operate. And we basically got a call from either  
8     David Evans or Keith Corbett the day before, saying  
9     that they wanted to come and speak to us about an  
10    allowables issue, and that they wanted to keep those  
11    items separate. They felt that they were separate  
12    items.

13                   And when they showed up in our office, we  
14    wanted -- we thought that if we could tell them that  
15    we might consider agreeing to their -- their  
16    request, in the event -- in return for them  
17    supporting us as operations.

18                   But we later realized that that was an  
19    incorrect position. The more we got into looking at  
20    the information and the data, the more we realized  
21    that we had a -- a significant problem with the  
22    allowables issue, and we wanted to separate those  
23    items at that point.

24           Q.     If we could turn to the next page,  
25    Mr. Rhodes, page 3.

1 A. (Witness complies.)

2 Q. Your first entry on April 20 indicates  
3 that Concho came to you with an offer. Four wells  
4 in 2011, I believe is what that reflects. Is that  
5 correct?

6 A. That's right.

7 Q. You wouldn't agree to their other  
8 condition, to pull three 160-acre spacing units out?  
9 That was a nonstarter for Burnett?

10 A. Yes, ma'am.

11 Q. On April 25 you indicate that -- I believe  
12 you responded saying that you were going to move  
13 forward with the hearing -- the pooling hearing, I  
14 assume you were referring to.

15 A. Yes.

16 Q. And you asked COG again to sign a JOA  
17 covering the entire area except the south half of  
18 Section 12, naming Burnett as operator, and to vote  
19 for Burnett to succeed Hudson as operator under the  
20 south half of the JOA?

21 A. Yes.

22 Q. In your April 25 letter, did you  
23 mention -- are you sure you mentioned that you asked  
24 them to vote Burnett as the successor operator?

25 A. I don't recall.

1 Q. In fact, if we were to look at the  
2 letter -- and I have it here if you want,  
3 Mr. Rhodes. You didn't mention that, did you?

4 A. Could I see a copy of that?

5 MS. MUNDS-DRY: May I approach, please?

6 HEARING EXAMINER EZEANYIM: Okay.

7 A. You're right. It does not say that.

8 Q. (By Ms. Munds-Dry) So your chronology is  
9 incorrect here as to that statement?

10 A. Well, as I recall, we -- I may have had a  
11 telephone conversation. I'm trying to remember  
12 exactly.

13 Well, that would be -- I -- I would assume  
14 the reason I put that in there is because of some --  
15 perhaps some telephone conversation that I may have  
16 had with David Evans, but I'm not sure about that.

17 Q. Okay.

18 A. But that is what we have been trying to do  
19 all along.

20 Q. You have been trying to be appointed  
21 successor operator under that JOA?

22 A. Trying to get COG to cooperate with us to  
23 operate the properties. I don't specifically  
24 remember about the south half of Section 12. I'm  
25 sorry.



1 MS. MUNDS-DRY: Thank you, Mr. Rhodes.

2 That's all the questions I have.

3 HEARING EXAMINER EZEANYIM: Rebuttal?

4 FURTHER EXAMINATION

5 BY MR. BRUCE:

6 Q. Just a few questions for you, Mr. Rhodes.

7 Now, did you attend the meetings with the  
8 BLM?

9 A. Yes, I did.

10 Q. And there was one in July, correct?

11 A. That's correct.

12 Q. Was there also one a month prior, in June,  
13 with the BLM?

14 A. Yes, there was.

15 Q. Now, when you met with the BLM, were the  
16 personnel at the BLM aware that Burnett controlled  
17 two-thirds of the working interest?

18 A. Yes, they were.

19 Q. So when you talked with them about the  
20 unit agreement, they knew you only controlled  
21 two-thirds?

22 A. Yes.

23 Q. And did you make them aware that obtaining  
24 COG's approval of the unit could be problematic?

25 A. Yes.

1 Q. And then just a couple of questions  
2 regarding operatorship.

3 Again, Burnett will be responsible for the  
4 lion's share of cost of developing this property,  
5 correct?

6 A. That is correct.

7 Q. In the Yeso?

8 A. Yes.

9 Q. And is that one of the reasons why it  
10 wants to operate it?

11 A. That's one of the reasons.

12 MR. BRUCE: I think that's all I have,  
13 Mr. Examiner.

14 HEARING EXAMINER EZEANYIM: Okay.

15 Mr. Brooks, do you have anything?

16 LEGAL EXAMINER BROOKS: No questions.

17 HEARING EXAMINER EZEANYIM: Let's go back  
18 to that Exhibit Number 1, the first page.

19 The two wells right here are the subject  
20 of this hearing, right? And then down -- there are  
21 two down there, on the south there, is for a hearing  
22 on the 26th.

23 THE WITNESS: Of May, yes, sir. That's  
24 right.

25 HEARING EXAMINER EZEANYIM: And you are

1 waiting for --

2 THE WITNESS: Waiting for a ruling.

3 That's correct.

4 HEARING EXAMINER EZEANYIM: You're waiting  
5 for a ruling on that. Okay.

6 And then one of these two wells, what's  
7 happening with this one, the one on the top there,  
8 and then the one --

9 THE WITNESS: That's just indicating an  
10 approved APD that we've received.

11 HEARING EXAMINER EZEANYIM: Okay. So all  
12 of these six wells are awaiting APD --

13 THE WITNESS: Yes.

14 HEARING EXAMINER EZEANYIM: -- from the  
15 BLM.

16 THE WITNESS: From the BLM.

17 HEARING EXAMINER EZEANYIM: Have you  
18 received also an APD from the OCD? Because, you  
19 know, both have to approve them, right? You get an  
20 APD from BLM, you still have to get it approved by  
21 the OCD. Have any of those six been approved by  
22 OCD?

23 THE WITNESS: I would have to defer that  
24 question to Mr. Jacoby, who's responsible for  
25 obtaining those APDs.

1 HEARING EXAMINER EZEANYIM: Okay. Because  
2 I would like to know what is happening with them.  
3 Okay?

4 Before you go, those two wells, the one on  
5 the top and the one on the middle, there are no  
6 proposals yet on that? There isn't an APD?

7 THE WITNESS: That's correct.

8 HEARING EXAMINER EZEANYIM: You haven't  
9 proposed it to any working interest on it?

10 THE WITNESS: We proposed the wells.

11 HEARING EXAMINER EZEANYIM: Yeah, but to  
12 who?

13 THE WITNESS: To the working interest  
14 owners.

15 HEARING EXAMINER EZEANYIM: Okay.

16 THE WITNESS: But we've sent out the well  
17 proposals on AFEs for the wells.

18 HEARING EXAMINER EZEANYIM: For those two  
19 wells?

20 THE WITNESS: Yes.

21 HEARING OFFICER EZEANYIM: And you are  
22 still waiting to see what they say before you know  
23 whether to composite the pool or go ahead and drill.

24 I'm talking about the other two wells, the  
25 one there in the middle?

1 THE WITNESS: The one in the middle.

2 HEARING OFFICER EZEANYIM: And then the  
3 one on top.

4 THE WITNESS: Yeah.

5 HEARING EXAMINER EZEANYIM: You have  
6 proposed them and you are still waiting for them to  
7 comment?

8 THE WITNESS: That's correct.

9 HEARING EXAMINER EZEANYIM: Including the  
10 Concho or COG?

11 THE WITNESS: Yes, including Concho.

12 HEARING EXAMINER EZEANYIM: Okay. Let's  
13 go back to the working interest ownership you talked  
14 about. That's why I needed to know where it is.

15 Yeah, it's B, 1B. Yeah.

16 When you talk about the Burnett Oil and  
17 Zorro partners and Javelina partners, are they, you  
18 know, individual independent operators, or are they  
19 aligned with the Burnett Oil --

20 THE WITNESS: Yes. Those are -- those --  
21 Zorro and Javelina are part of the Hudson family.

22 HEARING EXAMINER EZEANYIM: Zorro and --  
23 okay.

24 THE WITNESS: Zorro and Javelina. In  
25 fact, both of those principals are here today.

1 HEARING EXAMINER EZEANYIM: Okay. But how  
2 does it work? Do both Zorro and Javelina, are they  
3 working together with Burnett? I want to see  
4 whether they are --

5 THE WITNESS: Yes. They are working  
6 interest owners. I mean, they are title owners in  
7 that property. And their operating entity is Hudson  
8 Oil Company of Texas.

9 HEARING OFFICER EZEANYIM: Okay.

10 THE WITNESS: They are the Hudson family.

11 HEARING OFFICER EZEANYIM: Okay.

12 THE WITNESS: Zorro partners is Bill  
13 Hudson, who's here today. Javelina partners is  
14 Randall Hudson, who's here today.

15 HEARING OFFICER EZEANYIM: Okay.

16 THE WITNESS: And they separate as Hudson  
17 Oil Company of Texas. And Burnett and Hudson have  
18 worked together for many, many years and have known  
19 each other for many, many years.

20 HEARING EXAMINER EZEANYIM: Okay. So in  
21 other words, Burnett is really Burnett/Hudson?

22 THE WITNESS: That's correct.

23 HEARING EXAMINER EZEANYIM: Okay.

24 Let me talk about the confidential --  
25 something on that, on this, because you said there's

1 some confidential information you didn't want to put  
2 there.

3 Is that relevant to this case? If it is,  
4 is it possible for me to see them? I mean you said  
5 that, because you are telling us that there is some  
6 confidential information not included here.

7 Well, I'm not part of the, you know -- you  
8 know, the struggle. If that would help me, is that  
9 possible that I see it?

10 MR. BRUCE: Well, Mr. Examiner, I think  
11 the parties had some meetings. And I know there  
12 have been, at least for some of the meetings, a  
13 confidentiality agreement among the parties.

14 And, furthermore, they -- there are  
15 certain things that they just have agreed to --

16 HEARING OFFICER EZEANYIM: Not to --

17 MR. BRUCE: -- not to discuss. And I  
18 don't think there's any -- I don't think it's  
19 material to the ruling.

20 HEARING EXAMINER EZEANYIM: Okay. Now  
21 that I know that, I don't actually want to see it.

22 Okay. Now, there was a mention that COG  
23 proposed 47 vertical wells, right? Was that 47  
24 vertical wells -- or something that you were asked  
25 about.

1 THE WITNESS: COG or Burnett?

2 HEARING EXAMINER EZEANYIM: Well, who  
3 proposed 47 vertical wells? Maybe I --

4 THE WITNESS: 47 vertical wells.

5 HEARING EXAMINER EZEANYIM: Was proposed  
6 by who?

7 THE WITNESS: By Concho.

8 HEARING EXAMINER EZEANYIM: By Concho, in  
9 what area?

10 THE WITNESS: In this four-section area.

11 HEARING EXAMINER EZEANYIM: In this  
12 four-section area they proposed that.

13 What year did they propose that?

14 THE WITNESS: I'm sorry?

15 HEARING EXAMINER EZEANYIM: What time did  
16 they propose that?

17 THE WITNESS: It's on the chronology. We  
18 received 32 of those on January 24th of 2011.

19 HEARING EXAMINER EZEANYIM: Okay. Let me  
20 get to that. What page is that?

21 MR. BRUCE: The first page, Mr. Examiner.

22 HEARING OFFICER EZEANYIM: Okay. The  
23 first page on the --

24 THE WITNESS: On January 24th of 2011. It  
25 says that BOCI and Hudson received 32 well proposals



1 from COG on the Maljamar leases.

2 HEARING OFFICER EZEANYIM: Okay.

3 THE WITNESS: The Maljamar leases are the  
4 four sections that we are looking at here.

5 HEARING EXAMINER EZEANYIM: Okay. Now  
6 that we're on the Maljamar leases, what do you call  
7 the Taylor unit?

8 THE WITNESS: The Taylor Draw unit?

9 HEARING EXAMINER EZEANYIM: Yes. What is  
10 that?

11 THE WITNESS: That's three sections.

12 HEARING EXAMINER EZEANYIM: Those sections  
13 are the Taylor Draw unit?

14 THE WITNESS: Maljamar is Sections 12, 13,  
15 24, and 25, those four sections.

16 HEARING OFFICER EZEANYIM: Okay.

17 THE WITNESS: The Taylor Draw takes in the  
18 top three, 12, 13, and 24.

19 HEARING EXAMINER EZEANYIM: Okay. It's  
20 important that I understand that. Okay.

21 Now, let's go back there. On that 24 --  
22 January 24th of this year, they proposed 32 wells,  
23 right?

24 THE WITNESS: 32 wells.

25 HEARING EXAMINER EZEANYIM: They're

1 talking about 52 million. Okay.

2 Now, when did they propose the rest? They  
3 proposed the rest -- 47 minus 32 is about 15.

4 THE WITNESS: Then we received -- if you  
5 look down on February 17th of 2011, Burnett/Hudson  
6 received seven more well proposals from COG.

7 HEARING EXAMINER EZEANYIM: Yes.

8 THE WITNESS: And eight well proposals for  
9 wells in the north half of Section 12. So that's --  
10 15 plus 32 equals 47.

11 HEARING EXAMINER EZEANYIM: Okay. Okay.  
12 I see. And now I -- of course you didn't agree.

13 THE WITNESS: No.

14 HEARING EXAMINER EZEANYIM: Okay. And  
15 you're then saying that -- those are vertical wells,  
16 are they not?

17 THE WITNESS: That's correct. Yes, they  
18 are.

19 HEARING EXAMINER EZEANYIM: And you said  
20 now, on top of proposing that, what you're trying to  
21 say, after proposing 47, and they are divided into  
22 being able to drill vertical wells, is that what you  
23 are saying? What is your point by doing this?

24 THE WITNESS: What is their point by --

25 HEARING EXAMINER EZEANYIM: No, you, your

1 point. What are you trying to tell me about these  
2 47 wells that you are proposing?

3 THE WITNESS: Well, I think we started out  
4 by proposing two wells to them, to -- to start the  
5 program way back on January 20th of 2011.

6 HEARING OFFICER EZEANYIM: Uh-huh.

7 THE WITNESS: And instead of being able to  
8 cooperate, instead of them agreeing that Burnett,  
9 who has operations in the area and has the largest  
10 interest, instead of saying, "Okay. We will approve  
11 your AFEs and let's go ahead and get this drilled,"  
12 they immediately came back to us with 32 and 15  
13 within a short period of time. And it just looked  
14 to us like they were trying to bulldoze us with the  
15 number of wells. So we --

16 HEARING EXAMINER EZEANYIM: Go ahead.  
17 Make your statement.

18 THE WITNESS: I've made my point there.

19 HEARING EXAMINER EZEANYIM: Okay. Very  
20 good.

21 On your request for your overheads, what's  
22 the depth of these wells, the vertical wells that  
23 you suggest?

24 THE WITNESS: The depth? I've got it on  
25 the AFE here. Just one second. 7,200 feet. 71-

1 7,200 feet.

2 HEARING EXAMINER EZEANYIM: Okay. And  
3 they're in the Yeso formation?

4 THE WITNESS: Yes.

5 HEARING EXAMINER EZEANYIM: Who knows  
6 that? Anyway, I'll find out, because somebody will  
7 have to tell me where this depth is, since you only  
8 agree that it's approximate.

9 MR. BRUCE: Mr. Examiner, this is commonly  
10 referred to as the Yeso, but I think our next  
11 witness will give you the elements of that  
12 formation.

13 HEARING EXAMINER EZEANYIM: Yeah. I would  
14 like to see that.

15 And I would also like to know if the OCD  
16 approves the six APDs.

17 THE WITNESS: Mr. Jacoby will answer that,  
18 yes.

19 HEARING EXAMINER EZEANYIM: Okay.

20 And it is my understanding that the Taylor  
21 Draw unit includes those three sections, 12, 13, and  
22 24, right? That's the Taylor Draw unit?

23 THE WITNESS: The Taylor Draw unit is 12,  
24 13, and 24.

25 HEARING EXAMINER EZEANYIM: Okay. Very

1 good.

2 Okay. Does anybody have any other  
3 questions for this witness?

4 MS. MUNDS-DRY: I have a follow-up on a  
5 question you asked, Mr. Ezeanyim.

6 HEARING EXAMINER EZEANYIM: Okay. Go  
7 ahead.

8 FURTHER EXAMINATION

9 BY MS. MUNDS-DRY:

10 Q. Mr. Rhodes, you indicated -- Mr. Ezeanyim  
11 asked you -- that you got all of these vertical well  
12 proposals from Concho, and you said it was the 41 or  
13 42 total.

14 And I believe your comment was you felt  
15 like you got -- Burnett felt like they were being  
16 bulldozed by the vertical well proposals.

17 At the last -- on the March 3 meeting that  
18 you had, which was not confidential as we have  
19 discussed, what was the proposal that Concho brought  
20 to you? How many wells did Concho agree to have be  
21 drilled?

22 A. I am afraid I don't have that, and I don't  
23 specifically remember the answer to that.

24 Q. Wasn't it four this year?

25 A. It could have been, yes.

1 Q. And didn't Concho agree to let Burnett  
2 operate those four wells?

3 A. With strings attached, yes.

4 Q. Okay. There's negotiations, there's  
5 compromise. You agree there's give and take when  
6 you have these kinds of discussions? Yes?

7 A. That's correct.

8 Q. Coming down from 41 to four is a  
9 compromise, is it not?

10 A. Well, it was four this year. It was more  
11 than that in the following years.

12 Q. Wasn't it eight in the following year?

13 A. I believe that's correct.

14 MS. MUNDS-DRY: Thank you, Mr. Rhodes.

15 HEARING OFFICER EZEANYIM: Anything  
16 further?

17 MR. BRUCE: I have nothing further of the  
18 witness.

19 HEARING EXAMINER EZEANYIM: Okay. Very  
20 good. You may be excused.

21 And at this point, let's take only a  
22 five-minute break.

23 (A recess was taken from 10:25 a.m. to  
24 10:39 a.m.)

25 HEARING EXAMINER EZEANYIM: Let us go back

1 on the record.

2 Mr. Bruce, call your next witness.

3 MR. BRUCE: I call Mr. John Haiduk to the  
4 stand please.

5 JOHN HAIDUK,  
6 after having been first duly sworn under oath,  
7 was questioned and testified as follows:

8 EXAMINATION

9 BY MR. BRUCE:

10 Q. Where do you reside?

11 A. Colleyville, Texas.

12 Q. Who do you work for?

13 A. Burnett Oil Company, Inc.

14 Q. What is your job there?

15 A. I am a petroleum geologist. I'm also the  
16 geological manager for Burnett Oil Company.

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

19 A. I have.

20 Q. And are your credentials as an expert  
21 petroleum geologist accepted as matter of record?

22 A. Yes, sir.

23 Q. And are you familiar with the geology  
24 involved in these cases?

25 A. I am.

1 MR. BRUCE: And, Mr. Examiner, I tender  
2 Mr. Haiduk as an expert petroleum geologist.

3 HEARING OFFICER EZEANYIM: Any objection?

4 MS. MUNDS-DRY: No objection.

5 HEARING EXAMINER EZEANYIM: Mr. Haiduk is  
6 so qualified.

7 Q. (By Mr. Bruce) Mr. Haiduk, if you could  
8 refer to the first slide, which I've marked -- this  
9 package of exhibits is marked as Exhibit 6, but this  
10 is slide A of Exhibit 6. What does that reflect?

11 A. That is a stratigraphic chart of the  
12 northwest shelf area of New Mexico.

13 What I have highlighted in the green at  
14 the top is the column that represents the  
15 stratigraphy over the Permian -- in the Permian  
16 section of the northwest shelf area of New Mexico.

17 And in the red area, the subject of  
18 today's pooling hearings, the Glorieta formation.

19 And then the Yeso formation, and the  
20 members in descending order of the Yeso formation of  
21 the Paddock, Blinbry, Tubb, and Drinkard.

22 HEARING EXAMINER EZEANYIM: Where is the  
23 well drilling going to produce on those units?

24 THE WITNESS: The subject of -- in our  
25 opinion, the two pay zones are the Paddock and the



1 Blinebry, right now. We have not found production  
2 in the Tubb or the Drinkard in the area.

3 HEARING EXAMINER EZEANYIM: In this shelf  
4 you can get up to 7,200 feet?

5 THE WITNESS: Yes. Yeah. We're going  
6 to -- we'll see it on a type log in just a moment,  
7 and it will show you the approximate tops within  
8 about 100 feet.

9 HEARING OFFICER EZEANYIM: Okay.

10 Q. (By Mr. Bruce) And what does slide B  
11 reflect, Mr. Haiduk?

12 A. That is a regional map covering portions  
13 of New Mexico and Texas. It shows the Yeso/Clear  
14 Fork productive trends in the Permian Basin. The  
15 Clear Fork is the equivalent of the Yeso on the  
16 Texas side of this map. And you can see the  
17 northwest shelf area is located over here on the  
18 western side of the map.

19 And here is the trend of Yeso production  
20 that is of interest today.

21 HEARING OFFICER EZEANYIM: Where is the  
22 Clear Fork, in relation to the Yeso?

23 THE WITNESS: It's equivalent.

24 HEARING EXAMINER EZEANYIM: Where is that  
25 Clear Fork here on this map?

1 THE WITNESS: The Clear Fork is right here  
2 at the border... On the Texas side we call it the  
3 Clear Fork. On the New Mexico side we call it the  
4 Yeso.

5 HEARING EXAMINER EZEANYIM: Okay.

6 THE WITNESS: And on the previous slide  
7 you saw a cross-section A-A Prime, which is --  
8 basically, this is a diagramatic shelf-to-slope  
9 schematic cross-section demonstrating the position  
10 of the Yeso.

11 I've got the Yeso colored here in --  
12 tinted in green. You can see it goes basically from  
13 the top of the Abó up to the base of the Glorieta.  
14 And the Glorieta in this area is only about 40 to 70  
15 feet thick, and it is only productive in a handful  
16 of wells in the area.

17 Q. (By Mr. Bruce) What does this slide D  
18 reflect?

19 A. This is a structure map contoured on the  
20 top of the Yeso, and that's what these contours  
21 represent. This is a -- I believe it's a 100-foot  
22 contour interval on this particular map.

23 And the yellow boxes show where the  
24 Burnett leasehold is across the area. The different  
25 colored dots -- the red dots indicate the wells that

1 are operated by Burnett Oil Company, Inc.

2 The green dots represent those that are  
3 operated by Concho.

4 And then there's a single Yeso well here  
5 in Section 12 that is operated by Hudson.

6 There are other operators in the area, in  
7 this area, that do have Yeso production, but they  
8 are not shown. That's just basically for  
9 clarification for this hearing.

10 Actually, I correct myself. The other  
11 operators are included. Concho are the -- are in  
12 the -- in the green.

13 HEARING EXAMINER EZEANYIM: Mr. Haiduk,  
14 can you tell me how many wells have been drilled in  
15 Section 13, or that unit, by Burnett Oil Company? I  
16 can see a lot of wells. Do you know how many wells  
17 have been drilled there?

18 THE WITNESS: In which area, sir?

19 HEARING EXAMINER EZEANYIM: Section 13.

20 THE WITNESS: 13 of --

21 HEARING EXAMINER EZEANYIM: Of, you know,  
22 the -- I hope what is the section we are talking  
23 about, of 17/30.

24 THE WITNESS: 17/30?

25 HEARING OFFICER EZEANYIM: Yes. Is that

1 not one?

2 THE WITNESS: 17/30 is over here

3 (indicating). It's part of the --

4 HEARING EXAMINER EZEANYIM: No, I'm

5 talking about --

6 Q. (By Mr. Bruce) Mr. Haiduk, the acreage  
7 we're here for today.

8 A. Yes.

9 HEARING EXAMINER EZEANYIM: Yeah, the one  
10 we are here for today.

11 THE WITNESS: We have not drilled any  
12 wells, but we -- in the Yeso -- but we have  
13 participated and acted as contract operator for  
14 Hudson Oil on several wells in Section 13 recently,  
15 the Grayburg-San Andres.

16 HEARING OFFICER EZEANYIM: Okay. The  
17 Section 17 plus one. Okay. There are no wells  
18 there. Okay.

19 THE WITNESS: Right.

20 HEARING OFFICER EZEANYIM: And the other  
21 one is --

22 THE WITNESS: All of our production is  
23 over here (indicating).

24 HEARING OFFICER EZEANYIM: Yeah.

25 THE WITNESS: We do have working interest

1 over here, and we're contract operator for Hudson  
2 Oil through completion.

3 HEARING EXAMINER EZEANYIM: I saw lot of  
4 wells. I thought maybe that area had been developed  
5 a lot. But this --

6 THE WITNESS: I think the previous map  
7 that you saw, this particular map strips off the  
8 shallow wells.

9 HEARING OFFICER EZEANYIM: Oh, okay.

10 THE WITNESS: So this is only for deep  
11 wells that penetrate the Yeso formation.

12 HEARING EXAMINER EZEANYIM: Of course --

13 THE WITNESS: There are many, many wells  
14 that have been drilled in this area of question  
15 today, but they're just shallow wells. And only, I  
16 think, four wells --

17 HEARING OFFICER EZEANYIM: Yeah.

18 THE WITNESS: -- have penetrated the Yeso  
19 in this yellow area.

20 HEARING EXAMINER EZEANYIM: Yeah, but we  
21 are not interested in the shallow wells.

22 THE WITNESS: That's correct.

23 HEARING OFFICER EZEANYIM: We are just  
24 interested in the wells that penetrate the Yeso.

25 THE WITNESS: Yes, sir.

1 HEARING EXAMINER EZEANYIM: Okay. Go  
2 ahead.

3 Q. (By Mr. Bruce) And, Mr. Haiduk, looking  
4 at the area over -- like 17/30 -- what is the  
5 structural difference between that area and the area  
6 we're here for today?

7 A. The structural style is similar. We're  
8 just north of the edge of the northwest shelf. The  
9 difference is is that, structurally, we're  
10 significantly farther up than the acreage in  
11 question today.

12 Q. Okay. So you're going down dip to the --

13 A. We're going down dip from the Loco Hills  
14 area down to the Maljamar area.

15 Q. And what does slide E represent?

16 A. This is a blowup of the structure map.  
17 This is a very detailed structure map with 10-foot  
18 contours on the top of the Yeso. And we constructed  
19 this from a 3D seismic survey that we have access to  
20 through Hudson Oil Company, for the entire area of  
21 12 -- of 12, 13, and 24. And 17/31E is covered by a  
22 3D seismic survey.

23 Q. Do you believe that gives Burnett a better  
24 handle on the geology in this area?

25 A. I believe that it does, and it's also very

1 critical in terms of, in the future, steering  
2 horizontal wells.

3 HEARING EXAMINER EZEANYIM: Normally -- I  
4 wanted to make a comment on that, again.

5 Are you saying that the vertical wells and  
6 the horizontal wells bears on this geology? Is that  
7 what you're saying?

8 THE WITNESS: Based on this geology?

9 HEARING OFFICER EZEANYIM: Yes.

10 THE WITNESS: No, I'm not saying one is  
11 better than the other. I'm just saying that in  
12 either capacity we are able to optimally pick where  
13 we would like to drill, based on the -- with the  
14 grade A from this survey.

15 HEARING EXAMINER EZEANYIM: I think that  
16 is a good answer.

17 Okay. Go ahead, then.

18 Q. (By Mr. Bruce) And I'm -- excuse me.

19 On the prior exhibit, there's a type log  
20 noted on -- just to the west of Section 13, correct?

21 A. Yes, just a few hundred feet away.

22 Q. And is that slide F the type log?

23 A. Yes, it is. This is a log that is made  
24 from LAS, or digital data, so we are able to do log  
25 analysis on this through -- with that data.

1 I believe you've seen me demonstrate this  
2 before on other logs in the area. But we use  
3 standard industry formulas, which you will see down  
4 here in the burgundy color for generating water  
5 saturation and net pay calculations. You'll see the  
6 parameters that we've used, so you can go through  
7 that.

8 This particular section of the log is the  
9 Paddock member of the type log. The top of the Yeso  
10 is right here (indicating). The base of the Paddock  
11 member is in green, right here (indicating).

12 Resistivity is here (indicating). Gamma  
13 ray is here (indicating), depth track.

14 This (indicating) is the density neutron  
15 curves. And what we've colored here in red is  
16 greater than 3 percent density porosity.

17 This gives us both volume of water in this  
18 (indicating) column, and then we generate a water  
19 saturation curve here (indicating).

20 So what you see in the brown and the  
21 yellow right through here (indicating) is footage,  
22 reservoir footage, that is net pay. That is less  
23 than 40 percent water saturation. So we think those  
24 are the optimum zones to complete in.

25 However, we're still -- the only thing I



1 would like to point out here is in the lower  
2 Paddock. We've noted throughout this area of the  
3 Maljamar area that many operators avoid this  
4 particular area right through here (indicating).  
5 And based on the log analysis, we can see why.  
6 There doesn't appear to be a whole lot of net pay,  
7 and it appears that if you did try to produce it,  
8 there may be a high water cut.

9 But what we would like to know is, how do  
10 you test that individually? We like to set casing  
11 on vertical wells, go ahead at some point and  
12 perforate this, acidize it, and then start pumping  
13 it and see what kind of a hydrocarbon cut we get.

14 We think that there's a potential that you  
15 may have had a lot of hydrocarbons left behind  
16 there. And this is one of the critical parameters  
17 in doing vertical well testing, like we do over in  
18 our Loco Hills area.

19 We test each zone individually as we go  
20 up. We don't perforate and frac a thousand feet of  
21 Blinbry section and then flow it back all together  
22 and then commingle with the Paddock. We do the  
23 individual sections first. We do two over there.

24 Once that goes to noncommercial or near  
25 noncommercial, or we are at a point where we can no

1 longer pump it efficiently without adding the  
2 Paddock to it, then we go ahead and move up to the  
3 Paddock and later commingle it.

4 HEARING EXAMINER EZEANYIM: Yeah. Which  
5 operators are going after that?

6 THE WITNESS: Well, you can see Chevron  
7 here has perforated this, and we have seen other  
8 operators that avoid this particular zone as well.

9 And it may be -- it may be very relevant  
10 to do that, but we're not seeing enough testing to  
11 tell us that that's the prudent thing to do.

12 HEARING EXAMINER EZEANYIM: Well, what is  
13 your cutoff porosity?

14 THE WITNESS: The cutoff porosity here is  
15 3 percent.

16 HEARING EXAMINER EZEANYIM: And what is  
17 the highest porosity you see?

18 THE WITNESS: I think you can see some  
19 spikes out to 14 and 17 percent. We've got some  
20 core data, sidewall cores and some hole core data,  
21 where we've seen some 17 percent porosity.

22 HEARING EXAMINER EZEANYIM: Any idea of  
23 variability?

24 THE WITNESS: It's highly variable. We  
25 can see as much as 22 millidarcies down to .0 --

1 down as low as you can measure it, .01 or less.

2 HEARING EXAMINER EZEANYIM: Boy, you can  
3 get up to 14 MD here?

4 THE WITNESS: Pardon me?

5 HEARING OFFICER EZEANYIM: You can get up  
6 to 14 MD?

7 THE WITNESS: In certain areas, you can  
8 get some -- there's some nice zones in the  
9 intergranular porosity zones. You can get some good  
10 permeabilities.

11 HEARING EXAMINER EZEANYIM: I think I've  
12 heard some others, depending on what shear you're  
13 talking about.

14 THE WITNESS: The average porosity is  
15 going to be on the order of 7 to 9 percent.

16 HEARING EXAMINER EZEANYIM: And the  
17 permeability?

18 THE WITNESS: It's going to be less than a  
19 millidarcy.

20 HEARING EXAMINER EZEANYIM: Okay. That's  
21 interesting.

22 Okay. Go ahead.

23 Q. (By Mr. Bruce) And what is this next  
24 slide?

25 A. That is the same log that you previously

1 saw, but this is the Blinebry member of that.

2 Just a quick look at it, and you can see,  
3 again, we've got the gamma ray here (indicating),  
4 the resistivity here (indicating), the density  
5 neutron with the greater -- less -- greater than  
6 3 percent density porosity colored in red.

7 And you can see just a quick look at it,  
8 but there's not near as much net pay in this  
9 particular section of it that there is in the  
10 Paddock member.

11 And that's pretty typical across the  
12 entire area, but it is -- it does have a lot more  
13 thickness of this particular member than the other.  
14 So that probably helps overcome some of the  
15 limitations you might have on production.

16 HEARING EXAMINER EZEANYIM: What is your  
17 opinion of Paddock and Blinebry? Which one produces  
18 more? Do you have an idea?

19 THE WITNESS: Of what, again, sir.

20 HEARING EXAMINER EZEANYIM: In this area,  
21 what is your -- if you -- let's say Burnett asks you  
22 which one is better production, would it be Paddock  
23 or the Blinebry? Which one is better?

24 THE WITNESS: In this particular area, I  
25 don't really know yet. We haven't done the testing,

1 we haven't done the slickwater fracs.

2 We know that over in the Loco Hills area,  
3 when we started slickwater fracking the Blinebry, it  
4 was commercial. If we just acidized it, which we  
5 did on several wells, it was not commercial, and we  
6 just moved up to the Paddock. But if we frac it,  
7 it's commercial.

8 HEARING EXAMINER EZEANYIM: Okay.

9 THE WITNESS: It does vary across the  
10 area, so we're not -- we do understand that there is  
11 Blinebry production here, and we do understand  
12 there's some good wells, by looking at the  
13 production, some decent wells in the Blinebry. So  
14 we'd just like to test it individually and determine  
15 which zones are best to target and to treat -- how  
16 to treat them.

17 HEARING EXAMINER EZEANYIM: Okay.

18 Q. (By Mr. Bruce) Finally, Slide H,  
19 Mr. Haiduk. And as you're going through this, could  
20 you explain to the Examiner how Burnett's plan of --  
21 of completing these wells and testing these wells is  
22 critical to a future plan of development for this  
23 area from a geological standpoint?

24 A. It's just critical to determine which  
25 zones in the Paddock and which zones in the Blinebry

1 might be tight, might be wetter, might be highly  
2 permeable, low permeable, what type of matrix that  
3 you are looking at.

4 Molded porosity, we're finding out, is not  
5 a real good producer. We like to find the  
6 intergranular porosities, the dolomites.

7 That doesn't say that we can't produce the  
8 molded porosity, but we'd like to -- we'd prefer --  
9 we're seeing better results from the -- from the  
10 intergranular porosity.

11 So what we would like to do on our  
12 vertical wells, and what we've done over in the Loco  
13 Hills area, we have run such things as image logs,  
14 including FMI, what's called -- our image log is  
15 called an FMI for Schlumberger, XRFI for  
16 Halliburton, or STAR Log for Baker.

17 And we want to get fracture orientation,  
18 fracture type, whether they are open, healed, or  
19 drilling-induced, and the fracture frequency.

20 In the future, of course, what we're going  
21 to show you is that Burnett has drilled horizontal  
22 wells, numerous horizontal wells, in the Yesso in the  
23 Loco Hills area. We've run these logs in vertical  
24 wells to determine what was the best orientation, so  
25 we need to get a stress field.

1           By doing that, we can run what's called a  
2   sonic scanner on an advanced Dipole Sonic, which  
3   helps with stress field orientation, to find out if  
4   we are drilling north/south, which we have been  
5   doing. That's the best way over the Loco Hills  
6   area, we believe. But we might need to vary that a  
7   little bit to get the optimum drainage and intersect  
8   the right amount of fractures that might be  
9   enhancing the productivity of this reservoir.

10           Again, coring. We initially -- in our  
11   vertical program with this particular area, we like  
12   to drill rotary sidewall cores, and then we would  
13   move it on after a full analysis sweep and  
14   production testing of select targets for  
15   conventional coring. Because, basically, we don't  
16   want to waste -- coring is very expensive when you  
17   conventionally core. We don't want to waste any  
18   money, when we can get information from the sidewall  
19   cores, and then target the zones that we really  
20   think are the best targets for the conventional  
21   coring.

22           Microseismic, we already microseismic in  
23   other plays across the country with Burnett as  
24   operator and as a non-op, so we have a significant  
25   amount of experience with that.

1           We have not run any microseismic in the  
2   Loco Hills/Maljamar area, but we do plan on doing  
3   that. In our plan of development, we hope to drill  
4   our first horizontal wells next to our vertical  
5   wells so that we can -- we can do some microseismic  
6   testing on the treatments that we do in our first  
7   horizontal wells.

8           And again, what I mentioned to you before  
9   is, in our production testing, we like to test these  
10   zones individually, and it's going to be real  
11   critical in terms of targeting horizontal zones.

12           And one thing that's not on here, because  
13   it's not a vertical well test, but in our horizontal  
14   wells, in some of our first horizontal wells, we  
15   would like to open-hole log the horizontal section  
16   through through-bit technology, where we can get a  
17   resistivity, a density neutron, and a sonic log  
18   throughout the entire drilling interval open-hole  
19   log, which is beginning to become a norm in many of  
20   the plays across in the United States. We haven't  
21   heard of that going on in this particular area yet.

22       Q.     Mr. Haiduk, in your opinion, is drilling  
23   these initial vertical wells in this area, and  
24   taking this type of data, critical to developing the  
25   best plan of development for these three sections?



1           A.     We're a small company. We don't like to  
2 waste money, so it is very critical you get the  
3 right zones and get the right performance. Because  
4 if we get more money coming back, we can drill  
5 more -- drill more development wells, and we want to  
6 drill more development wells as we continue on. So  
7 good results get you more good results.

8           Q.     And our next witness will discuss the  
9 results of Burnett wells to the west.

10          A.     Yes, Mr. Jacoby.

11          Q.     Are slides A through H, part of Exhibit 6,  
12 prepared by you or under your supervision?

13          A.     Yes, sir.

14          Q.     In your opinion, is the granting of  
15 Burnett's applications and the denial of COG's  
16 applications in the interest of conservation and the  
17 prevention of waste?

18          A.     Yes, sir.

19                 MR. BRUCE: Okay.

20                 Mr. Examiner, I would move the admission  
21 of Exhibit 6.

22                 MS. MUNDS-DRY: No objection.

23                 HEARING OFFICER EZEANYIM: Exhibit 6 will  
24 be admitted.

25                 HEARING OFFICER EZEANYIM: Okay. Cross,

1 Ms. Munds-Dry?

2 MS. MUNDS-DRY: Thank you, Mr. Examiner.

3 EXAMINATION

4 BY MS. MUNDS-DRY:

5 Q. Mr. Haiduk, I'm looking at your structure  
6 map, if we could turn to that slide.

7 A. (Witness complies.)

8 Q. I believe you told me before that this is  
9 a computer-generated structure map.

10 A. Well, no. This was -- I worked with our  
11 geophysicist, Terry Durham, to generate this map.  
12 And once he -- once we -- he, mostly, but then me  
13 going over it with him -- has picked his Yeso top,  
14 which is very small grids. I mean, these are like  
15 200- to 300-foot boxes. We have got a data point  
16 every 200 to 300 feet, and then it's contoured based  
17 on that.

18 Q. Contrary to -- it's a software program?

19 A. Right, but it's not very interpretive when  
20 you've got these very small -- basically pixels --  
21 to generate. Because at every point, every  
22 cross-point you have a data point.

23 Q. Okay. In Section 12, you have the well  
24 control unit, the Knockabout?

25 A. Yes.

1           Q.     In your opinion, does this sort of tight  
2     contouring in here, would that well control point  
3     maybe affect that tight area there?

4           A.     The data was honored through that. But  
5     really and truly, the 3D survey, what we found here  
6     and all of the other plays where we were shooting  
7     data, is that -- you know, you don't have to  
8     interpret between wells any longer. You have all of  
9     these data points every 200 to 300 feet away from  
10    the wells, between wells, that help you to interpret  
11    that, so there's not as much guesswork anymore.

12                   It has kind of changed in the last 28  
13    years since I started doing this.

14          Q.     Okay. You mentioned you have 3D seismic  
15    over these three sections.

16                   What kind of information does that give  
17    you?

18          A.     It basically gives us -- it gives us  
19    structural tops. Of course from that we can glean  
20    IsoPak data. We're going to need to go -- the data  
21    through here has not been reprocessed in about eight  
22    or nine years. We do need to go through the  
23    exercise of getting it reprocessed, to see what we  
24    can see in terms of porosity developments.

25                   The surveys that are shot, the 3D surveys

1 that are shot correctly -- and, of course, that's  
2 depending on the rocks, as well, and how much  
3 porosity they have -- you can actually see porosity  
4 zones in the rock.

5 I don't believe, at this point, that we  
6 have it processed to that degree.

7 Q. With the microseismic, can you use a  
8 completed vertical well as a monitor well for  
9 microseismic?

10 A. Yes, we just did it.

11 Q. Where did you do that at?

12 A. We did that in the Marcellus, in  
13 Pennsylvania.

14 Q. Have you done that here in New Mexico?

15 A. As I stated previously, no, we have not.

16 Q. I'm sorry I missed that.

17 Would you describe the Yeso as  
18 heterogeneous?

19 A. Yes.

20 Q. How might the pay differ when you are 100  
21 feet from the well than from what -- you know, what  
22 you're seeing in the log?

23 A. It depends on -- it depends on the zone.  
24 It can vary greatly. But overall, there are trends  
25 that you can see. We've noticed in our Loco Hills

1 area that we've got sweet spots that -- maybe half a  
2 mile square that may be very -- very similar  
3 production characteristics, very similar log  
4 characteristics.

5 If we move away from that, we see  
6 different pressures on our fracs, treating  
7 pressures. We see different porosities, things like  
8 that, so it can vary. It can vary.

9 Q. I take it from our previous discussion  
10 about how you -- how you create this structure map  
11 and using your data points, that you -- you feel  
12 pretty confident that there are reserves in the  
13 Paddock and Blinbry.

14 A. Yes.

15 Q. It's just a matter of whether -- or how  
16 economic they are. Is that a fair statement?

17 A. I -- it's beyond me to calculate the  
18 economics right now. I'll leave that to  
19 engineering.

20 Q. But you don't see any structural issues,  
21 from your review of these three sections, that would  
22 indicate that there's not going to be reserves in  
23 one of those sections, do you?

24 A. I'm concerned about the southern half of  
25 Section 24, yes.

1 Q. The southern half of Section 24?

2 A. More like the southern half southern half.

3 What we're seeing over here in the  
4 COG-operated wells is a very, very high water cut.  
5 So of the wells that we have to drill vertically,  
6 our concern is this particular well may not stand up  
7 to being a vertical well. It may be that we want to  
8 turn this into a -- which fits our plan of  
9 development -- turn that into a horizontal well.

10 Q. And I take it -- I asked this question of  
11 Mr. Rhodes. I take it that's why you didn't include  
12 Section 25 in your proposed Taylor Draw unit?

13 A. Yeah. The 3D extends on down into that  
14 particular area. And we're even more concerned  
15 about the northern portions of Section 25 being  
16 highly water bearing.

17 Q. But we don't know yet?

18 A. We have a good indication from the COG  
19 wells that it's high water cut.

20 Q. Mr. Haiduk, you mentioned, I believe, that  
21 you were planning to do some open-hole logging,  
22 considering that for your proposed horizontal wells,  
23 or planned horizontal wells?

24 A. Uh-huh.

25 Q. Is running radioactive source logging

1 tools in horizontal wells considered risky?

2 A. I'm going to have to defer to the  
3 engineering department on that. We've got a witness  
4 who has run that many, many times. And in my  
5 discussions with the through-bit technology people,  
6 I'm going to have to -- I'm going to have to defer  
7 to Mr. Rodgers on that when he gets called.

8 Q. Mr. Rodgers?

9 A. Or Mr. Jacoby. Mr. Jacoby is well aware  
10 of it, too.

11 Q. So Mr. Jacoby or Mr. Rodgers?

12 A. Yes.

13 Q. Going back to the seismic for a minute,  
14 Mr. Haiduk, would open-hole log data be better  
15 than -- better quality than the 3D seismic, in your  
16 opinion?

17 A. On a localized basis, absolutely. You are  
18 measuring a very small area every few inches. It's  
19 much finer -- finer data.

20 Q. You said that you thought that the  
21 vertical well needed to be drilled to give you the  
22 information you need to better develop this  
23 property, something along those lines?

24 A. Yes.

25 Q. Don't those vertical wells interfere with

1 your proposed horizontal wells?

2 A. Not at all. Because as we have done  
3 many -- several times over in the -- successfully  
4 over in the Loco Hills area, if we decide -- we run  
5 7-inch casing. I think we discussed this in  
6 previous testimony. We run 7-inch casing. We cut  
7 windows out of our existing vertical wells and then  
8 drill horizontal wells out of it, and have made very  
9 commercial horizontal wells.

10 Mr. Jacoby can testify to that fact. He's  
11 been directly involved.

12 MS. MUNDS-DRY: Thank you, Mr. Haiduk.  
13 That's all I have.

14 THE WITNESS: Thank you.

15 HEARING EXAMINER EZEANYIM: Further  
16 questions?

17 MR. BRUCE: I have no more questions.

18 LEGAL EXAMINER BROOKS: No questions.

19 HEARING EXAMINER EZEANYIM: Okay. Good.

20 Mr. Haiduk, how do you spell your name?

21 THE WITNESS: Haiduk.

22 HEARING OFFICER EZEANYIM: H-A-I-D-U-K,  
23 right?

24 THE WITNESS: That's correct, sir.

25 HEARING EXAMINER EZEANYIM: Could you tell



1 me the basic difference between the Clear Fork  
2 formation and the Yeso formation? Is there any  
3 difference between those two?

4 THE WITNESS: Oh, there's reasonable  
5 variabilities and permea- -- thickness,  
6 permeability, porosity.

7 HEARING OFFICER EZEANYIM: Right.

8 THE WITNESS: You know, we even see it  
9 over a short period of -- of distance over in our  
10 Section 8 of 17/30, where we think, in this  
11 particular area, we have good rock over through here  
12 (indicating).

13 We drilled a well here (indicating).  
14 That's a very poor well. We logged it, looked at  
15 it, went, "Oh, that's low porosity. We're going to  
16 go ahead and test it and see how it does," and it  
17 has not been a good well.

18 Then when we later came back, even though  
19 we had a good well here (indicating) and drilled the  
20 B63 well, it looked even worse. And our partners,  
21 which is EOG Resources in that well, and I believe  
22 Yates, looked at those logs. We discussed it. They  
23 said, "Let's not complete the well."

24 So we went up the hole and completed in  
25 the Grayburg-San Andres instead.

1 HEARING EXAMINER EZEANYIM: That's in  
2 New Mexico.

3 In Texas, has Burnett drilled wells in the  
4 Clear Fork?

5 THE WITNESS: Not since I have been there.  
6 I have been there for 12 years, so, no.

7 HEARING OFFICER EZEANYIM: Oh. You  
8 haven't drilled any wells in Clear Fork?

9 THE WITNESS: Not since I have been with  
10 Burnett for 12 years.

11 HEARING EXAMINER EZEANYIM: Okay. So when  
12 you do the comparison, how do you get -- how do you  
13 compare the Clear Fork and the Yeso?

14 THE WITNESS: I'm not particularly  
15 interested in the Clear Fork. Burnett does not have  
16 any properties in the Clear Fork in Texas.

17 HEARING OFFICER EZEANYIM: Because it  
18 keeps coming up.

19 THE WITNESS: Actually, I apologize. We  
20 do have one 800-acre tract in Crane County, Texas,  
21 where we do produce from the Tubb section.

22 HEARING OFFICER EZEANYIM: Okay.

23 THE WITNESS: So it is Clear Fork. It's  
24 productive in the Tubb. It's not -- it is  
25 productive in the whole, which I believe is the

1 equivalent to the Paddock/Blinebry member. But the  
2 porosities haven't been good in that area.

3 But, again, that's limited to my  
4 investigation of 800 acres, plus maybe a couple of  
5 square miles around it.

6 HEARING OFFICER EZEANYIM: Okay. Very  
7 good. And let's go back to the New Mexico, because  
8 I am not interested in Texas.

9 What is the average net pay of their  
10 completions?

11 THE WITNESS: Average net pay in the --

12 HEARING OFFICER EZEANYIM: Yes, in the  
13 average good well.

14 THE WITNESS: Based on these parameters --  
15 this is just over in this particular area?

16 HEARING OFFICER EZEANYIM: Yes.

17 THE WITNESS: Based on the parameters that  
18 I've used, I would say your average net pay is going  
19 to be 90 to 150 feet in the Paddock, over in the  
20 Maljamar area.

21 HEARING EXAMINER EZEANYIM: Okay. How  
22 many wells has Burnett drilled in this -- in the  
23 Yeso -- actually, in the Yeso formation?

24 THE WITNESS: Total?

25 HEARING EXAMINER EZEANYIM: Yes.

1 THE WITNESS: Including the Loco Hills  
2 area?

3 HEARING OFFICER EZEANYIM: Yes.

4 THE WITNESS: We are at 97 wells.

5 HEARING EXAMINER EZEANYIM: Burnett has  
6 drilled 97 wells. So you like those Loco Hills  
7 wells?

8 THE WITNESS: We are very, very pleased,  
9 yes, sir.

10 HEARING EXAMINER EZEANYIM: Okay. Good.  
11 Now, you said on this 17 South, 32 East,  
12 if you look at them -- I don't know what -- the  
13 Number 6E. It looks like E.

14 Go to slide E, if you can, on those  
15 contour maps.

16 THE WITNESS: (Witness complies.)

17 HEARING OFFICER EZEANYIM: Do you see  
18 those wells? Those green dots here are COG wells,  
19 right?

20 THE WITNESS: I think these (indicating)  
21 are Cimarex wells, and I believe these (indicating)  
22 are COG wells.

23 HEARING EXAMINER EZEANYIM: COG wells?

24 Have you studied them and found out that  
25 they have high water cuts?

1 THE WITNESS: The wells down on the  
2 southwest quarter of Section 19.

3 HEARING EXAMINER EZEANYIM: They are high  
4 water cuts?

5 THE WITNESS: They have a high water cut.

6 HEARING EXAMINER EZEANYIM: Approximately  
7 how much?

8 THE WITNESS: I'd have to go back and  
9 look. I looked at them last week, but they are much  
10 higher than the average in this particular area.

11 I would say they're -- I'd say they're  
12 much -- down to as little as a 5 percent oil cut.

13 HEARING EXAMINER EZEANYIM: So 95 percent  
14 water cut?

15 THE WITNESS: Yes.

16 HEARING EXAMINER EZEANYIM: Okay. Now,  
17 why is that?

18 THE WITNESS: Well, we're -- as you can  
19 see right here -- and we can show you on the larger  
20 map. But you're falling off the edge of the shelf.

