

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

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

ORIGINAL

APPLICATION OF RSC RESOURCES
LIMITED PARTNERSHIP FOR APPROVAL
OF A NON-STANDARD OIL SPACING AND
PRORATION UNIT AND COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO

CASE NO. 14277

REPORTER'S TRANSCRIPT OF PROCEEDINGS
EXAMINER HEARING

BEFORE: TERRY G. WARNELL, Legal Examiner
DAVID K. BROOKS, Technical Examiner

March 5, 2009

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, TERRY G. WARNELL, Legal Examiner, and DAVID K. BROOKS, Technical Examiner, on Thursday, March 5, 2009, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico.

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A P P E A R A N C E S

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1 MR. WARNELL: Back on the record. It's
2 10:20, and we'll call Case Number 14277, application of
3 RSC Resources Limited Partnership for approval of a
4 non-standard oil spacing and proration unit and
5 compulsory pooling, Eddy County, New Mexico.

6 Call for appearances.

7 MR. BRUCE: Mr. Examiner, Jim Bruce of
8 Santa Fe representing the applicant. I have two
9 witnesses.

10 MR. HALL: Mr. Examiner, Scott Hall,
11 Montgomery & Andrews Law Firm, Santa Fe, appearing on
12 behalf of COG Operating, LLC, a/k/a Concho, and I have no
13 witnesses this morning.

14 MR. WARNELL: Any other appearances? Mr.
15 Bruce, will your witnesses please stand and state their
16 names and be sworn, please?

17 MR. SMITH: Kirk Smith.

18 MR. CATE: Randy Cate.

19 (The witnesses were sworn.)

20 KIRK SMITH

21 Having been first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. BRUCE:

24 Q. Would you please state your full name and city
25 of residence?

1 A. My name is Kirk Smith, and I live in Midland,
2 Texas.

3 Q. What is your occupation?

4 A. I'm a petroleum landman.

5 Q. What is your relationship to RSC Resources in
6 this matter?

7 A. I'm an independent contractor.

8 Q. Have you previously testified before the
9 Division?

10 A. Yes, I have.

11 Q. Were your credentials as an expert petroleum
12 landman accepted as a matter of record?

13 A. Yes, sir.

14 Q. And are you familiar with the land matters
15 involved in this application?

16 A. Yes.

17 MR. BRUCE: Mr. Examiner, I tender Mr.
18 Smith as an expert petroleum landman.

19 MR. HALL: No objection.

20 MR. WARNELL: We'll recognize Mr. Smith as
21 an expert petroleum landman.

22 Q. (By Mr. Bruce) Mr. Smith, could you identify
23 Exhibit 1 and describe what RSC Resources seeks in this
24 case?

25 A. Exhibit 1 is land plat, which includes Section

1 30 of Township 16 south, range 28 east. RSC Resources
2 seeks to drill the Lucky Wolf "30" Fed. Com. No. 2 well,
3 a Wolfcamp horizontal well, from the surface location
4 2,310 feet from the south line and 100 feet from the west
5 line of Section 30. The well will penetrate the Wolfcamp
6 formation at a point 2,290 feet from the south line and
7 330 feet from the west line, and I have determined this
8 1,980 feet from the south line and 330 feet from the east
9 line of Section 30.

10 The applicant requests an order approving a
11 non-standard 162.74-acre unit in the Wolfcamp formation
12 comprised of Lot Number 3, the northeast quarter of the
13 southwest quarter and the north half of the southeast
14 quarter of Section 30 and pooling all mineral interests
15 in the non-standard unit. The well unit is highlighted
16 in orange on Exhibit Number 1. The yellow highlighting
17 indicates the acreage we notified with respect to the
18 non-standard unit. The second page of Exhibit 1 lists
19 the offsets.

20 Q. What does Exhibit 2 reflect?

21 A. Exhibit 2 lists the working interest owners in
22 the well unit who we seek to pool with their percentage
23 of working interest.

24 Q. And referring to Exhibit 3, could you please
25 summarize your contacts with the uncommitted owners?

1 A. We submitted a well proposal on the 17th day
2 of December 2008, and this instrument contains a
3 reference to the well to be drilled, the cost of drilling
4 and contains a list of the addressees.

5 Q. Exhibit 2 only lists three parties to be
6 pooled. Are you still in ongoing discussions with these
7 parties?

8 A. Yes, we are.

9 Q. And if some of these parties subsequently join
10 in the well, will the Division be so notified?

11 A. Yes, they will.

12 Q. The proposal letter lists a dozen or so
13 interest owners. How many working interest owners
14 actually are there, approximately, in the well unit? I
15 should say how many interest owners?

16 A. There are 32 separate leasehold estate owners
17 within this well unit.

18 Q. So the vast majority of them have joined or
19 farmed out their interest?

20 A. That is correct. The only three that have not
21 joined are highlighted on Exhibit 2, these three parties
22 out of that group of 32.