21 HEARING OFFICER EZEANYIM: Yeah.

22 THE WITNESS: And so, of course, oil  
23 floats on top of water. And you see right here --  
24 we see the same situation down in here (indicating).

25 We drilled some wells down in here

1 (indicating) to kind of push the limits of the field  
2 south, to see how far we could make commercial  
3 wells. And we wound up drilling a couple of wells  
4 that made very, very high water cuts. In fact, one  
5 of them I don't even think made a show of oil.

6 HEARING EXAMINER EZEANYIM: You know, I'm  
7 trying -- I'm sorry I have to ask these questions.

8 THE WITNESS: No, sir, I appreciate it.

9 HEARING OFFICER EZEANYIM: If you look at  
10 that there, there are a lot of wells that have been  
11 drilled. And if COG is getting a lot of high water  
12 cut, they wouldn't -- if they wanted, they wouldn't  
13 use this -- I wanted to know what you think.

14 Is this completion practices, completion  
15 schemes, or why -- why is it having high water cut?  
16 I don't want it --

17 THE WITNESS: I can --

18 HEARING OFFICER EZEANYIM: -- to have high  
19 water cut, I have no use for water.

20 THE WITNESS: I can only speak to the  
21 geological. I did not study the completions, except  
22 to see where they were perforated. Some of those  
23 wells were drilled, I believe, by their predecessor,  
24 into the Paddock. And then, I think since that  
25 time -- and I would ask any COG witness to make a

1 clarification on this later on -- then they come  
2 back and started drilling wells in the Blinebry  
3 section.

4 And so again, what we're seeing with just  
5 a quick look right in this particular area as they  
6 push to the south, down structure, which is kind of  
7 what -- exactly what we've seen over in our  
8 particular area right through here (indicating),  
9 we're seeing high water cuts.

10 And from a geologic standpoint, to me,  
11 apples to apples, we don't want to go any farther  
12 south than that. And that's the reason why we  
13 didn't include Section 25 in our potential proposed  
14 Taylor Draw unit.

15 HEARING EXAMINER EZEANYIM: Because I  
16 just -- okay. Anyway, maybe it will be in my e-mail  
17 replies. I want to pull the oil, I don't want the  
18 water.

19 THE WITNESS: We don't want water either.  
20 We have to dispose of it.

21 HEARING EXAMINER EZEANYIM: Okay. You may  
22 be excused.

23 THE WITNESS: Thank you, sir.

24 MR. BRUCE: If I could ask just one  
25 follow-up question?

1 HEARING EXAMINER EZEANYIM: Go ahead.

2 FURTHER EXAMINATION

3 BY MR. BRUCE:

4 Q. Regarding that high water cutting in, does  
5 that reflect why it's best to do the testing  
6 completion, like Burnett wants to do in the first,  
7 at least, several wells?

8 A. Yes, because we want to find out which  
9 zones are high water cut, or if it's actually very  
10 commercial to produce it at a higher water cut, and  
11 we don't want to leave reserves behind. So it could  
12 go both ways.

13 HEARING EXAMINER EZEANYIM: Exactly.

14 MR. BRUCE: That's all I have, Mr. Haiduk.

15 HEARING EXAMINER EZEANYIM: Okay. You may  
16 be excused.

17 Call your next witness.

18 MR. BRUCE: One clean-up point. I don't  
19 know if I moved the introduction of the land  
20 exhibits.

21 HEARING EXAMINER EZEANYIM: You did. I  
22 admitted them.

23 MR. BRUCE: I call Mr. Jacoby.

24 HEARING EXAMINER EZEANYIM: Mr. Jacoby,  
25 you have been sworn, so you're still under oath.



1 THE WITNESS: Yes, sir.

2 MARK JACOBY,

3 after having been first duly sworn under oath,

4 was questioned and testified as follows:

5 EXAMINATION

6 BY MR. BRUCE:

7 Q. Where do you reside, Mr. Jacoby?

8 A. I reside in Fort Worth, Texas.

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

10 A. I work for Burnett Oil Company as  
11 engineering manager.

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

14 A. Yes.

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

18 A. Yes, they were.

19 Q. And are you familiar with engineering  
20 matters related to these applications?

21 A. Yes.

22 MR. BRUCE: Mr. Examiner, I would tender  
23 Mr. Jacoby as an expert petroleum engineer.

24 MS. MUNDS-DRY: No objection.

25 HEARING EXAMINER EZEANYIM: No objection?

1                   Mr. Jacoby is so qualified.

2           Q.       (By Mr. Bruce) Mr. Jacoby, let's get some  
3 of the -- maybe the introductory stuff out of the  
4 way.

5                   First of all -- and I've just designated  
6 these slides A and B together. What are slides A  
7 and B, the first two pages?

8           A.       This slide is an AFE of expenditure for  
9 the Partition Federal Number 2, one of the wells in  
10 question in this hearing.

11                   This particular AFE has been updated since  
12 these were mailed out back in the end of January or  
13 early February. So there's been several costs that  
14 have increased since that time. The total for this  
15 vertical is \$1,800,000, basically.

16                   This AFE, I might add, includes some  
17 formation testing that Mr. Haiduk just mentioned.  
18 We would plan to do some sidewall cores. We plan  
19 also to run an XRFI log in conjunction with the  
20 sidewall cores.

21                   HEARING EXAMINER EZEANYIM: The one is  
22 completed well cost?

23                   THE WITNESS: Yes, it is, completed well  
24 costs.

25           Q.       (By Mr. Bruce) And, again, this is for a

1 vertical well?

2 A. Yes, this is for a vertical well.

3 Q. Is this cost fair and reasonable and  
4 comparable to other costs of wells drilled at this  
5 depth in this area of New Mexico?

6 A. Yes, sir.

7 Q. What do the next -- what is the next  
8 slide?

9 HEARING EXAMINER EZEANYIM: Mr. Bruce, so  
10 it will be clear in my mind, I asked the question  
11 from the land person who was here answering  
12 questions.

13 This AFE is prepared to 7,200 feet?

14 THE WITNESS: Yes, sir.

15 HEARING EXAMINER EZEANYIM: He told me you  
16 are going to answer the question. So before I  
17 forget, the 7,200 feet, is that in the Paddock or  
18 the Blinebry?

19 THE WITNESS: That is probably a little  
20 bit deeper. That goes below the Blinebry. We  
21 often -- we like to drill --

22 HEARING EXAMINER EZEANYIM: Into the Tubb?

23 THE WITNESS: Into the Tubb, yes, sir.

24 HEARING EXAMINER EZEANYIM: Okay.

25 Q. (By Mr. Bruce) Is slide C the well plan

1 for the Partition Number 2?

2 A. Yes, it is. This is a well schematic. It  
3 also shows, although you can see -- cannot see on  
4 the slide, but you can see on the paper copy, the --  
5 roughly the plan of cementing.

6 We set two strings of casing. We set a  
7 surface string at about 600 feet, 10 and  
8 three-quarter, and then we would drill to 6,800,  
9 7,000, depending on mud logs and the picking of the  
10 TV. And we would set 7-inch casing and cement both  
11 back to the surface.

12 This also shows our plan at this point.  
13 We think we would probably do three fracs, two fracs  
14 in the Blinebry, one frac in the Paddock.

15 Q. Is that two in the Blinebry and one in the  
16 Paddock, is that a pretty common practice among  
17 operators in this area in the Yeso?

18 A. From what I have seen, yes. It's been  
19 common for us in our other wells.

20 HEARING EXAMINER EZEANYIM: For my  
21 information, Mr. Jacoby, do you circulate your  
22 cement all the way to the surface in all your  
23 vertical wells?

24 THE WITNESS: Yes, sir, we do.

25 HEARING EXAMINER EZEANYIM: All of them?

1 THE WITNESS: Yes. It's a requirement by  
2 the OCD as well.

3 HEARING OFFICER EZEANYIM: Yeah.

4 THE WITNESS: We set a DV tool of 27- or  
5 2,800 feet. We pick a point as we drill.

6 HEARING EXAMINER EZEANYIM: I know it's a  
7 requirement, but I wanted to see if you -- if you do  
8 that.

9 THE WITNESS: Yes, sir, we do.

10 HEARING EXAMINER EZEANYIM: Okay.

11 Q. (By Mr. Bruce) And what is the next  
12 slide, slide D?

13 A. This is a drilling and geological  
14 prognosis that we send out to the field, the rig,  
15 and then, also, we keep in-house to keep us on  
16 track.

17 The top part of it, this gives the well --  
18 the particular well information, the location,  
19 et cetera, the API number and so forth.

20 The next segment --

21 Q. Stop right there for a minute.

22 A. Okay.

23 Q. The Hearing Examiner asked this before.  
24 Regarding the wells that have permitted -- been  
25 permitted with the BLM in these three sections by

1 Burnett, have they also been approved by the  
2 division?

3 A. Yes.

4 Q. And they do have API numbers?

5 A. They have API numbers. The six --

6 HEARING EXAMINER EZEANYIM: All the six  
7 wells?

8 THE WITNESS: All six wells have API  
9 numbers.

10 Q. (By Mr. Bruce) Okay. Sorry for the  
11 interruption, Mr. Jacoby.

12 Please go back.

13 A. Okay. Through the heading -- in fact,  
14 this shows the API number on this particular well.

15 The next segment are the -- are our  
16 estimated tops for various formations, just so we  
17 know what to expect as we drill.

18 We have some offset well information, if  
19 there is offset wells.

20 The next segment just shows the casing  
21 setting, the size of the casing, the setting depths.

22 The next segment shows the mud program --  
23 basically, a summary of the mud program. We have a  
24 mud company that works with us on the details of  
25 that.

1           The next segment is just various  
2   information, the primary objective, whether or not  
3   we're going to do coring. It shows we would do  
4   sidewall coring on this well.

5           And then we list a suite of logs that we  
6   would expect to run, so the guys know what to plan  
7   for.

8           Mud logging, we mud log all of our wells.

9           And then there's a bottom section that's  
10   cut off. It just gives all the pertinent phone  
11   numbers for the contacts.

12          Q.     Does Burnett do one of these for each of  
13   the wells it drills?

14          A.     Yes, we do.

15          Q.     Let's move on to the next couple of pages.

16                 What do the pages E and F -- slides E and  
17   F represent?

18          A.     These are the same things for the Nosler  
19   Federal 3, the other well that is the subject of  
20   this hearing.

21                 I might point out that this is an AFE that  
22   was originally mailed out -- I think it was  
23   February 7, I just looked -- to all of the working  
24   interest owners. At that time, the AFE cost was  
25   1,600,000.

1           Q.     This one is slightly lower than the other  
2     -- the first AFE. Why is that?

3           A.     A couple of reasons. This one did not  
4     include the coring and the XRMI. We would not do  
5     that on every well. We would do it on some wells.

6                     More importantly, the drilling costs have  
7     had some increases since the targeted planning of  
8     this program. So the drilling cost has gone from  
9     9,500 -- at least in our area -- from 9,500 a day to  
10    12,000 a day.

11          Q.     Is Burnett's AFE for this well fair and  
12     reasonable and comparable to the cost of other wells  
13     drilled to this depth in this area of the state?

14          A.     Yes.

15          Q.     And, briefly, what is slide G?

16          A.     This slide, again, shows the diagram of  
17     the well bore as we were planning to drill it.

18                     Surface casing, 10 and three-quarters at  
19     about 600 feet, 8 and three-quarter hole TV with  
20     7-inch casing cemented back to surface with a DV  
21     tool.

22                     And then it shows kind of the proposed  
23     cementing.

24                     Actually on the long string -- I did not  
25     mention this -- we always run a caliper so we can



1 fine-tune the cement volumes. And we work with BLM  
2 and the folks on fine-tuning the volumes of cement.

3 And then, again, showing the proposed  
4 stimulation, the plan as we would think they would  
5 be right now.

6 Q. And, briefly, what is slide H?

7 A. It is the geologic and drilling prognosis.  
8 I won't detail it as much as the last time, but this  
9 gives the plan for -- it gives the well identifier  
10 information, the estimated tops, the formations we  
11 would penetrate, the casing program, mud program,  
12 the miscellaneous information, and then the suite of  
13 open-hole logs and all of our contact phone numbers.

14 Q. And the API number is on this slide?

15 A. And the API number is shown on this slide.

16 Q. Okay.

17 HEARING EXAMINER EZEANYIM: Mr. Jacoby,  
18 try to speak a little louder so he can understand  
19 you. I know you're soft-spoken, but we want to get  
20 it on the record.

21 THE WITNESS: Okay. I will. I'll try to  
22 be more forceful.

23 Q. (By Mr. Bruce) Now, let's go to the next  
24 slide -- several slides, Mr. Jacoby.

25 What is going to be the point of these

1 slides, first off?

2 A. This is a point just to show our  
3 completion technique. It also compares it to COG's  
4 completion technique. In other words, seeing this  
5 slide before, the next slide updates it.

6 But I will say that we picked nine wells  
7 of COG, nine wells of Burnett. The reason we chose  
8 those, because they were in a pretty close grouping,  
9 pretty close proximity to each other. There are  
10 more than nine, but we chose nine that were close  
11 by, just so we would have nine wells and nine wells,  
12 to try to make it as much apples to apples, if you  
13 would, on the comparison.

14 The triangles indicate the two wells. We  
15 compared the completion of these two wells, a Concho  
16 well here (indicating), the Burnett well right here  
17 (indicating).

18 Concho's completion, from what I have  
19 seen, they typically will do three fracs in the  
20 Blinbry at 200-foot blanket perforated intervals,  
21 and then they'll move up to the Paddock.

22 From what I can read in the scout tickets,  
23 it appears that they frac one, two, three, four, and  
24 then they put the well on production, for the most  
25 part.

1           As Mr. Haiduk explained, we'll take the  
2     log analysis, selective -- select perforations in  
3     the Blinebry and then design a frac accordingly.

4           Typically, we will divide that up into two  
5     fracs in the Blinebry. We will frac the bottom  
6     segment first. We would put it on production  
7     because, for one, our volumes are much larger, and  
8     we really prefer cleaning the well up. The wells  
9     typically do quite well.

10          We'll produce that until the fluid  
11     production comes down to a point. We'll move up the  
12     hole, complete the next interval, and just do the  
13     same thing again in the Paddock.

14          And this also shows a total -- just a  
15     comparison on these two jobs, and this seems to be  
16     pretty typical.

17          The sand volumes are pretty comparable on  
18     this particular well. The Burnett sand volume was  
19     750,000-plus pounds of sand. COG was 689,000  
20     pounds.

21          But our volume of water is almost 54,000  
22     gallons of fluid in three stag- -- for all three  
23     stages. Theirs was almost 12,000 barrels of water  
24     in four stages.

25          Q.     So four and a half -- you used -- Burnett

1 used four and a half times the amount of water?

2 A. Yes.

3 Q. Or fluid, excuse me.

4 HEARING EXAMINER EZEANYIM: Okay. Don't  
5 move, because that's important to me.

6 Tell me why the -- using a four-to-one  
7 ratio of water is more important.

8 THE WITNESS: We really believe that --  
9 the way we design the job, we alternate water and  
10 sand in a sweep. The more volume of water contacts  
11 the more formation, so we get more rock fracked, a  
12 deeper penetration, because of the larger volume of  
13 water and the alternating sand and water.

14 HEARING EXAMINER EZEANYIM: What is a  
15 typical frac half-length?

16 THE WITNESS: You know, a frac model is an  
17 estimation, but approximately 500 feet or so.

18 HEARING EXAMINER EZEANYIM: Okay. You  
19 know, this is -- you know, I don't know. It comes  
20 with the bulk of something that I'm working on now.

21 But I want to find -- on the left you say  
22 is Burnett, right, frac technology? And then on the  
23 right is COG frac technology?

24 THE WITNESS: Right.

25 HEARING EXAMINER EZEANYIM: Is there

1 anything wrong with that frac technology on the  
2 right, even if they use gel water instead of  
3 slickwater? Is there anything wrong with that, from  
4 your experience?

5 THE WITNESS: It's a preference.

6 HEARING OFFICER EZEANYIM: It's a  
7 preference?

8 THE WITNESS: I have fracked wells that  
9 way as well. I prefer this now.

10 HEARING OFFICER EZEANYIM: If you don't  
11 have slickwater, would you use that gel water?  
12 Let's say you don't have that technology. I know  
13 you are writing a paper on that.

14 If you don't have slickwater, would you  
15 use that? Is there anything wrong with that?

16 THE WITNESS: There's nothing wrong with  
17 that.

18 HEARING OFFICER EZEANYIM: Okay.

19 THE WITNESS: I'm not sure I can answer  
20 that question if that would be my choice.

21 HEARING OFFICER EZEANYIM: Yes. That's --  
22 I'm trying to establish that, actually, an operator  
23 can use whatever fracking technology they want. You  
24 know, there are a bunch of them out there. You can  
25 use any one of them, and I think it's a matter

1 simply of a business decision whatever you use.

2 I mean, we are here not to recommend what  
3 type of frac technology you are going to use.

4 That's not my job.

5 As long as it is presented to us and they  
6 are going to do it right, unless they are using a  
7 frac technology that is going to do those two  
8 things, then that's when I come in. But without  
9 that, I have no opinion whatever you use. You can  
10 use whatever.

11 And you can use gas, that's one out now.  
12 Gas fracking, it is coming up. I don't know if you  
13 do that.

14 THE WITNESS: There are several -- I'm  
15 sorry.

16 HEARING OFFICER EZEANYIM: There are  
17 several -- what do you want to say?

18 THE WITNESS: I was just going to say,  
19 there are a lot of things that factor into that, in  
20 the cost of the job, the economics.

21 HEARING OFFICER EZEANYIM: Yeah.

22 THE WITNESS: This is water and sand with  
23 a little bit of chemical, so it's --

24 HEARING OFFICER EZEANYIM: I know.

25 THE WITNESS: And it has worked very well.

1                   HEARING EXAMINER EZEANYIM: I know. I  
2 understand. So -- but it's okay.

3                   And the point that you are making here is  
4 that -- what point -- what are you -- what point are  
5 you making here? You know, what point are you  
6 making with this?

7                   THE WITNESS: I'm just making the point  
8 that -- and you will see the production graphs  
9 following this -- that this slickwater frac  
10 technique has been very successful before.

11                  HEARING EXAMINER EZEANYIM: And the  
12 production graph you are going to show me is from  
13 actual data?

14                  THE WITNESS: Yes.

15                  HEARING OFFICER EZEANYIM: Okay.

16           Q.       (By Mr. Bruce) Is that all on this one,  
17 Mr. Jacoby?

18           A.       Yes, sir.

19           Q.       What is the next slide, slide G?

20           A.       The next slide is just a cross-section,  
21 just showing the Paddock across. You see the high  
22 porosity. You see the Paddock is very similar wells  
23 from the well on our west side of their 160. It  
24 goes to the south and then cuts across; just trying  
25 to get a cross-section from Burnett to COG and

1 showing a strip along with each one.

2 Q. So the reservoir is present from Burnett's  
3 wells across COG's lease and over to the other  
4 Burnett well?

5 A. That's correct. Yes. The reservoir looks  
6 very -- it's present, and it looks very similar.

7 Q. Okay. You have talked about production  
8 comparisons. Is that what slide K shows?

9 A. Yes. Slide K is a 12-month production and  
10 GOR comparison, normalizing each of the nine wells  
11 back to the first month of production. Just because  
12 they have come on at different dates, this  
13 normalizes them back to month one.

14 Q. Okay. Now, before you go on, who are the  
15 solid lines and who are the dashed lines?

16 A. Okay. The solid lines are COG. The  
17 dashed lines are Burnett.

18 The green lines show oil production,  
19 barrels of oil per month -- thousands of barrels of  
20 oil per month, MBO.

21 The solid lines indicate GOR, the solid  
22 red lines. The red lines are GOR.

23 Q. Now, this exhibit has been shown to the  
24 hearing examiners before in a slightly different  
25 format, correct?



1           A.     Correct.

2           Q.     What is the change from the prior exhibits  
3     to this exhibit?

4           A.     The change -- the last exhibit showed the  
5     first six months. And since it's been several  
6     months, there are -- we added six more months to  
7     this slide. It just indicates the trend of the  
8     production, of Burnett's production, is fairly flat.  
9     This (indicating) is the oil production.

10          Q.     And so, number one, this shows that  
11     Burnett has better oil production than COG in a  
12     comparable area?

13          A.     The blue percentage shows they got a  
14     percentage higher -- that Burnett's oil production  
15     is -- than COG's oil production.

16          Q.     And it also shows that Burnett's GOR is  
17     lower?

18          A.     And Burnett's GOR is lower, yes.

19          Q.     And that gold line right in the middle of  
20     the chart is the six-month cutoff that the prior  
21     exhibits used?

22          A.     That's correct.

23          Q.     In the six months since, when this exhibit  
24     was first prepared, the difference has become even  
25     greater than it was for the first six months. Is

1     that correct?

2           A.     That's correct. The GOR has increased, it  
3     appears, and the oil production has increased. The  
4     difference between the two has increased as well.

5           Q.     Okay. So in other words, the numbers that  
6     showed in the first six months, Burnett's numbers  
7     look even better now?

8           A.     Correct.

9           Q.     What is slide L, Mr. Jacoby?

10          A.     Slide L is an attempt to go across three  
11     townships. You know, 17/30 is where the Burnett  
12     production -- most of our drilling has occurred.

13                   The subject of the two wells in this area,  
14     they are right on the east edge of 17/31, and then  
15     there is some production in this next township in  
16     the Maljamar area.

17                   This is a comparison of COG EURs across  
18     that trend. This analysis was done by a third  
19     party, PGH Engineering.

20                   They just took a cross-section of wells in  
21     17/30 and then a cross-section of wells all the way  
22     across to 17/32, for a total of 213 wells. And  
23     that -- their analysis showed the average EUR for  
24     oil was 66,000 barrels of oil.

25          Q.     Per well?

1 A. Per well.

2 Q. Now, this is strictly COG wells?

3 A. These are strictly COG wells.

4 Q. Let's move on to show the results that  
5 Burnett is getting in its wells. What does slide M  
6 reflect?

7 A. M is for vertical wells only. This  
8 analysis was also done by a third party, PGH  
9 Engineering. It also breaks out Paddock and  
10 Blinebry because of our stimulating them separately  
11 and producing them separately.

12 On the left, I knew we did not have a way  
13 of breaking out the different stimulation of COG  
14 wells, but just took those same 213 wells that were  
15 analyzed. Those were stimulated by gel fracs and  
16 hot acid fracs. I'm not sure of the number of  
17 those, but that average is being shown at 66,000 MBO  
18 per well.

19 Early on, Burnett stimulated our Paddock  
20 wells with a large volume of gelled water and gelled  
21 hot acid. 65 wells were analyzed, and that average  
22 was 115,000 barrels.

23 We were not able to make commercial -- as  
24 Mr. Haiduk referred to, we were not able to make  
25 Blinebry commercial completions with the hot acid

1 jobs.

2 Then we have begun using the slickwater  
3 technique, and we analyzed six wells. We have more  
4 wells than that now, but we wanted to have, you  
5 know, at least six months' production to have --  
6 because this was the decline curve analysis.

7 In the Paddock, their determination was  
8 that those six wells averaged 100- -- will average  
9 149,000 barrels of oil per well.

10 And then we still have 11 wells that were  
11 still producing out of the Blinebry only. And that  
12 analysis resulted in 157,000 barrels of oil per  
13 well.

14 Q. So using the slickwater frac had  
15 substantially improved production capabilities in  
16 the Paddock?

17 A. Substantially improved in the Paddock,  
18 yes.

19 Q. And in the Blinebry, there is really just  
20 no comparison?

21 A. That's right.

22 Q. So it looks like if you're looking at  
23 those two zones -- and of course it's not on a  
24 well-by-well deal. You look at -- if you do that in  
25 one well, just from a vertical well, you could get

1 up to 300,000 barrels out of a vertical well?

2 A. That's right. Yes.

3 HEARING EXAMINER EZEANYIM: Did you do  
4 this work? Who did this work?

5 THE WITNESS: PGH Engineering.

6 HEARING OFFICER EZEANYIM: Who is PGH?

7 THE WITNESS: A firm -- the principal is  
8 Raymond Gore out of Austin.

9 HEARING OFFICER EZEANYIM: You didn't do  
10 this yourself?

11 THE WITNESS: He did this for us.

12 HEARING EXAMINER EZEANYIM: Oh, you  
13 requested for them to do it for you and they did it?

14 THE WITNESS: Yes.

15 Q. (By Mr. Bruce) Mr. Jacoby, Mr. Gore  
16 testified in the prior rulings hearing, correct?

17 A. Yes. Yes, he did.

18 HEARING EXAMINER EZEANYIM: Okay. Yeah, I  
19 think I remember. Okay.

20 Q. (By Mr. Bruce) Let's go -- and the  
21 Hearing Examiner did ask about the water cut.

22 What does this map reflect?

23 A. This map reflects, basically, the trend in  
24 the water cut across these three townships. The  
25 purple outline is basically Burnett-operated wells.

1 That average water cut -- this -- we used IHS data,  
2 just went out to public information, so that the  
3 exact same data was used across this trend.

4 The wells outlined in purple have a little  
5 over 77 percent water cut.

6 The producing wells on the west side of  
7 this Maljamar area, plus two sections here on the  
8 east side that are shaded in blue, a total of 146  
9 wells, that number was almost 85 percent water cut.

10 Q. So there is a measurable difference  
11 between the two areas?

12 A. There is. There is. It seems to trend.  
13 There is a trend in higher water cut as you go down  
14 structure, as Mr. Haiduk referred to.

15 Q. Is that a reason to be careful when you  
16 are drilling and testing the initial wells in this  
17 area?

18 A. Yes. Yes, it is.

19 Q. If you will go to slide O.

20 HEARING EXAMINER EZEANYIM: Before you go,  
21 who -- who drilled those wells that have high water  
22 cuts? Who drilled those wells that have high water  
23 cuts?

24 THE WITNESS: Mr. Haiduk and I worked  
25 together on those. We just picked wells out of

1 our --

2 HEARING EXAMINER EZEANYIM: Who drilled  
3 them?

4 MR. BRUCE: Who drilled?

5 HEARING OFFICER EZEANYIM: Who drilled  
6 them?

7 THE WITNESS: Who drilled? I'm sorry.  
8 I'm sorry.

9 Burnett drilled the wells outlined in  
10 purple.

11 HEARING OFFICER EZEANYIM: Okay. They  
12 have 77 percent water cut?

13 THE WITNESS: Right.

14 HEARING EXAMINER EZEANYIM: And then who  
15 drilled them? What color is that? I am colorblind.

16 THE WITNESS: That is blue. I'm  
17 colorblind too. They laugh at me when I say the  
18 colors. They told me it was purple.

19 HEARING EXAMINER EZEANYIM: Okay. Who  
20 drilled those wells?

21 THE WITNESS: COG and Cimarex and probably  
22 some Marbob predecessor drilled some of those.

23 HEARING EXAMINER EZEANYIM: Do you think  
24 it's geology that caused the high water cut, or is  
25 it production practices? I want to understand why

1 you think -- this one is at 77.6 and this one is at  
2 84, because -- that's the format I'm getting at. Is  
3 it because of production practices, or because  
4 you're going down dip?

5 THE WITNESS: I think the big point here  
6 is we are going down dip, and it gets wetter.

7 HEARING EXAMINER EZEANYIM: So it's not  
8 really the production practices?

9 THE WITNESS: That's not the point here.  
10 And, no, I would not say that.

11 HEARING OFFICER EZEANYIM: Okay.

12 THE WITNESS: But it does say we have to  
13 be very careful about our production practices.

14 HEARING EXAMINER EZEANYIM: Yes. And that  
15 being what? What are you being careful about?

16 THE WITNESS: Just evaluating and knowing  
17 where water is and where you will get increased  
18 water cut. That we need to drill verticals and have  
19 a very good understanding where the water  
20 transitions from -- into higher water cuts.

21 HEARING EXAMINER EZEANYIM: Okay. Fine.

22 Q. (By Mr. Bruce) And, Mr. Jacoby, would  
23 the -- do you think the selective perforations that  
24 Burnett does, would you be better able to evaluate  
25 the water cut and control the water cut in your



1 wells than the -- kind of the blanket perforating  
2 and fracking that COG does?

3 A. Yes. Yes, I believe so.

4 Q. Okay. Let's talk a little bit about  
5 horizontal wells, Mr. Jacoby.

6 And there's a couple of plats showing  
7 horizontal wells and operations.

8 What is this first one? This is slide O.

9 A. This slide shows, I believe, all of the  
10 horizontal Yeso wells in these three townships that  
11 have been drilled by these -- by any operator. It  
12 turns out it's four operators.

13 Q. And Burnett has about two-thirds of the  
14 wells that have been drilled horizontally on there?

15 A. That's right. Burnett has drilled 12 of  
16 the horizontals in the Yeso.

17 Apache has drilled one which, actually, I  
18 think -- I know it was drilled by Marbob, that  
19 Apache now operates it.

20 Cimarex has drilled two wells right here.

21 COG has drilled four: Three in Paddock  
22 and one in the Blinebry.

23 Q. First of all, on this, the wells are not  
24 -- the horizontal wells -- there's no standard up  
25 here as to the length of the horizontals at this

1 point, correct? Some are 80, it looks like some are  
2 120, and there's a couple that are 160?

3 A. That's correct.

4 HEARING EXAMINER EZEANYIM: So in that two  
5 sections -- I mean in that two townships -- these  
6 are the total number of the horizontal wells drilled  
7 by operators?

8 THE WITNESS: Yes.

9 HEARING EXAMINER EZEANYIM: In those two  
10 townships?

11 THE WITNESS: We have shown three  
12 townships. But, yes, they are all --

13 HEARING EXAMINER EZEANYIM: Yeah, but the  
14 third one doesn't have any --

15 THE WITNESS: That's correct.

16 HEARING EXAMINER EZEANYIM: Okay.

17 Q. (By Mr. Bruce) What does this next slide  
18 show?

19 A. This just narrows it down so you can see  
20 the wells a little bit better in those two  
21 townships.

22 The ones in this township are actually  
23 right on the west end of that township adjacent to  
24 the -- most of the wells -- most of the horizontal  
25 wells have been drilled in 17/30, 12 of them by

1 Burnett, and then Burnett operated them.

2 Q. And what does this slide Q show?

3 A. Slide Q just shows the results and what  
4 we've realized through our completion of the Yeso  
5 wells.

6 Actually, the first three wells that we  
7 drilled, two of them were window cuts and they were  
8 uncemented casing. They're open-hole completions,  
9 these two wells.

10 This well is an open hole completion as  
11 well.

12 PGH, again, did the EUR valuation on all  
13 of these wells. This shows the MBO, the gas cum.  
14 The MBOE is in the range of 120,000 on those two.  
15 This well was a better well.

16 All of these wells have been stimulated  
17 with large volumes of hot acid.

18 We then started -- we were not quite as  
19 pleased with this. Actually, my predecessor began  
20 cementing the lateral with -- began with 5 and a  
21 half casing, and then we split to 7-inch casing  
22 because of producing the wells.

23 Our results were dramatically better. You  
24 see our EUR has ranged from 240 to one at 531 MBOE.  
25 All of these were drilled in the Paddock.

1 Q. So the cemented casing completion is, in  
2 Burnett's opinion, much superior to the uncemented?

3 A. Yes. Yes, in our opinion, it is. It has  
4 worked much better for us.

5 These are approximately 2,000-foot  
6 laterals on mostly 80-acre units.

7 Q. Most of Burnett's have been 80-acre  
8 laterals?

9 A. Most of them have, yes.

10 Q. And at least with the cemented ones, they  
11 definitely look commercial?

12 A. Yes.

13 Q. Okay. Let's get into the Taylor Draw  
14 unit. And, actually, this slide was included in the  
15 land plat exhibit, so I don't know if we really need  
16 to get into this much.

17 But this does reflect the Taylor --  
18 proposed Taylor Draw unit, correct?

19 A. Right. I might add, this shows the  
20 subject of the first two hearings.

21 Q. Uh-huh.

22 A. This shows the subject of the current  
23 hearing, today's pooling hearing.

24 It also shows the six APD's -- the six  
25 wells that we have APDs for.

1           It shows two diamonds marked in yellow  
2   that we have approval -- approved on-sites with the  
3   BLM. And we have just received the plats, and we'll  
4   be filing for APDs on those two.

5           Q.   Now, this has been discussed. But,  
6   certainly, Burnett is considering future horizontal  
7   wells?

8           A.   When I -- I did not mention it on that  
9   last slide. Then our thought -- and I know it's  
10   been mentioned before. We would drill several  
11   verticals at first to evaluate the reservoir. And  
12   then our thought would be to begin with probably  
13   three horizontals that were close to where we've got  
14   good formation evaluation.

15                So that -- then we would move -- that's  
16   why we show the AFE for the horizontal.

17               HEARING EXAMINER EZEANYIM: Okay. So  
18   before you go, your intention of that slide, you'll  
19   drill six wells and then you decide what your  
20   horizontal -- what the orientation would be, whether  
21   north/south or east/west, where you are going to get  
22   the greatest amount of production.

23               Is that what you are trying to do?

24               THE WITNESS: We would drill verticals.  
25   We may not drill all six verticals.

1 HEARING OFFICER EZEANYIM: Okay.

2 THE WITNESS: We would probably drill four  
3 verticals and evaluate to see if we need another  
4 vertical or so. But we would plan to drill these  
5 verticals. There are six verticals that we would  
6 plan to drill, and then drill three horizontals.

7 HEARING EXAMINER EZEANYIM: In each  
8 section?

9 THE WITNESS: Yes, one in each section.  
10 That's our --

11 HEARING EXAMINER EZEANYIM: One horizontal  
12 in each section?

13 THE WITNESS: One in each section. That's  
14 the way we envision it at this point, pending the  
15 evaluation of the six verticals.

16 Q. (By Mr. Bruce) And I think you'll get  
17 into this a little bit more, Mr. Jacoby.

18 But the plan of development is still  
19 preliminary, because you're uncertain of the results  
20 you'll get in the initial wells?

21 A. That's correct. This is a preliminary  
22 plan.

23 Q. Now, with respect -- moving to slides S  
24 and T, what do these slides reflect?

25 A. These slides reflect an AFE to drill a

1 160-acre horizontal, which would result in about a  
2 4,600 feet effective frac length in the pay zone.  
3 Completed well costs we estimate at about  
4 \$2.6 million.

5 Q. And you have drilled the most horizontals  
6 in this area, so do you believe that you have a good  
7 handle on the well costs for a horizontal well?

8 A. Yes.

9 Q. And this is for a single lateral  
10 horizontal?

11 A. Yes, for a single.

12 Q. And what does slide U reflect, Mr. Jacoby?

13 A. Slide U represents what we would see as,  
14 possibly, an ultimate plan of development. This was  
15 presented to the BLM in the Taylor Draw unit.

16 After the point of the six verticals and  
17 the three horizontals that we've discussed, pending  
18 evaluation, we have selected horizontals that would  
19 fit with the sand dune lizard habitat.

20 The shaded area shows the potential  
21 habitat, and so you can see that we have selected  
22 locations that would fit. Those could be altered,  
23 depending on the evaluation, but this is -- this is  
24 what we would envision possibly being the plan at  
25 this point.

1 Q. Okay. So the tan areas are the -- are the  
2 habitat for various potentially endangered species?

3 A. Yes.

4 Q. And then the blue is just the Taylor Draw  
5 itself, the arroyo flowing through that area?

6 A. Yes, it is.

7 Q. Okay. And this -- go ahead.

8 A. Okay. I was just going to say, the BLM  
9 asks us -- we're prohibited 600 feet on either side  
10 of the Taylor Draw. That's why this is so wide.  
11 We're prohibited to drill wells in that area.

12 HEARING EXAMINER EZEANYIM: What did you  
13 say? BLM --

14 THE WITNESS: The BLM has a 600-foot  
15 prohibited zone on either side of the Taylor Draw.  
16 So, effectively, there's a 1,200-foot-wide swath  
17 along Taylor Draw that is also -- you cannot  
18 locate -- build a location.

19 HEARING EXAMINER EZEANYIM: It appears to  
20 me, from your diagram here, that in Section 12  
21 you're going to drill these wells as horizontals,  
22 right?

23 THE WITNESS: That would be the plan now,  
24 based on the sand dune lizard habitat.

25 HEARING OFFICER EZEANYIM: Yeah. Okay.



1 THE WITNESS: But it also, again, depends  
2 on the evaluation of, you know, where we think the  
3 best orientation would be.

4 HEARING EXAMINER EZEANYIM: And that would  
5 be Section 13 and 24, you're going to drill  
6 north/south?

7 THE WITNESS: Yes.

8 HEARING EXAMINER EZEANYIM: Okay. The way  
9 you drew this, is that one horizontal -- okay. I  
10 think it stops at the section line.

11 THE WITNESS: The location would be next  
12 to the section.

13 HEARING OFFICER EZEANYIM: Oh, okay.

14 THE WITNESS: You drill horizontal and  
15 then you penetrate.

16 HEARING OFFICER EZEANYIM: Okay.

17 Q. (By Mr. Bruce) Now, there was talk in the  
18 opening arguments about surface use. Burnett has  
19 been -- since it has gotten involved in this area,  
20 is fully aware of the surface use restrictions that  
21 the BLM imposes on many leases, correct?

22 A. Yes, we are.

23 Q. And we'll get into this. But has Burnett  
24 taken steps to come into -- to comply with --  
25 whether it's regulations or local BLM

1 requirements -- regarding surface use?

2 A. We have. We discussed that at length. We  
3 have entered into a CCA. It has been approved.

4 It's been funded, and we are in that CCA plan.

5 We have worked with the BLM on these three  
6 sections -- Hudson has, for many years. As you can  
7 see, the dots show the shallower wells. They are  
8 not the subject of this hearing, but they just show  
9 the surface use with those shallower wells.

10 Q. Okay. Now, just looking at this plat, if  
11 horizontal wells are drilled, Burnett plans on  
12 drilling single lateral horizontal, correct?

13 A. Yes. Certainly. Yes, that is correct.

14 Q. But are the surface locations chosen such  
15 that, if it drilled a first single lateral in the  
16 Paddock, it could then drill, right next to that  
17 initial well, a single lateral in the Blinebry?

18 A. That's correct.

19 Q. And this has been discussed with the BLM,  
20 has it not?

21 A. Yes. Yes, it has.

22 Q. And how far apart could Burnett place  
23 those wells?

24 A. The laterals or the surface?

25 Q. On the surface.

1           A.     On the surface? You can locate wells as  
2     close as -- my cohort just drilled laterals as close  
3     as 7 and a half feet. So you can you start off  
4     steering, you can locate wells -- I think it's very  
5     industry standard in the shale plays, 15 to 20 feet  
6     apart.

7           Q.     So there would essentially be no more --  
8     no additional surface use from having one single  
9     lateral as opposed to two single laterals?

10          A.     That's correct.

11          Q.     What does this next exhibit reflect?

12          A.     This next exhibit just highlights the plan  
13     that I have just discussed. It shows the verticals  
14     that would be drilled. Later on, those verticals --  
15     the window could be cut. The horizontal could be  
16     drilled after an evaluation.

17                 The planned horizontals are shown  
18     highlighted, the first three that we would  
19     anticipate to be drilled, based on the evaluation of  
20     the vertical wells that we would drill first.

21          Q.     Now, you are -- the operator of the  
22     shallow rights is Hudson Oil?

23          A.     Correct.

24          Q.     And have you been working with Hudson Oil  
25     to use the same drill pads to minimize surface use

1 between their wells and your wells?

2 A. We have, and we would. On the Yeso, we  
3 would.

4 We actually, in Section 12 and 13, have  
5 jointly worked with Hudson on drilling  
6 Grayburg-San Andres wells. We have actually  
7 contract operated the drilling and the completion,  
8 working very closely with Hudson on the -- on the  
9 location of these wells, working with the BLM.  
10 These are existing Grayburg-San Andres locations.

11 Q. That's showing 40 or 50 of them out there?

12 A. There are -- I'm not sure of the number.  
13 These were drilled -- Burnett has an interest in  
14 these. These have been drilled over many, many  
15 years in the south end.

16 Q. Now, is there plans, also, to use common  
17 facilities -- surface facilities -- to, again,  
18 minimize surface use?

19 A. There are plans. The Taylor Draw unit  
20 would not require but one tank battery facility from  
21 an ownership standpoint, but we would plan two tank  
22 battery facilities.

23 One would be north of the highway.  
24 There's a major highway that cuts across, Highway  
25 62. That has already been approved by the BLM.

1           There are -- there is a shallow well  
2   nearby. It would be another well there nearby, so  
3   the surface -- there would be a very good -- minimal  
4   amount of surface used for a well and a tank  
5   battery.

6           And then there's another tank battery  
7   approved and planned that is in the -- here, just on  
8   the north end of Section 24.

9           There is currently -- that is where the  
10   Hudson Grayburg-San Andres tank batteries are  
11   already located. So there really is some good  
12   synergy of using the surface by locating the tank  
13   battery side-by-side.

14         Q.     Okay. This next slide, I think, was  
15   omitted from the exhibit.

16           HEARING EXAMINER EZEANYIM: It's not here.

17           MR. BRUCE: We'll provide copies to  
18   opposing counsel and to the division.

19         Q.     (By Mr. Bruce) This one was in the slide  
20   show, and it's not in the hard copies that I have  
21   for some reason.

22           But what is this, Mr. Jacoby?

23         A.     This shows the COG-proposed wells. The  
24   circles show the 47 proposed vertical wells that  
25   were proposed on two separate days. They had

1 22 percent working interest at that time.

2 Burnett/Hudson had 66 percent at that time.

3 Then, later, COG, or Concho, proposed 17  
4 triple laterals. Those are shown on here as well.  
5 They did have 33 percent working interest at the  
6 time of their proposal of the triple laterals.

7 They do have -- on the verticals, they  
8 have received 10 approved APDs, and that is shown in  
9 the purple dots.

10 Q. So they initially permitted all of their  
11 wells as verticals?

12 A. Yes. They initially applied for permits  
13 on the verticals, 47 verticals.

14 Q. And that slide is in the package. I don't  
15 know if you really need to comment on that. That's  
16 just another slide showing surface restrictions,  
17 correct?

18 A. Correct.

19 Q. Well, let's try to summarize the issues  
20 out here, insofar as the surface and environmental  
21 consideration.

22 What is slide X, Mr. Jacoby?

23 A. This slide just shows a summary of the  
24 surface considerations, environmental issues with  
25 the Taylor Draw unit.

1           Burnett, as has been mentioned, had  
2   received preliminary approval to form the unit from  
3   the BLM. We have shown the outline of the sections  
4   that would be included. It is limited  
5   stratigraphically to the Glorieta-Yeso formations.

6           Burnett does plan to develop the unit  
7   primarily with horizontal wells, based on the  
8   results of some verticals.

9           The unit is formed by working closely with  
10   BLM personnel in Carlsbad.

11           As has been discussed, Burnett would be  
12   the designated operator of the unit.

13           As I just mentioned, Hudson has developed  
14   the Grayburg-San Andres unit in conjunction with  
15   working closely with Burnett. I just described that  
16   a few minutes ago. And this would allow a lot of  
17   synergy in jointly developing the Yeso and Grayburg  
18   reservoirs.

19           As I mentioned, the tank battery could be  
20   located side-by-side. There are a lot of  
21   significant operational efficiencies and cost  
22   savings that would result in Burnett and Hudson  
23   continuing to work together on it.

24           And then the last item I mentioned a  
25   minute ago. We do have -- it's been approved --

1 Burnett Oil has been approved as operator of the  
2 Candidate Conservation Agreement.

3 Q. And that approval was from the BLM?

4 A. And that approval is from the BLM.

5 Q. And again, the BLM has made surface -- has  
6 restricted surface use out here for a number of  
7 reasons?

8 A. Yes.

9 HEARING EXAMINER EZEANYIM: Before you  
10 leave that, where you said that Burnett would be the  
11 operator of the unit, you are talking about the  
12 Taylor Draw unit, the Section 12, 13, and 24, right?

13 THE WITNESS: Yes.

14 HEARING EXAMINER EZEANYIM: That's what  
15 you are talking about, "the unit"?

16 THE WITNESS: Yes.

17 HEARING EXAMINER EZEANYIM: Okay. Because  
18 I just want to understand. It's not just one unit  
19 related to it, but it's just that -- those three  
20 sections?

21 THE WITNESS: Yes.

22 HEARING EXAMINER EZEANYIM: Okay.

23 Q. (By Mr. Bruce) Just another summary  
24 sheet, Mr. Jacoby. I don't know if -- let's discuss  
25 this briefly.



1           A.     This is just to summarize what we have  
2     discussed over the last -- Mr. Rhodes and Mr. Haiduk  
3     and myself -- for the two wells, the Nosler Federal  
4     3, Partition Federal 2, each one 40-acre units that  
5     are the subject of this proposed pooling.

6                     It shows the working interest ownership,  
7     the support that Burnett has of 100 percent of the  
8     record title owners.

9                     I've described our ongoing drilling  
10    program in the Maljamar leases. We have two rigs  
11    operating there.

12                    Burnett does have six approved APDs on  
13    vertical wells.

14                    As has been mentioned, Burnett and Hudson  
15    have a long working relationship.

16                    The real benefit of that is operational  
17    efficiencies, cost savings, less surface usage. And  
18    then, also, just reducing truck traffic gathering  
19    oil.

20            Q.     So you and -- Burnett and Hudson plan to  
21    construct an oil gathering system?

22            A.     We would have a tank battery system. And  
23    I think it would not be very -- in short order,  
24    those would be connected on a pipeline, which would  
25    greatly -- very much reduce trucking.

1 Q. Now, in your opinion, is Burnett's plan of  
2 development for these three sections the best plan  
3 of development?

4 A. Yes.

5 Q. And in your opinion, from an engineering  
6 standpoint, do the well results that you have  
7 obtained further to the west support Burnett as  
8 operator in the Yeso in this entire three-section  
9 area?

10 A. Yes, I do believe so.

11 MR. BRUCE: Mr. Examiner, if I could ask  
12 permission of one thing?

13 There were certain things, when I was  
14 occupied with other witnesses, that Mr. Grable had  
15 discussed with Mr. Jacoby. And if I could allow him  
16 to ask a few questions, just on issues that I  
17 haven't covered, if that's permissible?

18 HEARING EXAMINER EZEANYIM: Okay. How  
19 long will that take you, Mr. Grable?

20 MR. GRABLE: It would take me no more than  
21 a minute, hopefully.

22 HEARING EXAMINER EZEANYIM: Okay. Go  
23 ahead.

24

25

## EXAMINATION

1  
2 BY MR. GRABLE:

3 Q. Mr. Jacoby, were you here when  
4 Mr. Ezeanyim asked Mr. Haiduk some questions about  
5 comparing Texas Clear Fork reservoirs with  
6 New Mexico Yeso reservoirs?

7 A. Yes, I was.

8 Q. And those two reservoirs are time  
9 equivalent, geologically, are they not?

10 A. Yes. That's correct.

11 Q. Have you had experience with Texas Clear  
12 Fork reservoirs?

13 A. Yes, I have.

14 Q. With prior employers?

15 A. Yes. I worked 24 years for a company that  
16 had a lot -- we had a lot of Clear Fork.

17 Q. How would you compare the rock quality or  
18 reservoir quality between Texas Clear Fork  
19 reservoirs and New Mexico Yeso reservoirs, as to  
20 porosity, permeability, or other factors that you  
21 think could influence their ability to constitute a  
22 quality traditional reservoir?

23 A. My experience has been, on the Texas side  
24 of the Clear Fork, it's typically a little higher  
25 permeability, a little higher porosity.

1 Many of those fields were discovered in  
2 the '40s or earlier. Many of those have been put on  
3 secondary recovery and tertiary recovery.

4 Whereas the Yeso, my understanding, the  
5 reason it was bypassed a long time was wells  
6 initially would make all water for a few days, so  
7 people bypassed it. It's a bit tighter. It's,  
8 actually, different producing characteristics.

9 Q. So these Texas Clear Fork reservoirs,  
10 going back into the '40s, were able to produce in  
11 commercial quantities at lower oil prices without  
12 the big fracture stimulations now employed over here  
13 on the New Mexico side of these reservoir fields?

14 A. Yes.

15 MR. GRABLE: That's all I have.

16 HEARING EXAMINER EZEANYIM: Thank you for  
17 clearing that for me. That answers my question.  
18 That is really what I wanted to get at, because it's  
19 important to me. Thank you very much.

20 What I'm going to do -- I'm sorry,  
21 Ms. Munds-Dry, you're not going to cross-examine.  
22 We have to go to lunch.

23 MS. MUNDS-DRY: You know how I feel about  
24 lunch, Mr. Ezeanyim.

25 HEARING EXAMINER EZEANYIM: Yeah, that's

1     why.

2                   We are going to come back here in one  
3     hour. And let me say again, we must finish today.  
4     Even if it takes us to 10:00, we'll finish it today.  
5     So take your time, go and have your lunch, and we're  
6     going to finish when we come back. Be here at 1:35.

7                   (A recess was taken from 12:05 p.m. to  
8     1:55 p.m.)

9                   HEARING EXAMINER EZEANYIM: Now, we're  
10    going to go back on the record and then continue  
11    with where we left off in the morning.

12                   And I think Mr. Mark Jacoby is on the  
13    stand, and it is time for you to cross-examine.

14                   MS. MUNDS-DRY: Yes. Thank you,  
15    Mr. Examiner.

16                   HEARING EXAMINER EZEANYIM: I would like  
17    to say that Mr. Brooks is not present this  
18    afternoon.

19                                   EXAMINATION

20    BY MS. MUNDS-DRY:

21           Q.     Good afternoon, Mr. Jacoby.

22           A.     Good afternoon.

23           Q.     How is that paper going for the ESPE?

24           A.     It's done.

25           Q.     Are you on the way to getting it published

1 yet?

2 A. Not published; it will be presented.

3 Q. It will be presented?

4 A. At a technical conference.

5 HEARING EXAMINER EZEANYIM: Is that in  
6 Denver?

7 THE WITNESS: In Denver, yes.

8 HEARING EXAMINER EZEANYIM: Are you going  
9 to present this October, November?

10 THE WITNESS: It's in October, early  
11 November. John Ely and I will. I'm not sure  
12 exactly how we will do that.

13 HEARING EXAMINER EZEANYIM: Okay, good.

14 Q. (By Ms. Munds-Dry) I would like to turn,  
15 Mr. Jacoby, to the first slide, the AFE for the  
16 Partition Federal Number 2, please.

17 How much are you paying per barrel for  
18 water?

19 A. Some of it is trucked and some of it --  
20 there's a water supply line that goes through the  
21 middle of our lease, a Yates water supply line. And  
22 we -- we try to buy as much of the fresh water from  
23 that as we can.

24 Q. About how much are you paying per barrel?

25 A. For that, it is 65 cents, I believe.

1 Q. For both the trucked --

2 A. No. For the water out of the Yates --

3 Yates water. And then the trucked water is --

4 probably for about a load, is \$250 a load.

5 Q. And moving to your description of, really,

6 your completion costs, what sand size do you use?

7 A. We pump two large stages, very similar to

8 pads with hundred mesh -- two or three, depending on

9 the desire of the frac -- that has 100 mesh sand in

10 it. And then the alternating stages have 40/70

11 sand.

12 Q. Is that the largest sand size that you can

13 pump into the Yeso?

14 A. I do not think so. We prefer the design

15 of the 40/70. I know some others pump some more.

16 Other people have pumped larger sand. We pump

17 40/70. I'm sure some larger could be pumped.

18 Q. If we could turn to -- I guess it's, like,

19 C. It's the well bore schematic for the Partition

20 Federal Number 2.

21 A. (Witness complies.)

22 Q. What kind of issues do you see when you

23 have this kind of well bore design? Do you get

24 fishing jobs, stuffed pipe, when you don't use

25 intermediate casing? Do you see that?

1           A.     We have not -- it's rare. Sometimes you  
2 do, but it's a very low percentage of the wells.

3           Q.     Have you had stuffed pipe before, when you  
4 used no intermediate casing of the -- I believe you  
5 said somewhere around 97 wells were drilled that are  
6 Yeso wells. Have you had stuffed pipe?

7           A.     We have had stuffed pipes before, but it's  
8 been very rare.

9           Q.     How many times would you say?

10          A.     I really am not sure how many. It's a  
11 very minimal amount.

12          Q.     How about fishing jobs?

13          A.     We have had a few, but not very many. I  
14 don't know the number. It's a small number.

15          Q.     Isn't this a riskier way to drill a well?

16          A.     It depends on the area that we are  
17 drilling. We have found that it has not been a high  
18 risk to drill through there. We have some issues  
19 sometimes, but it's not been a -- we've not viewed  
20 it as a high-risk.

21          Q.     If you could turn to the completion  
22 comparison slide, please. I guess it's I.

23                   We have had this discussion before,  
24 Mr. Jacoby, and so you know what I'm going to ask  
25 you. You said that you asked -- Mr. Ezeanyim



1 actually asked you this, so I didn't have to ask you  
2 what you design your frac lengths to be.

3 You said you had a half-length design of  
4 500 feet, I believe?

5 A. Approximately, yes.

6 Q. Given that you have two well proposals  
7 here in unorthodox locations, are you still planning  
8 to design for a 500-foot frac length?

9 A. Which location are you --

10 Q. For the Nosler Number 3 and the Partition  
11 Number 2, the two applications that are before the  
12 OCD today.

13 A. We may -- we would design appropriately  
14 for each one of those locations. Typically, these  
15 locations are not unorthodox. We have scaled back  
16 the design.

17 Q. So you have designed smaller --

18 A. Yes.

19 Q. -- smaller frac jobs as the situation  
20 warrants?

21 A. Yes.

22 Q. Would you agree with me that if you do  
23 design -- have a smaller frac design, you also get  
24 smaller EURs?

25 A. We possibly would. We would prefer to

1 keep the larger frac design where we can.

2 Q. If you could, Mr. Jacoby, if you'd turn to  
3 slide K, the GOR and production comparison.

4 A. (Witness complies.)

5 Q. You got this -- the data and the table  
6 below there from IHS, I believe?

7 A. Yes, that's correct.

8 Q. And I know I've asked you this before, and  
9 I want to see if your answer is any different today,  
10 since you have added on additional production in  
11 GORs.

12 When you did these -- when you built this  
13 table and you looked at the data, did you look also  
14 for any workovers or recompletions that would have  
15 affected the numbers?

16 A. I did not go through the well histories,  
17 no, I did not, to see the work on these wells.

18 Q. So you didn't do anything to determine if  
19 there was any downtime in any of those wells, in  
20 particular, Concho's wells?

21 A. We took reported production. No, we did  
22 not.

23 Q. And have you done any analysis in  
24 comparison of Concho and Burnett wells in any other  
25 areas besides this small sample?

1           A.     No, we have not.

2                    Could I add to that?

3           Q.     We can let Mr. Bruce ask you that if you  
4     have something to add.

5           A.     Okay.

6           Q.     Mr. Jacoby, I think I got these out of  
7     order. I'm looking at I think what is next, which  
8     is the analysis of EURs. Is that next?

9                    Yes. That's it right there, which I guess  
10    it's M, but I lost track.

11                   Have you analyzed and done an EUR  
12    comparison of any of your horizontal wells to  
13    Concho's wells?

14          A.     Yes, I have.

15          Q.     You didn't present that here today?

16          A.     I did not present that.

17          Q.     And you know here -- and I understand that  
18    this was prepared by -- at least the data came from  
19    Mr. Gore's group.

20                   Of the 213 wells that were analyzed, do  
21    you know if Concho has ever completed with hot acid?

22          A.     I'm not certain, but I thought early on  
23    that they had completed some work with hot acid. I  
24    do not recall.

25          Q.     Of these 213 wells that were analyzed, do

1 you know how many were drilled by Concho?

2 A. I do not.

3 Q. And how is the EUR determined in your  
4 comparison here? Decline curve analysis?

5 A. Yes. PGH did the decline curve analysis.

6 Q. Of these six wells that Burnett uses here  
7 to show for the slickwater completions, when were  
8 those drilled?

9 A. They were drilled in over -- probably in  
10 2009. We tried -- we wanted to have wells that had  
11 at least six months of production.

12 Q. And the same is true for the 11 wells in  
13 the Blinebry that were completed?

14 A. Some of those were drilled more recently.  
15 The way that I've explained, we produce the Blinebry  
16 for a time and then move up to the Paddock. But  
17 some of those were drilled more recently.

18 Q. "More recently," meaning this year?

19 A. Some earlier this year and some last year.

20 Q. I'm hoping that the next slide is the  
21 water cut slide.

22 I think you discussed this with  
23 Mr. Ezeanyim. You've got, if I understand it, this  
24 water cut percentage from the Loco Hills area, which  
25 is more north, comparing it to the Maljamar area

1 which is south, closer to the shelf?

2 A. Well, it's north and west.

3 Q. Okay. So you have a north and west  
4 sample, which as I understand it from Mr. Haiduk, is  
5 up dip?

6 A. Yes.

7 Q. And then you have a sample for the  
8 Maljamar area, which is to the east and south,  
9 closer to the shelf?

10 A. Yes.

11 Q. Is there an oil/water contact in Loco  
12 Hills?

13 A. I think that is probably a debate. But as  
14 I -- we understand it, it transitions into water  
15 where it becomes wet, and -- from my analysis.

16 Q. And do you know where that is? Can you  
17 point to where you think that is on the map?

18 A. Not exactly. But it is on the southern  
19 end of the shelf edge.

20 And this map is -- it's along the southern  
21 end. I can't point exactly. Generally, that's  
22 where it is.

23 Q. You indicated that it's important to  
24 selectively perf in your wells to avoid water cut.

25 What about designing your frac height in

1 avoiding water cut? Does that make a difference?

2 A. Yes.

3 Q. Would you agree with me that the oil  
4 production is generally higher in the Maljamar area  
5 than in, say, the Loco Hills area?

6 A. Repeat your question, please?

7 Q. Is the oil production higher in the  
8 Maljamar area than in the Loco Hills area?

9 A. I have not seen that.

10 Q. But I am asking if you would agree with  
11 me.

12 A. No, I would not agree with you.

13 Q. Why do you not agree with me?

14 A. From what I have seen of production that  
15 we have analyzed, it appears that the oil  
16 production, the EURs, are a little bit less,  
17 possibly. But --

18 Q. As you go east?

19 A. As you go east. But some of that may be  
20 transitioning down into water.

21 That's why we think it's very important to  
22 evaluate and know exactly where to perforate. I  
23 think the completion is very important.

24 Q. Sure.

25 On your next slide, Mr. Jacoby, where you

1 show the horizontal Yeso producers, are there other  
2 horizontal wells in the Yeso, outside of these  
3 areas, that you're aware of?

4 A. Not that I'm aware of.

5 Q. Have you looked if you go east -- or west,  
6 I'm sorry.

7 A. I'm not aware of those.

8 Q. If we could please turn to the slide --  
9 and I stopped lettering them, so it's the -- the EUR  
10 table for the horizontal Yeso wells.

11 A. (Witness complies.)

12 Q. You noted on you previous slide -- and, in  
13 fact, we had an earlier version of the slide, where  
14 you included all 12 of the wells that Burnett has  
15 drilled horizontally.

16 You didn't show those all here, I think,  
17 because you qualified you wanted a certain number of  
18 production, is that correct, so you didn't include  
19 some of your newer horizontal wells that you  
20 drilled. You included nine here, I believe.

21 A. Correct. I included nine here.

22 Q. And it looks like you've drilled all  
23 Paddock horizontal wells?

24 A. Yes, that's correct.

25 Q. Of the 12 total that you have drilled,

1 have any of those been in the Blinebry?

2 A. No, not yet.

3 Q. For the uncemented casing completions,  
4 what -- approximately what year were those wells  
5 drilled, the three that you have listed there? I  
6 don't see a vintage on those wells.

7 A. Early 2000s, 2004 or 2005.

8 Q. Approximately?

9 A. Approximately.

10 Q. Now, why did you separate the cemented  
11 casing completions from the uncemented casing  
12 completions? What are you equating these two  
13 different types of completions to?

14 A. We have -- in most plays, we have seen the  
15 completion technology has gone more and more towards  
16 cemented casing. My thought was to divide this up,  
17 and there is certainly a very dif- -- much different  
18 EUR in the first two completions that are  
19 uncemented.

20 Just intuitively -- early on, cementing  
21 horizontals was a real challenge, and that  
22 technology has really improved. We can cement  
23 laterally, we can perforate selectively and  
24 stimulate in stages. We can stimulate the wells  
25 better, we think.



1 Q. Are you suggesting that Concho is planning  
2 to complete with an uncemented casing? Is that why  
3 you showed this?

4 A. I have noticed that they planned -- from  
5 the data that I saw, they were planning uncemented  
6 casing. And the wells that they had -- the  
7 completion records show their horizontals are  
8 ported. I believe they were uncemented.

9 Q. How many frac stages were there in the  
10 uncemented completions?

11 A. I do not remember exactly.

12 Q. I also notice that all of these are  
13 completed with hot acid.

14 A. That is correct.

15 Q. You have some newer wells that just don't  
16 have enough production on them you have completed  
17 with slickwater fracs?

18 A. We have completed two. They are in  
19 evaluation. They have been on production less than  
20 six months, one even less than a month, and so we're  
21 evaluating that.

22 It's encouraging, but it's not yet -- we  
23 want to evaluate that. That's kind of our style, is  
24 to move to the next thing that we -- we think that  
25 will be -- could have a lot of advantage in

1 stimulating a cemented casing with a slickwater  
2 frac. We are evaluating that.

3 Q. In your slickwater fracs, were all stages  
4 pumped?

5 A. No. We pumped half of the lateral, to  
6 evaluate half the lateral, six stages.

7 Q. Six stages?

8 A. Yes.

9 Q. Did you experience any screenouts?

10 A. No screenouts.

11 Q. Mr. Jacoby, this is that repeat slide,  
12 the -- that shows the six approved APDs. That  
13 slide, I don't know where that is in order.

14 A. Is this (indicating) the slide?

15 Q. Yes, sir. Thank you.

16 Mr. Rhodes thought you would know the  
17 answer to these questions, so it's Mr. Rhodes'  
18 fault.

19 A. Yeah. He's my buddy.

20 Q. You indicated you're now enrolled --  
21 you're now a member of the Candidate Conservation  
22 Agreement program?

23 A. Yes, we are.

24 Q. And have you evaluated your six approved  
25 APDs here to see if they comply with that program

1 and the setbacks that are required under the CCA?

2 A. The BLM approved all six of those  
3 locations.

4 Q. That was before you were a member of the  
5 CCA, correct?

6 A. Yes.

7 Q. But have you done anything to  
8 independently evaluate whether you -- whether they  
9 comply with the CCA?

10 A. I have not followed up to see that. I  
11 mean, the CCA program was -- was -- we had not  
12 joined it at that time, but we were very familiar  
13 with the CCA program. So I would say they are in  
14 compliance, based on -- the BLM, fish and wildlife  
15 people, came out and approved these locations,  
16 approved the on-sites.

17 Q. Did you participate in those on-sites?

18 A. Not physically on the ground, but I  
19 participate very much with the personnel involved in  
20 doing those on-sites.

21 Q. So you don't know if there was any  
22 discussion about whether the sites comply with the  
23 CCA or not?

24 A. I don't know all of their discussion.

25 Q. You were not told or made aware that there

1 was a discussion specific to meeting the setback  
2 requirements in the CCA?

3 A. I do not know.

4 Q. Mr. Ezeanyim, I believe, asked you if you  
5 intend to drill all six of the locations where you  
6 have approved APDs. And you -- I believe you  
7 answered him that you were looking, at least  
8 initially, at four.

9 Which of the four are you intending to  
10 drill?

11 A. Actually, of the first six APDs, one we  
12 have pulled out of compulsory pooling. The --

13 Q. Is that the one down in 24?

14 A. Right here (indicating), yes.

15 Q. So you're saying, of the four you intend  
16 to drill, are the two that have already gone to  
17 pooling, and the two that we're here discussing  
18 today?

19 A. The two -- the two, this one (indicating),  
20 we'll evaluate this as to how it fits with the  
21 horizontal.

22 We have two on-sites approved. We will be  
23 filing APDs there. We would like to drill those  
24 soon as well.

25 Q. So it's your plan to drill those two

1     verticals before you consider a horizontal well plan  
2     as well. Is that correct?

3           A.     We'll be considering the horizontal when  
4     we evaluate these vertical wells.

5           Q.     So you may start a horizontal program  
6     before you drill those two vertical wells?

7           A.     No. We will drill the verticals to  
8     evaluate.

9           Q.     So I'm clear, you will plan to drill all  
10    the vertical wells first and then evaluate your  
11    horizontal well plan?

12          A.     Probably drill four to evaluate the  
13    horizontals. We'd have one here (indicating) to  
14    drill a potential horizontal.

15                   We would drill one here (indicating) to  
16    evaluate a potential horizontal.

17                   We would like to drill this one  
18    (indicating) to evaluate horizontal.

19                   Of course, this well (indicating) has  
20    penetrated the Yeso. It's a Yeso producer, so that  
21    would give us some evaluation.

22          Q.     Okay. Then I'm confused, because I  
23    thought you had told me that you intend to drill all  
24    four of the wells, two that are the subject of the  
25    hearing today that are in the east half east half of

1 13, and the east half east half of 24, and the two  
2 wells that have already gone to hearing.

3 So I ask you: Which four do you intend to  
4 drill to evaluate?

5 A. We're going to drill these (indicating)  
6 two.

7 We are considering -- we'll probably drill  
8 that one (indicating) early on as well.

9 The plan is to drill these (indicating)  
10 two.

11 We are not certain yet we'll drill this  
12 one (indicating).

13 And we're not certain exactly in which  
14 order, one of these (indicating) or this one  
15 (indicating).

16 Q. The plan is to drill at least one vertical  
17 well per section?

18 A. Yes.

19 Q. If we could turn to the horizontal well  
20 which is, hopefully, the next slide.

21 A. (Witness complies.)

22 Q. And I understand this is not an actual  
23 well proposal, right? You haven't actually proposed  
24 this to anybody. This is based on your experience  
25 with AFEs and other horizontal wells that you have

1 drilled?

2 A. Correct.

3 Q. And this is obviously not before the OCD  
4 in any sort of official manner. This is to give an  
5 idea of how you would drill this sort of well. Is  
6 that the idea?

7 A. Yes. That's correct.

8 Q. Is this Burnett's first time drilling a  
9 full section lateral? Would this be the first time  
10 you would do that?

11 A. No, I do not think so.

12 Q. Where else have you gone a full section in  
13 the lateral?

14 A. I think in the Barnett we have and in the  
15 Marcellus we have.

16 Q. How about in New Mexico?

17 A. Not in New Mexico, no.

18 Q. And then, obviously, not in the Yeso?

19 A. Correct. Not in the Yeso.

20 Q. How much are you thinking you're going to  
21 pay per gallon for diesel? In your experience, how  
22 much have you paid?

23 A. I have -- it's about \$3 a gallon. 27-,  
24 \$2,800 a day for this rig.

25 Q. I don't know if you know this. You give

1 the measured depth here of 10,700 feet. What is the  
2 total -- what is that in total vertical depth? I  
3 just didn't see that on the AFEs. I didn't know  
4 what your TVD was.

5 A. 6,100. That's about a 4,600-foot  
6 effective lateral.

7 Q. Does that put it in the Paddock?

8 A. That would put it in the Paddock, correct.

9 Q. What about the Blinebry?

10 A. This AFE does not account for that. We  
11 would -- as I have testified before, we would drill  
12 one in the Paddock and one in the Blinebry, once we  
13 have more understanding of the reservoir and  
14 understanding of the Paddock.

15 Q. And I was curious about that. If you do  
16 as you propose, to drill one single lateral for the  
17 Paddock and one for the Blinebry, how do you -- what  
18 do you plan to design your frac height to be in the  
19 Blinebry?

20 A. I'm not sure exactly how we would -- until  
21 we evaluate our logs, evaluate the pay, I'm not sure  
22 what the answer to that would be.

23 Q. The next -- well, there are two slides, I  
24 guess, that show your proposed plan of development  
25 for the Taylor Draw unit.



1                   And this is really, I guess, a follow-up  
2     to my previous question.

3                   As we understand it, you do at least two  
4     fracs in the Blinebry for your vertical wells?

5           A.     Typically, that's what we have done.

6           Q.     But you'd only do one horizontal in the  
7     Blinebry?

8           A.     We are not certain of that.

9           Q.     Is it possible that you would do a dual  
10    lateral for the Blinebry?

11          A.     We have thought that maybe we could do a  
12    second lateral, if that's what it calls for, off of  
13    the same pad, go deeper, if we needed to drill and  
14    chose to drill deeper.

15          Q.     I think Mr. Rhodes said this was also in  
16    your category.

17                   If you show the Taylor Draw going -- going  
18    through this map here for these locations, do you  
19    know if you have approved surface, in terms of your  
20    setbacks, of what you're required to be back from  
21    the Taylor Draw? Has the BLM approved those --  
22    those sites?

23          A.     We've not permitted any of these sites,  
24    no.

25          Q.     Now, some of these are existing locations.

1 Maybe they're Hudson locations?

2 A. Some of these are, yes.

3 Q. You indicated that -- in terms of where  
4 we're talking about surface area, or impact -- that  
5 you had experience with drilling your horizontal  
6 wells on the surface 7 and a half to 10 feet apart,  
7 I believe. You've seen that before, or you have  
8 done that before?

9 A. I have not done that. My engineer, my  
10 cohort, has done that before. I've seen it done  
11 before.

12 Q. Someone here today?

13 A. Yes.

14 MS. MUNDS-DRY: Are you planning to call  
15 him as a witness?

16 MR. BRUCE: I don't know.

17 MS. MUNDS-DRY: Okay.

18 Q. (By Ms. Munds-Dry) Do you know what type  
19 of rig is required to drill when you are drilling 7  
20 and a half to 10 feet apart?

21 A. What type of rig?

22 Q. Yes.

23 A. Well, there are some -- some rigs to drill  
24 7 and a half feet that have been -- that are on  
25 rails, so they can move the rig over.

1 Q. Is that the type of rig that Burnett is  
2 using?

3 A. Currently, no.

4 Q. I've seen those purpose-built, those  
5 really cool expensive rigs, where they walk  
6 themselves over. I guess you don't have something  
7 like that?

8 A. We do not have that.

9 Q. I think if we look at either one of these  
10 plans -- I'm just trying to understand your vertical  
11 wells and how they relate to your horizontal wells  
12 that you have planned, at least in your plan of  
13 development here.

14 Don't these vertical wells inhibit your  
15 horizontal wells, as you've planned them here?

16 HEARING EXAMINER EZEANYIM: Can I see?  
17 What are you looking at?

18 MS. MUNDS-DRY: Well, either one of these  
19 slides, Mr. Ezeanyim. If you look at the vertical  
20 well proposals, the black circles as they overlie  
21 the horizontal wells.

22 HEARING OFFICER EZEANYIM: These  
23 (indicating)?

24 MS. MUNDS-DRY: Yes.

25 Q. (By Ms. Munds-Dry) Do they not get in the

1 way of your horizontal well plan?

2 A. No. No, they do not.

3 Q. If we look at the next slide, where it  
4 shows the first three that you're planning to --  
5 that you -- at least in these initially proposed --  
6 to drill for each section, if you drill them as you  
7 proposed, how do you change direction with these  
8 proposals, if you determine that you need to go  
9 north/south rather than lay down or vice versa?

10 If you drill -- let's just take for  
11 Section 12, and you drill that well in the south  
12 half, how do you change direction, if you determine  
13 that's not the right way to go?

14 A. If we have to go north/south?

15 Q. Uh-huh.

16 A. We would have to work with the BLM. It  
17 appears that there's some room across the top where  
18 you could go north/south.

19 You can -- we've drilled turnizontals, if  
20 that's what was required. You can also drill  
21 turnizontals, where you go horizontal but you turn  
22 out from one location and go east or west and then  
23 go north or south.

24 That's way down the road. That would  
25 certainly be -- that would have to be evaluated, and

1 those sites would have to be -- that's going to be  
2 the process of evaluation. That's why we want to  
3 drill the verticals, and that's why we would drill  
4 three horizontals and do our testing and determine  
5 the frac orientation.

6 Q. One last question, because I think  
7 Mr. Haiduk said that you would answer this question.

8 Well, one more before I get there.

9 Have you ever drilled a turnizontal?

10 A. We have. I have been involved with some.  
11 We have several --

12 Q. Here in New Mexico you have done that?

13 A. Not in New Mexico.

14 HEARING EXAMINER EZEANYIM: What was the  
15 question?

16 MS. MUNDS-DRY: Have you ever drilled a  
17 turnizontal, which is a new word for me.

18 HEARING EXAMINER EZEANYIM: Okay.

19 A. It is a well that does not go straight  
20 north and south or straight east and west. It turns  
21 a little bit and then goes --

22 HEARING OFFICER EZEANYIM: Okay.

23 Q. (By Ms. Munds-Dry) Let's get back to my  
24 question.

25 Is running radioactive source logging

1 tools in horizontal wells considered risky?

2 A. In the -- are you -- repeat your question,  
3 please.

4 Q. Is running radioactive source logging  
5 tools in horizontal wells considered risky?

6 If you remember, Mr. Haiduk was indicating  
7 that he would do some open-hole logging in the  
8 horizontal, or at least considering that.

9 A. There's a company, or a technology, where  
10 you can log through that. And, actually, I called  
11 the people that we are visiting with. They have  
12 failed on two out of 690 through-bit logging. It  
13 seems like the risk is really -- they have really --  
14 they have greatly reduced the risk by being able to  
15 go through-bit. It seems to be a low risk.

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

18 HEARING EXAMINER EZEANYIM: Thank you.

19 Mr. Bruce?

20 FURTHER EXAMINATION

21 BY MR. BRUCE:

22 Q. Let me --

23 MR. BRUCE: This is slide P, Mr. Examiner,  
24 of the engineering exhibits.

25 Q. (By Mr. Bruce) Mr. Jacoby, you have

1 mentioned turnizontal. If you look in Section 24,  
2 isn't the well in the northeast quarter kind of a --  
3 that's what --

4 A. Yes.

5 Q. Some of them are turned at a greater angle  
6 than that, but that's essentially what you're  
7 talking about?

8 A. Yes, it is. And I'm sorry. I thought,  
9 after I answered, we do have -- that one is,  
10 obviously, a bit of a turnizontal. Yes, it is.

11 Q. A lot of them have a bigger bend at the  
12 beginning and then head a specific direction?

13 A. Yes. Yes. I misspoke that.

14 Q. And the questions about pipe getting stuck  
15 and other things in the well bore, Mr. Jacoby, you  
16 said that has happened rarely in some of the wells  
17 that Burnett has drilled.

18 Have any of those wells been lost?

19 A. Since I have been here, we have not -- I  
20 have been here five years -- we have not lost a well  
21 bore.

22 Q. Okay. And then going back to the stuff  
23 where you're using the samples.

24 Ms. Munds-Dry called the nine-well versus  
25 the nine-well comparison a small sample. You're

1 dealing with almost 20 wells there. Do you think  
2 that's a fair number to use, to make a comparison  
3 between operators?

4 A. Yes, I do. I think it is.

5 Q. And you mentioned some of these wells  
6 being drilled 7 and a half feet apart. That's not  
7 the intent of Burnett, is it?

8 A. Absolutely not.

9 Q. It would only be if the -- perhaps the BLM  
10 said to do it on this surface location?

11 A. Correct.

12 Q. But then there's a question, Mr. Jacoby,  
13 about having a vertical well and then having a  
14 horizontal well.

15 If you had a horizontal well crossing,  
16 perhaps, say, a quarter quarter section where  
17 there's already a vertical well, that's permissible  
18 under OCD rules, is it not? You can have more than  
19 one well bore per well unit?

20 A. Yes.

21 Q. I mean, in the pool rules hearing that was  
22 one of the big issues?

23 A. Right. Correct.

24 Q. COG wanted four wells --

25 A. Correct.



1 Q. -- per well unit.

2 So that's not an impediment?

3 A. No.

4 Q. And a horizontal well can be steered to  
5 steer it away from the vertical well bore?

6 A. That's correct. That's correct.

7 Q. I'm going to flip back for one final  
8 question, Mr. Jacoby. I'm going to turn you into a  
9 landman for a minute.

10 Let's go first to the land exhibit.

11 Ms. Munds-Dry asked you about the  
12 Partition Federal 2 and about frac lengths. The  
13 Partition Federal Number 2 is in the northwest  
14 corner of that 40 acres, correct?

15 A. Correct.

16 Q. It's certainly more than 500 feet away  
17 from that outer boundary of that section, is it not?

18 A. It is. That's correct.

19 Q. And then when you go back to look at the  
20 land plat as a unit, you'll see that virtually all  
21 of these interest owners -- Concho and Burnett own  
22 in each of these quarter quarter sections, do they  
23 not?

24 A. Correct.

25 Q. All of these working interest owners and

1 overriding royalty owners would benefit by  
2 maximizing production from the well bore, would they  
3 not?

4 A. They would. They would.

5 MR. BRUCE: I think that's all I have,  
6 Mr. Examiner.

7 HEARING EXAMINER EZEANYIM: Okay. Thank  
8 you very much.

9 MS. MUNDS-DRY: Mr. Ezeanyim, I have one  
10 follow-up question, if I may ask it?

11 HEARING OFFICER EZEANYIM: Okay. You may  
12 ask it.

13 FURTHER EXAMINATION

14 BY MS. MUNDS-DRY:

15 Q. Mr. Jacoby, you said it's not your intent  
16 to drill these wells 7 and a half to 10 feet apart.  
17 What is your intent?

18 If you end up drilling single laterals,  
19 one in the Paddock and one in the Blinebry, what's  
20 your intent for how far you will drill them apart,  
21 on the surface perspective?

22 A. We showed the horizontals would be  
23 alternating Paddock/Blinebry. We would evaluate  
24 each of those.

25 And then if it's determined another

1 horizontal is needed on one of those surface pads,  
2 the point is we can use those -- those same surface  
3 locations to move over a short distance from a  
4 current well bore to drill another horizontal.

5 Q. What do you anticipate that short distance  
6 being?

7 A. I'm not sure exactly what that would be,  
8 but it would be short enough that we would use,  
9 basically, no additional surface. Probably 25 to  
10 50 feet -- 25 to 30 feet.

11 MS. MUNDS-DRY: Thank you.

12 That's all I have, Mr. Ezeanyim.

13 MR. BRUCE: I have no follow up,  
14 Mr. Ezeanyim.

15 HEARING EXAMINER EZEANYIM: Any other  
16 comment? Okay. Thank you.

17 I think I have heard enough from  
18 Mr. Jacoby, but let me go to Exhibit 7I. Do you  
19 have 7I?

20 THE WITNESS: Yes.

21 HEARING OFFICER EZEANYIM: The  
22 cross-section X-X.

23 THE WITNESS: I have it.

24 HEARING OFFICER EZEANYIM: And if you  
25 follow it, if you go -- if you follow the X-X, I

1 think that was in 17 South, 30 East, right?

2 THE WITNESS: Correct.

3 HEARING EXAMINER EZEANYIM: Okay. From  
4 the results that we see from there, can you  
5 extrapolate to other areas of the Yeso? Can you  
6 extrapolate that result to any other area of the  
7 Yeso? I mean, are you confident doing that?

8 THE WITNESS: I think, from the extent of  
9 the completion technique, I think you can  
10 extrapolate the comparison of the completion  
11 technique. That's why we show the water cut is  
12 different. The formation has to be evaluated. And  
13 there's some extrapolation that can be done.

14 HEARING EXAMINER EZEANYIM: And even  
15 though that variable is constant, can you still  
16 extrapolate? Forget about the slickwater or  
17 whatever completion technique.

18 If you look at it, there's another way in  
19 each operator, and you did it in that section. Can  
20 I take that and then put it on the -- even the  
21 section in question, 17 South, 31 East, can we  
22 extrapolate by inference?

23 THE WITNESS: I think you can extrapolate.

24 HEARING EXAMINER EZEANYIM: How so?

25 THE WITNESS: With some judgment.

1 HEARING EXAMINER EZEANYIM: What do you  
2 mean?

3 THE WITNESS: I mean evaluating -- that's  
4 why we would drill verticals. That's why we would  
5 evaluate the pay.

6 As far as extrapolating the same numbers,  
7 I would not extrapolate the exact same numbers. But  
8 we think, in order of magnitude, that could be  
9 extrapolated.

10 HEARING EXAMINER EZEANYIM: Okay. Go to  
11 M.

12 I'm trying to understand what you're  
13 trying to demonstrate on that -- on this.

14 Are you trying to say that slickwater is  
15 better than hot acid? Is that what you're trying  
16 to -- that is kind of what you are trying to say, or  
17 is there something else you wanted?

18 THE WITNESS: Yes, that's what I'm saying.  
19 That's been our experience. That's been our  
20 experience so far. We're going to continue to use  
21 slickwater over hot acid.

22 HEARING EXAMINER EZEANYIM: Okay. So that  
23 was -- you are trying to demonstrate to me that you  
24 don't have to use hot acid, but you want to use  
25 slickwater, right?

1 THE WITNESS: We will, in most cases, yes.

2 HEARING EXAMINER EZEANYIM: And this is in  
3 the Paddock?

4 THE WITNESS: Paddock. And we are using  
5 it in the Blinebry as well.

6 HEARING EXAMINER EZEANYIM: What are these  
7 CCA? I'm not familiar with CCA, the conservation  
8 agreement. Do they have any stipulations that I  
9 don't know? Do they have setback requirements, or  
10 what do they have? It's not our rule. What is it?

11 THE WITNESS: I can't give you all of the  
12 stipulations. I mean, it's an agreement where you  
13 go through and work with the BLM on the surface  
14 requirement.

15 I mean, it's a -- we pay some money per  
16 well to enter into this agreement. It's supposed to  
17 be some protection from the possibility of the sand  
18 dune lizard being listed as an endangered species in  
19 December.

20 HEARING EXAMINER EZEANYIM: Okay. So  
21 that's with BLM?

22 THE WITNESS: That's with BLM.

23 HEARING EXAMINER EZEANYIM: Not with the  
24 operators?

25 THE WITNESS: No. No, it's with BLM. The

1 fish and game department with the BLM. It's with  
2 the BLM.

3 HEARING EXAMINER EZEANYIM: The agreement  
4 is -- any operator can have a CCA with the BLM?

5 THE WITNESS: Yes.

6 HEARING EXAMINER EZEANYIM: Okay. You  
7 said in those sections -- if you will go to those  
8 sections we are talking about, 12, 13, and 24, you  
9 are going to drill one well per section; one  
10 vertical well per section, right?

11 THE WITNESS: Yeah.

12 HEARING EXAMINER EZEANYIM: And I see in  
13 that development that, on the left-hand side, what  
14 you have here as proposing putting on there.

15 If that were approved and these two were  
16 approved here (indicating), are you going to drill  
17 those four wells in that one section?

18 Can you put it up? Let's see it.

19 THE WITNESS: Can you put the slide up?

20 MR. BRUCE: Which one?

21 HEARING OFFICER EZEANYIM: Where you have  
22 the six wells that you're going to drill.

23 THE WITNESS: Taylor Draw, the six wells.

24 MR. BRUCE: This one?

25 THE WITNESS: Yes.

1 HEARING OFFICER EZEANYIM: Okay. Let's  
2 start at the bottom.

3 Okay. That one has already gone to  
4 hearing.

5 And then this one is the subject of this  
6 hearing. And you're going to drill only one of  
7 them, right?

8 THE WITNESS: These two (indicating) are  
9 the subject of this hearing.

10 HEARING EXAMINER EZEANYIM: Okay. Yes, I  
11 know. Those two are the subject -- on that section  
12 alone.

13 THE WITNESS: We may drill both of those.

14 HEARING EXAMINER EZEANYIM: What?

15 THE WITNESS: I said -- I'm not saying we  
16 would not drill that well. We would -- I would say  
17 it's a potential to drill both of those.

18 HEARING EXAMINER EZEANYIM: No, no. Yeah,  
19 you can do whatever. You can drill those two.

20 Are you going to drill the other one, this  
21 one here (indicating)?

22 THE WITNESS: Yes.

23 HEARING EXAMINER EZEANYIM: You are going  
24 to drill -- so you can drill two in that section?

25 THE WITNESS: Yes.



1 HEARING EXAMINER EZEANYIM: The same as in  
2 the middle of Section 12 -- I mean section 13.

3 THE WITNESS: This one (indicating)?

4 HEARING EXAMINER EZEANYIM: Yeah, those  
5 two.

6 THE WITNESS: Yes.

7 HEARING EXAMINER EZEANYIM: I'm just --  
8 you know, I just want to know, because I heard you  
9 say one vertical well per section, so I wanted to  
10 know what you want to do.

11 THE WITNESS: We plan to drill those. I  
12 thought she was trying to ask the order of wells.  
13 I'm not sure exactly the order, but we would  
14 certainly drill -- plan to drill those wells.

15 HEARING EXAMINER EZEANYIM: Yeah. You  
16 have the right to do it, but I wanted to know what  
17 your plan is.

18 THE WITNESS: Yeah.

19 HEARING EXAMINER EZEANYIM: Are there any  
20 other questions for this witness?

21 MR. BRUCE: Just one follow-up.

22 FURTHER EXAMINATION

23 BY MR. BRUCE:

24 Q. Mr. Jacoby, the slickwater, that is  
25 certainly, in your experience, the better way to

1 drill for vertical wells, correct?

2 A. Correct, yes.

3 MR. BRUCE: That's all I have,  
4 Mr. Examiner.

5 HEARING EXAMINER EZEANYIM: So you would  
6 only use slickwater on vertical wells. You can't  
7 use it on horizontal?

8 THE WITNESS: We are -- we are trying  
9 that. We think that it could work on horizontals.

10 HEARING EXAMINER EZEANYIM: Have you done  
11 it?

12 THE WITNESS: We have done two, just very  
13 recently, with not long-term results. We're  
14 evaluating.

15 HEARING EXAMINER EZEANYIM: You're just  
16 evaluating. You don't know whether you're confident  
17 with it yet or not?

18 THE WITNESS: Yes.

19 HEARING EXAMINER EZEANYIM: Okay. That's  
20 all I have.

21 Mr. Bruce, do you have any more witnesses?

22 MR. BRUCE: I have one more brief witness,  
23 I think.

24 HEARING EXAMINER EZEANYIM: You may call  
25 your next witness.

1 MR. BRUCE: I call Mr. Hudson to the  
2 stand.

3 HEARING EXAMINER EZEANYIM: Okay.  
4 Mr. Hudson, you are sworn already?

5 THE WITNESS: Yes, sir.

6 HEARING OFFICER EZEANYIM: All right.

7 RANDALL HUDSON,  
8 after having been first duly sworn under oath,  
9 was questioned and testified as follows:

10 EXAMINATION

11 BY MR. BRUCE:

12 Q. Mr. Hudson, where do you reside?

13 A. Fort Worth Texas.

14 Q. Who do you work for?

15 A. Hudson Oil.

16 Q. And what is your -- have you previously  
17 testified before the division?

18 A. Yes.

19 Q. And you have testified, I think, as a  
20 geologist, right?

21 A. Yes.

22 Q. And you have also -- you help run the  
23 operations for Hudson Oil Company in Texas?

24 A. That's correct. I'm president.

25 Q. You're president of the company.

1                   And as a result, you're pretty much  
2 familiar with everything Hudson does?

3           A.     Pretty much.

4           Q.     Including probably a little reluctant land  
5 work. Is that correct?

6           A.     Absolutely.

7                   MR. BRUCE: I'm not going to qualify  
8 Mr. Hudson as an expert, Mr. Examiner, but he is  
9 here just to testify about some factual matters.

10                   HEARING EXAMINER EZEANYIM: A fact  
11 witness? A fact witness, right?

12                   MR. BRUCE: Yes.

13                   HEARING OFFICER EZEANYIM: Okay.

14           Q.     (By Mr. Bruce) Mr. Hudson, there's been  
15 some comments about Hudson, and to a certain extent,  
16 Burnett's failure to develop the acreage we're  
17 talking about here today.

18                   Could you comment on your efforts,  
19 Hudson's efforts, to get this acreage drilled?

20           A.     Sure. We -- we first noticed Yeso wells  
21 being drilled in Section 19, offsetting us to the  
22 east, primarily by Mack Energy. And we followed the  
23 first 10 or 15 wells that they drilled and completed  
24 with great interest, of course, because it was  
25 directly offsetting our acreage.

1                   And the rate of return Mack was getting  
2   was not attractive to us, so we did not pursue the  
3   Yeso based on the fact that an offsetting operator  
4   was not getting a return that we were interested in.

5                   And that's what initially kept us from  
6   jumping right in and drilling Yeso wells when  
7   someone directly offsetting us had begun to do the  
8   same thing.

9           Q.       And eventually, looking at the slide  
10   that's up there, in Section 12, there's a square  
11   around a well in the northeast quarter southwest  
12   quarter of Section 12.

13                   How was that well drilled? And that is a  
14   Yeso well, correct?

15           A.       That is a Yeso producer. It was drilled  
16   as a Morrow test, I believe, in 2005, or very close  
17   to that date. It was not completed in the Morrow,  
18   and we made an attempt in the Yeso as a bailout  
19   effort. And we have produced about 25,000 barrels  
20   from that vertical Yeso completion since that time.

21           Q.       Okay. So what did the well eventually  
22   come -- originally come in at?

23           A.       I think it started at about 100 barrels a  
24   day, which got us fairly excited, out of the Paddock  
25   only. But it dropped off fairly quickly and has

1    been in single digits now for several years.

2                   Based on that, we weren't in a big hurry  
3    to do a lot of offsets in the Yeso. It was about  
4    that time -- in fact it was that time -- that we had  
5    a partnership with Marbob. In fact, they helped  
6    drill that particular Morrow test.

7                   And at the time discussing the Yeso,  
8    Johnny Gray, who was the principal at Marbob, and I,  
9    discussed that there didn't seem to be any hurry to  
10   offset the Knockabout with the Yeso test, and that  
11   we would simply wait and see how the Yeso proved  
12   itself, was it was going to be something that was  
13   worthy of further exploration on these leases or  
14   not.

15           Q.     And you've mentioned that well has  
16   produced 25,000 barrels or so. I mean, considering  
17   the fact that it was originally drilled to the  
18   Morrow, it would seem that that well hasn't paid out  
19   yet.

20           A.     No. In fact, we had to force pool my  
21   uncle, Mr. Ard. And I happened to notice that I  
22   think the payout option on that is somewhere in the  
23   5 to \$10 million left to recover yet. So we're a  
24   long way from payout on that well, under either a  
25   100 or a 300 percent situation.

1 Q. So you've had -- I mean, obviously, that  
2 well was drilled with Marbob. Did you continue to  
3 have discussions with Johnny Gray, of Marbob,  
4 regarding development of this acreage?

5 A. I did. And we discussed the fact that the  
6 acreage might become prospective, and we agreed that  
7 we would simply wait and let things develop around  
8 us. And if the offsetting production and the price  
9 of oil had an attractive rate of return, we would  
10 approach it at that time.

11 Q. And did you have kind of a handshake deal  
12 with Mr. Gray about sharing acreage or purchasing  
13 each other's acreage?

14 A. Yes. Johnny and I had an agreement that  
15 if any of the Hudson Oil entities acquired any other  
16 interest, we would offer Marbob half.

17 And Marbob, if they acquired any outside  
18 interest, would offer us half. And, in fact, that's  
19 exactly what happened with respect to a couple of  
20 the smaller interests.

21 Q. And, of course, that well, like you say,  
22 was drilled seven years ago. There's been a lot of  
23 changes, rapid changes, just over the last couple of  
24 years in technology, has there not?

25 A. Yes. And the price of oil has gone up as

1 well.

2 Q. And that makes it much more attractive to  
3 drill at this time?

4 A. Much more attractive. And I had a  
5 conversation with Ray Miller, who works for Johnny,  
6 at -- and Mo Gottlieb, two years ago, maybe three  
7 years ago, now. And I said, "It's about time to  
8 start looking at that."

9 He didn't tell me directly, but he  
10 indicated that they were considering other options,  
11 as in selling the company, and so there was really  
12 no way to pursue it at that point.

13 Q. But there hasn't been a neglect of the  
14 acreage?

15 A. There has been no neglect of the acreage  
16 whatsoever. In fact, if we had not done what we  
17 did, I think it's fair to say that none of us would  
18 be sitting here from either side looking at what  
19 looks to be a very attractive target for both  
20 parties.

21 MR. BRUCE: That's all I have,  
22 Mr. Examiner.

23 HEARING EXAMINER EZEANYIM: Okay. Thank  
24 you very much.

25 Ms. Munds-Dry?



1 MS. MUNDS-DRY: I have a few questions for  
2 Mr. Hudson.

3 I wonder if we could turn to the slide in  
4 the land exhibit, slide F, I believe.

5 EXAMINATION

6 BY MS. MUNDS-DRY:

7 Q. It shows -- Mr. Hudson, it shows your  
8 current surface development.

9 A. Okay.

10 Q. Of the wells that are shown here,  
11 Mr. Hudson, this is showing in Section 12, 13, and  
12 24. How many of these wells are candidates, in your  
13 opinion, for plugging?

14 A. Probably a handful.

15 Q. Five, six?

16 A. Yes. We plugged two, I think, in the last  
17 year, and we are working on plugging some more.

18 Q. How many of these wells are active?

19 A. All of them are active.

20 Q. They all produce some oil?

21 A. They produced, or injected into, to some  
22 degree, yes.

23 Q. How do you allocate production on those  
24 wells?

25 A. We use a well tester. There are two

1 leases involved. Actually, there are three leases  
2 now. You've got the Puckett North, up here  
3 (indicating), is one lease.

4 The A lease, which sits right here  
5 (indicating). And then everything south of that,  
6 including Section 25, is the B lease. We have got a  
7 Puckett North battery, an A battery and a B battery.

8 Q. How is it that all your wells are making  
9 about the same oil and gas for each lease?

10 A. I don't think that's true. I think the  
11 Puckett North average per well is considerably  
12 better than the two leases down here (indicating).

13 Q. If you look at it on a per-lease basis,  
14 they're making exactly the same, aren't they?

15 A. I don't have those figures in front of me.  
16 I would be very surprised, because we're selling --  
17 well, actually due to takeaway issues right now,  
18 we're having to hold back some up here.

19 But there's no magic effort on our part to  
20 try and match them all. The production from each  
21 lease goes into its own battery.

22 Q. Were you present for -- I'm sorry I don't  
23 have this up. But I think you were present for all  
24 the meetings between Concho and Burnett, maybe but  
25 one, if I recall?

1           A.     That's correct. I believe I missed one in  
2     Fort Worth.

3           Q.     Were you present for the March -- early  
4     March meeting, March 3?

5           A.     I don't remember the dates.

6           Q.     It was the meeting where Concho came to  
7     Fort Worth to discuss the allowables case.

8                     Were you present for that meeting?

9           A.     No.

10          Q.     Maybe that was the one you missed.

11          A.     Yes.

12          Q.     Were you present for the April 20 meeting?

13          A.     I don't remember the dates.

14          Q.     That was the meeting where Concho brought  
15     its counterproposal to allow Burnett to operate --

16          A.     Was Mr. Pollard present at that meeting?

17          Q.     I believe so. If you -- you were there, I  
18     wasn't, so you would have to tell me.

19          A.     I believe every meeting Mr. Pollard  
20     attended, except one, I was present at.

21          Q.     Okay.

22          A.     Again, we have -- there were a lot of  
23     meetings. I didn't prepare a chronology for my  
24     testimony. So...

25          Q.     Okay. Mr. Hudson, one more.

1                   If we could just back up to the  
2     Grayburg-San Andres production. What zone are you  
3     disposing into, do you know?

4           A.     Both the Grayburg and the San Andres.

5           Q.     Both the Grayburg and the San Andres?

6           A.     Yes.

7           Q.     When you were watching the Mack wells  
8     being developed in Section 19, when was that?

9           A.     That was -- I could have prepared dates  
10    for you, had I known the question. But I'm going to  
11    guess in 2002, '3, '4, somewhere in there.

12          Q.     Somewhere in that neighborhood?

13          A.     Yes. And that's rough, but, yes.

14          Q.     And you said the rate of return wasn't  
15    attractive to you at that time?

16          A.     That's correct.

17          Q.     What were they getting? What was their  
18    rate of return?

19          A.     I don't remember the numbers, but I  
20    remember Johnny and I sitting down looking at the  
21    production. We had gathered about 13 wells, based  
22    on initial six months' production. And he and Ray  
23    Miller and I sat down and looked at it, and none of  
24    us were excited about pursuing returns based on the  
25    production rates we were seeing.

1 I can't tell you what the rate of return  
2 rate was, though.

3 Q. Do you recall what rate of return would  
4 have been interesting to you?

5 A. Something above 60 or 70 percent would  
6 have been very attractive.

7 Q. When you had the -- and I know Mr. Gray,  
8 and I know he -- he's a man of his word, and so you  
9 can count on his handshake agreements.

10 And I know, when you had that discussion  
11 to wait and see for how the Yeso developed, do you  
12 recall when that was?

13 A. It was shortly after we drilled the  
14 Knockabout well.

15 Q. And that was drilled approximately seven  
16 years ago?

17 A. 2005 or so, something like that, yeah.

18 At that point, we actually had a plan of  
19 development written for Section 12 that included  
20 several 40-acre locations for the Yeso, in  
21 preparation of, should it become attractive enough  
22 we would pursue it, and it never did.

23 Q. And then you said it was approximately two  
24 or three years ago that you had this discussion with  
25 Mr. Miller about taking another look at it?

1           A.       Yes. At that point, the Blinebry was  
2       being drilled offsetting us, and that appeared to  
3       make a difference in the returns on the wells.

4                   And I'm loose on those dates, but  
5       approximately.

6                   MS. MUNDS-DRY: That's all the questions I  
7       have. Thank you, Mr. Hudson.

8                   HEARING EXAMINER EZEANYIM: Thank you.

9                   MR. BRUCE: No more questions.

10                  HEARING EXAMINER EZEANYIM: No more other  
11       questions?

12                  You know, I hate to ask questions of a  
13       fact witness, because they are telling you it's a  
14       fact. It doesn't need to -- I mean, whatever they  
15       say is a fact, right?

16                  Okay. Good. But, anyway, I need some  
17       clarifications.

18                  THE WITNESS: Sure.

19                  HEARING EXAMINER EZEANYIM: Some of those  
20       wells you pointed out there was related to the  
21       Morrow, right? You drilled them to the Morrow  
22       formation, right?

23                  THE WITNESS: Yes, sir.

24                  HEARING EXAMINER EZEANYIM: Your bailout  
25       was the Yeso, right?

1 THE WITNESS: In the particular well right  
2 here, yes, it was a bailout.

3 HEARING OFFICER EZEANYIM: Yeah. That  
4 would --

5 THE WITNESS: We drilled the Morrow dry  
6 hole here (indicating), and our bailout was  
7 Grayburg-San Andres.

8 HEARING EXAMINER EZEANYIM: Is that where  
9 you produced the 5,000? You are producing 5,000  
10 from that well now?

11 THE WITNESS: 25,000 came from the well up  
12 in here (indicating).

13 HEARING EXAMINER EZEANYIM: Is that in the  
14 Grayburg-Jackson?

15 THE WITNESS: Out of the Yeso, yes, sir.

16 HEARING OFFICER EZEANYIM: Okay. That's  
17 what I thought it was.

18 THE WITNESS: Yes, sir, out of the Yeso.

19 And then our bailout zone here  
20 (indicating) -- this well was drilled prior to this  
21 (indicating) well.

22 HEARING EXAMINER EZEANYIM: Oh, okay.

23 THE WITNESS: And this well (indicating),  
24 our bailout was the Grayburg-San Andres. Because,  
25 as I recall when this well was drilled, the Yeso was

1 not even --

2 HEARING OFFICER EZEANYIM: Yeah.

3 THE WITNESS: -- we were ahead of the game  
4 there.

5 HEARING EXAMINER EZEANYIM: What happened  
6 with that well in the Grayburg?

7 THE WITNESS: The Grayburg-San Andres,  
8 it's a marginal producer.

9 HEARING EXAMINER EZEANYIM: I'm not  
10 interested in that.

11 THE WITNESS: Uh-huh.

12 HEARING EXAMINER EZEANYIM: Okay. On  
13 those three sections, you said you have 100 percent  
14 working interest, right? I thought that's what you  
15 wrote there. You said that --

16 THE WITNESS: Operates 100 percent of the  
17 current surface. In other words, we're the only  
18 operator of any wells on these three sections right  
19 now.

20 HEARING EXAMINER EZEANYIM: In the  
21 Grayburg-Jackson? How many in Grayburg --

22 THE WITNESS: Any wells.

23 HEARING OFFICER EZEANYIM: Oh.

24 THE WITNESS: They're all  
25 Grayburg-San Andres except for one, but there are no



1 other wells drilled on those sections right now  
2 producing.

3 HEARING OFFICER EZEANYIM: No operators?

4 THE WITNESS: No other operators.

5 HEARING EXAMINER EZEANYIM: Okay. So only  
6 you?

7 THE WITNESS: Yes.

8 HEARING EXAMINER EZEANYIM: In the  
9 Grayburg-San Andres, right?

10 THE WITNESS: And one Yeso well right  
11 there (indicating), yes, sir.

12 HEARING EXAMINER EZEANYIM: Yeah. Okay.  
13 Okay. That one Yeso here.

14 I just want to understand that.

15 THE WITNESS: And Burnett is a partner, a  
16 working interest owner and partner, in the  
17 Grayburg-San Andres production here as well.

18 HEARING EXAMINER EZEANYIM: Okay. But you  
19 are the operator?

20 THE WITNESS: Yes, sir.

21 HEARING EXAMINER EZEANYIM: Could you  
22 point me to -- do you know how many wells are in  
23 Section 12? Do you have any idea?

24 THE WITNESS: How many total wells?

25 HEARING EXAMINER EZEANYIM: Yes, in

1 Section 12, in the Grayburg-San Andres.

2 THE WITNESS: I think we -- we drilled --  
3 on the Puckett North lease we have drilled 11 wells,  
4 plus the Knockabout. Two are down here  
5 (indicating), so --

6 HEARING EXAMINER EZEANYIM: So how many?  
7 11?

8 THE WITNESS: 10 up here, I believe.

9 HEARING EXAMINER EZEANYIM: And then on  
10 13, how many?

11 THE WITNESS: If we're going to count the  
12 shallow wells here, 11.

13 HEARING EXAMINER EZEANYIM: Okay. 11.  
14 And then if --

15 THE WITNESS: These are shallow producers,  
16 as well, as are all of these.

17 HEARING EXAMINER EZEANYIM: Okay.

18 THE WITNESS: And we have been operating  
19 on those leases since the 1940s, '30s.

20 HEARING EXAMINER EZEANYIM: What?

21 THE WITNESS: We have been operating these  
22 wells, some of them, since the 19- -- early 1940s,  
23 late 1930s.

24 HEARING EXAMINER EZEANYIM: The Hudson  
25 Company?

1 THE WITNESS: Yes. Before I was born.

2 HEARING EXAMINER EZEANYIM: But you are so  
3 young. That's what I was trying to say. And, you  
4 know, you are the president. And you can be -- and  
5 no matter how young you look, you were not born in  
6 1930.

7 THE WITNESS: I'm getting older every day.

8 HEARING OFFICER EZEANYIM: Yeah, I know  
9 that.

10 THE WITNESS: Some days more than others.

11 HEARING OFFICER EZEANYIM: So there are no  
12 more operators. Okay. That's good. I mean, that  
13 is a very good job. Okay? Thanks.

14 THE WITNESS: Thank you.

15 MR. BRUCE: That's all I have at this  
16 time, Mr. Examiner.

17 HEARING EXAMINER EZEANYIM: Thank you very  
18 much.

19 So we come to Ms. Munds-Dry. We're going  
20 to take a break before we start.

21 (A recess was taken from 3:01 p.m. to 3:17  
22 p.m.)

23 HEARING OFFICER EZEANYIM: We're going to  
24 go back on the record for Docket 24-11.

25 And, Ms. Munds-Dry, call your first

1 witness.

2 MS. MUNDS-DRY: Thank you. I call David  
3 Evans.

4 HEARING EXAMINER EZEANYIM: Who?

5 MS. MUNDS-DRY: David Evans, who happens  
6 to be conveniently sitting there already.

7 HEARING EXAMINER EZEANYIM: Very good.

8 DAVID EVANS,  
9 after having been first duly sworn under oath,  
10 was questioned and testified as follows:

11 EXAMINATION

12 BY MS. MUNDS-DRY:

13 Q. Mr. Evans, where do you reside?

14 A. In Midland, Texas.

15 Q. And by whom are you employed?

16 A. COG Operating, LLC.

17 Q. What do you do for Concho?

18 A. I'm the landman lead for the shelf team.

19 Q. Have you previously testified before the  
20 division?

21 A. I have.

22 Q. And were your credentials accepted and  
23 made a matter of record?

24 A. They were.

25 Q. And, Mr. Evans, are you familiar with the

1 applications that have been filed by Concho?

2 A. I am.

3 Q. Are you familiar with the status of lands  
4 that are subject to those applications?

5 A. I am.

6 MS. MUNDS-DRY: Mr. Ezeanyim, we tender  
7 Mr. Evans as an expert in petroleum land matters.

8 HEARING EXAMINER EZEANYIM: He will be so  
9 qualified.

10 Q. (By Ms. Munds-Dry) Mr. Evans, this is  
11 going to be a tedious exercise. But because we have  
12 so many applications before the division, I'd ask  
13 you to summarize for the Examiner in each case what  
14 Concho is seeking.

15 A. In these cases, 14706, 14707, 14708,  
16 14710, 14711, 14712, 14713, 14714, 14715, 14716,  
17 14717, 14718, we are asking for a consolidated -- to  
18 create a nonstandard unit for those sections, a  
19 nonstandard location for the wells, including all  
20 the mineral release of interest within Sections 12,  
21 24, and 13.

22 Q. What is Concho's position with respect to  
23 the two Burnett pooling cases that are before the  
24 Examiner today?

25 A. We believe those applications will cause

1 waste.

2 HEARING EXAMINER EZEANYIM: Is that what  
3 you're looking at?

4 MS. MUNDS-DRY: Oh, I'm sorry,  
5 Mr. Ezeanyim, yes. And just for your reference and  
6 for everybody that's playing along, in the white  
7 notebook are all of the exhibits except for 2, 3,  
8 and 4. 2, 3, and 4 are in that Redweld file.

9 HEARING EXAMINER EZEANYIM: Okay.

10 MS. MUNDS-DRY: I'm sorry.

11 Q. (By Ms. Munds-Dry) Mr. Evans, you were  
12 stating Concho's position with respect to the  
13 Burnett applications.

14 HEARING EXAMINER EZEANYIM: Go ahead.

15 A. We believe the applications by Burnett  
16 will cause waste. And due to the BLM surface  
17 matters and issues, Concho's developed a horizontal  
18 well plan to reduce surface impairment and maximize  
19 recovery.

20 Vertical well applications will interfere  
21 with horizontal patterns and will cause waste and  
22 will leave remaining reserves in the ground.

23 Q. (By Ms. Munds-Dry) If you could,  
24 Mr. Evans, turn to what has been marked as COG  
25 Exhibit Number 1.

1 Identify and review that for the Examiner,  
2 please.

3 A. This shows the outline of the two Federal  
4 leases and the Knockabout well and the various  
5 interests held by the parties.

6 Q. It's hard to read on the screen there. It  
7 may be a little easier in the notebook.

8 What is Concho's ownership in each of the  
9 leases?

10 A. In the federal leases, Concho's interest  
11 is 33.714587. And in the Knockabout well and the  
12 proration units, Concho's interest is 44.83 percent.  
13 So you see a substantial difference between the two.

14 Q. And in terms of the ownerships in each of  
15 the leases, how did Concho obtain its interest?

16 A. Concho acquired its interest from the Ard  
17 family and from the Iverson family and from Marbob's  
18 acquisition.

19 HEARING EXAMINER EZEANYIM: Who is the Ard  
20 family?

21 THE WITNESS: Julian Ard and Mary Ard are  
22 owners of about 11 percent, in Fort Worth. They  
23 reside in Fort Worth. They're the cousins of the  
24 Hudsons.

25 HEARING EXAMINER EZEANYIM: All right.

1 Are they a working interest or...

2 THE WITNESS: They were a working  
3 interest, and we acquired that through term  
4 assignment.

5 HEARING OFFICER EZEANYIM: Okay.

6 Q. (By Ms. Munds-Dry) What is the Iverson  
7 interest?

8 A. Right at 10 percent.

9 Q. And do you also hold a top lease on that  
10 interest?

11 A. Yes, we do.

12 Q. Why did you obtain that top lease?

13 A. When we first heard of this project, we  
14 believed that we had acquired assignments that  
15 were -- that we were capable of drilling and making  
16 application to get permits and -- drill permits.  
17 And we believed that those assignments allowed us  
18 enough time to get our applications through the  
19 hearing, through the commission.

20 As time went on, with all of our fights  
21 through allowables and with these force pooling  
22 hearings, our time started running out. The  
23 Iversons were contacted by the Hudson family for a  
24 top lease to take away our interest.

25 I received several e-mails with regard to



1     this matter. Although we were not really required  
2     to take a top lease at that time, because our  
3     interest was not about to expire, we were forced to  
4     take it to protect our backside.

5           Q.     That cost you some money?

6           A.     About a half million dollars.

7           Q.     What is Concho's primary objective in each  
8     of the proposed horizontal wells before the division  
9     today?

10          A.     To fully develop the Yeso, which is the  
11     Blinebry and Paddock.

12          Q.     And we'll be calling a geologist and some  
13     engineers to discuss those members of the Yeso?

14          A.     Yes, we will.

15          Q.     Okay. Let's summarize what Concho's  
16     efforts are -- have been to obtain the voluntary  
17     participation of all the working interest owners in  
18     the proposed project areas.

19                   When was your first contact with -- really  
20     with Mr. Hudson, as I understand it?

21          A.     Yes. November 12, 2010, I called  
22     Mr. Hudson, who I had known through a relationship  
23     through Oxy, thinking that we may be able to make a  
24     joint participation arrangement.

25                   We realized that, with our development

1 program at Concho, that we wanted to put two to four  
2 rigs in this area, and that the Hudson group could  
3 not possibly participate in that number of AFEs that  
4 we were proposing. So we were going to go meet with  
5 them to discuss some kind of working interest  
6 framework, that we would carry them for part and  
7 they would participate for part.

8 When we got to the meeting in Mr. Hudson's  
9 office, we were immediately told that they did not  
10 want to hear what we had to say, that they were  
11 going to operate this, that they were a better  
12 operator, that we needed to stand back and watch  
13 them operate this property. And we were told that  
14 we did not have the right to operate on the property  
15 because this had been in their family for 80 years.

16 Q. At that time, did Burnett or Hudson  
17 indicate how many wells they would plan to drill in  
18 a year?

19 A. Yes. They had planned to drill on this  
20 property between one to six wells, depending upon  
21 results.

22 Q. Okay. When was your next contact? Did  
23 you have another meeting with the -- what I'll call  
24 the Burnett/Hudson group?

25 A. Yes. This is on March 3, 2011. We --

1 after reviewing the shelf, or after our acquisition  
2 of Marbob, we realized that we had an allowable  
3 problem on the shelf. We immediately went to all  
4 the operators in the field to get support to come to  
5 hearing to get the rules changed.

6 We knew that Hudson would be, maybe, a  
7 problem because of the -- how upset they were about  
8 the Puckett issue, but we approached them to get  
9 some support on the allowables. We believed that  
10 they were two separate issues. We wanted to get the  
11 allowable fixed and then discuss development of the  
12 Puckett at a later time.

13 We went to the office where Bill Pollard  
14 and Randall met us. We asked to get their support  
15 in the allowable.

16 And Mr. Pollard immediately said, "Well,  
17 we will support you in the allowable hearing if you  
18 will turn over operations on the Puckett. And if  
19 you don't turn over operations on the Puckett, we're  
20 going to oppose you."

21 And then he got into the discussion of,  
22 "If you can't drill your wells because of this  
23 allowable problem, that's going to hurt your  
24 company, correct?"

25 And we didn't know what he was talking

1 about.

2 And he was -- "It's going to affect your  
3 budget. We are not going to allow you to drill  
4 these wells."

5 It was a real contested meeting, to where  
6 we left with the knowledge that they were going to  
7 fight us on allowables and they were going to try to  
8 take away operations on the Puckett.

9 HEARING EXAMINER EZEANYIM: Mr. Evans, I  
10 know you are angry. Just cool down.

11 THE WITNESS: Yes, sir.

12 HEARING OFFICER EZEANYIM: Yeah. You  
13 know --

14 THE WITNESS: I'm excited.

15 HEARING EXAMINER EZEANYIM: I know you are  
16 angry. Just cool down a little bit. Okay?

17 THE WITNESS: Okay.

18 MS. MUNDS-DRY: It's just passion,  
19 Mr. Ezeanyim.

20 HEARING OFFICER EZEANYIM: Yeah. I know  
21 that.

22 THE WITNESS: It's just passion.

23 HEARING OFFICER EZEANYIM: I understand.

24 Everybody understands that. But just cool down.

25 Okay?

1 THE WITNESS: Okay.

2 Q. (By Ms. Munds-Dry) And, Mr. Evans, for  
3 the record and so that Mr. Ezeanyim understands, we  
4 call them the Puckett leases, and I believe Burnett  
5 refers to them as the Maljamar leases or  
6 Maljamar area. Is that correct?

7 A. That's correct. The original lessor here  
8 was Puckett. Their name was Puckett.

9 HEARING EXAMINER EZEANYIM: But now it's  
10 the Maljamar lease?

11 THE WITNESS: It's the Maljamar area.

12 MS. MUNDS-DRY: You will hear Concho refer  
13 to it as Puckett, just so you don't think that it's  
14 two different --

15 HEARING EXAMINER EZEANYIM: Which is it?  
16 Is it Puckett or Maljamar?

17 MS. MUNDS-DRY: It's both. It's the same  
18 thing.

19 THE WITNESS: It's both. It's the same  
20 thing.

21 HEARING EXAMINER EZEANYIM: Okay. It  
22 depends on who is the operator. Is that the same  
23 thing?

24 MS. MUNDS-DRY: Yes.

25 HEARING EXAMINER EZEANYIM: It depends.

1 If you're COG, it's Puckett?

2 MS. MUNDS-DRY: Yes.

3 HEARING OFFICER EZEANYIM: If you are

4 Burnett/Hudson, it's Maljamar?

5 MS. MUNDS-DRY: Yes, sir.

6 HEARING EXAMINER EZEANYIM: Okay. I've

7 got the right to call it anything. But...

8 Q. (By Ms. Munds-Dry) Mr. Evans, then, so  
9 what was your impression then when you left that  
10 meeting?

11 A. Well, that they were not going to support  
12 us on the allowables, because we weren't going to  
13 give in to operations on the Puckett until we went  
14 to hearing.

15 HEARING EXAMINER EZEANYIM: Which  
16 allowable are you talking about?

17 THE WITNESS: That is the allowable -- the  
18 shelf allowable hearings that we've been going  
19 through.

20 HEARING OFFICER EZEANYIM: Yeah, okay.

21 THE WITNESS: That you are reviewing.

22 MS. MUNDS-DRY: I think you're familiar  
23 with those, Mr. Ezeanyim.

24 HEARING EXAMINER EZEANYIM: Okay. I am  
25 familiar with them. They are giving me a headache.

1 THE WITNESS: So I mean -- and the whole  
2 allowable argument was all about Puckett or  
3 Maljamar.

4 HEARING OFFICER EZEANYIM: Okay.

5 THE WITNESS: And then right after that,  
6 we received a letter from Bill Pollard that more or  
7 less said that "if you would turn over operations on  
8 Puckett, that we would support you in the allowable  
9 hearing. And if you don't, then we will fight you  
10 through all the allowable hearings."

11 Q. (By Ms. Munds-Dry) Okay. Mr. Evans, did  
12 you have another meeting, then, with the  
13 Burnett/Hudson group after that?

14 A. Yes. On March 29 we went back to  
15 Fort Worth to meet with Bill Pollard and Randall  
16 Hudson, Mark Jacoby, and David Rhodes.

17 You know we're fighting a standoff, just  
18 like you said earlier today. We went to see what  
19 they would do. If we turned over operations to  
20 them, what would they guarantee us to do. Would it  
21 be one well in 2011, would it be 30 wells in 2011?  
22 Just what was it that they would do for the  
23 property? And so we had a long discussion.

24 And at the end it was they would agree to  
25 drill four wells in 2011 and eight wells in 2012,

1 and then we would work together after that to do a  
2 development of the area. That satisfied our needs  
3 and all of the terms of our agreements.

4 So we went -- Keith and I flew back to  
5 Midland. I wrote up a letter that had those terms  
6 in it --

7 Q. And when was that, that you --

8 A. That was on the 20th.

9 Q. Uh-huh.

10 A. We flew back to Fort Worth to hand deliver  
11 it and to go over the terms. And, basically, it had  
12 the four wells for 2011 and the eight wells in 2012.  
13 Those were our terms, and we would turn over all  
14 operations on Puckett, or Maljamar, to Burnett for  
15 drilling and we would forego all the other AFEs that  
16 we had proposed and work with them to get these  
17 wells drilled for this year.

18 HEARING EXAMINER EZEANYIM: Do you have  
19 that letter here? Do you have that letter that you  
20 wrote on this issue?

21 MS. MUNDS-DRY: I'm sure I do,  
22 Mr. Ezeanyim, if you will give me a minute. We can  
23 do it at a break or I can try to find it now.

24 HEARING EXAMINER EZEANYIM: Okay. I would  
25 like to see that letter during the break.



1                   So the letter was really -- I'm sorry I  
2 interrupted.

3                   THE WITNESS: That's all right.

4                   HEARING OFFICER EZEANYIM: But, you know,  
5 I need to understand.

6                   Go ahead with the letter and tell me what  
7 happened.

8                   THE WITNESS: There -- in the letter  
9 agreement was the four wells and the eight wells.  
10 But because in previous meetings one of the members  
11 in the Burnett/Hudson group had threatened to cause  
12 our term assignments to expire if we didn't agree  
13 with them to let them operate, we had to build some  
14 protections into our letter.

15                   And basically the protections were, as  
16 they're drilling the wells under the terms that we  
17 agreed to, they would protect our assignments. And  
18 at the end of the drilling program which would be,  
19 under this theory, 24 wells, horizontal wells, that  
20 we would turn over -- we wanted to reserve two  
21 locations or three locations in case they couldn't  
22 perform, that we can move a rig in and drill the  
23 wells to make our lease continue -- continuing, by  
24 drilling. And --

25                   MS. MUNDS-DRY: Mr. Ezeanyim, I have the

1 letter. I just have one copy of it, though.

2 And so I don't know if you want to look at  
3 it first, and then I can give it to Mr. Ezeanyim.

4 HEARING EXAMINER EZEANYIM: Yeah. Let him  
5 look at it.

6 MS. MUNDS-DRY: I'm sorry, I didn't know  
7 we were going to --

8 HEARING OFFICER EZEANYIM: And then it's  
9 important to see the letter, but I would like to  
10 have a copy maybe at -- during the break.

11 MS. MUNDS-DRY: We will work on getting  
12 some copies made.

13 HEARING OFFICER EZEANYIM: Okay.  
14 Go ahead.

15 THE WITNESS: So, apparently, the  
16 provisions to protect ourselves were not to  
17 Burnett/Hudson's liking.

18 So with their threat, we had to have some  
19 kind of protection that, you know, if they failed or  
20 stopped drilling we could move a rig in and protect  
21 our leasehold.

22 The other part about that was that at the  
23 end of our drilling program, should they perform as  
24 they said they would, we would turn over the  
25 locations that we reserved for ourselves to them.

1 It was never our intent to drill any wells in there  
2 as long as they performed under those guidelines.

3 So --

4 HEARING EXAMINER EZEANYIM: The guidelines  
5 in the letter?

6 THE WITNESS: Yes, sir.

7 HEARING EXAMINER EZEANYIM: Okay.

8 THE WITNESS: So let's just say the  
9 guidelines were 56 wells was complete development of  
10 the field. So we would hold out three -- three well  
11 locations out of the 56. That would be three, so  
12 they had to drill 53. And then to drill 54 we would  
13 turn one of the three over to them, they would drill  
14 54. And if they drilled 54, we would turn 55 over  
15 to them. And if they drilled the 55th location we  
16 would let them drill the 56th location, and then we  
17 would no longer be an operator, or we would no  
18 longer have a reserve drilling location.

19 HEARING EXAMINER EZEANYIM: This was  
20 discussed among the parties, right?

21 THE WITNESS: Yes, sir.

22 HEARING EXAMINER EZEANYIM: This was  
23 discussed. What you're telling me was discussed,  
24 right?

25 THE WITNESS: Yes.

1 HEARING EXAMINER EZEANYIM: Okay. And  
2 agreed upon? Okay. Go ahead.

3 Q. (By Ms. Munds-Dry) So you were present  
4 for Mr. Rhodes' testimony this morning, were you  
5 not?

6 A. I was.

7 Q. I believe Mr. Rhodes described it as they  
8 didn't except it because there were strings  
9 attached?

10 A. There were strings attached.

11 Q. In your opinion, did Concho make a good  
12 faith effort to obtain the voluntary participation  
13 in these wells?

14 A. Yes, it did.

15 Q. In your opinion, has the Burnett/Hudson  
16 group made a good faith effort to obtain the  
17 voluntary participation of Concho in their wells?

18 A. They have not. We made several trips to  
19 Fort Worth showing our effort. We made several  
20 proposals to them showing our effort, and not once  
21 did we get something that we could live with.

22 Q. And I want you to be careful here,  
23 Mr. Evans, because as they have mentioned this  
24 morning, there's a confidentiality agreement.

25 But have there been other meetings or

1 other efforts to reach an agreement after April 20?

2 A. Yes.

3 Q. Okay. Let's go to what has been marked as  
4 Concho Exhibit Number 2.

5 MS. MUNDS-DRY: And, Mr. Ezeanyim, that's  
6 in the file folder there, the Redweld.

7 Q. (By Ms. Munds-Dry) What is Exhibit  
8 Number 2?

9 A. These are our well proposals and our  
10 amended well proposals for the Puckett wells.

11 Q. For all of the wells in Section 12 that we  
12 proposed?

13 A. Yes.

14 Q. And with those well proposals, what was  
15 included with each of those well proposals?

16 A. Our identification packet, our operating  
17 agreement.

18 Q. And how did Concho propose its wells, in  
19 terms of each lateral? Did it provide a separate  
20 AFE for each lateral?

21 A. Yes.

22 Q. And, hopefully, we've grouped them well  
23 enough. But can you give the dry hole and completed  
24 well costs for each of those wells in Section 12?

25 A. The lower Blinebry, the dry hole cost is

1 1.5 million and the completed cost is 3.78.

2 And the upper Blinebry, dry hole costs are  
3 1.2, basically, and completed was 2.9.

4 Q. And what about for the Paddock?

5 A. And the Paddock was 1.15 dry hole cost,  
6 completed at 2.9.

7 Q. I believe that was for the Puckett 12 1H,  
8 2H, 3H, 5H, and 7H?

9 A. That's correct.

10 Q. Was there a different AFE cost for the 9H?

11 A. Yes.

12 Q. What were those dry hole and completed  
13 well costs?

14 A. Lower Blinebry was 1.7. Dry hole  
15 completed was 3.957.

16 Upper Blinebry was 1.2, completed was 2.9.

17 Paddock dry hole was 1.155, and completed  
18 was 2.9.

19 MS. MUNDS-DRY: I don't want to rush,  
20 Mr. Ezeanyim. But if it's all right, we will turn  
21 to the next exhibit, Number 3.

22 Q. (By Ms. Munds-Dry) Which well proposals  
23 are contained in Concho Exhibit 3?

24 A. These are the Puckett 13 Federals.

25 Q. And did we also include AFEs for each

1 lateral and a proposed operating agreement?

2 A. Yes, we did.

3 Q. And what are the AFE totals for the  
4 Puckett 13 Federal 1H and 7H?

5 A. Dry hole cost of these was 1.5, completed  
6 3.7.

7 And for the Puckett 13, Fed 2H, 3H, 5H,  
8 8H, lower Blinebry was 1.5, completed was 3.78.

9 Upper Blinebry and Paddock, 1.1, completed  
10 2.9.

11 Q. And Exhibit 4, what is -- what well  
12 proposals are in Exhibit 4?

13 A. These are Puckett 24.

14 Q. And did we also send AFEs for each lateral  
15 and an operating agreement for these proposals?

16 A. We did.

17 Q. What are the AFE totals here?

18 A. 1.7 for the dry hole cost of the lower  
19 Blinebry. Completed costs were 3.9.

20 Upper Blinebry and Paddock, 1.1.  
21 Completed was 2.9.

22 Q. And that is for the Puckett 2H, 24 2H?

23 A. 2H. I'm sorry, yes.

24 And for the 24 Fed 4H, 6H, 7H, 8H, lower  
25 Blinebry of 1.5 for dry hole, completed well was

1 3.7.

2 Upper Blinebry and Paddock dry hole 1.5,  
3 completed 2.9.

4 Q. Are these costs that are set forth in  
5 these AFEs, do you believe these are in line with  
6 what has been charged for similar wells in the area?

7 A. Yes.

8 Q. And will an engineer testify later as to  
9 why we think those costs are in line with similar  
10 wells?

11 A. Yes, he will.

12 Q. Have you made an estimate of overhead  
13 administrative costs while drilling this well and  
14 also while producing this well -- these wells, if  
15 they're successful?

16 A. Yes, I have.

17 Q. What are those figures?

18 A. 600 and 6,000.

19 Q. 600 a month while drilling and 6,000 a  
20 month while producing?

21 A. Yes.

22 Q. Do you recommend that these figures be  
23 incorporated into any order that results from this  
24 hearing?

25 A. Yes, we do.



1 Q. You indicated earlier that a joint  
2 operating agreement had been proposed for these  
3 wells.

4 Does it provide for the periodic  
5 adjustment of these overhead administrative costs?

6 A. Yes, it does.

7 Q. And does Concho request that those  
8 overhead administrative costs be in that -- set out  
9 in the order that results from this hearing, be  
10 adjusted in accordance with the focus procedures?

11 A. Yes, we do.

12 Q. Does Concho request that the 200 percent  
13 charge for risk authorized under the statute be  
14 imposed on each cost, barring interest not  
15 voluntarily committed to the wells?

16 A. Yes.

17 Q. And does Concho seek to be designated  
18 operator of the proposed wells?

19 A. Yes, we do.

20 Q. Okay.

21 MS. MUNDS-DRY: We got that out of the  
22 way, Mr. Ezeanyim.

23 HEARING OFFICER EZEANYIM: Okay.

24 Q. (By Ms. Munds-Dry) Let's turn to what has  
25 been marked as Concho Exhibit Number 5.

1                   What does this slide show us?

2           A.       That is the additional revenue that we  
3       estimate that will go to the State of New Mexico if  
4       Concho drills its wells versus the Burnett plan.

5           Q.       This shows, under the 14 wells here that  
6       have been proposed, versus Burnett's two wells. Is  
7       that correct?

8           A.       That's correct.

9           Q.       And what's the additional revenue to the  
10      State of New Mexico difference?

11          A.       \$96,710,843.71.

12          Q.       Let's go to Concho Exhibit Number 6.

13                   HEARING EXAMINER EZEANYIM: Do you mind if  
14      I ask a question?

15                   MS. MUNDS-DRY: Please.

16                   HEARING EXAMINER EZEANYIM: Okay. This is  
17      interesting.

18                   You say "additional revenue." What's  
19      comprised? Are you comparing apples and apples or  
20      what are you comparing?

21                   THE WITNESS: Well, we're comparing our  
22      drilling program versus the one they have proposed  
23      at this hearing, sir.

24                   HEARING EXAMINER EZEANYIM: Oh, okay. And  
25      it bears on that. Is the tax rate different?

1 THE WITNESS: No.

2 HEARING EXAMINER EZEANYIM: Okay. The  
3 same tax rate. Then it's based on ultimate oil  
4 recovery, then?

5 THE WITNESS: On what?

6 HEARING EXAMINER EZEANYIM: Ultimate oil  
7 recovery.

8 THE WITNESS: It's based on our estimated  
9 oil recovery.

10 HEARING EXAMINER EZEANYIM: Your estimated  
11 oil recovery. And then what are you estimating  
12 here?

13 THE WITNESS: As far as our oil recovery?

14 HEARING EXAMINER EZEANYIM: Yeah. You are  
15 going to recover 15.7 million? Is that what you are  
16 saying?

17 THE WITNESS: Yes. Our estimate will  
18 recover this 15-7.

19 HEARING EXAMINER EZEANYIM: Okay. And  
20 then the royalty to New Mexico is what? Is that  
21 7-8?

22 THE WITNESS: I'm sorry?

23 HEARING EXAMINER EZEANYIM: What is the  
24 royalty to New Mexico? Is that 7-8? Why do you owe  
25 the government 7.5?

1 THE WITNESS: I think this is 8 percent  
2 tax on the value generated.

3 HEARING OFFICER EZEANYIM: Yeah. What --

4 MS. MUNDS-DRY: These are federal leases,  
5 Mr. Ezeanyim, so --

6 HEARING EXAMINER EZEANYIM: Oh, they are  
7 federal leases?

8 THE WITNESS: Yes, sir.

9 HEARING OFFICER EZEANYIM: I'm trying to  
10 see how you got the calculation.

11 THE WITNESS: Strictly a tax --

12 MS. MUNDS-DRY: This is just a tax.

13 THE WITNESS: -- revenue.

14 HEARING EXAMINER EZEANYIM: Oh, okay. I  
15 see.

16 So you're saying -- are you saying now  
17 that this ratio of production would be 15.7 million  
18 from what is proposed by the other party?

19 THE WITNESS: That is just the difference.

20 HEARING EXAMINER EZEANYIM: That would be  
21 the difference?

22 THE WITNESS: Yes, sir.

23 HEARING EXAMINER EZEANYIM: After all is  
24 said and done?

25 THE WITNESS: That's our program.

1 HEARING EXAMINER EZEANYIM: Oh, okay.

2 THE WITNESS: Less their program.

3 HEARING EXAMINER EZEANYIM: Yes. We are  
4 trying to put it on the record. That is why I'm  
5 asking this question. Okay.

6 THE WITNESS: And an engineer can testify  
7 later to this better than I can.

8 HEARING EXAMINER EZEANYIM: Okay.

9 Q. (By Ms. Munds-Dry) Okay. Let's turn to  
10 Concho Exhibit Number 6.

11 What is this document?

12 A. We received news sometime in August that  
13 Burnett had proposed a federal unit. This letter is  
14 our response to the BLM rejecting -- or asking the  
15 BLM to decline the unit.

16 That's because Burnett does not have  
17 85 percent control of the federal unit boundary,  
18 that Concho has 33.71 percent not recognized in the  
19 preliminary approval.

20 Q. And so this is just -- this is a copy of  
21 the letter that we sent to the BLM --

22 A. Yes, it is.

23 Q. -- rejecting the proposal?

24 A. Yes, it is.

25 Q. Let's go to Concho Exhibit Number 7, which

1     should be a slide.

2                   What does this show us?

3           A.     These are just basic reasons why we  
4     believe the unit should be denied.

5                   Burnett/Hudson does not have 85 percent  
6     approval of the working interest owners.

7                   Concho owns roughly 33.72 percent of the  
8     leasehold within the proposed unit, and we're not  
9     signing it.

10                   Burnett can slow play development with a  
11     federal unit agreement. A test well is not required  
12     until six months after it is approved. And then  
13     after completion of the test well, under the terms  
14     of the unit agreement, they could file a plan of  
15     development that would delay the drilling program by  
16     a solid year, as opposed to our proposed drilling  
17     program.

18                   Concho's harm, by not allowing a  
19     reasonable and timely rate of return on its  
20     investment if that occurs -- if the unit is  
21     approved, Concho is denied its reasonable and timely  
22     rate of return on its term assignments that it  
23     acquired.

24                   Federal exploratory units are developed  
25     for areas that are exploratory in nature and, by

1 definition, where development has never occurred.

2 That is not the case here. You have  
3 development on both the east and west sides and on  
4 the northern, inside the unit boundary. It's the  
5 Knockabout well.

6 And then last but not least, Concho  
7 objects to Burnett/Hudson's proposed form of  
8 agreements. The attempt to distort the operations  
9 with a 1989 form of JOA that is subject to the terms  
10 of the federal operating agreement form distorts the  
11 purpose of the federal operating agreement form.

12 It doesn't make a lot of sense of how it's  
13 going to work.

14 Q. Mr. Evans, I asked you previously if you  
15 were present for Mr. Rhodes' testimony.

16 Did you hear him state that they didn't --  
17 they kept those discussions with the BLM  
18 confidential because they were concerned about  
19 Concho's interference?

20 A. Yes.

21 Q. When did Concho first become aware that  
22 Burnett was proposing an exploratory unit for the  
23 three sections, 12, 13 and 24?

24 A. August 5.

25 Q. And did you also receive some sort of

1 official notice by letter?

2 A. August 25th.

3 Q. And have you, either at Concho or in  
4 previous jobs as a landman, ever been responsible  
5 for performing an exploratory unit?

6 A. Yes, I have.

7 Q. In fact, weren't you involved in one of  
8 the largest exploratory units in New Mexico?

9 A. I was involved in the signup for the Bravo  
10 Dome unit.

11 Q. What is the custom and practice as a  
12 landman, when you're forming a unit -- an  
13 exploratory unit, in terms of contacting the working  
14 interest owners that you plan to have in that unit?

15 A. In every federal unit that I have ever put  
16 together you always contact the working interest  
17 owners first to see what the plan would be to  
18 develop and formulate a unit. You get consensus of  
19 the owners, then you go jointly with the working  
20 interest owner group to go before the BLM and  
21 propose the unit.

22 Q. Is part of that just to simply determine  
23 whether you have enough percentage, according to BLM  
24 rules?

25 A. That's correct.



1           Q.     Is it highly unusual not to talk to the  
2     working interest owners until after the preliminary  
3     approval?

4           A.     Highly unusual.

5           Q.     Let's turn to what has been marked as  
6     Concho Exhibit Number 8.

7                     What does this show? And we visited a  
8     version of this before.

9           A.     Yes. This is the difference between the  
10    OA interests, which is the operating agreement,  
11    which is the south half of 12 and the interest in  
12    the -- not subject to the operating agreement -- and  
13    then the interest in the proration unit, so they're  
14    different.

15          Q.     And what effect would forming a unit have  
16    on this operating agreement?

17          A.     It would dilute our interest in the  
18    current existing well.

19          Q.     What does the operating agreement require  
20    in order to amend that contract?

21          A.     100 percent ratification.

22          Q.     And, Mr. Evans, is Exhibit Number 9 my  
23    notice affidavit showing notice of this? All of  
24    these applications were given to -- which is the  
25    green cards and letters and a copy of the

1 publication for each of those cases?

2 A. Yes.

3 Q. Mr. -- were Exhibits 1 through 9 either  
4 prepared by you or compiled under your direct  
5 supervision?

6 A. Yes, they were.

7 MS. MUNDS-DRY: Mr. Ezeanyim, we would  
8 move to admit Exhibits 1 through 9 into evidence.

9 MR. BRUCE: No objection.

10 HEARING EXAMINER EZEANYIM: Exhibits 1  
11 through 9 will be admitted.

12 MS. MUNDS-DRY: That concludes my direct  
13 examination of Mr. Evans.

14 I pass the witness.

15 HEARING EXAMINER EZEANYIM: Okay.

16 Mr. Bruce?

17 EXAMINATION

18 BY MR. BRUCE:

19 Q. Mr. Evans, without having you reference or  
20 go through these Exhibits 2 though 4 again, the only  
21 letters I saw in there were to Burnett Oil Company,  
22 correct?

23 A. In 2 through 4?

24 Q. 2 through 4, in --

25 A. That's the AFE packages?

1 Q. Yes.

2 A. Yes, but I think the notices correctly  
3 provide all the people that were notified.

4 MS. MUNDS-DRY: It should be Burnett,  
5 Javelina, the various Hudson entities.

6 THE WITNESS: Zorro, Javelina, Hudson Oil.

7 Q. (By Mr. Bruce) Then looking at Exhibit 9,  
8 the notice affidavits, just the very second page,  
9 which is talking about the west half west half of  
10 Section 12 -- and this is just for example -- did --  
11 I'll give you my copy.

12 MR. BRUCE: If I can approach the witness?

13 Q. (By Mr. Bruce) This is part of  
14 Mr. Rhodes' land package, which included their  
15 proposed Exhibit B to the unit agreement.

16 Now, I've got to memorize these names  
17 before I get there. There are some people named  
18 John F. Cranz and Ernest Cosult, Jr.?

19 A. Not recognized on our title.

20 Q. So you didn't notify them?

21 A. Not that I'm aware of. Our title team  
22 does not reflect that. In fact, that's the first  
23 I've seen of that.

24 Q. Did you notify Yates?

25 A. They're not in the west half west half of

1 12 or responsible for notice for a nonstandard unit.

2 Q. Now, when you talked about your contacts  
3 with Hudson and Burnett starting in November of 2010  
4 and going through at least April of 2011, all of  
5 those contacts concerned vertical wells, did they  
6 not?

7 A. All of those con- -- no, they did not.

8 Q. At that time, you had proposed -- COG had  
9 proposed 47 vertical wells to Hudson and Burnett,  
10 correct?

11 A. That's correct.

12 Q. We're here today on triple lateral  
13 horizontals.

14 When were the triple lateral horizontals  
15 proposed to Hudson and Burnett?

16 A. After that.

17 Q. As a matter of fact, I believe three were  
18 proposed in late May before the original hearing?

19 A. That's correct.

20 Q. And then all the rest were just proposed  
21 in July, correct?

22 A. Correct.

23 Q. So really, with respect to all the  
24 conversations before May 2011, virtually all of your  
25 contacts concerned drilling of vertical wells?

1           A.     No. Our discussion -- one of the meetings  
2     was the allowable. At that time we also discussed a  
3     drilling program.

4                     During that time we talked about how many  
5     wells they could drill; what nature of wells would  
6     they be, horizontal or vertical; whether or not they  
7     would accept a horizontal program; and whether or  
8     not one of the four or eight -- four wells in '11 or  
9     eight wells in '12 would be for horizontal.

10          Q.     Okay.

11          A.     So there was a discussion.

12          Q.     Of triple laterals?

13          A.     Of laterals.

14          Q.     Of triple laterals?

15          A.     Not that I recall.

16          Q.     Now, let me ask you this. If COG owned 67  
17     percent working interest in a lease, would it demand  
18     to be named operator?

19          A.     It would request that it be operator.

20          Q.     And you may want me to ask the drilling  
21     engineer about this, Mr. Evans, but -- and I'm using  
22     approximate numbers.

23                     The AFEs for your proposed triple laterals  
24     are now approximately \$9.4, \$9.5 million per well,  
25     roughly?

1 A. Roughly. That's correct.

2 Q. Maybe 9.4 might be closer. I don't  
3 remember.

4 The first three triple laterals that were  
5 proposed were at \$11.5 million, were they not?

6 A. Yes.

7 Q. Why the drastic change?

8 A. You probably want to talk to the drilling  
9 engineer.

10 Q. The fact is, COG has no handle on these  
11 well costs because it hasn't drilled triple laterals  
12 in New Mexico, correct?

13 A. That's a two-part question. Which one do  
14 you want me to answer first?

15 Q. Well, they haven't -- has COG drilled any  
16 triple laterals in New Mexico?

17 A. Not that I'm aware of.

18 Q. Double laterals in New Mexico?

19 A. I wouldn't know. I've only been there 10  
20 months.

21 Q. Has it proposed triple laterals to any  
22 other working interest owner in New Mexico?

23 A. I wouldn't know. I'm only the shelf man.

24 Q. Well, in this area, then, has it proposed  
25 any triple laterals in 17 South, 30, 31, 32 East or

1 any adjoining townships?

2 A. Not on the shelf.

3 Q. With respect to your triple laterals,  
4 outside of COG/Concho, has anybody agreed to join in  
5 your triple laterals?

6 A. Would you repeat that question?

7 Q. Has any working interest owner, other than  
8 COG and Concho Oil & Gas, agreed to participate in  
9 your proposed triple laterals?

10 A. Not at this time.

11 Q. And are any of these -- there has been  
12 some testimony about COG obtaining APDs on this  
13 acreage. They have obtained some APDs, correct?

14 A. That's correct.

15 Q. Were those all, at least initially, for  
16 vertical wells?

17 A. Yes, that's correct. We're having them  
18 transferred over for the vertical -- the horizontal  
19 program at this time.

20 Q. By filing sundry notices?

21 A. Yes, sir.

22 Q. At this point, you have no approved triple  
23 lateral APDs from the BLM?

24 A. I think we have another guy that will  
25 testify to that.

1 Q. Okay. I know this isn't one of your  
2 exhibits. I just want a broader exhibit, Mr. Evans.

3 If you could go to Exhibit 12 in the  
4 booklet.

5 Up to the northwest there is acreage at  
6 11; and, therefore, COG has interest in that  
7 acreage, correct?

8 A. Section 11?

9 Q. Up to the north, Section 11, Section 10.

10 A. Oh, okay. To the west?

11 Q. Uh-huh.

12 A. Yes.

13 Q. Does it own a greater interest than it  
14 does in the three sections that we're here about  
15 today?

16 A. I don't know.

17 Q. But your testimony is it hasn't proposed  
18 any triple laterals on that acreage?

19 A. Not at this time. We do drill wells.

20 Q. Are you aware that -- of any efforts to  
21 form a federal exploratory unit in Sections 3  
22 through 10 of the adjoining township?

23 A. I'm not aware.

24 Q. Now, when you say you're the landman for  
25 the shelf, could you define that a little bit more



1 for me?

2 A. I am the land manager for the shelf.

3 Q. The land manager for the shelf.

4 A. The landmen on the shelf report to me.

5 That's why I don't know some of the answers here of  
6 the questions being asked.

7 Q. How about -- approximately how many Yeso  
8 locations does COG have left to drill on the shelf?

9 A. You'll have to ask an engineer.

10 Q. Turning to your Exhibit 5, Mr. Evans, this  
11 is basically predicated on the assumption that COG  
12 will drill all of its wells and Burnett would only  
13 drill five wells, correct?

14 A. Exhibit 5?

15 Q. Exhibit 5.

16 A. It is predicated upon the fact that a  
17 unit -- Federal unit is not necessary.

18 Q. Exhibit 5.

19 A. Oh, I'm sorry. I've got 6. I apologize.  
20 Ask the question again.

21 Q. Okay. These numbers are simply predicated  
22 on the fact that all of the COG wells will be  
23 drilled, yet Burnett will drill five wells and then  
24 completely stop?

25 A. This is predicated on our drilling program

1    which we know, versus the drilling program that we  
2    know of Burnett's.

3           Q.     And then on Exhibit 6, the BLM has not  
4    retracted their preliminary approval letter, have  
5    they?

6           A.     We have not been notified yet.

7           Q.     Then on your Exhibit 7, here on the very  
8    final line, are you aware that you -- you state that  
9    Concho objects to Burnett/Hudson's proposed form of  
10   agreements.

11                   Are you aware that the form of agreement  
12   for the unit agreement itself is fixed in the  
13   regulations?

14          A.     Yes, I am.

15          Q.     Okay. So you're not going to object to  
16   the form of the unit agreement?

17          A.     It's the form of operating agreement  
18   placed on top of it, which is a 1989 joint operating  
19   agreement.

20          Q.     And are you aware that the BLM does not  
21   approve a joint operating agreement and the parties  
22   are free to negotiate an agreement among themselves?

23          A.     Yes.

24          Q.     Are you planning on giving any comments on  
25   the JOA to Burnett or Hudson?

1           A.     No, because we don't believe that there's  
2     a need for it.

3           Q.     So under no circumstances would you  
4     approve a unit agreement?

5           A.     On this property, the unit agreement is  
6     not necessary. It delays development.

7           Q.     And regarding the two applications that  
8     we're here for today on Burnett, you said they will  
9     cause waste. On what basis?

10          A.     We believe that the vertical proposals by  
11     Burnett will interfere with our horizontal  
12     development.

13          Q.     In what way?

14          A.     You will be able to talk to an engineer  
15     and geologist next.

16          Q.     Well, then, it's not your opinion, it's  
17     the geologist's or the engineer's opinion, right,  
18     that it will cause waste?

19          A.     Well, it is my opinion that it will cause  
20     waste because it interferes with the progression of  
21     the horizontal lateral.

22          Q.     Well, I mean, aren't -- in Section 12, for  
23     instance, you're proposing four stand-up  
24     horizontals, and then right across the top of the  
25     section a fifth lateral, aren't you?

1 A. Yes.

2 Q. So there will be multiple wells on a well  
3 unit. What's the difference if they're vertical or  
4 horizontal?

5 A. That's why you need to talk to an  
6 engineer.

7 Q. So it's their opinion, not yours, that it  
8 will cause waste?

9 MS. MUNDS-DRY: Objection, Mr. Ezeanyim.  
10 I know you don't want legal stuff, but asked and  
11 answered.

12 MR. BRUCE: Mr. Ezeanyim, that's fine. It  
13 was asked, but it wasn't answered.

14 MS. MUNDS-DRY: Maybe it just wasn't the  
15 answer Mr. Bruce wanted.

16 MR. BRUCE: Well, there was no answer.

17 HEARING EXAMINER EZEANYIM: Well, I'm  
18 going to have you leave it at that.

19 MR. BRUCE: I will leave it at that.

20 HEARING EXAMINER EZEANYIM: Yes.

21 Do you have more questions?

22 MR. BRUCE: I'm finished with Mr. Evans.

23 HEARING OFFICER EZEANYIM: You have more?

24 MS. MUNDS-DRY: I have a few redirect,

25 Mr. Ezeanyim. Thank you.

1 HEARING OFFICER EZEANYIM: Okay. Go  
2 ahead.

3 FURTHER EXAMINATION

4 BY MS. MUNDS-DRY:

5 Q. Now, Mr. Evans, is it your understanding  
6 that Burnett has a 46 percent working interest,  
7 correct --

8 A. Yes.

9 Q. -- in these leases?

10 A. Yes.

11 Q. The 66 percent or 67 percent is -- is what  
12 they control in total, correct?

13 A. Correct.

14 Q. Does an interest owner who has a one-third  
15 interest in these leases have the right to propose  
16 wells on these leases?

17 A. Yes, they do. They have the right to  
18 cause development.

19 Q. Do you have any nonoperated wells that you  
20 have a 43 percent working interest in?

21 A. Yes, we do.

22 Q. If Concho were the majority working  
23 interest owner here, would it be prepared to fully  
24 develop this acreage?

25 A. Yes, it will be. That was the start of

1 our original premise.

2 Q. Because you want a development in a  
3 reasonable time frame to get a return on your  
4 investment, right?

5 A. Yes.

6 Q. Mr. Bruce asked you if the BLM had  
7 retracted the preliminary approval that they have  
8 given.

9 Have you seen final approval on that unit  
10 yet?

11 A. I have not.

12 Q. Do you know if a unit agreement for a  
13 federal unit is modifiable?

14 A. It is modifiable limited to approval by  
15 the BLM.

16 MS. MUNDS-DRY: Thank you.

17 That's all I have, Mr. Ezeanyim.

18 HEARING EXAMINER EZEANYIM: Redirect?

19 MR. BRUCE: No questions.

20 HEARING EXAMINER EZEANYIM: Okay.

21 I still have to get that letter that I was  
22 asking from the --

23 MS. MUNDS-DRY: I've got it here, and  
24 we'll make copies of it at the break for you.

25 HEARING EXAMINER EZEANYIM: Okay. Thank

1     you.

2                   In the docket, I wasn't aware that you  
3     guys are asking for triple laterals, because it  
4     wasn't stated in there. It's when I read your AFE  
5     that you are asking for -- all the letters that you  
6     sent out that you were going to do triple laterals:  
7     One to Paddock, another one to the upper Blinebry,  
8     and another one to the lower Blinebry.

9                   You should have put it in the docket so  
10    that we know that's what you're doing. As a  
11    position, you should have put it in this docket.  
12    Because right now I was thinking it's one lateral,  
13    as it's written.

14                  MS. MUNDS-DRY: That's not really covered  
15    by the rules, Mr. Ezeanyim. I'm not aware that we  
16    have ever had to do that in the past, so I can't  
17    really answer your question.

18                  HEARING EXAMINER EZEANYIM: Well, I'm  
19    asking him.

20                  MS. MUNDS-DRY: I'm not sure Mr. Evans  
21    knows all the horizontal -- do you know, Mr. Evans,  
22    if --

23                  THE WITNESS: I rely on counsel.

24                  HEARING EXAMINER EZEANYIM: Okay. You may  
25    be excused.

1 THE WITNESS: Thank you, sir.

2 MS. MUNDS-DRY: Mr. Rankin will be calling  
3 our next witness.

4 MR. RANKIN: Mr. Examiner, I would like to  
5 call Concho's next witness, Noel Olivas, please.

6 HEARING EXAMINER EZEANYIM: State your  
7 name for the record, please.

8 THE WITNESS: My name is Noel Olivas.

9 HEARING EXAMINER EZEANYIM: Thank you.

10 NOEL OLIVAS,  
11 after having been first duly sworn under oath,  
12 was questioned and testified as follows:

13 EXAMINATION

14 BY MR. RANKIN:

15 Q. Mr. Olivas, please state your full name  
16 for the record -- and you already have.

17 And in which state do you reside?

18 A. Texas.

19 Q. And by whom are you employed?

20 A. COG Operating, LLC.

21 Q. And what's your current position with COG  
22 Operating, LLC?

23 A. I'm the lead permitting and right-of-way  
24 specialist.

25 Q. And have you previously testified before



1 this division?

2 A. No, I have not.

3 Q. Are you familiar with the application  
4 filed in this case?

5 A. Yes.

6 Q. Are you familiar with the status of the  
7 lands in the subject area?

8 A. Yes.

9 Q. Mr. Olivas, can you please just provide  
10 for the examiner a little bit of the background of  
11 your education and your experience?

12 A. I graduated from Texas Tech University  
13 with a BBA in management.

14 I have been handling surface issues since  
15 2004 to the present. And I am now a supervisor with  
16 COG Operating.

17 Q. And in your position with Concho, can you  
18 explain to the Examiner what you do on a daily  
19 basis?

20 A. Sure. I deal with -- I oversee our  
21 permitting of federal and state wells, and even on  
22 fee lands.

23 I deal with the BLM. I perform on-sites  
24 with the BLM, take care of any surface issues,  
25 right-of-way issues, pipelines, and the building of

1 locations.

2 Q. That includes all sorts of permitting  
3 requirements for federal and state levels. Is that  
4 correct?

5 A. Yes.

6 MR. RANKIN: Mr. Examiner, I would like to  
7 tender Mr. Olivas as an expert witness in permitting  
8 and right-of-way.

9 HEARING EXAMINER EZEANYIM: Okay. Is that  
10 permitting for state agencies?

11 THE WITNESS: Yes, as well.

12 HEARING EXAMINER EZEANYIM: BLM or state's  
13 and the fee? Is that it?

14 THE WITNESS: Yes.

15 HEARING EXAMINER EZEANYIM: You are not a  
16 land person?

17 THE WITNESS: No, I don't work under  
18 Mr. Evans.

19 HEARING EXAMINER EZEANYIM: You just  
20 obtain permits for drilling and right-of-way?

21 THE WITNESS: I do that, yes, sir.

22 HEARING EXAMINER EZEANYIM: Okay. Well,  
23 he is qualified to testify. Go ahead.

24 MR. RANKIN: Thank you, Mr. Examiner.

25 Q. (By Mr. Rankin) Mr. Olivas, can you

1 please explain what exactly a Candidate Conservation  
2 Agreement is, or a CCA, as it has been described?

3 A. Yeah. Mr. Jacoby touched on it earlier.  
4 It was developed by fish and wildlife, along with  
5 BLM and industry, to help protect the proposed  
6 endangered sand dune lizard.

7 Originally, it was -- it was supposed to  
8 kind of help to keep this lizard from being listed.  
9 But through time it has kind of turned into an  
10 insurance policy, it seems like.

11 There's some surface stipulations in there  
12 to where we have to be certain feet away from the  
13 sand dunes and other stipulations that help protect  
14 any potential habitat and any -- and also dunes that  
15 are already occupied by this lizard.

16 It's kind of turned into an insurance  
17 policy, to where in the event that this lizard is to  
18 become listed, that the wells that you do have APD,  
19 you'll be able to continue to drill. So it's -- it  
20 helps protect our company.

21 And also, as being good corporate  
22 citizens, we have taken an initiative. We were the  
23 first to sign up for the CCA, as well, and we have  
24 kind of been the catalyst to help promote this.

25 Q. When was it that you signed up as a CCA

1 participant?

2 A. Oh, we signed up this year, early this  
3 year.

4 Q. And all of the acreage that is in these  
5 applications, are they all subject to the CCA?

6 A. Yes.

7 Q. Is that correct?

8 A. Yes.

9 Q. You've already sort of touched on this a  
10 little bit. But why -- about the importance of the  
11 CCA for Concho.

12 But as far as future development, is  
13 that -- that's sort of a target, right?

14 A. Yeah, absolutely. If people are not  
15 enrolled, if this gets listed, you're not going to  
16 be allowed to drill. So this definitely protects  
17 our assets in the area. It keeps us drilling out  
18 there. It keeps me having a job.

19 Q. Now, what is your understanding of how  
20 well locations are being granted in these  
21 environmental sensitive areas?

22 And we will -- I will ask you to describe  
23 that for Exhibit Number 10.

24 A. Well, there's an outline -- let me see  
25 here.

1 Q. There's two parts to Exhibit 10, is that  
2 correct, or three parts?

3 A. Yeah. This is an outline showing, as they  
4 described earlier, to where there is dunes that the  
5 BLM has considered occupied. So we've got to  
6 completely stay way from those. There's not -- we  
7 cannot have any surface disturbance whatsoever.

8 Q. So on this Exhibit 10, would that be that  
9 sort of bluish area in the middle?

10 A. Yes.

11 Q. Is that right?

12 A. Yes.

13 Q. And on the next page, it's those bluish  
14 areas?

15 A. Yes..

16 HEARING EXAMINER EZEANYIM: So what -- I  
17 see two of the bluish areas here. What happens  
18 there? You're not supposed to drill a well there?

19 THE WITNESS: No, you can't -- you can't  
20 disturb the surface at all.

21 HEARING OFFICER EZEANYIM: Okay.

22 THE WITNESS: Yeah. They are showing that  
23 there are -- those dunes are either potential  
24 habitat for this lizard, or they are occupied by the  
25 lizard.

1 HEARING EXAMINER EZEANYIM: So the only  
2 way you can do it is to drill somewhere other than  
3 the blue?

4 THE WITNESS: Yes, sir.

5 Q. (By Mr. Rankin) And these requirements  
6 are the same for anybody who's operating on this  
7 lease. Is that right?

8 A. Yes. It's the same for everybody. The  
9 same setbacks for everyone that's enrolled in the  
10 CCA.

11 Q. Now, where did you receive this exhibit?

12 A. I got it from the BLM.

13 Q. And did Concho -- do you rely on this in  
14 developing the location sites for this property?

15 A. Absolutely.

16 Q. Now, are you familiar with Burnett's  
17 approved well locations, the APDs, to see if they  
18 comply with the CCA?

19 A. I am.

20 Q. They mentioned that they were members and  
21 they just signed up for the CCA.

22 A. Yes.

23 Q. Do they comply with the CCA?

24 A. I did look at the Partition Federal Number  
25 2 well that they have, and it does not comply with

1 the CCA.

2 HEARING EXAMINER EZEANYIM: Can you ask  
3 that question again? What did you say?

4 MR. RANKIN: Yes. I asked him if he was  
5 familiar with the Burnett APDs that have been  
6 approved, and whether or not they had complied with  
7 the CCA requirements.

8 HEARING EXAMINER EZEANYIM: But they're  
9 not a member of the CCA, are they?

10 MR. RANKIN: Yes, they are members.

11 HEARING EXAMINER EZEANYIM: Is that -- the  
12 CCA the same?

13 THE WITNESS: It's the same requirements  
14 for everybody.

15 HEARING OFFICER EZEANYIM: What?

16 THE WITNESS: Everyone who signs up, they  
17 have the same requirements for setback and so forth.

18 HEARING EXAMINER EZEANYIM: Okay.

19 Q. (By Mr. Rankin) And your basis for your  
20 statement that they are not in compliance comes from  
21 what?

22 A. Basically, I -- I physically looked at  
23 that well myself. We had a -- when we were  
24 proposing our vertical plan, I had a well that was  
25 just a few feet away from there that I wanted to

1 propose -- or that COG wanted to. And the BLM had  
2 told us that we could not stake it there, due to us  
3 being a part of the CCA.

4 Q. Now, Mr. Olivas, could you please turn to  
5 Exhibit Number 12?

6 HEARING EXAMINER EZEANYIM: Who developed  
7 this thing? Who did it?

8 THE WITNESS: The BLM.

9 HEARING EXAMINER EZEANYIM: Okay.

10 Q. (By Mr. Rankin) I'm sorry, 11.

11 A. Okay.

12 Q. I misstated. Exhibit Number 11. It looks  
13 like a great vacation spot.

14 HEARING EXAMINER EZEANYIM: Is that you  
15 there?

16 THE WITNESS: That's not me. He works for  
17 me. I took that picture.

18 HEARING OFFICER EZEANYIM: Okay.

19 THE WITNESS: I'm a part-time  
20 photographer.

21 Q. (By Mr. Rankin) Can you please explain to  
22 Mr. Examiner what it is you are looking at here?

23 A. This is just showing the size of the  
24 dunes. And I put him there so you can kind of use  
25 him as a scale.



1           The terrain out there is consistent like  
2   this in a majority of the sections that we are  
3   talking about today. Those are the dunes that we  
4   need to stay away from.

5           The CCA actually says we need to be 100  
6   feet away from these sand dunes that they call  
7   blowouts, that the lizard -- they thrive and they  
8   live and supposedly reproduce in this area.

9           Q.     Now, Mr. Olivas, what was the process for  
10   you to get these horizontal wells -- what is the  
11   process to get these horizontal wells approved?

12          A.     Well, there's -- it's been -- gosh, we've  
13   had over a dozen meetings with the BLM. I've met  
14   with them in their office looking at aerial maps,  
15   doing the preliminary overview, looking at their  
16   archeology, their -- this.

17                 That's when they gave me this outline of  
18   where the dunes are -- they reside. And we have  
19   made multiple trips out in the field with not only  
20   their natural resource specialist, but also their  
21   biologist, and carefully picking these locations to  
22   where we're going to least impact the surface to  
23   help protect this -- this lizard.

24          Q.     And during those meetings, you had  
25   discussions about the potential of future horizontal

1 well locations?

2 A. Yes, absolutely. And they were very  
3 responsive towards that.

4 Q. So they preferred the horizontal well  
5 program to a vertical well program. Is that  
6 correct?

7 A. Yes, absolutely. That's correct.

8 HEARING EXAMINER EZEANYIM: Have you  
9 proposed those horizontals to them?

10 THE WITNESS: Have I proposed -- I'm  
11 sorry, sir?

12 HEARING EXAMINER EZEANYIM: Have you  
13 proposed the horizontal wells to the BLM?

14 THE WITNESS: Our lateral wells?

15 HEARING EXAMINER EZEANYIM: Yeah. Yeah,  
16 lateral.

17 THE WITNESS: Yes, sir. Yes, sir. And  
18 they -- we've looked at all 17 of those locations,  
19 and they have approved every one of them on -- on  
20 on-sites.

21 HEARING EXAMINER EZEANYIM: Final approval  
22 or...

23 THE WITNESS: Not of APDs. They have done  
24 a final approval of -- you've got to physically go  
25 and take what you call an NRS, a natural resource

1 specialist, and they ground trooped it and approved  
2 all 17 of our locations.

3 HEARING EXAMINER EZEANYIM: Okay.

4 Q. (By Mr. Rankin) Mr. Olivas, would you  
5 please turn to Exhibit Number 13 in your packet?

6 A. (Witness complies.)

7 Q. Would you please identify and describe  
8 what this exhibit is?

9 I'm sorry, I keep skipping ahead. I'm  
10 actually looking at the tab. It actually should be  
11 Number 12. I'm sorry.

12 A. 12?

13 Q. Yes.

14 A. It's showing -- it's showing the 17  
15 proposed wells that the -- the horizontal wells that  
16 we've looked at with the BLM.

17 And if you can tell, you can see there are  
18 some that are on the northern part of the section,  
19 some in the south part of the section.

20 The square indicates our surface location,  
21 and that was to -- we had to move those in order to  
22 stay away from these -- these significant dunes that  
23 the lizard lives at.

24 So this is how we -- this is what we're  
25 going to call our plan to develop -- well, this is

1 17 of the wells that we plan to develop out here.

2 Q. And these 17 wells were all approved?

3 These locations were all approved?

4 A. All of these. Every single one, yes, sir.

5 Q. And not shown on this map, but you also  
6 are planning, and have already planned, to develop  
7 and construct a gathering system and other surface  
8 support facilities. Is that correct?

9 A. Yes, absolutely. That's really important  
10 to them, as well, how to strategically place tank  
11 batteries in order to minimize truck traffic and not  
12 have so much caliche dust in the air, as well.

13 Q. That's already been considered?

14 A. That's already been approved.

15 HEARING EXAMINER EZEANYIM: Approved by  
16 BLM?

17 THE WITNESS: By the BLM, yes, sir.

18 Q. (By Mr. Rankin) Now, Mr. Olivas, have you  
19 submitted APDs for each well?

20 A. All 17 have been submitted. And I have  
21 been going and following up and checking, and I  
22 believe they are all what they call in a NEPA  
23 process, which is an Environmental Protection Act  
24 process that the BLM does while approving APDs.

25 Q. So in addition to submitting these APDs

1 and having your earlier discussions, have you been  
2 in discussion with BLM?

3 A. Yes.

4 Q. For these APD approvals?

5 A. Yes. Weekly, or maybe even more. We talk  
6 a lot. I almost have an office over there.

7 Q. Now, you're familiar with your surface  
8 disturbance. Are you also familiar with Burnett's  
9 estimates for its surface disturbance under their  
10 proposed plan of development?

11 A. Yes. I looked at their -- I looked at  
12 their map. And under their 23 proposed -- 23  
13 proposed locations, that if they were to drill this  
14 horizontally, they had said that they would be using  
15 105.5 acres. That's the amount of surface they  
16 would use to develop.

17 And if I were to do -- if I were to do 23  
18 wells, I could do that in about 66 acres. So  
19 there's -- there's about 40 acres' difference that  
20 we -- less acres that we would be using than they  
21 were.

22 Q. And that's based on what has been  
23 approved. Is that right?

24 A. Yes, absolutely.

25 Q. By -- in Concho's plan.

1 Mr. Olivas, were Exhibits 10 --

2 Oh, just one last exhibit.

3 Could you please turn to what has been  
4 marked as Exhibit Number 13?

5 A. Yes.

6 Q. Could you please briefly summarize and  
7 describe what this exhibit shows?

8 A. Yes. This is depicting all 17 wells that  
9 the BLM has looked -- and actually, the natural  
10 resource specialist that approved these signed off  
11 on this. This is actually a letter that he wrote  
12 approving all of these 17 wells -- the locations.

13 Q. Mr. Olivas, were Exhibits 10 through 13  
14 prepared by yourself or by your supervision?

15 A. Yes.

16 MR. RANKIN: Mr. Examiner, I would move to  
17 admit into evidence Exhibits 10 through 13.

18 HEARING EXAMINER EZEANYIM: Any objection?

19 MR. BRUCE: No objection.

20 HEARING EXAMINER EZEANYIM: Exhibits 10  
21 through 13 will be admitted.

22 HEARING OFFICER EZEANYIM: Any questions?

23 MR. BRUCE: Mr. Grable has requested to  
24 cross-examine this witness.

25

1 EXAMINATION

2 BY MR. GRABLE:

3 Q. First, sir, do you pronounce your name  
4 Olivas?

5 A. Olivas.

6 Q. Olivas. I didn't want to butcher it. I'm  
7 sorry. Olivas.

8 As I understand your testimony, Concho  
9 does not have any approved APDs for the wells it's  
10 proposing in this hearing at this moment?

11 A. They're in process right now.

12 Q. They're not approved?

13 A. Not yet.

14 Q. Okay. Now, when you were testifying about  
15 the locations had been approved, you were talking  
16 about with respect to surface disturbance?

17 A. Yes, sir.

18 Q. Okay. Not with respect to the APDs?

19 A. Well, the surface has -- has -- I would  
20 say that's a part of the APD, that the surface --  
21 the APD will not get approved until the surface  
22 portion is approved by biology and the NRS, the  
23 natural resource specialist.

24 Q. When you said in your testimony that the  
25 APD -- or that the BLM has approved your locations,

1     you were speaking only of the surface use portion?

2           A.     Yes, that is correct.

3           Q.     Thank you.

4                   Now you also said, in your opinion, one of  
5     Burnett's proposed locations would not comply with  
6     the surface use restrictions.

7           A.     Not only in my opinion. I had a BLM  
8     representative with me that I took, and I asked  
9     their opinion.

10                   And they said they are not enrolled in the  
11     CCA, because they were not at the time, so there was  
12     a different set of rules.

13           Q.     All right. You are not the person that  
14     decides whether or not Burnett's proposed locations  
15     are acceptable or not, are you?

16           A.     No.

17           Q.     And the BLM will make that decision, will  
18     it not?

19           A.     BLM and fish and wildlife as well.

20           Q.     And just as you have negotiated Concho's  
21     proposed locations, wouldn't you expect that Burnett  
22     will do the same thing, make sure their surface  
23     locations are acceptable?

24           A.     I don't work for Burnett.

25           Q.     Okay. Now, the other thing.



1 Now that you have heard the testimony that  
2 Burnett is a contracting party under the CCA, it  
3 will have precisely the same benefits under the CCA  
4 as Concho will, will it not?

5 A. Absolutely.

6 Q. Just because the surface location of the  
7 proposed well is approved by the BLM does not  
8 guarantee that the APD will be approved, does it?

9 A. No, there's a lot more to it.

10 MR. GRABLE: Thank you. That's all I  
11 have.

12 MR. RANKIN: Mr. Ezeanyim, just one  
13 redirect by me.

14 HEARING EXAMINER EZEANYIM: Okay. Go  
15 ahead.

16 FURTHER EXAMINATION

17 BY MR. RANKIN:

18 Q. It's true that Burnett/Hudson now will  
19 have the same benefits under the CCA program?

20 A. Yes.

21 Q. But they will also have the same  
22 obligations, correct?

23 A. The same obligations.

24 MR. RANKIN: Thank you, Mr. Examiner.  
25 That's it.

1 HEARING EXAMINER EZEANYIM: What was your  
2 question?

3 MR. RANKIN: I just made the point that --  
4 I asked whether or not they'd have the same  
5 obligations under the CCA as Concho would.

6 HEARING EXAMINER EZEANYIM: Okay. Very  
7 good.

8 You are Mr. Olivas?

9 THE WITNESS: Yes, sir.

10 HEARING OFFICER EZEANYIM: You have  
11 applied for APD for those 17 wells?

12 THE WITNESS: Yes, sir.

13 HEARING EXAMINER EZEANYIM: When did you  
14 apply for those APDs?

15 THE WITNESS: There have been -- they --  
16 we -- shoot.

17 We started applying about five weeks ago.  
18 Actually, we've had some that we submitted sundries  
19 for some of the verticals that were approved. I  
20 believe there was five of them that I filed sundry  
21 forms to go from vertical to horizontal.

22 HEARING EXAMINER EZEANYIM: Okay. Now,  
23 when you apply to BLM, you are waiting for BLM to  
24 approve before you apply to OCD?

25 THE WITNESS: Yes, sir. You have got to

1 get an approval from the BLM before the OCD.

2 HEARING EXAMINER EZEANYIM: Because it is  
3 federal land.

4 THE WITNESS: Yes, sir.

5 HEARING EXAMINER EZEANYIM: So you haven't  
6 applied to OCD at all? You haven't applied to OCD?

7 THE WITNESS: We have -- well --

8 HEARING OFFICER EZEANYIM: You haven't?

9 THE WITNESS: You don't -- you don't apply  
10 to the OCD. What you do is -- or what I have been  
11 doing is, after the APD is approved from the BLM,  
12 the BLM has been giving it to the OCD.

13 HEARING EXAMINER EZEANYIM: For approval,  
14 right?

15 THE WITNESS: Yes, sir.

16 HEARING EXAMINER EZEANYIM: How long does  
17 it take BLM to approve the APD?

18 THE WITNESS: It's supposed to be four to  
19 six weeks, but they are extremely backlogged.

20 Last -- I went last week. They said they  
21 were about 380 APDs behind, so I can't really  
22 estimate --

23 HEARING EXAMINER EZEANYIM: How many?

24 THE WITNESS: 380 APDs behind. They're  
25 really short staffed.

1 HEARING EXAMINER EZEANYIM: Good luck,  
2 then.

3 Anyway, I think that's all I have for you  
4 now.

5 THE WITNESS: Thank you.

6 HEARING OFFICER EZEANYIM: Call your next  
7 witness, Mr. Rankin.

8 MR. RANKIN: Ms. Munds-Dry will call him.

9 MS. MUNDS-DRY: I'll take it back over  
10 now, Mr. Ezeanyim.

11 HEARING OFFICER EZEANYIM: Okay.

12 MS. MUNDS-DRY: We will call  
13 Mr. Broughton.

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

17 EXAMINATION

18 BY MS. MUNDS-DRY:

19 Q. Mr. Broughton, where do you reside?

20 A. Midland, Texas.

21 Q. By whom are you employed?

22 A. Concho Resources, or COG Operating, LLC.

23 Q. What do you do for Concho?

24 A. I am a senior geoscientist.

25 Q. Have you previously testified before the

1 division?

2 A. Yes, ma'am, I have.

3 Q. And were your credentials accepted and  
4 made a matter of record at that time?

5 A. They were, yes, ma'am.

6 Q. Are you familiar with the applications  
7 that Concho has filed?

8 A. I am.

9 Q. Are you familiar with the geology of the  
10 subject lands in both Concho and Burnett's  
11 applications?

12 A. I am, yes.

13 MS. MUNDS-DRY: Mr. Ezeanyim, we tender  
14 Mr. Broughton as an expert in petroleum geology.

15 MR. BRUCE: No objection.

16 HEARING EXAMINER EZEANYIM: Are you a  
17 geologist?

18 THE WITNESS: I am.

19 HEARING EXAMINER EZEANYIM: Okay. You  
20 said geoscientist. There might be a difference  
21 between geoscientist and geology.

22 THE WITNESS: That's --

23 HEARING OFFICER EZEANYIM: I want to know  
24 what you are going to present, you know, define, you  
25 know.

1 THE WITNESS: Primarily, I'm talking about  
2 geology here.

3 HEARING EXAMINER EZEANYIM: Okay. Yeah.  
4 Very good. I think you are well qualified.

5 MS. MUNDS-DRY: Thank you, Mr. Ezeanyim.

6 Q. (By Ms. Munds-Dry) If you would turn to  
7 what has been marked as Concho Exhibit Number 14,  
8 please. That's this first slide you see here.

9 A. Uh-huh.

10 Q. Identify and review this slide for the  
11 Examiner.

12 A. This is a slide that shows Yeso production  
13 across the entire shelf area. So you can see over  
14 towards the right side of the slide section, here  
15 (indicating) is the subject area here, the only --  
16 the area that does not have any wells on it.

17 So you can see there's a lot of Yeso  
18 production, yeah, from east of the subject area to  
19 well west of the subject area. And I handle the  
20 geology for this entire Concho part of the shelf.

21 Q. Let's turn to what has been marked as  
22 Concho Exhibit Number 15.

23 What does this slide show us?

24 A. This slide shows our original plan to  
25 develop these acres, just in the way that we have

1 developed other acreage in the area.

2 We typically drill four wells per 40-acre  
3 proration unit, so we -- we devised a scheme where  
4 we basically put theoretical locations on all of the  
5 40-acre locations. So that came out -- and of  
6 course we are excluding Section 25 here.

7 But this came out to 191 vertical 10-acre  
8 locations. So this was our original plan for  
9 development of this acreage.

10 Q. Okay. Let's turn to the next slide, which  
11 has been marked as Concho Exhibit Number 16.

12 What is this slide?

13 A. This shows a cross-section that will be my  
14 next slide. So it shows the Puckett, or the  
15 Maljamar area, with our proposed -- our planned  
16 vertical locations.

17 And then it shows Concho's Skelly unit,  
18 which lies just to the west of these subject lands.  
19 And they -- what we call the Maljamar area -- Concho  
20 calls the Maljamar area -- which lies directly east.  
21 I said this is directly west -- or directly east.

22 And then I have selected four wells to  
23 show a cross-section, to show the continuity of the  
24 formations of the reservoirs across the subject  
25 lands.

1 Q. Let's go to the next slide, which has been  
2 marked as Concho Exhibit 17. And I believe there's  
3 a big version --

4 A. Yeah, there's a foldout version of the map  
5 if you need to look at that.

6 Q. -- foldout version of the map in the  
7 exhibit notebooks.

8 Go ahead and review this for the Examiner.

9 A. Okay. These are the four wells that you  
10 just saw in the previous slide. And let me get it  
11 open here.

12 So this just shows what the lower section  
13 of a Yeso well will look like. So --

14 HEARING EXAMINER EZEANYIM: Are these the  
15 four wells you showed?

16 THE WITNESS: Yes. Those are in the  
17 previous slide. Yes, sir. Those are the four wells  
18 that I've selected.

19 And really, what we're trying to show here  
20 is the continuity of these formations across the  
21 subject properties.

22 Up here (indicating) at the top is the  
23 Glorieta.

24 This little sandstone here (indicating)  
25 marks the top of the Yeso, or the Paddock member of



1 the Yeso.

2 Here (indicating) you have the top of the  
3 Blinebry.

4 And then here (indicating), you have the  
5 base of the Blinebry, which is the top of the Tubb  
6 sand. Okay?

7 So this -- this is the productive  
8 reservoir interval that we're looking at.

9 Q. If you could, describe the Yeso for  
10 Mr. Ezeanyim. I know he has studied it in some  
11 detail, but for this case and to remind us all, what  
12 does this rock look like?

13 A. Okay. The Yeso, the Paddock and Blinebry,  
14 are -- it's a dolomite formation, highly  
15 heterogeneous. Typically, the porosity is quite a  
16 bit higher in the Paddock member than it is in the  
17 Blinebry member. But it's primarily dolomite with  
18 minor silts and some anhydrite component to it,  
19 though probably not critical to the production.

20 It's a heterogeneous rock, which means  
21 that the porosity and permeability vary. Okay?

22 As an example of this, you can see in this  
23 particular well in the Paddock interval, the  
24 porosity is all towards the top.

25 Here (indicating), it's further down in

1 the section.

2 And in both, it's a little bit higher than  
3 in these (indicating) wells. So I've selected these  
4 four wells to demonstrate the heterogeneity of the  
5 formation.

6 I will make a note here, also,  
7 typically -- not typically, but almost exclusively,  
8 there's about a hundred feet of tight Paddock rock  
9 at the base of what we call the Paddock porosity.  
10 So the bottom 75 to 100 feet of the Paddock is  
11 tight. It's not porous or permeable. Okay?

12 Then you get into the Blinebry interval  
13 down here, where the porosity is considerably lower,  
14 and permeability will be lower also. But we have  
15 found all of these intervals to be economically  
16 productive, even though the porosity is lower in the  
17 Blinebry. It's a much thicker section. It's  
18 roughly a thousand feet thick in this area.

19 The Paddock is probably closer to 500 feet  
20 thick, with 400 feet of it being porous.

21 HEARING EXAMINER EZEANYIM: What's the  
22 typical porosity on the Paddock?

23 THE WITNESS: Typical porosity on the  
24 Paddock ranges from -- well, we use a 3 percent  
25 porosity cutoff. But I've seen -- I have seen

1 porosity as high as 20 percent in some streaks in  
2 the Paddock. It's highly variable, and you can see  
3 how variable it is.

4 HEARING EXAMINER EZEANYIM: Yes, I can see  
5 it.

6 THE WITNESS: I mean, it ranges -- the  
7 productive part probably ranges from 6 to  
8 15 percent, but we have seen some instances where  
9 it's higher.

10 HEARING EXAMINER EZEANYIM: On the --  
11 what's typical on the Blinebry?

12 THE WITNESS: Typical, of course, is --  
13 with the low end cutoff of 3, I have seen porosities  
14 maybe as high as 10 percent, but it's only over a  
15 very small interval. I mean you don't have big  
16 thick intervals of 10 percent porosity in it.

17 So it, again, is highly variable  
18 laterally, vertically, you know, north, south, east,  
19 west. It varies in every direction.

20 HEARING EXAMINER EZEANYIM: And  
21 permeability, do you have an idea?

22 THE WITNESS: Permeabilities range from,  
23 well, zero to, you know, 20, 30, 40 millidarcies.  
24 That would be the highest that you would expect to  
25 see.

1 HEARING EXAMINER EZEANYIM: A zero

2 permeability won't produce anything.

3 THE WITNESS: Right. Zero doesn't produce  
4 anything. I mean, you've got zero percent porosity  
5 rock in here, and I would say the permeability in  
6 that is probably zero.

7 HEARING EXAMINER EZEANYIM: Okay. Go  
8 ahead.

9 Q. (By Ms. Munds-Dry) Let's turn, then,  
10 to -- put that away for now, and let's turn to  
11 Concho Exhibit 18. It should be our next slide.

12 A. Okay.

13 Q. What is this slide?

14 A. This is just another depiction of one of  
15 the previous slides. It show our 191 proposed  
16 vertical well locations, the 10-acre locations.

17 And in this case, it shows it on a -- with  
18 an aerial photograph, a satellite photograph.

19 And I did this just to show the draw  
20 running through there, the highway, just so you  
21 could get some kind of a feel for the -- for the way  
22 that the surface looks.

23 And then, of course, just west of that and  
24 just east of that, the dots -- the blue and red  
25 dots, those are Yeso wells. The red -- the red dots

1 are Paddock wells, the blue dots are Blinebry wells,  
2 and then the half-and-halves are combo wells. And  
3 those are all operated by Concho, all the ones that  
4 you see in this picture.

5 Q. Okay. If you could turn to the next  
6 exhibit please, Mr. Broughton, Exhibit Number 19.

7 What does this slide show us?

8 A. Well, we had asked Mr. Olivas and his  
9 group to go stake one 10-acre well per 40-acre  
10 proration unit across these three sections.

11 He came back, and these were the only  
12 locations that he could get -- there were 35 of  
13 them -- and that's because of the surface  
14 challenges: The draw, the highway, but primarily  
15 the dune fields, with the blown out dunes where the  
16 sand dune lizards inhabit.

17 So we were quite shocked to find, out of  
18 191 possibilities, all we could get was 35. So, I  
19 mean, that equated to basically 18 percent of the  
20 total number of wells that we would like to drill  
21 were actually drillable or approvable by the BLM  
22 because of the surface conditions.

23 Q. Okay. Let's go to the next slide, Exhibit  
24 Number 20.

25 What does this show us?

1           A.     Okay. This is what we're calling our  
2     blackout map. So what we tried to show here is  
3     the -- with the backed out area -- is the area that  
4     is not going to be approved by the BLM. This is  
5     areas that are going to be excluded because of the  
6     surface challenges.

7                     So from an acreage standpoint, we only  
8     were able to get 35 10-acre locations. So,  
9     basically, we're developing 350 acres out of the  
10    total 1,910 available acres. And that, of course,  
11    also equates to 18 percent.

12                    So what we're saying is 82 percent of  
13    this -- of this acreage -- is undevelopable in a  
14    vertical sense. That's when we had to back up and  
15    say, you know, we are never going to get this done.  
16    We have got to go horizontally to do this.

17                    So that's -- this is what drove our  
18    decision. This -- when we got to looking at this  
19    map, how we could fit vertical locations in there,  
20    it became obvious we couldn't.

21           Q.     Thank you, Mr. Broughton.

22                    Let's then turn to what Concho's  
23    horizontal development plans are. If you would look  
24    at --

25                    HEARING EXAMINER EZEANYIM: Before you go

1 on, this blackout section?

2 THE WITNESS: Uh-huh.

3 HEARING OFFICER EZEANYIM: Other than CCA,  
4 is that applicable to all operators?

5 THE WITNESS: Pardon me?

6 HEARING EXAMINER EZEANYIM: The blackout  
7 section, other than CCA, is that also applicable to  
8 all operators?

9 THE WITNESS: Yes. This is the BLM -- you  
10 know, these locations were approved in accordance  
11 with BLM regulations, and they were applied to us as  
12 a member of the CCA. Okay?

13 So, yes, this was approved for any  
14 operator who is part of a CCA. This would apply to  
15 the --

16 HEARING EXAMINER EZEANYIM: The whole  
17 third section is blacked out.

18 THE WITNESS: Pardon?

19 HEARING OFFICER EZEANYIM: The whole third  
20 section is blacked out.

21 THE WITNESS: Right. Right. 82 percent  
22 of these three sections is undrillable in a vertical  
23 sense. That's what we're showing here, yes, sir.  
24 This entire area is covered with sand dunes.

25 HEARING EXAMINER EZEANYIM: Okay. Those

1 red dots, are they wells or what are they?

2 THE WITNESS: No, no. The red diamonds  
3 are the actual -- those were the wells that we were  
4 able to get approved. Okay?

5 So you'll notice that those are -- it is  
6 not blacked out around those particular locations.

7 HEARING OFFICER EZEANYIM: Oh, okay.

8 THE WITNESS: So the red diamonds where  
9 the drillable locations based on the surface  
10 constraints. Those are the ones that the BLM  
11 on-site approved. Out of the 191, those are the  
12 only 35 that they would approve under -- under the  
13 constraints that the CCA put upon us.

14 HEARING EXAMINER EZEANYIM: Okay.

15 Q. (By Ms. Munds-Dry) Let's go to Concho  
16 Exhibit 21, and this is another big foldout.

17 Mr. Broughton, what does this show us, and  
18 the slide shows it as well?

19 A. So we backed up and we said, "All right,  
20 we can't drill vertical wells. We're not ever going  
21 to develop all of this acreage vertically. We're  
22 going to have to come up with a horizontal scheme."  
23 So we went and put two wells per 160-acre -- per  
24 160 acres.

25 So you will notice we've got -- at the



1 bottom of Section 24, we lined up two wells per  
2 proration unit, or per line.

3 HEARING EXAMINER EZEANYIM: Two wells, two  
4 vertical wells?

5 THE WITNESS: Two horizontal wells.

6 HEARING EXAMINER EZEANYIM: Per 160?

7 THE WITNESS: Yes, per 160. So you will  
8 see -- as an example, Section 24, the squares are  
9 our surface locations, and those wells would go from  
10 south to north, completely traversing Section 24.

11 The same thing in Section 13 and in  
12 Section 12.

13 And we did this to minimize our surface  
14 impact. We tried to align the wells, and you'll  
15 notice along the boundary of Section 12 and 13 that  
16 we put our surface locations really very near each  
17 other, and that was to minimize the surface impact.

18 I mean, that's what's driving the whole  
19 thing, is the availability of surface locations.

20 HEARING EXAMINER EZEANYIM: And you're  
21 drilling from south to north?

22 THE WITNESS: In Section 24 we had planned  
23 to drill from south to north.

24 In Section 13 we would be going from north  
25 to south.

1 And then in Section 12 we would be going  
2 from south to north.

3 But you'll notice that this changes, when  
4 we got our final approvals, in the next exhibit.  
5 Okay? So this was -- this was a plan. This was  
6 just what we put on paper.

7 When we went to the BLM and tried to get  
8 approvals, I think the next -- the next exhibit will  
9 address what we were able to actually do.

10 Q. (By Ms. Munds-Dry) I think we have one  
11 more slide before that, so let's turn to Concho  
12 Exhibit 22.

13 HEARING EXAMINER EZEANYIM: Before you go,  
14 on those two wells for the 160 acres, you have two  
15 wells there?

16 THE WITNESS: Right.

17 HEARING EXAMINER EZEANYIM: Each of those  
18 wells would have three laterals?

19 THE WITNESS: That is correct. Yes, sir.  
20 That is correct. That's the only way we can exploit  
21 the entire 1,500 feet of Yeso formation, is to have  
22 three laterals. You can't do it with one.

23 HEARING EXAMINER EZEANYIM: One to the  
24 Paddock or --

25 THE WITNESS: Two in the -- one in the mid

1 to lower Blinebry, another in the mid to upper  
2 Blinebry, and then one in the Paddock, yes, sir.  
3 That's our plan. That's the only way we believe  
4 that we can exploit and produce all the hydrocarbons  
5 available to us.

6 Q. (By Ms. Munds-Dry) Okay. Let's go to  
7 Exhibit 22, the next slide.

8 This just further discusses the surface  
9 impact, correct?

10 A. This is really very similar to the  
11 previous slide. This just is demonstrating how we  
12 attempted to minimize our surface impact by just  
13 drilling -- having surface location in these  
14 ellipses that you will see. There is one along the  
15 boundary of 24/25, one along the boundary of 12 and  
16 13, and then one up in the northwest corner of 12.

17 HEARING EXAMINER EZEANYIM: Can you  
18 explain what you're trying to do here?

19 THE WITNESS: Well, we are trying to  
20 demonstrate to you how we are minimizing our surface  
21 impact. All of the wells are going to be drilled  
22 along very, very minimal surface impacts, the  
23 surface locations.

24 HEARING EXAMINER EZEANYIM: That's not  
25 within the constrained areas?

1 THE WITNESS: That's not within the  
2 constraints, yes, sir.

3 So now, still, again, this is a plan.  
4 This is not what the BLM finally approved, which I  
5 believe you'll be seeing next. Okay? So this was  
6 our plan. We were going to -- we were going to try  
7 to drill eight laterals -- well bores per section,  
8 with three legs in each lateral. And that would  
9 reduce the necessity of drilling eight vertical  
10 wells. So we're trying to -- trying to use one  
11 lateral to cover eight 10-acre locations.

12 Q. (By Ms. Munds-Dry) Okay. Let's go to  
13 Concho Exhibit 23 if we could, please, the next  
14 slide.

15 HEARING OFFICER EZEANYIM: Is that the  
16 same thing we have?

17 THE WITNESS: This is going to be  
18 different here.

19 HEARING OFFICER EZEANYIM: Okay. Go  
20 ahead.

21 THE WITNESS: We asked Mr. Olivas and his  
22 group to go and stake all of the locations that you  
23 just saw in the previous slide.

24 HEARING OFFICER EZEANYIM: Okay.

25 THE WITNESS: Well -- and I -- also on

1 this slide we have depicted -- in the gray stippling  
2 we have the -- what the BLM calls the exclusion  
3 area. These are the areas where you're not going to  
4 be allowed to drill.

5 Q. (By Ms. Munds-Dry) That's the same thing  
6 that Mr. Olivas showed in a blown-up fashion  
7 earlier?

8 A. Right. This is just another depiction of  
9 the same exclusion areas, based on the -- based on  
10 the lizard habitat.

11 So these are --

12 HEARING EXAMINER EZEANYIM: Those are  
13 shown in the yellow?

14 THE WITNESS: Excuse me?

15 HEARING OFFICER EZEANYIM: Forgive me, I  
16 don't follow. Are those the exclusion areas in  
17 yellow?

18 THE WITNESS: Well, it's actually a gray  
19 shading.

20 HEARING OFFICER EZEANYIM: Oh, okay.

21 THE WITNESS: It's a gray shading. The  
22 yellow is Concho leasehold, the yellow background.

23 HEARING OFFICER EZEANYIM: Okay.

24 THE WITNESS: The gray area, the odd  
25 shapes there that you see --

1 HEARING OFFICER EZEANYIM: Yeah.

2 THE WITNESS: -- that's the lizard  
3 exclusion area.

4 HEARING OFFICER EZEANYIM: Oh, the sand  
5 dunes?

6 THE WITNESS: The sand dunes, because of  
7 the sand dunes.

8 So this is -- this is the 17-well program  
9 that we're able to come up with, with BLM approval,  
10 under the CCA.

11 The squares, those are the surface  
12 locations. And you'll notice we've tried to group  
13 those into certain areas to minimize the surface  
14 impact.

15 HEARING OFFICER EZEANYIM: Okay.

16 THE WITNESS: So the surface locations,  
17 you will notice, are clustered in specific areas  
18 that are not within the exclusion area.

19 Those are the nearest locations that the  
20 BLM would grant, so that's what we were -- that's  
21 what we are dealing with here. It's a very  
22 challenging surface issue.

23 HEARING EXAMINER EZEANYIM: Okay.

24 Q. (By Ms. Munds-Dry) Okay. Let's turn to  
25 the next exhibit, if we could, please, which should

1 be Exhibit Number 24.

2 HEARING EXAMINER EZEANYIM: Okay.

3 Q. (By Ms. Munds-Dry) What does this show  
4 us, Mr. Broughton?

5 A. This is showing Concho's program for  
6 developing the three sections in question, overlaid  
7 by the six approved APDs that Burnett has -- has  
8 secured.

9 And what we're depicting here, or trying  
10 to show here, is how those fall right in line with  
11 the horizontal well and would -- would impede the  
12 ability to drill full-length laterals, which would  
13 optimize the development of each of these sections.

14 Q. Mr. Broughton, were you present for  
15 Mr. Evans' testimony?

16 A. I was, yes.

17 Q. And were you present for the questions  
18 about how it would impact -- how our horizontal well  
19 program would be impacted by Burnett's vertical well  
20 program?

21 A. Yes, I was.

22 Q. So this is the visual depiction of that?

23 A. This is just a visual depiction to show  
24 that those wells fall in line with a lateral well, a  
25 horizontal well, and would make -- make drilling of

1 that lateral well difficult, if not impossible.

2 HEARING EXAMINER EZEANYIM: All right. In  
3 Section 12, what's that red dot in the forbidden  
4 area?

5 THE WITNESS: Okay. That is the Hudson  
6 Knockabout well that you've heard reference to  
7 several times. That's actually a Yeso well that  
8 was -- that's the Hudson Oil Morrow well that was  
9 dry-holed in the Morrow and completed in the Yeso.

10 So that is actually producing from the  
11 Paddock at this point.

12 HEARING EXAMINER EZEANYIM: But the BLM  
13 approved that well?

14 THE WITNESS: Well, they must have, but  
15 this was drilled in 2005. And I don't think the  
16 lizard issue was quite as big of a deal at that  
17 point. So this was done a number of years ago.

18 This was actually drilled in 2005. I'm  
19 not certain when it was completed into the Paddock.  
20 But, yes, it probably wouldn't be granted today  
21 under the current surface constraints.

22 HEARING EXAMINER EZEANYIM: So when did  
23 you guys start having CCA with the BLM?

24 THE WITNESS: I don't know the exact date  
25 of that. That's -- that's really more -- but I



1 believe it was -- well, I don't know the answer to  
2 that. That's really not my -- my area. That's more  
3 of a land question.

4 HEARING EXAMINER EZEANYIM: Is that after  
5 2005?

6 THE WITNESS: Oh, yeah, much after 2005.

7 HEARING EXAMINER EZEANYIM: Okay. Go  
8 ahead.

9 Q. (By Ms. Munds-Dry) Okay. Let's then turn  
10 to the next exhibit, Exhibit 25.

11 What are you showing here?

12 A. This slide is kind of a busy slide, but it  
13 depicts the data that Concho has in this particular  
14 area.

15 The pink circles, the pink -- well, I  
16 guess they're octagons -- are wells with open-hole  
17 logs.

18 The black diamonds with the stippling in  
19 them, those are wells with sidewall cores.

20 The red triangles that face to the left,  
21 or to the west, those are wells with FMI logs, image  
22 logs.

23 And then the large purple stars, of which  
24 there's five, are wells in the immediate area where  
25 Concho has full cores.

1           And this is to depict the amount of data  
2   that we have developed and analyzed in our -- you  
3   know, used in our completions and to determine what  
4   to do on a well-to-well basis with the completion.

5           HEARING EXAMINER EZEANYIM: Are these  
6   Concho wells?

7           THE WITNESS: Those are all Concho wells.  
8   And they're actually -- just in the picture you're  
9   looking at, there's 220 wells with open-hole logs,  
10   35 with FMI logs, 42 with sidewall cores, and 5 with  
11   hole cores.

12           And I would daresay there's not another  
13   saturation of data like this anywhere in this part  
14   of the world, maybe not in the world.

15           Q.     (By Ms. Munds-Dry) Mr. Broughton, besides  
16   making me hungry for Lucky Charms, what was your  
17   intent in forming this exhibit?

18           A.     It was just to show that Concho was  
19   actually gathering data, using data, actually  
20   high-end data, in the evaluation of our wells. And  
21   we're not -- we're not simply drilling holes and  
22   fracking them, we're actually using a fair bit of  
23   science.

24           Q.     And does Concho intend to continue to  
25   perform this kind of logging and some of this data

1 if it's awarded operations in Sections 12, 13, and  
2 24?

3 A. Absolutely, we will.

4 Q. What would you anticipate Concho -- what  
5 kind of logging and other types of data would Concho  
6 seek for its horizontal laterals?

7 A. Well, because we have got -- because we've  
8 got so many -- so much data right on each side of  
9 this, there's places where we might not run full  
10 open-hole logs.

11 But in each cluster of surface locations,  
12 we would propose running a -- drilling a pilot hole,  
13 running a full suite of open-hole logs, which would  
14 be spectral, gamma ray, resistivity, neutron density  
15 porosity, possibly an FMI, possibly sidewall cores,  
16 and we would run a mud log through it.

17 And then we -- in the horizontal section,  
18 we would run a mud log and a gamma ray tool.

19 Q. Were you present for -- I believe it was  
20 Mr. Haiduk's testimony -- where they went through  
21 the list of items that they plan -- the science that  
22 they plan to run on their wells?

23 A. I was here for that, yes.

24 Q. And do I understand from your testimony  
25 that you will plan to do something similar to that?

1           A.     Absolutely. Absolutely. We'll do  
2 something very similar to that.

3           Q.     I want to ask you about this water cut  
4 slide, but let's take care of a few other  
5 housekeeping matters.

6           A.     Okay.

7           Q.     In your opinion, Mr. Broughton, will the  
8 production from horizontal wells in these three  
9 sections be better than from vertical wells?

10          A.     It would be hard to say that, but the  
11 problem is the surface. You're not going to drill  
12 vertical wells. You won't be able to drill vertical  
13 wells.

14          Q.     So then given the circumstances here, the  
15 horizontal well is the best way to produce these  
16 reserves?

17          A.     It's the only way that we believe that you  
18 could produce these wells, yes.

19          Q.     Do you consider each of the quarter  
20 quarter sections in each of the project areas that  
21 we proposed here today to be perspective?

22          A.     Oh, absolutely. There's no reasonable --  
23 no reasonable geologist would look at the wells to  
24 the east and to the west and come up with any other  
25 conclusion.

1 Q. Do you consider each of those quarter  
2 quarter sections to be likely to contribute  
3 significant production from the Yeso formation and  
4 the proposed nonstandard units?

5 A. I do believe that, yes.

6 Q. Does Concho anticipate producing reserves  
7 from each of these quarter quarter sections?

8 A. We do anticipate that, yes.

9 Q. Will the granting of Concho's  
10 applications, in your opinion, be in the best  
11 interest of conservation, the prevention of waste,  
12 and the protection of correlative rights?

13 A. Yes, I do.

14 Q. I want to touch on one matter,  
15 Mr. Broughton.

16 Were you present for the presentation on  
17 the slide regarding water cut that I think  
18 Mr. Jacoby discussed?

19 A. I was here for that, yes.

20 Q. In your experience in the shelf, do you  
21 see more water as you go east?

22 A. Yes, I do. There's actually an oil/water  
23 contact in the Paddock that -- since I'm the  
24 geologist for both of these areas, I have the luxury  
25 of knowing where that oil/water contact first

1 becomes visible on logs, and it's over on the west  
2 side of our Skelly unit, and you get increasing --  
3 increasing water column.

4 What I mean by that is an increasing  
5 section of water compared to oil as you move to the  
6 east.

7 Further out to the east there's some wells  
8 one section further that have, really, virtually  
9 no -- or very little hydrocarbon column in the  
10 Paddock interval.

11 So it's very natural, as this dips to the  
12 east, that you would have an increase in water cut.

13 The key with the water is to mitigate it  
14 as best you can. But if you're not going to produce  
15 water, you're not going to produce oil either. So  
16 you have to -- you have to have a way to dispose of  
17 the water, which Concho has an extensive SWD system  
18 in this very area.

19 Q. Concho is capable of producing the water?

20 A. We're capable of producing water so that  
21 we don't leave oil behind. And we are currently  
22 injecting well over 100,000 barrels of water a day  
23 in the shelf area.

24 Q. And what is your opinion on the amount of  
25 oil production as you move east? Does it get higher

1 or lower?

2 A. You know, that's a question for the  
3 engineer. The oil cut might come up, but the total  
4 volume of fluids might go up also.

5 Q. Is it just a matter of economics, when  
6 you're dealing with water and oil ratios?

7 A. Yeah. We don't look really so hard at the  
8 oil cut or the water cut. We are concerned more  
9 with the economics.

10 And our ability to deal with the water and  
11 to eliminate it, or inject it, dispose of it, I  
12 guess, makes us not quite so fearful of the water.  
13 Because if you don't -- if you can't deal with the  
14 water, you are not going to get the oil, basically.

15 Q. Thank you, Mr. Broughton.

16 Did you either prepare -- or were Exhibits  
17 14 through 25 compiled under your direct  
18 supervision?

19 A. They were.

20 MS. MUNDS-DRY: Mr. Ezeanyim, we move to  
21 admit Exhibits 14 through 25 into evidence.

22 HEARING OFFICER EZEANYIM: Any objections?

23 MR. GRABLE: No objection.

24 HEARING EXAMINER EZEANYIM: Exhibits 14  
25 through 25 will be admitted.

1 MS. MUNDS-DRY: Thank you. That concludes  
2 my direct examination.

3 I pass the witness.

4 MR. BRUCE: Mr. Grable will ask the  
5 questions of this witness.

6 HEARING EXAMINER EZEANYIM: We'll take a  
7 10-minute break.

8 (A recess was taken from 5:01 p.m. to 5:17  
9 p.m.)

10 HEARING EXAMINER EZEANYIM: Okay. Now,  
11 let's go back on the record.

12 Where are we? Cross-examine?

13 MR. GRABLE: Cross-examine.

14 HEARING EXAMINER EZEANYIM: Okay. Go  
15 ahead, Mr. Grable.

16 EXAMINATION

17 BY MR. GRABLE:

18 Q. Is it Mr. Broughton?

19 A. Broughton.

20 Q. Mr. Broughton, pardon me.

21 A. That's fine.

22 Q. Mr. Broughton, I'm Bob Grable. I  
23 represent the Burnett and Hudson entities in this  
24 case. And we haven't met or spoken before right  
25 now, have we, sir?



1 A. No, we have not.

2 Q. Did you -- well, I don't believe you  
3 testified in the pool rules and allowable hearing  
4 back in May, did you?

5 A. I testified at the pool rules, not the --  
6 they split those two. I testified at the pool rules  
7 but not the allowable portion of that. I believe  
8 that's correct.

9 Q. Okay. Now, as I understand your  
10 testimony --

11 A. Uh-huh.

12 Q. -- COG's preference and your preference  
13 would have been to cover up these three sections  
14 with 10-acre verticals.

15 A. That was our initial plan, yes, sir.

16 Q. As the company has done in other areas  
17 where it operates?

18 A. That's our typical MO, yes, sir.

19 Q. In fact, in these various maps you have  
20 presented today -- I just happen to have out Number  
21 25.

22 A. Okay.

23 Q. Isn't it true that Concho has not drilled  
24 a single horizontal well in any of these yellow  
25 areas on this map?

1           A.     No. That is true, we have not. When we  
2     got this acreage, my -- my thought is that we might  
3     develop a lot of the shelf horizontally, but we're  
4     impeded by the fact that there's already a lot of  
5     vertical development, which leaves you doing  
6     horizontals just around the edges.

7                     So the answer is no, we haven't. Would we  
8     if we had a clean slate? Probably.

9           Q.     Well, if you will look at the northwest  
10    corner up here in Section 10 and 9, that's under  
11    the --

12          A.     Uh-huh.

13          Q.     It's all covered up with 10-acre vertical  
14    locations also?

15          A.     Yes. We don't operate that property.

16          Q.     But you have a 40 percent working  
17    interest?

18          A.     I don't know what our interest is, no,  
19    sir. That's operated by Apache.

20          Q.     I'm just a bit confused.

21          A.     Uh-huh.

22          Q.     Because I thought you told me at first  
23    your preference and your company's preference was to  
24    drill these three sections at issue in this hearing  
25    with 10-acre verticals.

1           A.     That was our initial thoughts, yes, sir,  
2     until we were impeded by the surface challenges.

3           Q.     But, again, you haven't drilled any  
4     horizontals anywhere else?

5           A.     Well, we have; not in this immediate area.  
6     There's so many vertical wells you couldn't drill a  
7     horizontal well.

8           Q.     But in these three sections there's one  
9     and only one vertical Yeso well operated by Hudson,  
10    right?

11          A.     I believe that's correct.

12          Q.     And despite that, your preference was  
13    still to drill these the same way you drilled  
14    this --

15          A.     That was our initial thoughts, yes, sir.

16          Q.     Okay. Now -- and that is how you  
17    proposed -- that's how your company proposed wells  
18    to Burnett and Hudson, with the 47 --

19          A.     Originally, yes, sir.

20          Q.     -- originals in January to February?

21          A.     That is true. Yes, sir.

22          Q.     Now it's also true, is it not, that Concho  
23    has not drilled a triple lateral horizontal well  
24    anywhere in New Mexico?

25          A.     No, sir, we have not.

1 Q. And I presume you haven't done that  
2 anywhere else that you operate in the United States.

3 A. Not that I'm aware of, no, sir.

4 Q. Have you drilled any dual horizontal  
5 laterals?

6 A. Not that I'm aware of.

7 Q. So this is your pioneering voyage?

8 A. That is true, yes, sir.

9 Q. You want to pioneer with two-thirds of  
10 Burnett Hudson's money?

11 A. They can go nonconsent.

12 Q. Well, would it be reasonable to step over  
13 here just across the line, where it's -- you have  
14 only got one well per 40, and experiment with one of  
15 these triple laterals with your own money instead of  
16 two-thirds of your partner's money?

17 A. Well, that's a 50-50 lease, also, so I  
18 don't -- we would have to get the approval of the  
19 50 percent partner in that.

20 Q. All right. Let's go back to the start a  
21 minute.

22 Are you intending with your exhibits --  
23 and I believe it was 16, when you showed a log  
24 cross-section.

25 A. The first big foldout?

1 Q. Yes, sir.

2 A. Okay.

3 Q. Are you intending, with the green coloring  
4 on here and your testimony about this, to give any  
5 evidence in this case about net pay in these  
6 reservoirs?

7 A. Any evidence about net pay?

8 Q. Yes, sir. Do you have net pay criteria?

9 A. 3 percent porosity. And these are neutron  
10 logs, so they're not going to have a water  
11 saturation on there.

12 But, yeah, our typical, in an open-hole  
13 log, would be 40 percent water saturation, 3 percent  
14 porosity.

15 Q. These little what I'll call flags down  
16 the -- on the first log section of these logs, are  
17 those computer-generated net pay flags?

18 A. They're computer-generated, yes, sir, pay  
19 flags.

20 Q. Does the owner or an operator of the log  
21 have to input information in the computer to tell it  
22 what to -- criteria for net pay to generate these  
23 net pay flags?

24 A. Yes. And the cutoff here, this would meet  
25 a porosity cutoff for these particular logs, yes,

1 sir.

2 Q. All right. Did you use -- which porosity  
3 curve or curves did you use to determine that  
4 cutoff?

5 A. This was only on a neutr- -- these are  
6 neutron logs. The reason I put this slide together  
7 was to demonstrate the heterogeneity of the  
8 formation and how -- the porosity magnitude and  
9 where it lies in the vertical section actually shows  
10 up. So that -- that was really the purpose of this  
11 particular cross-section.

12 Q. Okay. So you don't have any neutron  
13 density porosity curve --

14 A. Not on this -- not on this cross-section,  
15 that's correct.

16 Q. Do you have an opinion whether or not in  
17 these reservoirs the neutron density curve is a more  
18 accurate indicator of true porosity?

19 A. Oh, sure it is. Absolutely.

20 Q. But it's not on there?

21 A. I did not put it on here.

22 Q. Okay. Now, again, despite the  
23 heterogeneity of these sections, the perforations  
24 actually made in the sections treated in completion  
25 are the four separate approximate 200-foot sections

1 shown in the log by these interior big black marks,  
2 correct?

3 A. Yes, sir. Those are the perforated  
4 intervals, yes, sir.

5 Q. And that's consistent with your company's  
6 practice of perforating in four 200-foot blocks  
7 across -- one in the Paddock and three in the  
8 Blinebry?

9 A. For a combination well, that would be  
10 true, yes, sir.

11 Q. So despite the heterogeneity, you  
12 perforate in a uniform manner?

13 A. It's not necessarily uniform. The perms  
14 move around based on where the porosity shows up.

15 Q. But you don't even log all your wells, do  
16 you?

17 A. Sure we do.

18 Q. You take open-hole logs on all your wells?

19 A. We run open-hole logs on select wells, and  
20 we run cased-hole logs on infill wells. All wells  
21 are logged.

22 Q. Okay. Are those cased -- cased-logs, they  
23 are a considerably poorer indication of porosity  
24 than open-hole logs?

25 A. They would be less accurate, yes, sir.

1 Q. Have you done any net pay work on the  
2 wells in this reservoir?

3 A. Not net pay, no, sir.

4 Q. Have you done any sort of study to form  
5 the basis of an opinion that --

6 Well, let me back up and ask it this way.

7 A. Uh-huh.

8 Q. Did I understand your testimony to give an  
9 opinion that you believe your company's plan of  
10 development will result in less waste of producible  
11 hydrocarbons compared to the Burnett/Hudson plan?

12 A. As I understand the Burnett/Hudson plan,  
13 yes, I believe that. Yes, sir.

14 Q. But have you done any kind of study  
15 deriving net pay and expected production to form the  
16 basis of that opinion, or is that just your  
17 off-the-cuff opinion, looking at the various plans?

18 A. Well, I haven't done a study. But if you  
19 look at the coverage of our lateral wells with the  
20 two completions in the Blinebry and one in the  
21 Paddock, you're obviously contacting more rock.  
22 You're going to get more pay.

23 Now I haven't, you know, done a  
24 foot-by-foot study of it. But, I mean, it's just --  
25 logic tells you you are producing more hydrocarbon



1 if you're -- if you're producing the entire Yeso  
2 interval.

3 Q. Your plan, as presented, involves 17  
4 triple laterals. So that would be 51 laterals?

5 A. 17 times 3, yes, sir. That's correct.

6 Q. And the Burnett/Hudson plan, as submitted,  
7 I believe, is 24 double laterals, which would be 48  
8 laterals?

9 A. I don't know. I don't remember the  
10 numbers.

11 Q. Plus some verticals.

12 But if you don't know, how can you express  
13 an opinion that one is better than the other with  
14 respect to the range of plays?

15 A. Well, I knew that the -- I know, with two  
16 laterals, you're not going to contact as much rock  
17 as with three laterals. That, I do know.

18 I'm just basing it on coverage of the  
19 roughly 1,500-foot of Yeso formation.

20 Q. Let me ask it again.

21 If the Burnett plan involves 48 horizontal  
22 laterals plus four or five verticals versus 51  
23 laterals on Concho's side, how is it that you can  
24 give an opinion that your plan is materially better  
25 for prevention of waste than the Burnett plan?

1           A.     Because we are contacting the entire Yeso  
2 interval in each of our well bores, where Burnett  
3 would not be.

4           Q.     Have you calculated the total footage in  
5 the productive area between the two plans?

6           A.     No, I have not.

7           Q.     If they were equivalent, would you have  
8 the same opinion?

9           A.     If the total footage was equivalent?

10          Q.     Yes.

11          A.     I don't know how to answer that, sir.

12          Q.     But anyway, you haven't done that study?

13          A.     I haven't done a study, no.

14          Q.     Now, how can you be confident -- well, let  
15 me ask you this.

16                 Are you confident that these triple  
17 laterals will even work, that you can mechanically  
18 drill one and produce it without considerable  
19 problems?

20          A.     Well, that's more a question for our  
21 drilling engineer, who will be up. But the belief  
22 in Concho is that it can. Multiple lateral wells  
23 are drilled in industry all the time. We believe  
24 that it's a viable option.

25          Q.     But your company hasn't drilled any?

1 A. No, sir.

2 Q. Even dual wells?

3 A. Not to my knowledge, no, sir.

4 Q. Yet, based upon no experience and no real  
5 study, you want this division to approve your plan  
6 versus the Burnett plan?

7 A. Well, at one time, no one messed with the  
8 Blinebry, and now it's an economically viable  
9 producer. So you've got to start somewhere.

10 Q. Were you -- you were in the room when  
11 Mr. Jacoby presented what I believe were his  
12 Exhibits 8, 9, and 10, that were similar to the  
13 exhibits that he presented in the pool rules hearing  
14 comparing the Burnett production.

15 I'm not going to try to put them back up.  
16 I think Mr. Ezeanyim will remember the exhibits.

17 Where we looked at the Burnett/Hudson --  
18 the Burnett property surrounding the Concho Harvard  
19 Federal and looked at the first six months' and now  
20 the first 12 months' production.

21 A. I was here for that, yes, sir.

22 Q. Do you have any basis to dispute the  
23 conclusions reached there about the greater  
24 productivity and the lower GORs that Burnett --

25 A. That's a reservoir engineering question.

1 I wouldn't -- I wouldn't address that.

2 Q. All right. Now, would you believe it  
3 would be an accurate way, as an analogy to that, to  
4 compare the Burnett horizontals that's actually  
5 drilled in these reservoirs with the COG horizontals  
6 it has drilled, and compare them on a lateral foot  
7 basis for -- productivity per lateral foot?

8 A. You could probably draw some kind of  
9 comparison, yes, sir.

10 Q. To compare a 3,000-foot lateral versus a  
11 4,000, or a 4,000 versus a 2,000, you've got to do  
12 something to normalize the extra productivity by the  
13 extra reach in the reservoir, don't you?

14 A. You -- I mean, you -- I mean, you would  
15 have to normalize completion techniques and, you  
16 know, mud log shows. And, I mean, there are other  
17 things that would go into it.

18 But, in general, I would go with you and  
19 say that there's some comparative.

20 Q. Productivity per foot -- perforated foot  
21 in the productive interval?

22 A. Could you repeat that? I'm not with you  
23 yet.

24 Q. Well, if you look from -- what do you call  
25 it, the penetration point of the horizontal coming

1 down?

2 A. Okay. Where it first contacts the Yeso?

3 Q. Out to the toe?

4 A. Okay.

5 Q. And look, maybe, from the first  
6 perforation to the last, and look at the number of  
7 drilled feet. And then look at the productivity  
8 from that well and express it in barrels of oil per  
9 foot or something like that.

10 And then you could do the same thing with  
11 other wells. And do you think that would be a  
12 reasonable way to compare productivity of horizontal  
13 wells?

14 A. Well, it could be, except that the rock,  
15 laterally, is heterogeneous. So it --

16 Q. Yes. I understand that. But that's true  
17 for any well in this reservoir?

18 A. That is absolutely true, yes, sir.

19 Q. Now, just again, a general question. It  
20 doesn't matter which map we look at, and I just  
21 happen to have this last one out that's 25.

22 A. Okay.

23 Q. If you look over in the two sections, I  
24 guess Sections 14 and 23, opposing 13 and 24,  
25 immediately to the west.

1           A.     14 and 23, yes, sir. I'm with you.

2           Q.     Just eyeballing that, doesn't it look like  
3 most of that is developed on a 20-acre pattern  
4 rather than a 10-acre pattern?

5           A.     No, sir, it's not.

6           Q.     It's not? Well, we --

7           A.     It's not yet. We have a limited -- this  
8 is an area where we have a farmout from Chevron, and  
9 we have a very strictly-defined number of wells that  
10 we can drill per year there, and so that's why it  
11 has not been more developed.

12          Q.     Do you also know, or are you aware, that  
13 Chevron has, in fact, nonconsented some proposals to  
14 downspace from 20 to 10 acres in this area?

15          A.     I'm not aware of that, no.

16                   HEARING EXAMINER EZEANYIM: Mr. Grable,  
17 ask your last question about Chevron. What did you  
18 say? What was your question?

19                   MR. GRABLE: In that area I was asking him  
20 about, to the west of the three sections at issue, I  
21 asked him if it appeared to be developed on 20 acres  
22 versus 10.

23                   And he said, well, their ability to drill,  
24 as I understood his answer -- he can speak for  
25 himself -- was limited by the terms of the farmout

1 from Chevron.

2 THE WITNESS: That is correct, yes, sir.

3 Q. (By Mr. Grable) And Chevron has a working  
4 interest on this section?

5 A. We're 50-50 partners, yes, sir.

6 HEARING EXAMINER EZEANYIM: And then you  
7 say Chevron wanted to drill on 10 or 20?

8 MR. GRABLE: Well, I asked him if he knew  
9 whether or not Chevron had, in fact, nonconsented a  
10 proposal to drill down to 10s in some of these  
11 sections. And as I understood his answer, he wasn't  
12 aware of it. But that's what I was asking.

13 HEARING EXAMINER EZEANYIM: Okay. So  
14 Chevron went nonconsent?

15 MR. GRABLE: Well, I can't testify.  
16 But...

17 HEARING EXAMINER EZEANYIM: I'm sorry, I  
18 want to understand your question. I wasn't  
19 understanding your question.

20 Q. (By Mr. Grable) My question is: Have any  
21 10-acre wells been proposed, to your knowledge, in  
22 which Chevron went nonconsent in those sections  
23 immediately west of the --

24 A. Not to my knowledge, no, sir.

25 Q. Okay. Do you know the number of wells

1 Chevron permitted on the farmout in a density sense,  
2 like 40-acre -- one per 40 or one per -- or two per  
3 40 or --

4 A. Well, it's actually simpler than that.  
5 It's just a number. It's 25 per year in the Skelly  
6 unit.

7 So at the beginning of the year, I -- at  
8 the beginning of the year we give them a menu of  
9 wells that we think they will like, and there's  
10 probably 50 or 60 on there, and they pick the ones  
11 they want to do.

12 So we don't propose anything to them that  
13 they haven't already preselected. So why they would  
14 nonconsent something, I'm not certain. They pick,  
15 in advance, the ones they want to do on a yearly  
16 basis.

17 HEARING EXAMINER EZEANYIM: Now,  
18 Mr. Grable, before you go -- I'm not asking you,  
19 you're not a witness. You are just an attorney, so  
20 don't think I'm asking you as a witness to answer  
21 the question.

22 MR. GRABLE: Yes, sir.

23 HEARING OFFICER EZEANYIM: I just wanted  
24 to understand the question.

25 MR. GRABLE: Right. Well, I --



1 HEARING OFFICER EZEANYIM: Because, as the  
2 legal counsel, you are not a witness, so I'm not  
3 asking you to answer the question. I want you to  
4 tell me what the question was, and then I will see  
5 if I can get an answer from the witness.

6 MR. GRABLE: Yeah. I don't know.

7 We had some information, I don't know  
8 whether it's true or not, but some of our people had  
9 a belief that Chevron had, in fact, gone nonconsent  
10 on some 10-acre wells. But if this witness doesn't  
11 know, then that's the end of the inquiry.

12 THE WITNESS: It would have been before I  
13 was involved in these fields. Because all of their  
14 approvals had been preapproved, you know, so they'd  
15 have no reason to nonconsent.

16 HEARING EXAMINER EZEANYIM: And you don't  
17 know whether they went nonconsent?

18 THE WITNESS: I don't know about prior to  
19 me being the geologist for this field.

20 Q. (By Mr. Grable) When did that begin?

21 A. I have been over this field for  
22 probably -- I don't know the exact date, but  
23 probably around the beginning of 2010. So I'm  
24 certain in the last two -- in 2010 and 2011 they  
25 haven't nonconsented any 10-acre wells. That I do

1 know. I'll answer that.

2 Q. Now, looking at your Exhibit 24.

3 A. Okay.

4 Q. As I understand the opinion there  
5 expressed that was -- at least in part the basis for  
6 your prevention of waste testimony -- was that the  
7 Burnett/Hudson proposed vertical wells would  
8 interfere with your company's proposed horizontal  
9 wells; and, thereby, cause waste.

10 A. It would cause us to not be able to drill  
11 the full lateral length that we prefer to drill.

12 Q. But isn't the supposition underlying that  
13 opinion that both companies' plans of development  
14 would be approved and implemented?

15 I mean if only one company is approved,  
16 then there won't be any interference between the  
17 Burnett plan and the COG plan, will there?

18 A. If only one company is approved?

19 Q. Yes.

20 A. I would say that's right, yes.

21 Q. All right. Just as a matter of curiosity,  
22 do you have an opinion as to how close a projected  
23 horizontal path would need to be to a vertical well  
24 bore in order for it to interfere with it?

25 A. That wouldn't be my realm. That would

1 be -- the engineers would have to answer that.

2 Q. Just looking at the size of these green  
3 diamonds representing the Burnett surface locations,  
4 each of those squares in which they reside is a  
5 40-acre square, right?

6 A. That is correct, yes, sir.

7 Q. So the size of those little green squares,  
8 those location markers, are probably five or more  
9 acres as depicted on this map.

10 A. Well, this is not to scale. This is just  
11 a -- this is just a depiction of where those wells  
12 lie. It's not going to be to scale.

13 I couldn't speak to exactly the size of  
14 the Burnett proposed pad.

15 Q. Well, looking at -- as to this  
16 interference issue --

17 A. Uh-huh.

18 Q. -- as I understand your plan, at the very  
19 tip-top --

20 A. Yes.

21 Q. -- on the north part of Section 12, you're  
22 going to drill an east/west lateral across the north  
23 line?

24 A. That is a plan, yes.

25 Q. Which intersects at least two of your

1 proposed north/south laterals.

2 A. No, it won't intersect. The two  
3 north/south ones that are showing up right there  
4 would not contact or penetrate the Yeso until south  
5 of that particular location. So this was designed  
6 to not have that interference.

7 Q. Okay. Well, couldn't -- you know, even in  
8 the bizarre circumstance that Burnett and Hudson  
9 could both drill the wells they want to drill there,  
10 which I'm not sure how in the world that happens --

11 A. Right.

12 Q. -- but anyway, couldn't you also, you  
13 know, move around the existing well bores of  
14 Burnett, just as you have moved around existing  
15 proposed well bores of COG up there on the north  
16 side?

17 A. Well, it's not just the well bore, it's  
18 the frac line. So if there's a vertical well that's  
19 been fracked and you're drilling a horizontal  
20 through it, that might cause some concern on the  
21 drilling side.

22 So it's not merely just the actual well  
23 bore and the casing that would be there, it would be  
24 the extension of that well bore via the fracture,  
25 the hydraulic fracture.

1 Q. Yes, sir. But isn't it a general rule the  
2 more fractures the better?

3 A. If you have a well that's fracked and  
4 producing, I don't think you would want to be  
5 drilling through that. You might lose some drilling  
6 fluid or cause some other drilling problems.

7 Q. Have you ever heard of simo fracs, or  
8 simultaneous fracs?

9 A. Sir, I've not heard of that. I'm sorry.

10 Q. Okay. Now, going back to your Exhibit 25.

11 A. Okay.

12 Q. In general, your company believes, as  
13 Mr. Haiduk and the Burnett witnesses have testified,  
14 that it's good operator practice, prudent operator  
15 practice, to get as much data as you can from a  
16 vertical penetration through a section like this  
17 before you decide where to kick off and drill  
18 horizontally?

19 A. Yes. And that's why we would drill pilot  
20 holes in select spots.

21 Q. And pilot holes are just another word for  
22 a vertical well?

23 A. That is true.

24 Q. And so you would drill that vertical well  
25 and get -- gather the data in the same fashion that

1 Burnett is proposing?

2 A. A similar fashion, sure.

3 Q. In a similar fashion.

4 Would you then drill out the bottom of  
5 that pilot well as your bottom lateral?

6 A. No, not out the bottom. We would  
7 penetrate the entire Yeso interval through the Tubb,  
8 we would set 7-inch, come up, cut a window for the  
9 lower lateral in the Blinebry and for the upper  
10 lateral in the Blinebry and then for the Paddock,  
11 sequentially. It would be from the bottom up.

12 Q. Now -- and again, I don't mean to beat the  
13 point to death.

14 A. Okay.

15 Q. But with all of this data that you have  
16 gathered from the east to the west --

17 A. Uh-huh.

18 Q. -- your company's decision, based upon  
19 that data, has never been to drill a horizontal  
20 well. All of these --

21 A. They are already impeded by vertical  
22 wells. I mean we would like to, in some spots,  
23 probably drill a horizontal well, but you're left  
24 nibbling at the edges, off the shelf edge, or up to  
25 the north.

1 Q. Well, I don't want to argue with you, but  
2 a lot of this area is not fully developed. If you  
3 will look at Section 11, it's not even fully  
4 developed on 40s yet, is it?

5 A. That's another area where we share with  
6 Chevron, and we would have to seek their approval to  
7 do a horizontal well.

8 Q. Would you ever try to force pool Chevron  
9 into a triple lateral?

10 A. That would be a question for our land  
11 department.

12 Q. You haven't done it so far, anyway?

13 A. Not to my knowledge, no, sir.

14 Q. Is it your testimony that you saw an  
15 actual oil/water contact in the Paddock?

16 A. Yes, sir.

17 Q. And is that in just one of those larger  
18 stratigraphic porous sections?

19 A. It's in the upper porous part of the  
20 Paddock.

21 Q. Is there, in your opinion, oil bearing  
22 rock in the Paddock below that same oil/water  
23 contact?

24 A. There is possibly some hydrocarbon there,  
25 but it's largely water. It calculates off the logs

1 to be predominantly water, well above the 40 percent  
2 pay flag cutoff.

3 Q. But then as you go down into the Blinebry,  
4 you see prospective hydrocarbons in the Blinebry  
5 section below this oil/water contact?

6 A. Yes, that is true. It's the nature of a  
7 heterogeneous reservoir. It's compartmentalized,  
8 when you've got a very tight 100-foot section at the  
9 base of the Paddock that I believe is helping  
10 isolate that.

11 Q. So it's really multiple reservoirs, in the  
12 sense of natural communication?

13 A. I don't know if you'd go that far, but  
14 it's got some segregation to it, at least a baffle  
15 if not a barrier.

16 Q. You normally don't find the distributions  
17 of fluids -- of water above and below oil in the  
18 same reservoir, do you?

19 A. You can. San Andres is a good example of  
20 that. You've got multiple compartments --

21 Q. It's got some permeability barriers or  
22 something --

23 A. It's got to have some kind of a barrier,  
24 yes, sir. I'll agree with you.

25 Q. From all of this data you've gathered



1 on -- shown on Exhibit 25, do you have an opinion on  
2 the anisotropy?

3 A. Anisotropy?

4 Q. Yes.

5 A. Yes, sir. It's pronounced anisotropy.  
6 You're talking about stress anisotropy?

7 Q. Yes.

8 A. Yes, I do. What would you like to discuss  
9 on that?

10 Q. Does it have a directional orientation?

11 A. The maximum horizontal stress direction  
12 from FMI logs in this area is north/northwest to  
13 south/southeast.

14 Q. Is that true both in the Paddock and the  
15 Blinebry?

16 A. They might be slightly different. But  
17 essentially, it is -- I would call it the same.  
18 There might be a slight difference in the Paddock  
19 and the Blinebry.

20 Q. North/northwest to south/southeast?

21 A. Yes.

22 Q. So, predominantly, north/south?

23 A. Closer to northwest/southeast. But, yes,  
24 skewed towards north/south by some degrees.

25 Q. Would that lead to a preference to

1 drilling your horizontals -- well, would it be your  
2 preference to drill your horizontal laterals  
3 perpendicular to that stress field?

4 A. That would probably be the best, but it  
5 wouldn't fit within the surface land constraints. I  
6 mean you're -- you're limited by -- to drill them --  
7 to give you maximum coverage of these -- of a  
8 section to north/south or to east/west.

9 Q. Have you tried to orient more north/south  
10 or east/west laterals?

11 A. Well, that's the reason that we have that  
12 east/west lateral on the top of Section 12 there.  
13 We would like to compare the two.

14 We have seen good north/south laterals,  
15 good east/west laterals. We're not sure that  
16 there's a difference. There may not be.

17 But if we drill the east/west lateral and  
18 it comes on, you know, on an order of magnitude  
19 higher in production, then we would have to rethink  
20 our north/south orientation.

21 The north/south orientation is largely  
22 governed by surface availability. That's what drove  
23 that.

24 Q. All right. And the testimony you've given  
25 about blackout areas, or only the surface you may

1 use, or your company may use for surface  
2 locations --

3 A. Uh-huh.

4 Q. -- is that from what you've been told by  
5 the previous witness? And I am trying not to  
6 butcher his name, but Mr.- --

7 A. Olivas?

8 Q. -- Olivas, or do you have personal  
9 knowledge?

10 A. That's what I get from the surface land  
11 people who go stake the wells.

12 And it was based on the 35 that we were  
13 actually able to get BLM on-site approval. That's  
14 what drove that slot.

15 Q. Okay. And you don't know, therefore,  
16 whether or not the BLM has approved or may approve  
17 the surface locations proposed by Burnett, do you,  
18 sir?

19 A. I have no idea. No, sir.

20 MR. GRABLE: Thank you. One moment.

21 Q. (By Mr. Grable) Mr. Broughton?

22 A. Yes, sir.

23 Q. Does that Chevron farmout to the west,  
24 does it cover the entire Skelly unit?

25 A. Yes, I believe it does.

1 Q. How big is the Skelly unit?

2 A. Let's see. It is one, two, three, four,  
3 five sections. It covers five sections, and then it  
4 covers the Section 11 just to the north, that's just  
5 north of the Skelly unit that's listed as Texmack  
6 11. It also covers that, but that is not part of  
7 the Skelly unit.

8 Q. So the farmout covers six sections?

9 A. Well, actually, seven. The one just to  
10 the north, Section 2, north of Section 11, is  
11 involved. It's got some different terms, and I'm  
12 not really familiar with the specific terms of that.

13 But 11, and then one, two, three, four,  
14 five. So there's six that have the same constraints  
15 and one that doesn't. But only five of those  
16 sections are in -- actually in the Skelly unit.

17 Q. But does the farmout cover the sixth  
18 section?

19 A. Yes, I believe it does. It's really a  
20 land question, but I do believe it does.

21 Q. So the 25 wells per year covers -- applies  
22 to the whole six sections as a total?

23 A. The 25 covers the Skelly unit, and then  
24 there's five in the Texmack 11, so there's a total  
25 of 30.

1 Q. 30 in six sections?

2 A. 30 in six sections, yes, sir.

3 Q. So, in effect, that's five wells per  
4 section per year?

5 A. Okay. Yes, sir.

6 Q. Okay.

7 MR. GRABLE: Thank you. That's all I  
8 have.

9 HEARING EXAMINER EZEANYIM: Redirect?

10 MS. MUNDS-DRY: I think I have just a few  
11 questions.

12 FURTHER EXAMINATION

13 BY MS. MUNDS-DRY:

14 Q. Mr. Broughton, are you aware of -- since  
15 you've been in charge of the shelf at Concho --  
16 Chevron's participating in the new drilling Concho  
17 is doing?

18 A. They have participated in all of it that I  
19 have been involved in so far.

20 Q. In fact, isn't Chevron asking Concho to  
21 drill even more wells?

22 A. Right. They have allowed us to drill an  
23 additional -- they sought -- internally sought  
24 funding to drill five additional wells in the Skelly  
25 unit or Texmack, and we're in the process of

1 modifying our plan of development for the BLM to  
2 include those additional five wells.

3 Q. Mr. Grable asked you if a pilot hole was  
4 essentially a vertical well.

5 A. It is exactly a vertical well, yes.

6 Q. But isn't the difference that you don't  
7 produce a pilot hole?

8 A. You typically don't produce a pilot hole.  
9 Not that you couldn't, you just typically don't.

10 Q. And isn't it -- and, Mr. Broughton, I  
11 believe you stated this. But what's the main driver  
12 behind Concho's drilling plans for these three  
13 sections?

14 A. The main driver is to protect our interest  
15 and be able to drill wells and produce oil.

16 Q. Given the surface restrictions?

17 A. Oh. Well, it's -- it's to try to contact  
18 as much of the formation with the well bore and  
19 subsequent frac job as we possibly can while  
20 minimizing the surface use.

21 MS. MUNDS-DRY: Thank you, Mr. Broughton.

22 That's all I have for Mr. Broughton,  
23 Mr. Ezeanyim.

24 HEARING EXAMINER EZEANYIM: Okay.

25 Anything further, Mr. Grable?

1 MR. GRABLE: Nothing further. Thank you.

2 HEARING EXAMINER EZEANYIM: How long has  
3 COG been operating in the Yeso? How long?

4 THE WITNESS: COG started operating in the  
5 Yeso with the purchase of Mack Energy, which I  
6 believe was in 2006. That was before I started with  
7 Concho, but it was October of 2006, somewhere in  
8 that time frame.

9 HEARING EXAMINER EZEANYIM: All right. So  
10 in 2006 it purchased Mack Energy?

11 THE WITNESS: Purchased Mack Energy, and  
12 that was our first arrival into the Yeso.

13 HEARING EXAMINER EZEANYIM: So previous to  
14 that, Mack Energy was the operator?

15 THE WITNESS: Mack Energy was the  
16 operator. Yes, sir.

17 HEARING EXAMINER EZEANYIM: So state  
18 again, what is your main driver in what you are  
19 doing now. You were asked that question.

20 THE WITNESS: The main driver is to be  
21 able to drill wells and protect our interest and  
22 contact as much of the roughly 1,500 feet of Yeso  
23 formation with the minimum impact on the surface,  
24 because of the -- our participation in the CCA and  
25 the BLM surface constraints based on that CCA.

1 HEARING EXAMINER EZEANYIM: Okay. All  
2 right. You may step down.

3 MS. MUNDS-DRY: Mr. Ezeanyim, I'm sorry, I  
4 forgot one question I meant to ask.

5 HEARING EXAMINER EZEANYIM: Go ahead.

6 FURTHER EXAMINATION

7 BY MS. MUNDS-DRY:

8 Q. Mr. Broughton, Mr. Grable asked you if you  
9 performed any comparison of reserve analysis or any  
10 other study between the Burnett/Hudson plan, as he  
11 characterized it, 48 double -- 48 laterals, or the  
12 Concho plan.

13 When did Concho find out about what  
14 Burnett/Hudson's plans were for -- under this  
15 proposed --

16 A. I'm not certain of that. Today in this --  
17 Burnett's testimony was the first that I've  
18 personally learned of it, so I wasn't aware of what  
19 their plans were until today.

20 MS. MUNDS-DRY: Thank you, Mr. Ezeanyim.

21 HEARING EXAMINER EZEANYIM: You may be  
22 excused.

23 THE WITNESS: Thank you.

24 HEARING EXAMINER EZEANYIM: Call your next  
25 witness.



1 MS. MUNDS-DRY: Thank you. I call Ken  
2 Craig.

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

6 EXAMINATION

7 BY MS. MUNDS-DRY:

8 Q. Mr. Craig, where do you reside?

9 A. Midland, Texas.

10 Q. By whom are you employed?

11 A. Concho.

12 Q. What is your position with Concho?

13 A. I am the lead reservoir engineer over the  
14 shelf team.

15 Q. Have you previously testified before the  
16 division?

17 A. Yes, I have.

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

20 A. Yes.

21 Q. Are you familiar with the applications  
22 that Concho has filed here today?

23 A. Yes.

24 Q. Have you made an engineering study of the  
25 subject acreage?

1           A.     Yes.

2                   MS. MUNDS-DRY:  Mr. Ezeanyim, we tender  
3   Mr. Craig as an expert in petroleum engineering.

4                   HEARING EXAMINER EZEANYIM:  Mr. Craig is  
5   so qualified.

6                   MS. MUNDS-DRY:  Thank you.

7           Q.     (By Ms. Munds-Dry)  Let's turn, Mr. Craig,  
8   if we could, to Concho's Exhibit Number 26, the  
9   first slide here.

10                   Please review it for the Examiner.

11          A.     This was a slide that we put together just  
12   to introduce the concept of a triple lateral  
13   completion.  There is a switchover from going from  
14   true vertical development for the area when we found  
15   our surface restrictions.  So we devised a plan that  
16   would cover those same reserves, and this was the  
17   proposal slide for that.

18          Q.     So this is really a general slide of the  
19   plan?

20          A.     Yes.

21          Q.     And does it show that Concho plans to  
22   drill pilot holes?

23          A.     In some of the wells.

24          Q.     In some of the wells.

25                   And what do -- what does the drilling of

1 pilot holes in a horizontal well give -- what kind  
2 of information does that give you? ..

3 A. It does allow you to more easily get  
4 open-hole logs.

5 Q. Anything else?

6 A. Well, it allows you to do the triple  
7 laterals.

8 Q. Well, that's helpful.

9 A. Yeah.

10 Q. And the general plan here as I understand  
11 it, and as Mr. Broughton just testified, is to drill  
12 a lateral in the Paddock and then two in the  
13 Blinebry?

14 A. Yes.

15 Q. And will Concho be calling a drilling and  
16 completions engineer to more -- to give these plans  
17 in more detail?

18 A. Yes.

19 Q. To provide more information?

20 HEARING EXAMINER EZEANYIM: Did you say  
21 tomorrow?

22 MS. MUNDS-DRY: No, today.

23 HEARING OFFICER EZEANYIM: Oh, okay.

24 MS. MUNDS-DRY: Tonight. I hope I didn't.  
25 I didn't mean to, if I said tomorrow.

1 Thank you for clarifying that,

2 Mr. Ezeanyim.

3 Q. (By Ms. Munds-Dry) Let's turn to the next  
4 exhibit, Concho Exhibit Number 27.

5 What are you showing here?

6 A. The blue table is an earlier table that  
7 we've shown before, which showed a comparison of our  
8 10-acre vertical development, if we had full access  
9 to those three sections, which would have been 191  
10 locations, for an average recovery of 120 MBO per  
11 well. That represented almost 23 million barrels.

12 After we went out on-site and looked at  
13 the surface locations that we could get, which is  
14 the 35 that we've talked about earlier, using that  
15 same 120 MBO per vertical well, the total reserves  
16 were around 4 million barrels.

17 So there was a -- it was pretty  
18 apparent -- pretty easy to see that the vertical  
19 well development program that we could do with the  
20 35 was definitely lacking on trying to recover all  
21 of the reserves in those three sections.

22 The second table below that is based on  
23 the current development scheme based on the  
24 recommendations from COG and Burnett. I believe we  
25 have 17 horizontal wells recommended, which

1 represents 16.3 million barrels. And then the five  
2 locations -- vertical locations from Burnett, about  
3 600,000 barrels.

4 So even though we have 12 additional  
5 locations, it's almost 16 million barrels'  
6 difference in those two programs.

7 Q. And this includes wells that are not  
8 subject to today's hearing, both on our side and  
9 their side?

10 A. Well, this is the 17 and the 5.

11 Q. Okay.

12 HEARING EXAMINER EZEANYIM: Now, before  
13 you go on, where do these numbers come from? These  
14 numbers, where do they come from?

15 THE WITNESS: Well, the location count  
16 itself is from the work that we did going into the  
17 project, knowing that we would like to develop those  
18 three sections.

19 The well count changed as we went out to  
20 the on-site and looked and found that that wasn't  
21 going to work. And so we backed off and found that  
22 we had 35 locations that we could drill vertical  
23 wells on.

24 The 120 MBO was based on type curves for  
25 the area that we've seen.

1 HEARING EXAMINER EZEANYIM: Where is the  
2 number 120?

3 THE WITNESS: 120 MBO?

4 HEARING EXAMINER EZEANYIM: Yeah. Where  
5 did that number come from?

6 THE WITNESS: It's based on performance of  
7 the offsets, east and west offsets.

8 HEARING EXAMINER EZEANYIM: Okay. So  
9 these numbers are based on that 120 MBO?

10 THE WITNESS: Yes, sir.

11 HEARING EXAMINER EZEANYIM: Okay. All  
12 right.

13 Q. (By Ms. Munds-Dry) Okay. Let's turn to  
14 the next slide and the next exhibit, which is Concho  
15 Exhibit Number 28.

16 Explain to us what you're showing here.

17 A. It was just a comparison of the cost of  
18 doing a triple lateral versus three individual  
19 laterals versus individual vertical wells.

20 The top part of the table shows the lower  
21 lateral of about \$3.8 million, the two subsequent  
22 laterals of \$2.9 million each, for a total of  
23 \$9.6 million for a triple lateral.

24 We looked at just three individual  
25 laterals, which would be just the single times -- or

1 three times the single. The estimated cost would be  
2 around \$11 million.

3 And then if we look at the vertical wells  
4 that are displaced by drilling triple laterals, that  
5 would be eight locations. A single well is  
6 approximately \$1.75 million. So for drilling those  
7 eight locations would be around \$14 million.

8 So from an economic standpoint, triple  
9 laterals does appear favorable.

10 Q. You have a few bullet points there as to  
11 where you get some of the savings between the triple  
12 lateral and the single lateral?

13 A. I do. It's easy to see. If you do the  
14 triple lateral, you don't have to have redundant  
15 facilities, particularly on the surface. That would  
16 be lift equipment, pumping unit, flow lines.

17 And then the other apparent -- what you  
18 have is a smaller footprint of doing the triple  
19 laterals from one location, and not having to drill  
20 a single, move over, add to the pad, drill another,  
21 move over, add to the pad, and drill another, if you  
22 went with the idea that you had to have three  
23 laterals to properly drain the reservoir.

24 Q. Okay.

25 A. So the total cost of just those programs.

1 is almost three-quarters of a million dollars.

2 Q. Okay. Let's turn to the next exhibit,  
3 Concho Exhibit Number 29.

4 HEARING EXAMINER EZEANYIM: I want to know  
5 what is 573 M? What's that? Is that thousand or  
6 million? What is that?

7 THE WITNESS: I'm trying to find you, sir.  
8 M is thousand.

9 HEARING EXAMINER EZEANYIM: Oh, okay.

10 THE WITNESS: MM is million.

11 HEARING EXAMINER EZEANYIM: I wanted to  
12 confirm that, because people use it interchangeably.  
13 Sometimes they use the small letter. I don't know  
14 what it is. The convention is to use the capital  
15 letter.

16 Okay. Go ahead.

17 Q. (By Ms. Munds-Dry) Thank you.

18 Let's go to what has been marked as Concho  
19 Exhibit Number 29.

20 Where did this slide come from?

21 A. This came from a previous hearing  
22 concerning the performance of this area.

23 Q. This was a slide that Burnett prepared?

24 A. Yes, it was.

25 Q. And what --



1 MR. GRABLE: Pardon me. Which exhibit are  
2 you on?

3 MS. MUNDS-DRY: Exhibit 29.

4 Q. (By Ms. Munds-Dry) What are you showing  
5 here, with this exhibit?

6 A. Well, the item that caught our eye,  
7 particularly on this slide, was the fact that there  
8 was a Yeso dry hole immediately north of the lease  
9 line of where we do operate 10-acre locations.

10 Q. And if you can, identify that here on the  
11 slide.

12 A. It's at the lower part of Section 8. It's  
13 Well Number 63.

14 HEARING EXAMINER EZEANYIM: You see a dry  
15 hole?

16 THE WITNESS: Yeah. It has "dry hole"  
17 there, and I believe we've discussed that today,  
18 that they went up and made a Grayburg-San Andres  
19 completion from it.

20 This is a -- I believe Concho would have  
21 made an attempt to test the Yeso in this location.  
22 And you can see we do have 10-acre development to  
23 the south.

24 This particular well has Yeso producers  
25 east and west and also to the north. So if you are

1 looking at this reservoir as a Yeso reservoir, you  
2 would want to test that well. In fact, I would  
3 probably anticipate Concho would like to farm out  
4 that 40 acres and drill three more 10-acre locations  
5 there.

6 Q. (By Ms. Munds-Dry) To your knowledge, has  
7 Concho drilled a dry hole in the Yeso in this shelf  
8 area?

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

10 Q. Before we go to our next slide,  
11 Mr. Craig, did you have a chance to review  
12 Mr. Jacoby's slide that compares the nine wells, the  
13 nine Gissler wells to the nine Harvard wells?

14 We don't need to pull it out.

15 A. I think I can remember that.

16 Q. Did you have a chance to review that?

17 A. I did. It was the comparison of Gissler  
18 lease wells against the Harvard wells that we  
19 operate.

20 And if you look that, you can see severe  
21 separation between the two curves. And so we broke  
22 that down and started looking at the individual  
23 completion practices for those wells.

24 There was a map there that allowed us to  
25 find out which individual wells were used in the

1 nine-well comparison for both sides.

2 A lot of -- approximately half of the  
3 Concho wells that were used in that comparison were  
4 drilled back in 2006. Since that time, I believe  
5 our completion practices have changed some.

6 And the ones that were used on the Burnett  
7 side, I believe, were 2008 wells or later.

8 Also during that time period there was a  
9 lot of activity of individual testing of individual  
10 zones, where we would go down and test the Blinbry  
11 and get an idea of the contribution that it was  
12 making in that area, so there was downtime in those  
13 numbers.

14 And then the one that concerned me the  
15 most was the fact that I had those list of nine  
16 wells for both sides and I couldn't duplicate the  
17 data.

18 So from a normalization standpoint that  
19 should have been pretty easy, just to take industry  
20 data, line it up, and come up with a normalized  
21 curve.

22 And I am also not a big fan of just  
23 choosing nine wells to represent a whole area. If  
24 you have 14 wells, use 14 wells. That's what  
25 normalization is for.

1           So I don't know what else to comment on  
2   that slide, other than the fact that we couldn't --  
3   we weren't able to duplicate it, and then we saw  
4   some things in the data and completion practices  
5   that maybe it wasn't a fair comparison.

6           HEARING EXAMINER EZEANYIM: What do you  
7   want to demonstrate today with Exhibit Number 29 --  
8   or I mean that's the Burnett exhibit, right?

9           THE WITNESS: This is an exhibit --

10          HEARING EXAMINER EZEANYIM: 29?

11          THE WITNESS: Yes, sir.

12          HEARING EXAMINER EZEANYIM: It's a Burnett  
13   slide, right?

14          THE WITNESS: It's from an earlier  
15   hearing.

16          HEARING EXAMINER EZEANYIM: Yeah. So what  
17   are you trying to demonstrate here?

18          THE WITNESS: I'm trying to demonstrate  
19   that when you take a snapshot of one well using your  
20   open-hole log data, that may not tell the whole  
21   story, especially when you look around and you see  
22   10-acre development immediately to the south of you.

23                So I would -- I would say Concho would  
24   have completed that well and made a Yeso well out of  
25   it.

1 HEARING EXAMINER EZEANYIM: Out of one of  
2 these, right?

3 THE WITNESS: Yes, sir.

4 HEARING EXAMINER EZEANYIM: Why?

5 THE WITNESS: Well, it's a dry hole, based  
6 on log interpretation. If you look around, we've  
7 got a lot of logs that don't look very good, but  
8 they're good Yeso wells.

9 Some people didn't think the Blinebry was  
10 any good for so long, until we started having the  
11 correct completion practices to bring those wells  
12 on. And now it's just a common add to drill in a  
13 Yeso well.

14 HEARING EXAMINER EZEANYIM: So actually,  
15 this is waste? If we leave these plugged and  
16 abandoned, and without -- if you just wrongly -- you  
17 wrongly said it is dry or wet, we're losing waste.  
18 It's not your well, so you can't complete it.

19 THE WITNESS: Well, no. I -- I don't --  
20 well, if I could get that well, I would complete it.

21 But I am trying to make a point that if  
22 you just look at log interpretation only, you can  
23 have an event like that where you could -- may have  
24 had a Yeso completion. Because when you frac out,  
25 you are starting to get into that rock that you

1 can't see from your log.

2 MS. MUNDS-DRY: Thank you, Mr. Ezeanyim.

3 Q. (By Ms. Munds-Dry) Mr. Craig, if you  
4 would, turn to what has been marked as Concho  
5 Exhibit 30.

6 Did you review Burnett's exhibit -- it's  
7 their L in Exhibit 7. It gives an analysis -- it's  
8 really the two slides that give an analysis of  
9 Concho's EURs and Burnett's EURs.

10 Do you recall those two slides that  
11 Burnett --

12 A. Yes. That's the 60 MBO and the comparison  
13 of --

14 Q. What is Concho Exhibit 30? And we have it  
15 up on the PowerPoint, too, if that helps you,  
16 Mr. Craig.

17 A. That's not how it's in the book, but  
18 that's the one that I believe you are referring to.

19 Q. Do I have them backwards? Is that the one  
20 you want to discuss first, Concho Exhibit 31?

21 A. The one that was up there before.

22 Q. That one?

23 A. No.

24 Q. Okay. Then we're on the same page.

25 A. It's not in my book.

1 Q. It's not in your book?

2 A. No.

3 MS. MUNDS-DRY: I'm sorry, Mr. Ezeanyim,  
4 this one was left out.

5 HEARING OFFICER EZEANYIM: What is it  
6 called?

7 MS. MUNDS-DRY: It's called 10-acre COG  
8 Yeso average well performance.

9 HEARING OFFICER EZEANYIM: What number?

10 MS. MUNDS-DRY: It should be Exhibit 30.  
11 It looks like Exhibit 31 got copied twice. I  
12 apologize for that.

13 HEARING OFFICER EZEANYIM: Okay.

14 Q. (By Ms. Munds-Dry) Go ahead Mr. Craig.  
15 What is this slide showing us?

16 A. This slide is a normalized curve for the  
17 10-acre development that we have done in the Yeso.

18 The solid green line is the normalized  
19 data. You can see after 12 months how it's coming  
20 off of a hyperbolic part of the curve and starting  
21 to exhibit exponential decline.

22 The reason we put this curve together is  
23 because of the 60 or 66 MBO finding that Burnett's  
24 consultants had. So what I tried to do is show,  
25 with that small dotted curve coming down below, is

1 that that normalized curve would have to go on a  
2 22 percent decline to get down to 66 MBO. And from  
3 what we've seen in the Yeso formation, that's not  
4 how it works.

5 So what we've done on there is put the  
6 long dashed line at a 10 percent decline, and that  
7 gets an ultimate recovery of over 121 MBO, so it's  
8 not easy for me to see that sharp inflection point  
9 based on the data that we have.

10 In fact, the final decline rate for much  
11 of the Yeso is accepted to be around 7 percent. So  
12 that 121 MBO is probably a very conservative number.

13 HEARING EXAMINER EZEANYIM: As compared to  
14 66?

15 THE WITNESS: Well, I don't believe 66 --  
16 or my data doesn't support 66.

17 Q. (By Ms. Munds-Dry) Let's go to what I  
18 hope is Concho Exhibit 31. Do you have that one?

19 Mr. Craig, what does this curve show us?

20 A. This is the same data for the green part  
21 of the normalized data for approximately 180 10-acre  
22 development wells that Concho has drilled, with a  
23 10 percent decline shown as the green dashed line.

24 So what we've done is gone back to look at  
25 14 of the vertical wells that have done the



1 slickwater frac to the east of this area that we are  
2 talking about, and that's shown with a red curve.

3           And this curve does support the fact that  
4 you do have higher initial rates, and I think that's  
5 a characteristic of slickwater fracs. And I think  
6 it's also a characteristic of -- I believe Burnett  
7 runs ESPs in their wells immediately after  
8 completion, and so you're going to get those high  
9 volumes and you are going to get those high rates.

10           What concerns us is the fact that the red  
11 line now has shown a tendency to cross the green  
12 line. So you may be getting the rate up front, but  
13 you are going to be sacrificing reserves at the end.

14           Q.     Okay. I think we've covered the exhibits.  
15 Let's take care of a few other things.

16           For the wells that Concho has proposed to  
17 be at nonstandard locations, will the producing  
18 interval and the well bores be within the producing  
19 areas of each project area? In other words, by the  
20 time you are producing, will you be at a standard  
21 setback?

22           A.     Yes, we will.

23           Q.     Will the horizontal well bore, as we have  
24 proposed here today, test a greater reservoir length  
25 than the vertical well bore that's been proposed by

1 Burnett?

2 A. Yes.

3 Q. Does this, then, increase the chances for  
4 an economic completion and development of the Yeso  
5 formation?

6 A. Yes, it will.

7 Q. In your opinion, is it a reasonable and  
8 prudent method for the horizontal well plan for  
9 developing these units?

10 A. Yes, it is.

11 Q. Will approval of Concho's applications  
12 avoid the drilling of unnecessary wells, prevent  
13 waste, protect correlative rights, and allow Concho  
14 and the other interest owners in the nonstandard  
15 units/project areas the opportunity to produce their  
16 just and fair share of the oil and gas under the  
17 subject lands?

18 A. Yes, it will.

19 Q. Were Exhibits 26 through 31 either  
20 prepared by you or compiled under your direct  
21 supervision?

22 A. Yes, they were.

23 MS. MUNDS-DRY: Mr. Ezeanyim, I move the  
24 admission of Exhibits 26 through 31.

25 HEARING EXAMINER EZEANYIM: Any objection?

1 MR. BRUCE: No objection.

2 MS. MUNDS-DRY: We'll get an Exhibit 30 to  
3 the court reporter and to you, Mr. Ezeanyim.

4 HEARING EXAMINER EZEANYIM: Okay.  
5 Exhibits 26 through 31 will be admitted.

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

7 HEARING EXAMINER EZEANYIM: Mr. Grable?

8 MR. GRABLE: Is this exhibit that was  
9 labeled 31 in our book not an exhibit?

10 MS. MUNDS-DRY: I think it's the same --  
11 oh, it's not an exhibit. I apologize.

12 So, Mr. Ezeanyim, we'll fix Exhibit 30 and  
13 31 to make sure.

14 EXAMINATION

15 BY MR. GRABLE:

16 Q. Your Exhibit 26, an extremely simplified  
17 schematic of the triple lateral. Are you -- well, a  
18 subsequent witness testified to the mechanical  
19 feasibility of actually completing such oil in the  
20 three different laterals, or is that your province?

21 A. That's not my province.

22 Q. And in fact, as Mr. Broughton testified,  
23 your company has never completed even a dual  
24 lateral?

25 A. I believe we've participated in dual

1 laterals.

2 Q. As a nonoperator?

3 A. Yes, sir.

4 Q. So you haven't been the operator  
5 responsible for drilling and completing a dual  
6 lateral?

7 A. Not that I'm aware of.

8 Q. And this dual lateral you participated in,  
9 was it in some other area than the New Mexico Yeso?

10 A. Yes, sir.

11 Q. Let's look at your Exhibit 27.

12 MR. GRABLE: Can you put that up,  
13 Ms. Munds-Dry?

14 Q. (By Mr. Grable) Now, I understand where  
15 you got, on the top line, full access, 10-acre  
16 vertical, 191 locations, 22.9 million barrels.  
17 That's the simple product of multiplying 191 by  
18 120,000?

19 A. Yes, sir.

20 Q. And the 120,000 comes from your type curve  
21 that is now Exhibit 30. Is that right?

22 A. The data that built that type curve is not  
23 just from this immediate area, it's across the  
24 shelf.

25 We were trying to get as many locations as

1 possible into that type curve because we didn't  
2 know -- on your chart where it had 66 MBO, we didn't  
3 know where those wells were, so we grabbed the whole  
4 shelf.

5 Q. Okay. Have you found, in your experience,  
6 that your decline curve analysis in this immediate  
7 area, near these three sections on the eastern part  
8 of the play, produced more or less than the ones  
9 over in the Loco Hills area and even farther west?

10 A. I have seen those types of curves. But  
11 for me to tell you how they all line out, I'm sorry,  
12 I can't remember that.

13 Q. So you have no evidence to give to the  
14 examiner that 120 is or is not representative of  
15 these three sections today?

16 A. The 120 that's listed here --

17 Q. Yes, sir.

18 A. -- is an example of the type curve  
19 immediately to the east of this area.

20 Q. I thought you said it occurred all across  
21 the shelf, west to east.

22 A. No. You asked me if that was the curve  
23 that I showed on this later slide, and so that's not  
24 the same data.

25 It did turn out to be a similar number,

1 when I put a 10 percent decline on that.

2 Q. Okay. Let me start again. I'm confused.

3 Maybe I asked a bad question.

4 Are these two -- the 200 wells that you  
5 used to construct this type curve on your Exhibit  
6 30, do you know where they're located in the Yeso  
7 trend?

8 A. Across the shelf. It's not a specific  
9 area.

10 Q. That's what I thought.

11 A. Right.

12 Q. From several miles to the west to a mile  
13 or two to the east?

14 A. More than several.

15 Q. How much? 10 miles plus?

16 A. Yeah, it could be 10.

17 Q. Now, when I say "miles," that's from these  
18 three sections in the Maljamar or Puckett area,  
19 there are wells in those 200 that may be 10 or more  
20 miles to the west?

21 A. In that curve, yes.

22 Q. In that curve.

23 And then the follow-up question is: Do  
24 you know whether or not your wells over there on the  
25 west tend to be better wells than the wells over

1 here on the east?

2 A. As I said, I'm not sure how that all lined  
3 up.

4 Q. But if that is the case, if the evidence  
5 were to show that these wells in Puckett and  
6 Maljamar are less productive than the wells to the  
7 west, then this 120,000 barrels per well average  
8 would not be representative of what one would expect  
9 in the Maljamar/Puckett area, would it?

10 A. You're right. We're not communicating.  
11 This 120 here --

12 Q. Yes.

13 A. -- is representative of the immediate area  
14 in the Maljamar/Puckett area.

15 I wish that it hadn't come so close to the  
16 121 MBO that we had on the -- across the shelf, but  
17 that's just the way it played out.

18 Q. All right. Well, let's move on.

19 A. I'm sorry.

20 Q. Going back to Exhibit 27.

21 A. All right.

22 Q. Now, in your -- down here in the current  
23 development scheme, the 17 wells included are the 17  
24 triple laterals that Concho has proposed to  
25 Burnett/Hudson?

1           A.     Yes, sir.

2           Q.     13 of which are included in the  
3     application before Examiner Ezeanyim. Is that  
4     correct?

5           A.     Yes.

6           Q.     Now, we can do the math, but I mean  
7     that's -- that's right at a million barrels per  
8     well, isn't it, just slightly less than a million  
9     barrels per well?

10          A.     That would be right.

11          Q.     Which is going to be in the range of  
12     325,000 barrels per lateral?

13          A.     Okay.

14          Q.     What evidence have you presented in this  
15     hearing that your company, Concho, has actually  
16     drilled horizontal wells in this Yeso that can  
17     produce 300,000 barrels or more per lateral?

18                 You don't have any new evidence, do you?  
19     All you have got are your vertical wells?

20          A.     To answer your question, yes.

21          Q.     So the supposition behind this is that  
22     each of those three laterals are going to produce  
23     325,000 barrels, more or less, for about 984,000 per  
24     well? That's -- but you haven't presented any  
25     backup evidence to show how you came to those



1 numbers, have you, sir?

2 A. No.

3 Q. Now, in the Burnett case, the five wells  
4 are just five verticals at the 120,000 per vertical?

5 A. Yes.

6 Q. So that's 600,000. So the difference is  
7 that.

8 But you're aware now that the Burnett plan  
9 is for 24 double laterals which would be 48  
10 laterals, right?

11 A. Okay.

12 Q. So if you gave them the same presumed  
13 productivity per lateral, plus added this  
14 600,000 barrels, you come out within a couple of  
15 million barrels of the -- you come out -- 48 versus  
16 51 -- you come out about a half a million barrels  
17 different. I mean that 15.7 million barrels  
18 basically disappears if you take the Burnett plan  
19 versus the COG plan?

20 A. When I put this chart together I was  
21 unaware of the Burnett plan, so I didn't include  
22 that here.

23 Q. Right.

24 A. But to answer your question, I think the  
25 difference would be more.

1 Q. We'll come back to that in a minute.

2 But if you apply the same assumptions to  
3 the Burnett horizontal wells, and if they're  
4 proposing 24 horizontals, each of which has a  
5 Paddock horizontal and then a Blinbry horizontal,  
6 and you gave them the equal productivity of what you  
7 have assumed to be for the COG horizontals, there  
8 would only be three horizontals difference, which is  
9 right at -- a little less than a million barrels,  
10 right? Because each one of these 17 has three  
11 laterals.

12 We can write -- I'm trying to go quickly.  
13 We can write down --

14 A. Yeah. Now, to do the math the way you  
15 said, that's correct.

16 Q. And then from that, you would have to  
17 subtract the five verticals in the Burnett program  
18 from that million difference. So the difference is  
19 going to be -- instead of 15.7 million barrels, it's  
20 going to be about 4- or 500,000 barrels using the  
21 same assumptions?

22 A. The same assumptions.

23 MR. GRABLE: Can we go to the next slide,  
24 Ms. Munds-Dry, Number 28?

25 Q. (By Mr. Grable) All right. Now this

1 slide shows, as I understand it, the drilling cost  
2 for your triple laterals as you project, at 11.34  
3 million per well, correct?

4 A. Could you repeat that please?

5 Q. Now, the number right here is  
6 \$11.34 million? \$11,340,000.

7 A. That's right.

8 Q. I'm confused. Let me start over.  
9 You're projecting your triple lateral at  
10 9.65 million per well, correct?

11 A. Yes, sir.

12 Q. Okay. And then the 3.78 million you have  
13 used on the Burnett proposals, where did that number  
14 come from?

15 A. It wasn't directed at a Burnett proposal.  
16 It was taking that top middle lower Blinbry initial  
17 lateral times three to get the comparison basis.

18 Q. Well, are you aware that Burnett's --  
19 Burnett's numbers are about 2.6 million per lateral?

20 A. Not until today.

21 Q. All right. Now, the initial AFEs that COG  
22 sent out were about that 11.4, 11.5 number. Isn't  
23 that correct?

24 A. I don't see those numbers.

25 Q. So you don't know what they were?

1           A.     No, sir.

2           Q.     Well, are you able to testify to  
3     Mr. Ezeanyim with any certainty that what you  
4     projected, either for the AFE for your company's  
5     projected at 9.64, or this number derived for  
6     Burnett at 11.34, is based on anything specific? Do  
7     you know how those numbers were constructed?

8           A.     I have a general knowledge of how they  
9     were constructed. Our drilling group does those,  
10    and I know that they use their actual data from the  
11    horizontals that we drill.

12          Q.     But in the case of the --

13                 MR. GRABLE: Counsel, this is a little  
14    hard to find. But one of your proposals in your  
15    Exhibit 3 pertaining to the proposed Puckett 13  
16    Federal 1H --

17                 MS. MUNDS-DRY: I'm with you.

18                 MR. GRABLE: -- as proposed to Burnett.

19          Q.     (By Mr. Grable) Let me hand you -- and  
20    this was an actual proposal from Concho to Burnett.  
21                 Have you studied any of those?

22          A.     No, sir. I do not see these when they go  
23    out.

24          Q.     But you'll notice that the number in there  
25    for the well, as proposed by Concho, is precisely

1     \$11,340,000?

2           A.     Okay.

3           Q.     And for some reason, that's not the number  
4     you used for Concho's wells, but it is precisely the  
5     number you used for Burnett's wells.

6           Can you explain that?

7           A.     Well, as I explained, I didn't have a  
8     Burnett well cost. I was just looking at it from  
9     a -- if we were going to do a triple lateral or we  
10    were going to do three individual laterals, how  
11    would that look?

12           So I believe there's -- and maybe it's not  
13    the exact cost savings that's the difference in  
14    those two numbers, but it appears to me that the  
15    triple laterals would be the more cost efficient way  
16    of developing the acreage.

17           Can I comment more about this?

18           Q.     No. I'll let you do that with your  
19    counsel.

20           A.     Okay.

21           MR. GRABLE: Now, let's look at your  
22    Exhibit 31, if we may, Counsel.

23           Q.     (By Mr. Grable) In the case of the --  
24    okay. Were there 200 Concho wells used to construct  
25    your type curve? Is that accurate?

1           A.     Almost 200.

2           Q.     Okay. Do you know how many of those were  
3     Paddock wells, Paddock only wells, how many were  
4     Blinebry only wells, and how many were Paddock plus  
5     Blinebry completions?

6           A.     The criteria that we used for that --

7           Q.     Yes.

8           A.     -- was the third and the fourth well  
9     drilled in that 40-acre location. So we didn't try  
10    to go in and say this batch is all Yeso, this is a  
11    Blinebry test, this is a Paddock test.

12          Q.     Why did you use the third and fourth?

13          A.     We were trying to compare our 10-acre  
14    development against this curve, which was kind of a  
15    conservative outlook.

16          Q.     So you don't know whether the wells in  
17    that group were completed only in the Paddock, only  
18    in the Blinebry, or in both Paddock and the  
19    Blinebry?

20          A.     No.

21          Q.     The same question on the Burnett wells.  
22    Do you know, of those 14 wells in the Burnett type  
23    curve using slickwater frac, whether they were  
24    completed in the Paddock only, Blinebry only, or  
25    both Paddock and Blinebry?

1 A. No, sir.

2 Q. Are you aware of Burnett's typical  
3 completion practices in its wells?

4 A. I have seen some of those.

5 Q. Are you aware that they typically --  
6 again, if they're completing in the Blinebry, would  
7 the lowest perforations allow them to recover their  
8 frac load and kind of reach a normalized steady  
9 state before they go up and complete the next set of  
10 perforations?

11 A. I have seen that.

12 Q. And if some of the 14 wells included in  
13 there were Blinebry wells that had just been  
14 perforated in only the lower Blinebry and had not  
15 moved up to the upper yet, they would not be  
16 representative of the actual EUR potential of those  
17 wells, would they?

18 A. No.

19 MR. GRABLE: I pass the witness.

20 MS. MUNDS-DRY: I have a few questions.

21 HEARING EXAMINER EZEANYIM: Okay.

22 FURTHER EXAMINATION

23 BY MS. MUNDS-DRY:

24 Q. Mr. Craig, other than Mr. Grable's  
25 assertion that Burnett had some plans to drill 48

1 laterals, did you hear anything today or were you  
2 aware previously that that was Burnett/Hudson's  
3 plan?

4 A. No.

5 Q. Is Burnett/Hudson's plan sort of an 11th  
6 hour plan they put together before the OCD today?

7 A. I'm sorry?

8 Q. This horizontal well plan, is that before  
9 the OCD today?

10 A. I don't believe so.

11 Q. Mr. Craig, you wanted to make an  
12 additional comment on the AFE that Mr. Grable asked  
13 you about for the Puckett 13 Federal 1H?

14 A. Looking at the individual AFEs associated  
15 with that well, it looks like there were three of  
16 the lower -- or the middle lower Blinebry AFEs  
17 attached to that letter, instead of the middle lower  
18 Blinebry at the higher dollar cost, and then the  
19 subsequent laterals through the upper Blinebry and  
20 Paddock being lesser cost.

21 So that's what gets us down to the 9.6  
22 versus the 11.34.

23 Q. In fact, Mr. Craig, if we go to the AFE  
24 just after that --

25 MS. MUNDS-DRY: May I approach,



1 Mr. Ezeanyim?

2 HEARING EXAMINER EZEANYIM: Yes, go ahead.

3 Q. (By Ms. Munds-Dry) What is the total  
4 estimated cost for that AFE?

5 A. This is the Puckett 13 Federal 2H. The  
6 total cost is \$9.648 million.

7 Q. So that reflects the numbers you had in  
8 your table there?

9 A. Yes.

10 MS. MUNDS-DRY: That's all the redirect I  
11 have, Mr. Ezeanyim. Thank you.

12 HEARING EXAMINER EZEANYIM: Mr. Grable,  
13 any redirect?

14 MR. GRABLE: No further questions.

15 HEARING EXAMINER EZEANYIM: Okay. Very  
16 good.

17 Let's go back to that Exhibit Number 27.

18 Mr. Craig, let me understand what you're  
19 trying to do on this development plan comparison.  
20 The 10-acre, the -- I mean the one -- who's drilling  
21 the four well locations? The four locations you are  
22 comparing, where did it come from?

23 THE WITNESS: I want to make sure I am on  
24 the same --

25 HEARING EXAMINER EZEANYIM: Your

1 Exhibit Number 27.

2 THE WITNESS: All right.

3 HEARING EXAMINER EZEANYIM: On the bottom  
4 line there, you have 24 wells. Who drilled those 24  
5 locations?

6 THE WITNESS: The 24 wells is the number  
7 of triple laterals that we would propose is  
8 necessary to develop the reserves on this acreage.

9 HEARING EXAMINER EZEANYIM: All right.  
10 Not the 17?

11 THE WITNESS: We just haven't got to 24  
12 yet.

13 HEARING EXAMINER EZEANYIM: What did you  
14 say?

15 THE WITNESS: We just haven't got to 24  
16 yet. We've only done 17. So for full development,  
17 it's 24.

18 HEARING EXAMINER EZEANYIM: Oh, okay. In  
19 these three sections?

20 THE WITNESS: Yes, sir. It is eight per  
21 section. Eight triple laterals per section is what,  
22 ultimately, it will look like.

23 HEARING EXAMINER EZEANYIM: Oh, okay.

24 Okay. I see what you mean. Okay.

25 Okay. I guess I've got the information.

1 You may step down.

2 I'll tell you what, we're going to take  
3 another break. How many witnesses do you have,  
4 ma'am?

5 MS. MUNDS-DRY: Two, but they're pretty  
6 short. At least my direct is short.

7 HEARING EXAMINER EZEANYIM: Okay. Very  
8 good.

9 We're going to take another break. But  
10 before we do, Mr. Baca, the court reporter here  
11 taking the transcript, has advised me that he can  
12 get the transcript to you on Friday. That's really  
13 very impressive you can do that. So I commend him  
14 for doing that.

15 But why I want him to get it by Friday is  
16 that I want you, you know, the two parties, to draft  
17 your proposed order. So he said he can get it by  
18 Friday, so he will get it to you by Friday. And by  
19 next Friday I would like to get a proposal out,  
20 because I want to get an order in this case as  
21 quickly as possible. Maybe by then the other one  
22 I'm working on will be out.

23 So if you can get the transcript by  
24 Friday, which is what, September 2nd? Then I can  
25 get the other one, your proposal done by

1 September 9th, and see if I can get this other out  
2 in September. I'm not on vacation in September.

3 MR. GRABLE: You are requesting a proposed  
4 order only, not a written closing argument or  
5 anything like that?

6 HEARING EXAMINER EZEANYIM: A proposed  
7 order, and the closing argument you might do today  
8 if you want to, or you can submit it so that we can  
9 cut down the -- shorten the time. I can read the  
10 closing statements.

11 MR. BRUCE: I would rather have a written  
12 closing statement, and I think Ms. Munds-Dry would,  
13 too.

14 HEARING EXAMINER EZEANYIM: I would prefer  
15 that, because that is more than -- you can say all  
16 you want.

17 So we'll take 10 minutes, and we'll have  
18 two more witnesses.

19 (A recess was taken from 6:47 p.m. to 7:04  
20 p.m.)

21 HEARING EXAMINER EZEANYIM: We'll go back  
22 on the record.

23 MS. MUNDS-DRY: We call Carl Bird.

24 HEARING EXAMINER EZEANYIM: Okay. Who's  
25 going here?

1 MS. MUNDS-DRY: I will do it.

2 CARL BIRD,

3 after having been first duly sworn under oath,

4 was questioned and testified as follows:

5 EXAMINATION

6 BY MS. MUNDS-DRY:

7 Q. Mr. Bird, where do you reside?

8 A. Midland.

9 Q. By whom are you employed?

10 A. Concho.

11 Q. What do you do for Concho?

12 A. I am a drilling engineer.

13 Q. What do your duties as a drilling engineer  
14 involve?

15 A. The main duty of a drilling engineer is to  
16 mitigate risk in the most economical way possible,  
17 but I drill wells.

18 Q. Are you responsible for this area of the  
19 Yeso, on the shelf?

20 A. I am, indeed.

21 Q. Have you previously testified before the  
22 division?

23 A. No.

24 Q. Could you give Mr. Ezeanyim a short review  
25 of your education and work history as it relates to

1     being a drilling engineer?

2           A.     Sure. I graduated in 1978 from Texas A&I.  
3     I have been a drilling engineer for nearly 34 years.

4                   I drilled my first well deeper than  
5     four miles in 1982.

6                   I have drilled multiple horizontal wells,  
7     starting with the beginning of the technology, back  
8     when it was wiggly collars and turbans and bed subs.

9                   I drilled the first two horizontal wells  
10    in Oklahoma. The second one was the record reach  
11    for a few years. And that's been a long time ago  
12    now, so I'm sure it's been beat.

13                   I drilled one of the first wells -- it may  
14    have been the first horizontal well in New Mexico.  
15    I'm not positive it was the first, but it was in the  
16    Empire Abo unit. And they use my procedure as a  
17    go-by even now. It's been 20 years ago.

18                   I have drilled dual and multiple laterals.  
19                   I've drilled turnizontals.

20                   And I don't mean to offend you, but  
21    your-all's little deal is not a turnizontal.

22                   I have drilled probably 3,000 wells in my  
23    career. I have drilled 500 wells for Concho, on the  
24    shelf, in those four townships.

25           Q.     How long have you been working for Concho?

1 A. Three years.

2 Q. And where were you before that?

3 A. Going backwards immediately, I worked for  
4 Bass. Before that I worked for Citation. Before  
5 that I worked for BP, and then ARCO. Before that it  
6 was for Westland and then Texas Oil & Gas.

7 Q. Are you familiar with the applications  
8 that Concho has filed here today?

9 A. I am.

10 Q. And have you made a drilling engineering  
11 study of the wells that Concho has proposed?

12 A. I have.

13 MS. MUNDS-DRY: Mr. Ezeanyim, we tender  
14 Mr. Bird as an expert witness in drilling  
15 engineering.

16 HEARING EXAMINER EZEANYIM: Mr. Bird, you  
17 have a degree in natural gas engineering?

18 THE WITNESS: That is correct.

19 HEARING EXAMINER EZEANYIM: Are you  
20 registered, sir?

21 THE WITNESS: I am, indeed.

22 HEARING EXAMINER EZEANYIM: You are  
23 registered?

24 THE WITNESS: Yes.

25 HEARING EXAMINER EZEANYIM: What state?

1 Texas?

2 THE WITNESS: I beg your pardon?

3 HEARING OFFICER EZEANYIM: Where are you  
4 registered?

5 THE WITNESS: Oh, no. I'm not registered.  
6 No. No.

7 HEARING EXAMINER EZEANYIM: But you have  
8 drilled a lot of horizontal wells?

9 THE WITNESS: I have drilled many, many  
10 horizontal wells.

11 HEARING EXAMINER EZEANYIM: Good.  
12 Mr. Bird is so qualified.

13 Q. (By Ms. Munds-Dry) Thank you, sir.

14 A. Thank you.

15 (Discussion off the record.)

16 Q. (By Ms. Munds-Dry) Mr. Bird, let's turn  
17 to the applications that we're here to talk about  
18 today.

19 I appreciate your formality and your  
20 respect to Mr. Ezeanyim.

21 A. Thank you.

22 Q. You were discussing your experience when  
23 we were in the process of qualifying you as to  
24 drilling horizontal wells.

25 A. That is correct.



1 Q. How many have -- well, first of all, let  
2 me ask you.

3 Have you had experience drilling  
4 multilateral horizontals?

5 A. I have.

6 Q. In New Mexico?

7 A. Yes. Up in Farmington, yes.

8 Q. What about outside of New Mexico?

9 A. Yes.

10 Q. What was your experience outside of  
11 New Mexico?

12 A. Well, I drilled multiple laterals in the  
13 Slaughter field, which is right across the border  
14 from New Mexico in Texas.

15 And my mind has gone blank. I'm sorry.

16 Q. When you say you have -- you have had  
17 experience drilling multiple laterals, were they  
18 dual laterals, triple laterals?

19 A. I have drilled duals and triples. I have.

20 Q. Let me ask you the basic question of why  
21 we're here today.

22 Do you have any concern with the third  
23 lateral that Concho is proposing to drill here  
24 today?

25 A. Not in the least. I would like to share

1 an analogy with you. You know, if you had a  
2 little -- if you were going to want to build a house  
3 and you had a little lot the size of this room, and  
4 on one side of that lot you had a really nice apple  
5 tree, and you started building this house on this  
6 little lot.

7 Your wife comes along and says, "You know,  
8 this lot is too small for a one-story. You better  
9 build two stories."

10 So you say "Okay."

11 And about halfway through she looks at  
12 that and she says, "You know, that's not going to be  
13 tall enough to get the apples off that tree. You  
14 better build three stories."

15 It's the same thing with drilling three  
16 laterals. If you're going to want to be able to  
17 reach out the window and pick those apples on that  
18 tall apple tree, you're going to need all three  
19 stories. And there's no technical difference  
20 between a two-story house and a three-story house.  
21 It's all the same.

22 Q. So you're analogizing that to the  
23 difference between a dual lateral and a triple  
24 lateral?

25 A. I am, indeed.

1 Q. Do you believe that Concho's well  
2 proposals, the triple laterals, will be successful  
3 here?

4 A. Yes.

5 Q. Will you turn, Mr. Bird, if you would,  
6 to -- hopefully in your book it's marked Concho  
7 Exhibit 32.

8 A. Okay.

9 Q. What is this showing us?

10 A. This is a depiction of the triple laterals  
11 that we're proposing with a cemented casing in the  
12 bottom and two additional laterals above it with  
13 packers for separation between the zones.

14 Q. Now, we're going to call a completions  
15 engineer next, correct?

16 A. That's correct.

17 Q. If you could, Mr. Bird, for the Examiner,  
18 explain how Concho proposes to drill these triple  
19 lateral wells.

20 A. Okay. Well, let me back up first and say  
21 that all horizontal wells start as vertical wells.

22 HEARING EXAMINER EZEANYIM: All what?

23 THE WITNESS: All horizontal wells start  
24 as vertical wells.

25 HEARING EXAMINER EZEANYIM: Okay. Yeah.

1           THE WITNESS: You have got to drill from  
2     surface down through whatever zones you have to pass  
3     through on your journey down to where you are going  
4     to build a horizontal.

5           We -- we set three strings of pipe. We  
6     set surface pipe, 13 and three-eighths, and then  
7     we'll set 9 and five-eighths at about 2,000 feet,  
8     which gets you completely through the salt. And  
9     then we'll drill down, and we will drill our bottom  
10    lateral. We'll run casing in it, 7-inch by 5 and a  
11    half, and cement that bottom.

12           We'll perforate, treat, and test. We'll  
13    perforate it and treat it down the casing, test it.

14           When we get through with that testing  
15    process, then we'll come back up the hole, we will  
16    set a plug over that lateral, set a whipstock on top  
17    of that plug, and we will drill the next lateral.

18           And these gentlemen have mentioned that  
19    they intend to do that, drilling the second lateral  
20    out of their well. So this is not anything that  
21    anybody is surprised by.

22           And we'll go ahead and run 4-and-a-half-  
23    inch liner in there with packers for separation  
24    between the zones, and treat it down that 4 and a  
25    half.

1           And then when we get through treating and  
2     testing that second lateral, then we'll pull that  
3     whipstock, take out that plug, set another plug  
4     above our new lateral, set another whipstock, and do  
5     it again.

6           So, essentially, that second story is the  
7     same as the third story.

8           Q.     (By Ms. Munds-Dry) Could you explain to  
9     the Examiner why, as it is depicted here, at least,  
10    why we plan to cement and case the bottom lateral?

11          A.     Well, the belief is that we might get  
12    better treatments in that bottom lateral with a  
13    cemented casing. I'm sure that's something that  
14    will be tested, and we might modify that. We might  
15    run liners with packers in all three at some point.  
16    But the initial ones are planned to be cemented on  
17    the bottom.

18          Q.     Is there a difference in the cost between  
19    cementing and casing?

20          A.     After the treatment is over with, it's  
21    really a wash. You will spend as much with one as  
22    you will with the other.

23          Q.     Do you have any concern about setting the  
24    whipstock in either the second, the middle, or the  
25    shallow lateral?

1 A. No.

2 Q. What makes you say that?

3 A. I have done it 35, 40 times, and I'm sure  
4 these gentlemen have, too. It's just not that big a  
5 deal.

6 Q. Mr. Bird, did you have an opportunity to  
7 review the AFE that Burnett included in its exhibits  
8 for a horizontal well?

9 A. Not really. I don't work for Burnett.

10 Q. But did you have a chance to review their  
11 exhibits that they proposed here?

12 A. I looked at it some. I didn't go into it  
13 in the detail that I might like to. But, yes, I did  
14 look at it.

15 Q. Did you have any major concerns about --

16 A. Well, some of their things are a little  
17 light on the cost. I will just say I had some minor  
18 concerns. I don't think that they are deal  
19 breakers.

20 Q. Have you reviewed Burnett's proposals to  
21 drill their vertical wells that are the subject of  
22 this hearing?

23 A. Yes.

24 Q. Have you had any experience with  
25 slickwater fracs?

1           A.     I have.

2           Q.     What is your opinion about completing with  
3     slack water fracs in this area?

4           A.     I think slickwater fracs are a real good  
5     application for shales, where you're encouraging  
6     spalling that self-props. I think slickwater fracs  
7     are a real good application for refracking older  
8     wells.

9                   I don't know -- I don't believe that  
10    they're as good an application for a brand-new well  
11    as what a conventional gel water frac is.

12          Q.     Mr. Bird, were you or someone you have  
13    supervision over responsible for creating this  
14    cartoon in Exhibit Number 32? Is this someone in  
15    your company that prepared this?

16          A.     Yes. It was actually prepared by Peak  
17    Packers. They sell -- they are one of the brand  
18    names of the packers that we use. They're not the  
19    only one, but they are one of them.

20          Q.     Did they prepare this for Concho?

21          A.     Yes, they did.

22                   MS. MUNDS-DRY: Mr. Ezeanyim, we move to  
23    admit Exhibit Number 32.

24                   HEARING EXAMINER EZEANYIM: Any  
25    objections?

1 MR. BRUCE: No objection.

2 HEARING EXAMINER EZEANYIM: Exhibit 32  
3 will be admitted.

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

5 HEARING EXAMINER EZEANYIM: Thank you.

6 Mr. Grable or Mr. Bruce?

7 MR. GRABLE: Thank you.

8 EXAMINATION

9 BY MR. GRABLE:

10 Q. Mr. Bird, I don't think I can mess your  
11 name up. It will be hard to do.

12 When did you leave Bass?

13 A. Three years ago.

14 Q. That was after John Smitherman moved to  
15 Fort Worth? Who was head of the office out in  
16 Midland then?

17 A. Well, it started off with Keith Bussey  
18 being the head of the office there. He's actually  
19 who hired me. And then after Keith, it was Kent  
20 Adams.

21 And then Kent moved to Fort Worth about  
22 the time I left, and it was -- Johnson is his last  
23 name. His first name -- he wasn't the boss when I  
24 was there.

25 Q. Now, you said you worked on Slaughter



1 field dual laterals. Those were for Bass and its  
2 program?

3 A. That is correct.

4 Q. Now those were fairly short laterals,  
5 weren't they?

6 A. Some of them were.

7 Q. There weren't any of them 4,600 feet long,  
8 though?

9 A. No. Although there were a significant  
10 number of them that were turnizontals, and that gets  
11 them the ability to be longer than you think they  
12 would ordinarily. They would be 3,600-foot total  
13 lateral.

14 But you're talking about a TVD that is  
15 much shallower than these are, and that makes a  
16 significant difference in how far you can get out,  
17 because you've got gravity working against you. Or  
18 if they are deeper, it's working for you. It's  
19 difficult to get farther out than what your TVD is.  
20 So...

21 Q. Have you drilled any triple laterals, like  
22 you projected on your Exhibit 32?

23 A. Yes. And -- in general, yes.

24 Q. Where?

25 A. There at the Slaughter.

1 Q. A lot of those were singles, some of them  
2 were doubles?

3 A. They had a few of them that were triples,  
4 too. You know, they were trying to fill in their  
5 pattern, make a chain. You seem familiar with it.

6 Q. Right.

7 A. They had a problem with casing.

8 Q. Old wells?

9 A. Old wells. So sometimes the one that you  
10 really would like to use was not going to work, so  
11 they had to drill some extra laterals out of some of  
12 them that still had good casing.

13 Q. Weren't they moving substantially less  
14 total fluid volumes than we would project out of one  
15 of these wells, like Exhibit 32?

16 A. No. No, they moved a lot of fluid.

17 Q. They had ESPs?

18 A. Some of them did.

19 Q. Have you looked at the fluid volumes that  
20 you project to move out of a well like this Exhibit  
21 32?

22 A. No, not my job.

23 Q. Is it any part of your responsibility to  
24 make recommendations to your management as to  
25 whether or not any of these Yeso wells that Concho

1 has drilled should be vertical or horizontal?

2 A. No.

3 Q. They just come to you and say, "We've  
4 decided to do this, can you do it?"

5 A. Basically, yeah.

6 Q. Now, the plan you have depicted on Exhibit  
7 32 has the two upper horizontals as not cemented?

8 A. That is correct. Yeah. The separation  
9 there between zones is achieved with those packers.

10 Q. Did Bass cement all of their casing?

11 A. No. No, a lot of them were open hole. It  
12 was San Andres that was kind of...

13 Q. In speaking of slickwater fracs versus gel  
14 or water fracs, were you talking more about  
15 horizontal wells or vertical wells, or does it make  
16 any difference in the opinion you're giving?

17 A. It doesn't make a difference in the  
18 opinion I have. They use slickwater a lot on shale  
19 plays, so there's a lot of shale plays being drilled  
20 horizontally now, so that's a very good application  
21 for slickwater.

22 I don't know if it will overapply to  
23 others, though.

24 Q. Did Peak give you a more detailed report  
25 with this page that's Exhibit 32 as the cover?

1           A.     They gave us a procedure that they  
2     recommend for running their fliers.

3           Q.     Did it mention any potential hazards or  
4     risks in these procedures?

5           A.     Oh, there's some cautions in there. They  
6     are in the business of selling that stuff.

7           Q.     Have you had anything to do with meeting  
8     with the BLM and working on the permits, either  
9     surface access or APDs for these proposed wells?

10          A.     Uh-huh.

11          Q.     And what was your role in that?

12          A.     Drilling engineer.

13          Q.     So did you have any -- I take it, then,  
14     you didn't have any responsibility for what surface  
15     areas could or could not be used?

16          A.     More as a bystander than an active  
17     participant in that. They asked a lot about what  
18     size of pad do you need for your drilling rigs and,  
19     you know, how much room would you need between  
20     wells, and could you fit a drilling rig here, can  
21     you turn it around, can you -- you know.

22                 How -- you know, I have been out there and  
23     looked at it. I'm not sure what you're getting at.

24          Q.     Well, do you think there's any problem  
25     with today's technology in drilling two twin

1 horizontals at 20, 25, 30 feet apart, like Burnett  
2 has testified about?

3 A. With the technology, no. With the surface  
4 constraints that we have here, yes.

5 They asked me early on how close we could  
6 get these wells together. And with the idea that  
7 they're being rod pumped, you know, they need room  
8 for pumping units.

9 But furthermore, you know, where you hear  
10 about where it's done where they're 7 and a half,  
11 10, 15 feet apart, they are different drilling rigs  
12 from what we have available out here so that you  
13 could actually do pad drilling, which is what they  
14 call that. Those drilling rigs have got windows  
15 that -- where they -- in their substructures, where  
16 when you move over, it clears the previous well.

17 We don't have those kind of rigs out here.  
18 We would have to bring one in from Fort Worth. They  
19 cost about \$10,000 a day to run. It is doable,  
20 although if you drill them that close together,  
21 you're going to have problems with pumping them.

22 Q. How about 30 feet apart?

23 A. You could start making it happen at  
24 30 feet apart. You're still going to need a  
25 different drilling rig from what you've got.

1           Q.     How far apart would you have to get, in  
2     your opinion, before you could use the rigs that are  
3     typically used out here?

4           A.     You'd probably need to get about 75 feet  
5     apart so that that last well bore would clear the  
6     substructure. And that's dependent on which rig you  
7     actually pick for it.

8           MR. GRABLE: All right. I pass the  
9     witness.

10          MS. MUNDS-DRY: I have no redirect for  
11     Mr. Bird.

12          HEARING EXAMINER EZEANYIM: Okay. Very  
13     good.

14                 Is it possible for you to give me the  
15     actual construction -- schematic construction of  
16     this well?

17          THE WITNESS: Sure.

18          HEARING EXAMINER EZEANYIM: I would really  
19     like to see that.

20          THE WITNESS: Okay.

21          HEARING EXAMINER EZEANYIM: You know, if  
22     you can give it to your counsel, she will share it  
23     with everybody, and then I can get a copy --

24          THE WITNESS: Sure.

25          HEARING OFFICER EZEANYIM: -- of this

1 triple lateral, the construction.

2 THE WITNESS: Uh-huh.

3 HEARING OFFICER EZEANYIM: And then I know  
4 you may have answered this question. What is the  
5 separation between those laterals?

6 THE WITNESS: What is the separation  
7 between those laterals?

8 HEARING EXAMINER EZEANYIM: Yes.

9 THE WITNESS: Just quoting from memory, I  
10 think that the bottom lateral to the middle lateral  
11 was 500 feet.

12 HEARING OFFICER EZEANYIM: Okay.

13 THE WITNESS: And then the middle lateral  
14 to the top lateral was 400 feet. But I'm just  
15 quoting from memory. I might stand corrected.

16 HEARING EXAMINER EZEANYIM: Okay. Very  
17 good. When you give me the construction, give me  
18 the actual construction on what you plan to do.

19 THE WITNESS: Okay.

20 HEARING OFFICER EZEANYIM: What are the  
21 penetration points? Do they penetrate at the same  
22 time or, you know, they -- I mean, let's say you  
23 have the two Blinebrys and one Paddock. Do they  
24 penetrate the -- like the two branches, leave at the  
25 same point or at a different point?

1 THE WITNESS: No, they're not the same  
2 penetration points. These penetration points are  
3 determined by the packers that are run or the -- or  
4 the cement.

5 You know, you don't -- you don't perforate  
6 it until you're past your penetration point. You  
7 don't have a port or a packer until you're past the  
8 penetration point.

9 HEARING EXAMINER EZEANYIM: And you know  
10 each of those laterals must meet the same pack  
11 requirements?

12 THE WITNESS: That's correct.

13 HEARING EXAMINER EZEANYIM: So you  
14 design -- because that's why, really, I want to  
15 see -- can I get that tomorrow?

16 MS. MUNDS-DRY: I'm told it might take --

17 HEARING OFFICER EZEANYIM: I mean, he can  
18 draw the -- he can do it in a minute.

19 MS. MUNDS-DRY: I'm not sure we can get it  
20 to you that quickly, but we'll work to get it to you  
21 as soon as we can.

22 HEARING EXAMINER EZEANYIM: Because I'm  
23 interested in that construction.

24 And most of these completions are open  
25 hole, right, open hole completion?



1 THE WITNESS: No, they're not. The bottom  
2 one is set up to be cemented, and then the next two  
3 are -- they have got packers for separation, so  
4 they're not really open holes.

5 HEARING EXAMINER EZEANYIM: Oh, they're  
6 not? Okay.

7 THE WITNESS: Really, the only other point  
8 that I'd like to make is we -- since I came to work  
9 at Concho, we have been running three strings of  
10 pipe and -- because that allows you to case off the  
11 salt zone that, of course, you're familiar with.

12 HEARING OFFICER EZEANYIM: Yeah. Yeah.

13 THE WITNESS: If you don't case that off,  
14 then you're condemning yourself to drilling the rest  
15 of that well with saturated brine because you  
16 can't -- you know, whatever water you put in there  
17 becomes saturated brine as soon as it passes the  
18 salt.

19 The result of that is huge washouts in the  
20 brine which prevents you from being able to really  
21 accurately get good cement jobs.

22 Without two-staging, and without a whole  
23 lot of effort, we get full circulation on all three  
24 strings of pipe on all -- you know.

25 And I work with Darryl Gray with OCD and I

1 work with Wesley Ingram with the BLM. They -- they  
2 really push for that.

3 But the real benefit of that is your wells  
4 are so much cheaper and faster if you will go ahead  
5 and set that string of pipe.

6 And after we have drilled, you know, 450,  
7 500 wells in this area and people still don't run  
8 two strings of pipe, they're not paying attention.  
9 Because you can -- you can tell from the bit records  
10 how much faster our wells are and, therefore, how  
11 much cheaper they are. I -- I question their  
12 competence.

13 HEARING EXAMINER EZEANYIM: So, in your  
14 wells, you run three strings?

15 THE WITNESS: Three strings.

16 HEARING EXAMINER EZEANYIM: That's what  
17 you're going to run. That's not what you are  
18 recommending? That's what you're going to do?

19 THE WITNESS: We're going to run three  
20 strings.

21 HEARING EXAMINER EZEANYIM: I need that  
22 construction. It's really important.

23 MS. MUNDS-DRY: Yes, sir.

24 HEARING EXAMINER EZEANYIM: Okay. And  
25 these laterals, now, they call it the four units,

1    which is about 4,600 feet? Is that what you're  
2    saying?

3               THE WITNESS: Yes.

4               HEARING OFFICER EZEANYIM: Is that about  
5    how long they are, the laterals?

6               THE WITNESS: Yes.

7               HEARING EXAMINER EZEANYIM: They are all  
8    the same length?

9               THE WITNESS: Roughly, yes.

10              HEARING EXAMINER EZEANYIM: Okay.

11              THE WITNESS: That's something else that  
12    I'd like to mention. We never -- I've never drilled  
13    one longer than we were allowed to. I've never  
14    exceeded our APD length.

15              HEARING EXAMINER EZEANYIM: Of course  
16    you're not supposed to.

17              THE WITNESS: I know. I am glad you  
18    brought that up, though. Because it looks like on  
19    Burnett's last lateral that they did, that they not  
20    only got stuck because they didn't set that pipe,  
21    they -- they exceeded the length of their -- their  
22    permitted length of their lateral.

23              We downloaded this off of the BLM Web  
24    site. I believe it is public record.

25              HEARING EXAMINER EZEANYIM: Well, yes,

1 that's why you can do that.

2 Well, I don't know, you might share it  
3 with them, and then...

4 THE WITNESS: It's their well. I mean...

5 HEARING EXAMINER EZEANYIM: Oh, it's their  
6 well? Can I see it?

7 THE WITNESS: Sure.

8 And you will notice this notation that  
9 Wesley wrote on there.

10 HEARING EXAMINER EZEANYIM: Oh, okay.

11 Yeah. Okay. Very good.

12 Do you mind me looking at this?

13 MR. BRUCE: No, Mr. Examiner. I would  
14 like to see what it is.

15 THE WITNESS: It's public record that  
16 you-all filed.

17 HEARING EXAMINER EZEANYIM: You might see  
18 it before I look at it, because that's why I'm  
19 asking you the question.

20 THE WITNESS: I should tell you what the  
21 well name is, for the record. Let me put my glasses  
22 on.

23 HEARING EXAMINER EZEANYIM: Okay. Do you  
24 have any objection?

25 MR. BRUCE: No objection.

1 THE WITNESS: This is the Stevens A  
2 Number 17H. And the API number is 30-015-38373.

3 HEARING EXAMINER EZEANYIM: Okay. Well,  
4 this is not in evidence. It's just something for  
5 me. Okay.

6 All right. You may be excused.

7 THE WITNESS: Thank you.

8 HEARING EXAMINER EZEANYIM: I may re-call  
9 you if I remember something else.

10 THE WITNESS: All right, sir.

11 MS. MUNDS-DRY: We have one more witness.

12 HEARING EXAMINER EZEANYIM: Okay. Go  
13 ahead.

14 MS. MUNDS-DRY: I call Ryan Dehnad,  
15 please.

16 RYAN DEHNAD,  
17 after having been first duly sworn under oath,  
18 was questioned and testified as follows:

19 EXAMINATION

20 BY MS. MUNDS-DRY:

21 Q. Mr. Dehnad, where do you reside?

22 A. Midland, Texas.

23 Q. And by whom are you employed?

24 A. Concho Resources.

25 Q. What do you do for Concho?

1           A.     I am a completion engineer.

2           Q.     What does that mean? What do your duties  
3 include?

4           A.     I design stimulations, I analyze, and I  
5 make improvements.

6           Q.     Are you responsible for this area of  
7 Southeast New Mexico, and particularly the Yeso,  
8 what we call the shelf?

9           A.     Yes, I am.

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

12          A.     No, I haven't.

13          Q.     Would you please review for Mr. Ezeanyim,  
14 your education and work history?

15          A.     Yes, I will.

16                 I graduated in 1999 from Mercer -- that's  
17 M-E-R-C-E-R -- Mercer University in Macon, Georgia.  
18 This was December of '99, with a degree in  
19 environmental engineering. I worked for  
20 Schlumberger in 2000.

21                 I worked for them for a little over two  
22 years, and I went back to school to pursue a  
23 master's in petroleum engineering.

24                 I attended Montana Tech in 2002 to 2004.  
25 I moved to Midland, Texas, to work for Chevron. I

1 worked for Chevron for six and a half years. My  
2 first two years were drilling engineer, next two  
3 years were workover engineer, and then my last years  
4 I was a completion engineer focused on the Wolf Camp  
5 and Canyon Reservoirs in Sterling County, Texas.

6 And then I hired on with Concho in May of  
7 2010.

8 Q. Are you a registered engineer? I know  
9 Mr. Ezeanyim likes to ask that.

10 A. I'm not a registered engineer.

11 Q. Are you familiar with the applications  
12 that Concho has filed here today?

13 A. Yes, I am.

14 Q. Are you responsible for designing the  
15 completion plans for the proposed horizontal triple  
16 laterals that are the subject of the applications  
17 here today?

18 A. Yes, I am.

19 MS. MUNDS-DRY: Mr. Ezeanyim, we tender  
20 Mr. Dehnad as an expert in completions engineering.

21 HEARING EXAMINER EZEANYIM: Mr. Dehnad is  
22 qualified.

23 Q. (By Ms. Munds-Dry) Mr. Dehnad, I assume  
24 you're familiar with Concho's horizontal well  
25 proposals?

1 A. Yes, I am.

2 Q. Have you had any previous experience  
3 completing horizontal wells?

4 A. Yes.

5 Q. And were any of those in New Mexico?

6 A. Yes, 12 of them.

7 Q. You have completed 12 horizontal wells in  
8 New Mexico?

9 A. Yes.

10 Q. Other than your horizontal well  
11 experience, how many Yeso wells have you completed  
12 in -- since you've been with Concho?

13 A. Almost 300.

14 HEARING EXAMINER EZEANYIM: Vertical  
15 wells?

16 THE WITNESS: Yes, sir.

17 Q. (By Ms. Munds-Dry) Were they multistage  
18 wells?

19 A. They were multistage wells.

20 Q. If you could explain to Mr. Ezeanyim -- if  
21 it helps you, I don't know if it helps you to refer  
22 to Exhibit 32.

23 But if you could, explain to Mr. Ezeanyim  
24 how you propose to complete these triple laterals.

25 A. Sure.



1           Mr. Examiner, I looked at vertical wells  
2   that we fracked that immediately neighbored the  
3   Puckett lease. What was brought to my concern was  
4   the fracturing pressures of the Blinebry. In some  
5   cases we almost got up to 6,000 PSI. And the frac  
6   pressure would decrease almost 600 PSI between my  
7   Blinebry intervals. That 600 PSI difference was  
8   enough concern for me that I would like to have that  
9   lower Blinebry lateral with cement behind it.  
10   Cement behind it will give me extra tolerance for  
11   frac pressure.

12           The subsequent laterals will be open hole  
13   completion, where I will use an open hole packer and  
14   sleeve system.

15         Q.    Mr. Dehnad, why, in your opinion, do you  
16   only need a cement casing design for the bottommost  
17   lateral?

18         A.    For fracture pressure.

19         Q.    For fracture pressure?

20         A.    Yes, ma'am.

21         Q.    You don't have that same concern in the  
22   middle or top lateral?

23         A.    You don't. Because as you move up in the  
24   Blinebry reservoir, your frac pressure decreases.

25         Q.    Okay. What are you designing for your

1     frac length?

2           A.     Okay.  If my arm is the lateral  
3     (indicating), is the lateral portion of the well, my  
4     length is going to be in this (indicating)  
5     direction.  Okay?  My half length is going to be  
6     300 feet.

7           Q.     Does that depend on the vertical pilot  
8     hole, your design?

9           A.     Yes, it does.

10          Q.     What about frac height?

11          A.     Okay.  Again, if my arm is the lateral, my  
12     height is this (indicating) direction, and I'm  
13     designing for 400 to 600 feet in height.

14          Q.     And what's the distance that you plan  
15     between stages?

16          A.     That's to be determined.  I really need to  
17     look at the logs before I can determine stages.

18          Q.     And how many stages are you planning?

19          A.     Well, I'm planning to get 12 to 16 stages.

20          Q.     Do you know where you are going to place  
21     your stages in a vertical well before you drill?

22          A.     I don't.

23          Q.     What do you use to determine the stages?

24          A.     Again, I use the logs.

25          Q.     And why is that?

1           A.     It's a -- it's a heterogeneous log, just  
2     like Mr. Broughton testified earlier. You know, the  
3     rock characteristics, they can change from immediate  
4     well to well, particularly the porosity.

5           Q.     Is this the same process that you follow  
6     when you're completing a vertical well?

7           A.     Yes.

8           Q.     So that's a common process that you use?

9           A.     Yes, it is.

10          Q.     What sand volumes are you planning to use?

11          A.     Again, I can give you a range. Each stage  
12     will have approximately 100,000 to 150,000 pounds of  
13     sand.

14          Q.     And what about your fluid volumes?

15          A.     Okay. Again, the fluid volumes I will  
16     determine from the stages as well. But each  
17     lateral -- each lateral will have approximately  
18     60,000 to 90,000 barrels of fluid.

19          Q.     Is the liner system you're running similar  
20     to the uncemented liners that Mr. Jacoby commented  
21     were for their poorer wells?

22          A.     It's not. My liner system will be  
23     mechanically staged with the open hole packers.

24          Q.     In terms of the cement case plan and then  
25     the packer sleeve plan that you have here, you have

1 performed both of those methods?

2 A. I have performed both of those methods.

3 Q. And have you been successful with both of  
4 those methods?

5 A. I have been successful.

6 Q. Have you had any completion failures?

7 A. I have not had any completion failures in  
8 horizontal wells.

9 Q. Let me ask you the same question I asked  
10 Mr. Bird.

11 Do you have any concern with the third  
12 lateral?

13 A. No, I do not.

14 Q. Do you believe Concho's proposals for  
15 three laterals will be successful?

16 A. Yes.

17 Q. Has this proposed -- and I'm referring to  
18 this particular design in Exhibit 32.

19 Has this proposed multilateral design been  
20 done before?

21 A. Yes, it has.

22 Q. And are you aware of whether it's been  
23 successful?

24 A. Unfortunately, I haven't done it, and it  
25 hasn't been done at Concho. I'm going by our -- our

1 service provider of this type of system.

2 Q. Is that Peak?

3 A. That is Peak.

4 Q. And what is Peak telling you about their  
5 success rate?

6 A. It's been an outstanding system for them,  
7 very successful, used in Texas and in Canada.

8 Q. Did they give you any indication of how  
9 many times they have done this before?

10 A. It was -- an off-the-top-of-the-head  
11 number it wasn't -- you know, it wasn't a strong  
12 count, but it was just under 100.

13 Q. Mr. Dehnad, what is your goal when you're  
14 designing completions for multilateral wells?

15 A. My goal is to optimally develop the entire  
16 Yeso.

17 Q. And have you reviewed Burnett's proposals  
18 to drill horizontal wells?

19 A. Yes, I have.

20 Q. Do you have any concerns?

21 A. Concerns with particular...

22 Q. With their horizontal completion plan?

23 A. No, ma'am, I don't. Just...

24 Q. Do you believe their single laterals will  
25 optimally develop the entire Yeso?

1 A. No, I don't.

2 Q. Why is that?

3 A. The Yeso is a 1,500-foot thick formation.

4 I don't think that one lateral is going to be able  
5 to -- is going to be able to allow you to have that  
6 much contact fluid with that entire bed. You're  
7 going to have to have more laterals.

8 Q. In your opinion, will that cause waste?

9 A. It will cause waste.

10 Q. Have you reviewed Burnett's proposals to  
11 drill vertical wells, in particular, the two wells  
12 they have in front of the division today?

13 A. Yes, I have.

14 Q. Do you have any opinions on using  
15 slickwater frac?

16 A. I do. And this is not a cut at  
17 Burnett/Hudson by any means, with their technique.

18 I just prefer the cross-linked gel. I  
19 prefer the cross-linked gel because the gel can  
20 carry larger sand size. And with larger sand size,  
21 Mr. Examiner, you can have higher conductivity.  
22 That's just my opinion.

23 Q. What about the ability of the slickwater  
24 to carry proppant?

25 A. From what I understand, slickwater is

1 limited on the sand sizes it can carry. Typically,  
2 it's 100 mesh or 40/70.

3 HEARING EXAMINER EZEANYIM: How much?

4 THE WITNESS: It's a 100 mesh -- it's a  
5 size 100 mesh sand or 40/70 size, so you can't go  
6 any larger than that.

7 Q. (By Ms. Munds-Dry) And how does that  
8 affect your frac height or width?

9 A. I feel that you would be limited by your  
10 frac height, particularly.

11 Q. And in particular, I'm interested in your  
12 opinion on how that affects your frac height in the  
13 Blinebry.

14 A. Again, the Blinebry being a tight  
15 heterogeneous rock, I don't think you'll get the  
16 same frac height as you would with the cross-linked  
17 gel system.

18 Q. Is that why you are not proposing a  
19 slickwater frac for the horizontal wells here?

20 A. That's correct.

21 MS. MUNDS-DRY: Okay. I have no further  
22 questions for Mr. Dehnad. I pass the witness.

23 HEARING EXAMINER EZEANYIM: Mr. Grable?

24 MR. GRABLE: Just a couple.

25

## EXAMINATION

1  
2 BY MR. GRABLE:

3 Q. Mr. Dehnad, when you were talking about  
4 the Burnett/Hudson horizontal design, are you  
5 assuming they will only drill one lateral per  
6 spacing unit?

7 A. I was assuming it was one lateral for the  
8 Paddock, yes, sir, and one lateral for the Blinebry.

9 Q. Which is two laterals for the spacing, if  
10 there are --

11 A. Yes, sir. Two laterals, yes, sir. Two  
12 laterals per spacing, yes.

13 Q. So the difference is the Concho plan has  
14 two laterals in the Blinebry versus only one?

15 A. Correct.

16 Q. If you got -- did you say you were  
17 planning for a 4- to 600-foot vertical frac height?

18 A. Again, if you're calling this (indicating)  
19 direction the frac height, yes, sir.

20 Q. And that would be up and down?

21 A. Predominantly up. The -- your -- your  
22 proppant length will be 4- to 600 feet. Your prop  
23 length will be 4- to 600 feet.

24 Q. Were you involved in the -- I believe it's  
25 four horizontal wells that COG has actually drilled



1 in the Yeso?

2 A. No, sir, I wasn't.

3 Q. They were all single lateral horizontals?

4 A. Correct.

5 Q. And you have never -- have you ever worked  
6 on a design of a completion in a multiple lateral  
7 horizontal well?

8 A. No, sir, I haven't.

9 Q. So this would be your maiden voyage?

10 A. Yes, it would.

11 Q. When we were discussing the preference for  
12 gel, acid gel versus slickwater, what is your  
13 understanding with respect to what Burnett/Hudson  
14 had done in completing their horizontal wells?

15 A. My understanding is Burnett/Hudson's  
16 preference is the slickwater practice. More sand  
17 volume -- it's comparable -- again, if I'm going  
18 back to a vertical setting, sand volumes will  
19 compare. They did have a little bit more, but a lot  
20 more fluid.

21 And again, I'm not doubting that they're  
22 getting the frac length, I'm just concerned about  
23 the frac height.

24 Q. Were you here when Burnett presented its  
25 Exhibit 6Q showing its -- showing nine of its --

1 I'll just let you look at mine.

2 Did you see Exhibit 6Q?

3 A. Yes, I did.

4 Q. Doesn't it reflect that all nine of those  
5 horizontals were completed with hot acid instead of  
6 slickwater?

7 A. Initially when I saw this, it had  
8 slickwater only.

9 MR. GRABLE: They've done it. Well, I'll  
10 let our people testify about it, but we may be  
11 closer in agreement on horizontal wells than you  
12 think.

13 Pass the witness.

14 MS. MUNDS-DRY: I have no redirect for  
15 Mr. Dehnad.

16 HEARING EXAMINER EZEANYIM: Okay.

17 If I understood your testimony, you say on  
18 each lateral you have 16 stages of completion,  
19 right?

20 THE WITNESS: Possibly, Mr. Examiner. It  
21 will be at least 12.

22 HEARING EXAMINER EZEANYIM: 12 to 16?

23 THE WITNESS: Yes, sir.

24 HEARING EXAMINER EZEANYIM: Okay. And you  
25 stated that you didn't like to use the slickwater in

1 the lateral. Why? Why is it bad to use that?

2 THE WITNESS: Again, that's my preference.

3 My preference is that the cross-link gel system --

4 HEARING EXAMINER EZEANYIM: The what?

5 THE WITNESS: The cross-link gel system --

6 HEARING OFFICER EZEANYIM: Yeah.

7 THE WITNESS: -- will allow me to carry a

8 larger grain size of sand.

9 HEARING OFFICER EZEANYIM: Okay.

10 THE WITNESS: Okay? I can use something  
11 larger than 40/70. I can go 20/40. And that 20/40  
12 sand, Mr. Examiner, will allow me to have greater  
13 conductivity.

14 HEARING EXAMINER EZEANYIM: But for  
15 slickwater, which has low viscosity, you can't do  
16 that?

17 THE WITNESS: That's correct.

18 HEARING OFFICER EZEANYIM: You can't  
19 carry...

20 THE WITNESS: That's correct.

21 HEARING EXAMINER EZEANYIM: So you would  
22 not recommend that COG use slickwater for this?

23 THE WITNESS: I would not recommend COG to  
24 use slickwater. I would recommend them to use the  
25 cross-link gel.

1 HEARING EXAMINER EZEANYIM: And did you  
2 state -- have you completed any horizontal wells?

3 THE WITNESS: Yes, sir, I have.

4 HEARING EXAMINER EZEANYIM: But not the  
5 triples?

6 THE WITNESS: Not the triples.

7 Mr. Examiner, one horizontal completion  
8 will mimic the next -- the next ones.

9 HEARING EXAMINER EZEANYIM: And then  
10 you -- would you -- would you expect some  
11 interference between the laterals?

12 THE WITNESS: Do you mean communication?

13 HEARING EXAMINER EZEANYIM: Yes,  
14 communication between the laterals.

15 THE WITNESS: No, sir. Again, the frac  
16 heights are to where it will -- it will just reach  
17 the next lateral, that's it. They won't -- they  
18 won't communicate. That's my design.

19 HEARING EXAMINER EZEANYIM: That's your  
20 design?

21 THE WITNESS: Yes, sir.

22 HEARING EXAMINER EZEANYIM: Okay. I think  
23 that's all I have, but I would really like to have  
24 the schematic. And you might input there, you know,  
25 where you -- your stages where you think you might

1 complete it.

2 THE WITNESS: Yes, sir.

3 HEARING OFFICER EZEANYIM: Does anybody  
4 have anything further for this witness anymore?

5 MR. BRUCE: Not with this witness,  
6 Mr. Examiner.

7 HEARING EXAMINER EZEANYIM: Oh, you want  
8 to call somebody else?

9 MR. BRUCE: We would like to call -- do  
10 some rebuttal.

11 HEARING EXAMINER EZEANYIM: Okay.  
12 Okay. You may step down.

13 MR. GRABLE: We call John Rodgers.

14 HEARING EXAMINER EZEANYIM: Can you spell  
15 your last name for the record?

16 THE WITNESS: John Rodgers, R-O-D-G-E-R-S.

17 JOHN RODGERS,

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

20 EXAMINATION

21 BY MR. GRABLE:

22 Q. Mr. Rodgers, by whom are you employed and  
23 in what capacity?

24 A. I'm currently employed by Burnett Oil as  
25 an engineering manager.

1 Q. How long have you worked for Burnett?

2 A. I am going on four weeks -- five weeks, I  
3 think it is, excuse me.

4 Q. Would you please state your educational  
5 experience and job experience in the oil and gas  
6 industry for the record, please?

7 A. I graduated from Texas A&M in 1975.  
8 Basically, I have been in the oil and gas industry  
9 for 36 years.

10 I started out with Amoco, went to work for  
11 Bass Enterprises, was with Bass for 19 years. I  
12 left Bass and I opened an office in Midland for,  
13 back then, Lomak Petroleum, which is now Range  
14 Resources.

15 I moved to Fort Worth and went to work for  
16 Encore Operating as a drilling engineer, as a  
17 production engineer, and as a completion engineer.  
18 In fact, we were a little bit of everything. I  
19 spent eight years with Encore Operating.

20 I went to work for EOG Resources in  
21 Fort Worth, and was with EOG for three and a half  
22 years.

23 Most recently, I was with Nutech  
24 Engineering designing horizontal well completions  
25 for four and a half months.

1 Q. And Nutech is a consulting firm?

2 A. Yes, sir.

3 Q. And what's the nature of their consulting  
4 practice?

5 A. Drilling and completion. They do have a  
6 small production group, but it's very small.

7 Q. And are horizontal well designs and  
8 completions a part of their practice?

9 A. That is their practice.

10 Q. Is it a major part of their practice?

11 A. It's a major part of their practice.

12 Q. About how many engineers does Nutech have?

13 A. All I can speak of is Fort Worth. We had  
14 four engineers on drilling and we had three  
15 engineers on completions.

16 Q. Let me show you what has been marked as  
17 Burnett Exhibit 10.

18 The caption, "Horizontal Drilling  
19 Experience, Burnett Staff and Consultants."

20 And have you reviewed this before?

21 A. Yes, I have.

22 Q. Can you just describe, generally, for  
23 Mr. Ezeanyim the engineers with Burnett whose total  
24 experience in horizontal drilling is represented on  
25 this Exhibit 10?

1           A.     Primarily, that is myself and Mr. Pollard  
2     and two engineers up in the Marcellus area, I  
3     believe.

4           Q.     And approximately how many horizontal  
5     wells have you designed or worked on in your career?

6           A.     Approximately 13- to 1,350.

7           HEARING EXAMINER EZEANYIM:   Mr. Grable?

8           MR. GRABLE:   Yes.

9           HEARING OFFICER EZEANYIM:   Have you  
10    qualified the witness?  Is this a fact witness or an  
11    expert witness?

12           MR. GRABLE:   I'm still doing it.  He just  
13    said he has worked on 1,300 --

14           HEARING EXAMINER EZEANYIM:   Okay.  I  
15    thought you were just going to -- okay.

16           MS. MUNDS-DRY:   If it helps, Mr. Ezeanyim,  
17    I don't plan to object.  He's been a drilling  
18    engineer -- when I was one.  So, I mean, he's had  
19    plenty of experience.

20           I don't know if that cuts that short or  
21    not.

22           HEARING EXAMINER EZEANYIM:   Well, that's  
23    okay.  I'm sorry to interrupt.  Go ahead.

24           MR. GRABLE:   That's fine.  Well, we will  
25    now tender Mr. Rodgers as an expert in drilling



1 engineering.

2 HEARING EXAMINER EZEANYIM: I so will  
3 find. I want to get it on the record so that I can  
4 then weigh the evidence.

5 Q. (By Mr. Grable) Have you worked on  
6 multiple lateral horizontals before?

7 A. In total, I've worked on five multilateral  
8 wells. Two of those were what we called in Montana  
9 a crow's foot, and three of those were in the Bakken  
10 in North Dakota. And we called those coplanar  
11 multilateral wells.

12 Q. Have you reviewed the COG plan for triple  
13 laterals in their proposed wells in these cases?

14 A. Yes, sir, I have.

15 Q. Did you hear Mr. Bird's testimony about  
16 the risks or lack of risks with respect to triple  
17 laterals?

18 A. I heard Mr. Bird's testimony on that. I  
19 would not do it like COG is proposing.

20 I believe the risk involved in the second  
21 and third lateral is minimal on the drilling, but on  
22 the completion side, it is maximized.

23 Q. What about the completion side gives you  
24 concern about risks?

25 A. It's the open hole packer completion

1 technique. That technique is very outdated. It's  
2 been tried over and over in the Barnett shale, in  
3 the Hainesville shale, and they are getting away  
4 from that completion technique and going to  
5 completely cemented laterals, centralized casing  
6 strings in the lateral.

7 Q. Does a cemented casing give you greater  
8 control over the stimulation and the fracturing  
9 operations?

10 A. Yes, sir, it does.

11 Q. Can you explain how that is to  
12 Mr. Ezeanyim?

13 A. It gives you more of a pinpoint limited  
14 entry technique. It focuses your energy in -- I'll  
15 take for example a Barnett -- over a 200, 250-foot  
16 interval. And this has been seen over and over by  
17 the increase in frac ball pressure from one stage to  
18 the next.

19 That's one reason that people were getting  
20 away from the Peak Completion technique, is they  
21 were not seeing the frac ball pressure increases,  
22 they were seeing communication between the packers.

23 And when I was at Encore, we were drilling  
24 some Barnett wells. We did talk to Peak Completion.  
25 We also talked to other service companies, and we

1    went with cemented laterals because you can make  
2    better wells, and it was a more proven technique,  
3    more proven technology on fracture stimulation.

4            Q.    In your opinion, do open hole methods have  
5    a higher chance of mechanical failures in the  
6    completion phase?

7            A.    Yes, sir. That's -- the open hole  
8    packers, again, on frac ball pressures between the  
9    stages, we were seeing -- or I heard from certain  
10   service companies they were seeing minimal frac ball  
11   pressure increase between stages, and that is why  
12   they were getting to the cemented centralized casing  
13   strings in the laterals.

14           Q.    Are there other problems with single  
15   laterals versus double or triple laterals in  
16   producing from different strata, like the Paddock  
17   and the Blinebry in this case?

18           A.    One of the main problems I can see, as an  
19   old production engineer, is the commingling of  
20   downhole waters.

21                    The Paddock and the Blinebry are not  
22   compatible waters. Thus, you have more of a scaling  
23   tendency, which is going to mean you're going to  
24   have to go into those second and third laterals  
25   several times to clean them out with scale.

1 Q. Are there problems, or potential problems,  
2 with gas production in these wells with multiple  
3 laterals?

4 A. I don't know how -- well, I'll relate back  
5 to my Montana days, when we were doing so many  
6 cased-hole exits. We were actually setting our  
7 whipstock, cutting our windows. After we cut our  
8 window we would remove our whipstock and we would  
9 have a sump hole.

10 In both cases with horizontal wells, you  
11 do not have that sump hole. You can put one there,  
12 but you don't have one unless you put one there.

13 But you are going to have more total fluid  
14 coming in from the second and the third lateral.  
15 And especially the Paddock, where it mixes with the  
16 Blinebry waters, you will see scaling tendencies.  
17 And you could actually flood out the lower Blinebry  
18 interval, I would assume, unless you put an ESP in  
19 there or something, to remove that total fluid. But  
20 then, again, you're mixing waters downhole.

21 Q. Is there potential problems with gas  
22 locking that are increased with multiple lateral  
23 wells?

24 A. Yes.

25 Q. Could you explain?

1           A.     Either with a --

2           Q.     Could you explain what gas locking is and  
3 why it's very dangerous?

4           A.     Gas locking is -- basically, your standing  
5 valve is on the bottom, you have your traveling  
6 valve on top. And if you do not have your pump or  
7 your ESP set down in fluid, gas is going to try to  
8 enter that pump cavity to be pumped out of the hole.

9                   Gas is very compressible; fluid is not as  
10 compressible, so you get less and less travel on  
11 your traveling -- on your traveling valve than you  
12 do -- or you get less and less travel on your  
13 traveling valve. And before you know it, your  
14 chamber there is full of gas, and you sit there  
15 pounding fluid.

16          Q.     Are there problems, or potential problems,  
17 with lifting the total fluid volumes from multiple  
18 lateral wells?

19          A.     We think there could be problems in  
20 lifting the total fluid. It can be done with an  
21 ESP.

22                   I noticed EOG -- excuse me -- COG, on  
23 their proposal, was setting 7-inch -- I assume at  
24 TD -- and not plugging back, which is one thing I  
25 would differ in. I believe they could save a lot of

1 money by not setting 7-inch all the way to total  
2 depth.

3 But anyway, now that I said that, now I  
4 forgot your question.

5 Q. We were talking about lifting total  
6 fluids, volumes.

7 A. Oh, lifting total fluids, volumes.

8 Once they get the three laterals  
9 stimulated, they're going to have a large  
10 increase -- or they are going to have a large volume  
11 of total fluid. They're going to need large ESP in  
12 the 7-inch, very costly.

13 Once that total fluid drops off, as you  
14 saw on the decline curves, total fluid is going to  
15 drop off. They're going to have to spend more money  
16 and reduce the size of their ESP to handle that  
17 total fluid. Again, that's another major expense.

18 I just see it to be a large operational  
19 problem.

20 Q. Do you see any greater problems in  
21 multiple lateral wells in doing individual zone  
22 testing and remedial work?

23 A. I'm sorry. I missed your question.

24 Q. Is there potentially more problems with a  
25 multiple lateral horizontal well versus a single

1 lateral, in doing individual zone testing and  
2 remedial work?

3 A. Oh, yes, sir. They have to be able to  
4 reenter -- they have to be able to reenter that  
5 horizontal lateral.

6 What we were experiencing in Montana, when  
7 we pulled the whipstock, we went in with a bent  
8 joint, as they do recommend. But it took us hours  
9 and sometimes days to be able to find that window  
10 exit, to be able to go in and either clean out that  
11 open hole or to restimulate it.

12 Q. And finally, on these risks with potential  
13 corrosive fluids in shallow zones, do you take  
14 triple the risk with losing three wells in one from  
15 casing corrosion uphole in a triple lateral versus a  
16 single lateral?

17 A. I think you could take that -- I think  
18 that's a very big risk. And there, if you lose one  
19 vertical well bore, you have lost three laterals.

20 Q. Now, If three single laterals can be  
21 drilled and completed for approximately the same  
22 cost as one triple lateral, which would you  
23 recommend to your management?

24 A. I would recommend three. I call them  
25 grass root horizontal wells. The Bakken has shown

1 over and over, as the Barnett has shown -- I'm not  
2 so sure about the Hainesville in Louisiana.

3 But drilling techniques have come a long  
4 way in the last several years. And I really feel  
5 that you could drill three wells cheaper than you  
6 could do three lateral wells out of one vertical  
7 well bore.

8 Take for instance, in North Dakota, the  
9 initial -- when those wells were first being  
10 drilled, they were 44- or 45-day wells. In talking  
11 to some of my EOG buddies up there now, they are  
12 getting those wells down in 18 days. That's why  
13 they have gotten away from the dual lateral well  
14 bores, coplanar well bores.

15 Q. Now, how far apart on the pad do you think  
16 Burnett and Hudson can drill these single horizontal  
17 laterals with reasonable ease and safety?

18 A. At EOG on pad drilling, we were doing  
19 25-foot center to centers.

20 The Barnett, at its peak, was about 182,  
21 185 rigs. They're now down to about 60-something, I  
22 believe. All of those rigs have moved to West  
23 Texas. Those rigs are out here. They do pad  
24 drilling. We should not have trouble finding a rig  
25 that would do that. We may have to look for one. A



1 lot of them are under contract, but we should be  
2 able to find a rig to do pad drilling.

3 EOG did do a couple of wells, not by  
4 choice, on 7-and-a-half-foot centers. I would not  
5 recommend that again, not unless you have to.

6 MR. GRABLE: Thank you, Mr. Rodgers.

7 I pass the witness.

8 HEARING EXAMINER EZEANYIM: Ms. Munds-Dry?

9 MS. MUNDS-DRY: Thank you.

10 EXAMINATION

11 BY MS. MUNDS-DRY:

12 Q. Mr. Rodgers, have you drilled any  
13 horizontal wells in New Mexico?

14 A. No, I have not.

15 Q. If I understand your testimony, your  
16 experience is primarily in Texas, drilling  
17 horizontal wells?

18 A. Montana, North Dakota, Mississippi, and  
19 Texas.

20 Q. Okay. Thank you. I missed -- I did hear  
21 Montana.

22 You were testifying that the open hole  
23 packer technique is, I believe you said, outdated?

24 A. Yes, ma'am.

25 Q. Does that mean it doesn't work?

1           A.     I know everybody in the Barnett was  
2     getting away from it.

3           At one time -- this was before Encore  
4     started drilling horizontal wells -- it was one of  
5     the accepted practices. But people were getting  
6     away from it when Encore started drilling their  
7     wells on the first ranch. And we did not -- well,  
8     we contacted Peak Completion. We found out that  
9     they had not done one in the Barnett shale in a  
10    couple or three months, because people were getting  
11    away from that technique in the Barnett; and,  
12    therefore, we didn't want to approach them.

13          Q.     I'm not sure you answered my question.  
14                 Does that mean it doesn't work? I  
15    understand new technology has occurred.

16          A.     It does not work as well as cemented  
17    completion -- casing completions.

18          Q.     And you're citing these examples in the  
19    Barnett. That's a shale, isn't it?

20          A.     Yes.

21          Q.     Are shales different than carbonates?

22          A.     Very much so.

23          Q.     So how is that comparison relevant to this  
24    Yeso shelf?

25          A.     They are horizontal wells. You start with

1 a vertical well and you go horizontal.

2 The completion techniques are different.

3 The drilling is pretty much the same.

4 Q. But the completion techniques would be  
5 different from a shale horizontal well to a Yeso  
6 horizontal well?

7 A. I have not completed a carbonate well in a  
8 great while, actually, since my Bass days, to be  
9 quite honest, so it's been 15 years.

10 Q. You were also noting examples of -- in the  
11 shales, of how open hole completions have a higher  
12 risk.

13 Did you bring any evidence with you today  
14 or a study showing this to be true?

15 A. Open hole completions?

16 Q. You were saying that they're a higher  
17 risk. Mr. Grable asked you about these open hole  
18 completions that related to higher risks.

19 A. Open hole is a higher risk.

20 Q. Did you bring any of that kind of evidence  
21 or study or anything like that to show that here  
22 today?

23 A. I think that's evident by operators  
24 getting away from the Peak Completion in the shales.

25 Q. So the answer is no?

1           A.     I did not bring any evidence, no. But I  
2 believe that's published data through SPE. Several  
3 papers have been written on that.

4           Q.     Do you get danger of washout in shale that  
5 is not present in a carbonate environment?

6           A.     I'm sorry. Washed out in shales that are  
7 not present --

8           Q.     You don't have that same issue in a  
9 carbonate environment?

10          A.     Washout in shales? I'm sorry. I missed  
11 your question. I'm not sure I understand your  
12 question.

13          Q.     Mr. Rodgers, have you performed any  
14 attempted open hole packer systems in New Mexico?

15          A.     No, I have not.

16          Q.     In the open hole packer system that you  
17 were discussing in the Barnett, what rate were you  
18 dropping the frac ball?

19          A.     At what rate was I dropping the frac ball?  
20 Well, the frac ball drops at its own rate. We  
21 pumped it down.

22          Q.     Pump rate. Does that sound better?

23          A.     Excuse me. Okay. Well, in Montague and  
24 Cooke Counties, primarily Montague County, which is  
25 in the Barnett Oil Combo area, we were pumping our

1 jobs somewhere between 25 and 45 barrels a minute.

2 In the Denton County and the Johnson  
3 County area, which is more in the gas window, we  
4 were pumping our jobs upwards of 70 -- 65 to  
5 70 barrels a day.

6 Q. What were your port sharing pins set to?

7 A. Port sharing pins? There are not any  
8 ports in a cased cemented lateral. You drop a frac  
9 ball and it sits in your frac plug, and you break  
10 down your next set. There are not any ports.

11 Q. You were mentioning one of the problems  
12 that you have, an issue with the multilaterals, is  
13 the commingling of waters between the Blinebry and  
14 the Paddock.

15 Does Burnett currently commingle the  
16 Paddock and Blinebry waters?

17 A. Yes, they do have commingled wells.

18 Q. Do you see the scalings in the commingling  
19 in your vertical or horizontal wells that would be  
20 here?

21 A. Just on a larger volume scale with the  
22 horizontal wells.

23 Q. And there are methods to treat for scale  
24 and the other issues that result from that  
25 commingling of waters, aren't there?

1           A.     Yes, if you can get back into that lateral  
2     to clean it out.

3           Q.     In fact, I think Burnett has a pretty  
4     extensive treatment program, as I recall.

5           A.     I'm not familiar with that.

6           Q.     Do you do any individual zone testing in  
7     your vertical wells? Does Barnett, do you know?

8           A.     Listening to Mark talk, yes, they do do  
9     individual zone testing.

10          Q.     And do you perform workovers in your  
11     vertical wells?

12          A.     I am sure, yes. I do not know at what  
13     frequency or whatever.

14          Q.     The same risks are present when you  
15     conduct individual zone testing and remedial work in  
16     a vertical well and in a horizontal well, aren't  
17     they?

18          A.     No. The risk is much greater in a  
19     horizontal well.

20          Q.     Why is that?

21          A.     Well, as I said earlier, you would have to  
22     get into that lateral first. And if you're cutting  
23     three windows, you have to get into each of the  
24     three laterals for a vertical hole.

25          Q.     Did you complete your answer?

1           A.     Yes. I'm sorry.

2           Q.     Mr. Rodgers, you noted that -- I want to  
3     make sure I understand your answer -- that you would  
4     recommend three grass root wells, three single  
5     laterals, essentially?

6           A.     Uh-huh.

7           Q.     Is that what Burnett's proposing to do  
8     now?

9           A.     I have not gotten into that much detail on  
10    that. I would think that would be a better option  
11    than three laterals out of one vertical well bore.

12          Q.     Your last testimony was how far apart you  
13    could do pad drilling between each lateral.

14                 If you were restricted by surface  
15    conditions and could not do three laterals, what  
16    would you do?

17          A.     I don't see that you're restricted by  
18    surface conditions, because you can put three  
19    laterals on a -- on a -- I believe -- correct me if  
20    I'm wrong here.

21                 But Mr. Bird -- Mark said about a  
22    300-by-300-foot pad you can do three laterals on  
23    that.

24          Q.     Assuming you can get the right rig to do  
25    it, right?

1           A.     Assuming you can get the right rig to do  
2     it.   Again, these are only 6,500-foot TVD wells.

3           Q.     This goes back to an earlier question I  
4     tried to ask you.

5                     Do you think there is a greater danger of  
6     washout during completions in an open hole packer  
7     setting in a shale than in a carbonate/dolomite  
8     environment?

9           A.     I'm sorry. I'm going to have to ask you  
10    to read it again.

11          Q.     Do you think there is a greater danger of  
12    a washout during completions in an open hole packer  
13    setting in a shale than in a carbonate environment?

14          A.     Yes, I think there are. I think you  
15    probably would have a little bit more washout in a  
16    shale environment than you do in a carbonate  
17    environment.

18          Q.     But you can't exactly equate the shale  
19    environment as you could in a carbonate environment,  
20    could you? You are saying it's greater in a shale?

21          A.     Well, you have washouts in carbonate,  
22    also. When I was working at Bass, working in  
23    Slaughter San Andres, as we were drilling new wells,  
24    I mean we saw washout in the carbonate all the time.

25          Q.     Horizontal wells?



1           A.     No, vertical. Well, I left before Bass  
2     did the horizontals.

3                   MS. MUNDS-DRY: Okay. I think that's all  
4     the questions I have for you, Mr. Rodgers.

5                   HEARING EXAMINER EZEANYIM: Thank you.  
6                   Mr. Grable?

7                   MR. GRABLE: No redirect.

8                   HEARING EXAMINER EZEANYIM: Mr. Rodgers,  
9     have you ever done this packer open hole completion  
10    anywhere?

11                  THE WITNESS: In vertical holes, yes. In  
12    horizontal wells, no.

13                  HEARING EXAMINER EZEANYIM: Okay. You  
14    have done it in vertical but not horizontal, right?

15                  THE WITNESS: Yes.

16                  HEARING EXAMINER EZEANYIM: Okay. Since  
17    you have done it now, and you told me that a lot of  
18    people are getting away from that practice, why are  
19    they getting away from that practice?

20                  THE WITNESS: Again, they were going back  
21    to the frac ball pressure increases that they were  
22    seeing in the -- in primarily the Barnett. They  
23    were not seeing the frac ball pressure increases  
24    from one stage to the next that they would see with  
25    a cemented case hole lateral.

1 HEARING EXAMINER EZEANYIM: So you're  
2 saying that it becomes an old technology. There are  
3 new technologies that might be more efficient?

4 THE WITNESS: Correct.

5 HEARING EXAMINER EZEANYIM: Okay.

6 THE WITNESS: That's why COG, in  
7 particular, who I can really speak for -- I mean  
8 that's all they were doing was cemented case-hole  
9 laterals.

10 HEARING EXAMINER EZEANYIM: Okay. So when  
11 you say there's no -- well, my concern is if it  
12 doesn't work well, are you going to lose different  
13 hydrocarbons underground?

14 THE WITNESS: I think the EUR would be  
15 less if you use the open hole packer technique.

16 HEARING EXAMINER EZEANYIM: You can  
17 definitely say it will be less?

18 THE WITNESS: Because I do not think you  
19 get the -- because you -- when you're pumping, I  
20 don't know what rate we'll be pumping these out.

21 But when you're pumping -- I'll make up a  
22 number, 50 barrels a minute -- through a set of  
23 ports between packers that are anywhere between 150  
24 and 200 feet apart, that's significantly different  
25 than pumping 50 barrels a minute through, say, 30

1 perforations over 250 feet. That's critical on a  
2 completion.

3 HEARING EXAMINER EZEANYIM: Okay.

4 THE WITNESS: It is a very limited entry  
5 type technique, and it's been more proven in the  
6 shale technology.

7 HEARING EXAMINER EZEANYIM: Then the next  
8 question is: Why do you prefer three separate  
9 laterals, three separate lateral wells, to a  
10 multilateral?

11 THE WITNESS: First off, I think we can do  
12 three grass root laterals cheaper than three  
13 laterals out of a vertical well bore. I think the  
14 risk of a vertical well bore with three laterals is  
15 greater than the risk of three grass root lateral  
16 wells at different elevations.

17 HEARING EXAMINER EZEANYIM: Explain to me  
18 what are those risks, from drilling the three  
19 laterals, as opposed to drilling three vertical  
20 wells. What risks are you talking about?

21 THE WITNESS: You just drill one skid, the  
22 15, 20, 25 feet, however far you need to skid to get  
23 your next bore hole. You drill your second one,  
24 skid it again, and drill your third one, if you  
25 choose to drill all three of them back to back to

1 back.

2 HEARING EXAMINER EZEANYIM: So that would  
3 minimize your risks?

4 THE WITNESS: That would be the most  
5 efficient way to do it. That's correct.

6 HEARING EXAMINER EZEANYIM: And you say  
7 it's also going to save you money?

8 THE WITNESS: Yes.

9 HEARING EXAMINER EZEANYIM: I'm not really  
10 concerned about money. It's a business decision.

11 MR. GRABLE: I don't think he understood  
12 your question.

13 He was asking you about increased risks,  
14 dangerous risk of losing a hole versus three grass  
15 roots single wells.

16 HEARING EXAMINER EZEANYIM: That was my  
17 question.

18 THE WITNESS: I'm sorry. I think you  
19 would have less risk on three grass root horizontals  
20 than you would on one vertical with three laterals  
21 out of it.

22 HEARING EXAMINER EZEANYIM: Yes, that is  
23 what I'm saying. Explain to me those risks that's  
24 less on three horizontals as opposed to laterals.

25 THE WITNESS: Primarily it comes, I

1 believe, on the completion side, where you're trying  
2 to enter that open hole, case-hole packer, open hole  
3 completion. You have got to latch on. I assume  
4 they use PBRs. I don't know that.

5 Well, I assume the ports are closed. You  
6 know, you do your total stage first, then you drop  
7 either your ball or whatever you do, your next  
8 ported stage, and then you work your way back up the  
9 lateral.

10 HEARING EXAMINER EZEANYIM: Okay.

11 THE WITNESS: But just as I said earlier,  
12 when we pulled whipstocks in Noonan, North Dakota,  
13 we had trouble finding those windows with a bent  
14 sub. A lot of times we had to go in with gyros,  
15 more costly, to find that window cut in the casing.

16 HEARING EXAMINER EZEANYIM: Okay.

17 THE WITNESS: To me, there's just more  
18 risk involved and more costly.

19 HEARING EXAMINER EZEANYIM: Yes, I know  
20 you have risks.

21 Is there any circumstance where you would  
22 recommend triple lateral or you recommend no one --  
23 you wouldn't recommend a triple lateral whatever the  
24 condition is?

25 THE WITNESS: As I said, I drilled a

1 couple of crow's foots, but those were all on the  
2 same elevation in Montana, in the Red River zone.

3 If they were all on the same plane, I  
4 would consider it, and if they were open hole. If  
5 they were cased-hole, I would not ever consider it.

6 HEARING EXAMINER EZEANYIM: So if it's  
7 cased you wouldn't consider it ever, but if it's  
8 open you would?

9 THE WITNESS: Correct.

10 HEARING EXAMINER EZEANYIM: Okay. That's  
11 what I wanted to get from you. Nothing further.

12 Do you want to call any rebuttal?

13 MR. BRUCE: Mr. Examiner, I would like to  
14 recall Mr. Jacoby to the stand for some brief  
15 testimony.

16 HEARING EXAMINER EZEANYIM: Any  
17 objections?

18 MS. MUNDS-DRY: No.

19 HEARING EXAMINER EZEANYIM: If the record  
20 could reflect Mark Jacoby has been recalled to the  
21 stand.

22

23

24

25

1 MARK JACOBY,

2 after having been first duly sworn under oath,

3 was questioned and testified as follows:

4 EXAMINATION

5 BY MR. BRUCE:

6 Q. Mr. Jacoby, I have handed you Exhibit 31,  
7 and so I'll kind of recite from memory what that  
8 exhibit was used to show. That based on 200 COG  
9 wells, their estimated ultimate recovery was about  
10 121,000 barrels?

11 A. Yes.

12 Q. And they show, based on 14 recent COG  
13 wells, Burnett wells, the estimated ultimate was  
14 about 109,000 per well, correct?

15 A. Correct.

16 HEARING EXAMINER EZEANYIM: Which  
17 exhibit are you talking about?

18 MR. BRUCE: COG Exhibit 31.

19 HEARING EXAMINER EZEANYIM: Okay. Not  
20 this one?

21 MR. BRUCE: No.

22 HEARING EXAMINER EZEANYIM: Okay. Go  
23 ahead.

24 Q. (By Mr. Bruce) First of all, Mr. Jacoby,  
25 could you just very briefly restate Burnett's

1 practice in completing these vertical wells?

2 A. What Burnett does is complete the lower  
3 Blinebry first, frac the -- large volume frac. And  
4 we much prefer producing that frac water with low  
5 water frac. The well makes very good production,  
6 but then they decline at different rates, different  
7 times. We'll move up. Then after three, six, eight  
8 months, a year, sometimes to the next --

9 HEARING EXAMINER EZEANYIM: It's not --  
10 you're very soft-spoken, so please talk to us.

11 THE WITNESS: We complete the lower  
12 Blinebry, frac it, and then we produce it for a time  
13 to recover all of the load water until the well  
14 stabilizes and the fluid is decreased.

15 And then we move up to the second zone in  
16 the Blinebry, the upper Blinebry, and do the same  
17 thing. Once again, produce it for a time, and then  
18 move up into the Paddock, the very top, frac it,  
19 complete it, produce it for a while until it cleans  
20 up. And then we put all the three zones together to  
21 commingle the production.

22 Q. (By Mr. Bruce) Okay. So when you're  
23 looking at Exhibit 31, if these are recent wells,  
24 chances are they only have been completed in one  
25 Yeso zone?



1           A.     I'm certain there will be some of these  
2     wells that are producing from only the lower  
3     Blinebry at this point in time.

4           Q.     And would that 19,000 EUR comport with the  
5     study by PGH Engineering, which showed that even in  
6     the -- just out of the Blinebry, you're going to  
7     recover in excess of 100,000 barrels in the well?

8           A.     Yes. The study at PGH did show that we  
9     would recover in excess of 100,000 from both lower  
10    and upper Blinebry, the Blinebry together. But if  
11    only half of the Blinebry is producing for a time  
12    with some of the wells it would really skew this  
13    curve.

14          Q.     So that does not correct your testimony,  
15    that based on the decline curve analysis, the  
16    Burnett wells are capable of producing upward of  
17    300,000 barrels per well?

18          A.     Correct. This does not correct my  
19    testimony on that.

20          Q.     Okay.

21                 MR. BRUCE: Next, Mr. Examiner, now, we  
22    are moving to what I've marked Exhibit 8 that I  
23    handed you. And very briefly -- Exhibit 8.

24                 And I've lettered the pages, Mr. Examiner,  
25    A through H.

1 Q. (By Mr. Bruce) First of all, what is that  
2 slide A, Mr. Jacoby?

3 A. Slide A, shown up on the screen, depicts  
4 Burnett's six vertical APDs. It shows the two  
5 verticals that we have on-sites approved. APDs will  
6 be filed for very soon.

7 And then it shows the -- currently, what  
8 possibly could take place with the horizontals that  
9 will be drilled.

10 Q. Okay. Let's go into what you hope to  
11 produce on the horizontals.

12 What are exhibits -- slides B and then C?

13 A. This shows -- this depicts the three  
14 horizontal wells that COG's drilled in the Paddock.

15 Q. And -- oops, they're out of order.

16 A. Okay. This depicts the McIntyre well that  
17 COG is drilling in the Blinebry.

18 Q. This is one COG Blinebry horizontal and  
19 three in the Paddock?

20 A. Correct. Correct.

21 Q. And did you look at production from those  
22 wells?

23 A. Yes.

24 Q. Okay.

25 A. Yes.

1 Q. Now, we'll move on to slide D, which we've  
2 already shown. These are Burnett's horizontal  
3 wells, correct?

4 A. Yes, that's correct.

5 Q. That have produced at least six months?

6 A. Yes, that have produced at least six  
7 months.

8 Q. Now, in looking at a production  
9 comparison, are you going to use the cemented casing  
10 completion in those six wells?

11 A. I will definitely use the cemented casing.

12 Q. Now, when you take Burnett's six cemented  
13 completion wells and compare them to production from  
14 COG's Paddock horizontals, what will you get?

15 A. What we did is we had to take all of the  
16 subjectivity out of the comparison. This is actual  
17 production in the first six months of each well.

18 And this is added up. The top curve is  
19 the Burnett six wells, and the first six months is  
20 the cumulative production divided by the total  
21 lateral feet of those six wells. The total lateral  
22 feet added up from those six wells is almost 12,000  
23 lateral feet, for an average of about 2,000.

24 And then we took production, the total  
25 production from those six months for each well and

1     calculated the barrels of oil per lateral foot  
2     produced.

3           Q.     Per month?

4           A.     Per month.

5           Q.     Okay.

6           A.     Correct.

7           Q.     And you did that for both Burnett and COG?

8           A.     I did that for both Burnett and COG.  And  
9     the three Paddock wells for COG -- this just takes  
10    the subjectivity out.  It takes the EURs out, just  
11    reduces it to barrels of oil per foot.  And you can  
12    see the difference in the numbers is very  
13    significant.

14          Q.     The Burnett wells produced substantially  
15    better than the COG horizontal wells?

16          A.     Yes, substantially better.

17          Q.     And then if you move to the next slide, is  
18    this essentially the same thing, just adding in the  
19    COG Blinebry completion?

20          A.     Yes.  This just addresses the Blinebry  
21    comparison to show the same thing.

22          Q.     And again, this is just comparing  
23    production per lateral foot in each of these wells?

24          A.     That's correct.  It is production per  
25    lateral foot.

1 Q. And taking that, what type of return on  
2 investment would you see, return on gross  
3 investment, would you see from the Burnett wells,  
4 from a Burnett horizontal well single lateral?

5 A. Okay. Single lateral, if you extrapolate  
6 that barrels of oil per lateral foot, you take the  
7 48 laterals times 4,600 fluid feet per lateral, that  
8 equals 220,800 total lateral feet.

9 We took the total of that six months of  
10 production divided by total lateral feet, so the  
11 average for the first six months' normalized  
12 production is 4.2 barrels of oil per lateral foot.  
13 Multiply that times 220,800 lateral feet, it's  
14 927,000 barrels of oil.

15 The Burnett's -- our estimated completed  
16 well cost on the horizontal is \$2.7 million. \$2.7  
17 million, 48 wells, is \$129.6 million total  
18 investment.

19 So the projected normalized six-month --  
20 first six-month gross sales from the Taylor Draw  
21 unit horizontals will be 74 million, using \$80 per  
22 barrel.

23 Q. \$74 million?

24 A. \$74 million.

25 Q. Okay. So you would recover -- the first

1 six months of those wells you would recover a  
2 majority of the gross investment in the wells?

3 A. The first six months we would recover a  
4 calculated 57 percent of the gross cost, gross  
5 investment.

6 Q. Moving on to the final slide, how does  
7 that compare with the COG?

8 Before you start on this, perhaps we  
9 should say that COG's testimony was that they were  
10 going to recover a million barrels per triple  
11 lateral.

12 Do you see any recoveries like that in the  
13 single? Do you see a recovery of 300,000 barrels  
14 plus in any single lateral?

15 A. No, I don't. We did the very same thing,  
16 taking the 1.4 barrels of oil per lateral foot the  
17 first six months of those three wells, multiply it  
18 times the total lateral feet, to get 463,680 barrels  
19 of oil.

20 I took -- the COG's estimated completed  
21 well cost is \$9.6 million. The total investment  
22 would be \$230.4 million.

23 Doing the same thing, projecting the  
24 normalized six-month gross sales, using, again, \$80  
25 per barrel, would be \$37 million.

1 Q. Based on your calculations, Burnett is  
2 running a much more economical operation?

3 A. Based on this, they'd recover 16 percent  
4 of gross investment. This just takes real numbers  
5 and applies it to the cost.

6 Q. Then I am handing you Exhibit 9.

7 Using those same numbers you just talked  
8 about, did you then compute recovery of -- or I  
9 should say royalty and severance tax benefit to the  
10 state and federal government?

11 A. Yes. We just projected the federal  
12 royalties of New Mexico State tax revenue at 12 and  
13 a half percent.

14 Based on this, the first six-month  
15 normalized production with Burnett would be  
16 \$9,273,600. The COG number would be \$6 million.

17 The projected state tax revenue at  
18 8.2 percent, based on that same first six-month  
19 normalized production for Burnett would be 4.6  
20 million. COG would be 3 million.

21 Q. Again, substantially more benefit to the  
22 state and federal governments would result?

23 A. Burnett numbers here would result in  
24 52 percent more revenue to the federal government  
25 and the State of New Mexico.

1 Q. Were Exhibits 8 and 9 prepared by you or  
2 under your supervision?

3 A. Yes, they were.

4 MR. BRUCE: Mr. Examiner, I would move the  
5 admission of Exhibits 8 and 9.

6 MS. MUNDS-DRY: No objection.

7 MR. GRABLE: While we are there, I'm not  
8 sure I offered Exhibit 10. If I haven't, I'll offer  
9 it now.

10 MS. MUNDS-DRY: No objection.

11 HEARING EXAMINER EZEANYIM: You have got  
12 no objection on this?

13 MS. MUNDS-DRY: No objection.

14 HEARING EXAMINER EZEANYIM: Exhibits 8  
15 through 10 will be admitted.

16 HEARING EXAMINER EZEANYIM: Now, my  
17 question on these Exhibits 8 and 9, why did you not  
18 present it before?

19 MR. BRUCE: Well, Mr. Examiner, we were  
20 waiting to see what they were going to present with  
21 respect to their recoveries.

22 HEARING EXAMINER EZEANYIM: Okay.

23 MR. BRUCE: I pass the witness.

24

25



## EXAMINATION

1

2 BY MS. MUNDS-DRY:

3 Q. Mr. Jacoby, what proposals are before the  
4 division today -- what's Burnett asking the division  
5 to adjudicate today?

6 A. They're proposing two wells, two vertical  
7 wells, compulsory pooling Federal 3 and Partition  
8 Federal 3.

9 Q. And this Exhibit 8 and 9 includes some  
10 sort of plan of development from Burnett for a full  
11 plan of horizontal well development, correct?

12 A. It includes some plan, yes.

13 Q. And that plan, as I understand it, is to  
14 perhaps drill two single laterals, one in the  
15 Paddock and one in the Blinebry?

16 A. To begin with, to evaluate, yes.

17 Q. I guess I'm still wondering how you're  
18 going to fully produce the Blinebry with one  
19 lateral.

20 A. It would be alternating laterals in the  
21 Blinebry. We feel like with our stimulation  
22 technique -- applying this to our stimulation thus  
23 far, we feel like this applies to the recovery we  
24 would get from horizontals.

25 Q. Mr. Jacoby, on your slide -- this is a

1 slide that we've seen before on the EUR for the  
2 horizontal Yeso wells, comparing the cemented casing  
3 completions with the uncemented casing completions.  
4 The uncemented casing completions Burnett did are  
5 not the same as the system Concho is proposing,  
6 right?

7 A. I think that's correct, yes.

8 Q. You used four of Concho's wells to  
9 evaluate production in this packet, is that correct,  
10 horizontal wells?

11 A. We'd just -- there were only four Yeso  
12 Concho wells, taking the actual production on the  
13 horizontal wells, three of the Paddock, for this  
14 evaluation.

15 Q. There's actually five horizontal wells in  
16 the Yeso, aren't there, drilled by Concho?

17 A. I'm not sure. I thought we identified  
18 three Paddocks and one Blinebry.

19 Q. On this Exhibit Number 9, this comparison  
20 of federal royalty between Burnett and Concho is  
21 based on what?

22 A. It's based on the slide that is up on the  
23 board there, the actual production per lateral foot.  
24 Horizontal, we took -- averaged the production for  
25 those six months, added the lateral feet, divided it

1 to get an average of 4.2 barrels per lateral foot.

2 Q. Did you use 24 horizontal wells in that  
3 equation or 48 laterals, or what did you use to get  
4 there?

5 A. Yes. That is the COG projected income  
6 based on their horizontal plan proposed.

7 If you will go back one more slide to  
8 Burnett, it would be 48 laterals based on those  
9 numbers.

10 Q. And then, again with Exhibit Number 9, the  
11 last exhibit you discussed, that's also based on 48  
12 laterals?

13 A. Correct.

14 Q. But those are not before the division  
15 tonight?

16 A. This just was the potential plan of  
17 development, to compare to Concho's plan of  
18 development to their horizontals.

19 Q. Mr. Jacoby, assuming you go with the  
20 horizontal well plan, what's your anticipated pace  
21 of development?

22 A. I don't know exactly what the number of  
23 wells would be. We have talked about that some. We  
24 would drill verticals to evaluate. We would follow  
25 that with three horizontals, one horizontal in each

1 section. I'm not sure exactly what the pace would  
2 be.

3 Q. So these royalties and state tax revenue,  
4 that is not something that the federal or state  
5 government would see in one year, in five years.  
6 You just don't know?

7 A. This does not take in the time value. It  
8 is just taking the current production.

9 Q. Did you do a calculation of what the  
10 projected federal royalty revenue would be for two  
11 vertical wells?

12 A. No, I did not.

13 Q. What about the projected state tax revenue  
14 for the two vertical wells you produced today?

15 A. No, I did not.

16 MS. MUNDS-DRY: Thank you, Mr. Jacoby. I  
17 have nothing further.

18 HEARING EXAMINER EZEANYIM: Any redirect?

19 FURTHER EXAMINATION

20 BY MR. BRUCE:

21 Q. Mr. Jacoby, you have sat through the  
22 testimony all day today?

23 A. I have.

24 Q. Unfortunately?

25 A. Yes.

1 Q. It's come up a couple of times, where our  
2 witnesses have been questioned about what we're here  
3 for today. And of course, we -- Burnett just has  
4 the two vertical wells here for forced pooling  
5 today?

6 A. That's correct.

7 Q. And 22 cases were heard back in May?

8 A. Yes, that's correct.

9 Q. But there are three sections of land  
10 involved.

11 Is it reasonable to think that Burnett is  
12 going to develop the three sections of land,  
13 ultimately, with only three or four wells of  
14 whatever type?

15 A. Say that again.

16 Q. Do you think -- would Burnett seek to  
17 reasonably develop these three sections of land with  
18 only four or five wells, vertical or horizontal, in  
19 total?

20 A. No, absolutely not. It would take more  
21 wells.

22 Q. So what we're starting to do here is to  
23 get the development rolling. And as we go along,  
24 once we learn more data, get more data from the  
25 wells, then determine the ultimate plan of

1 development?

2 A. Absolutely. That's correct.

3 Q. Do you think it's premature to go out  
4 there and, say, in the next six months, drill 24  
5 triple lateral horizontals?

6 A. Yes, it would be premature.

7 Q. When you were asked about how many wells  
8 would be drilled, Burnett was ready to start  
9 drilling these wells last March, wasn't it?

10 A. Yes, we were. I had the wells in my  
11 drilling schedule for March.

12 Q. You're not trying to slow play  
13 development, are you?

14 A. We are not trying to slow play. I was  
15 ready to drill over in the year.

16 Q. Didn't you have a rig in your inventory so  
17 that you could drill more wells out -- in this  
18 inventory?

19 A. Yes, I had a rig planned to come. The rig  
20 is available this week.

21 MR. BRUCE: Thank you, Mr. Jacoby. That's  
22 all.

23 HEARING EXAMINER EZEANYIM: Actually, I  
24 don't have any questions for you.

25 (Following the above proceedings there was

1 settlement discussion. The attorneys have made the  
2 decision to forego transcription of those  
3 discussions. Also, technical difficulties ensued  
4 concerning the court reporter's equipment which was  
5 beyond anyone's control.)

6 (Proceedings concluded.)  
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14 I do hereby certify that the foregoing is  
15 a complete record of the proceedings in  
16 the Examiner hearing of Case No. \_\_\_\_\_,  
17 heard by me on \_\_\_\_\_.

18 \_\_\_\_\_, Examiner  
19 Oil Conservation Division  
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## CERTIFICATE

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I, Paul Baca, RPR, CCR in and for the  
State of New Mexico, do hereby certify that the  
above and foregoing contains a true and correct  
record, produced to the best of my ability via  
machine shorthand and computer-aided transcription,  
of the proceedings had in this matter.

---

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