23 Q. And in your opinion, has RSC made a good-faith
24 effort to obtain the voluntary joinder of all mineral
25 interest owners in the well?

1 A. Yes.

2 Q. And before I forget, all of the interest
3 owners in the well unit were located, were they not?

4 A. Yes, they were.

5 Q. There weren't any old names of people you
6 couldn't locate?

7 A. No. We located 100 percent of the leasehold
8 estate owners.

9 Q. Do you request that RSC be named operator of
10 the well?

11 A. Yes.

12 Q. Do you request a maximum cost plus 200 percent
13 risk charge against any non-consenting interest owner?

14 A. Yes.

15 Q. What overhead rates are proposed?

16 A. The overhead rate, I did not list here. I'm
17 sorry. The drilling rate, I believe, is 5,000 a month
18 and the overhead rate is 700 a month.

19 Q. Okay. Are these rates equivalent to those
20 charged by operators in this area for wells of this
21 depth?

22 A. Yes.

23 Q. Do you request that these rates be adjusted as
24 provided in the COPAS accounting procedure?

25 A. Yes.

1 Q. Does Exhibit 4, Affidavit of Notice, contain
2 the notice letter to the parties being pooled?

3 A. Yes.

4 Q. And, again, they all received actual notice of
5 this application, did they not?

6 A. Yes.

7 Q. And were all of the offset owners notified of
8 this application?

9 A. Yes.

10 Q. And, again, they were all locateable and they
11 have all been given actual notice?

12 A. Yes.

13 Q. Were Exhibits 1 through 5 prepared by you or
14 under your supervision or compiled from company business
15 records?

16 A. Yes, they were.

17 Q. In your opinion, is the granting of this
18 application in the interest of conservation and the
19 prevention of waste?

20 A. Yes, it is.

21 MR. BRUCE: Mr. Examiner, I move the
22 admission of RSC Exhibits 1 through 5.

23 MR. HALL: No objection.

24 MR. WARNELL: Exhibits 1 through 5 are
25 accepted.

1 (Exhibits 1 through 5 were admitted.)

2 MR. BRUCE: Pass the witness.

3 CROSS-EXAMINATION

4 BY MR. HALL:

5 Q. Mr. Smith, referring to your Exhibit 3 and the
6 Attachment A to that, can you tell us how you identified
7 all the other interest owners in the unit? Was this
8 pursuant to a title opinion?

9 A. No, it was not the product of a title opinion.
10 It was a product of an ownership report prepared from the
11 county, state and federal record.

12 Q. Are there any unleased mineral interest
13 owners?

14 A. No, there are not any unleased mineral
15 interest owners.

16 Q. Referring to your Exhibit 1, if we look at
17 Unit K in Section 30, there is an existing well spot
18 there?

19 A. Yes.

20 Q. Is that also a Wolfcamp well?

21 A. Yes, it is.

22 Q. Can you tell the Examiner how you intend to
23 reconcile a situation where we're going to have multiple
24 operators in the same unit?

25 A. Yes. I believe that the wellbore operator has

1 been duly notified of this hearing. And we have also
2 notified them in writing by certified mail and requested
3 a waiver associated with this multiple operators in a
4 well unit.

5 Q. Who was that operator?

6 A. Three Span Oil & Gas Company.

7 Q. Have you had any direct conversations with
8 Three Span?

9 A. Yes, we have.

10 Q. Can you tell us about those? What's the
11 result of those conversations?

12 A. They have indicated that their only
13 reservation is to preserve their right to protect their
14 wellbore in the event of damages as a result of our
15 operations.

16 Q. Also, looking on Exhibit Number 1, reflecting
17 another horizontal well in Units I and J, a COG Donner
18 federal well?

19 A. Yes. I see that.

20 Q. How does RSC intend to reconcile -- let me ask
21 you this: Do you know if an APD has been approved for
22 the COG well?

23 A. I do not know if an APD has been approved for
24 the COG well.

25 Q. Can you explain to the Examiner how you

1 propose to reconcile -- there appears to be a conflict
2 between, again, another operator in another unit in the
3 same pool.

4 A. Yes. We are in ongoing discussions with COG
5 and have visited with both their land department and
6 their geology department, and we are, at this moment,
7 trying to finalize a potential trade, which has not taken
8 place as of the moment of this hearing, and we hope to
9 reconcile the multipal APDs in the well unit through our
10 negotiations.

11 Q. Can you tell us how that will be done? Tell
12 us what the proposal is.

13 A. I don't -- at this time I don't have a final
14 agreement with them, so I don't know the answer to the
15 question.

16 MR. HALL: No further questions, Mr.
17 Examiner.

18 MR. BROOKS: This is a strange situation.
19 You've got a vertical well on the northeast of the
20 southwest that is completed in the Wolfcamp; is that
21 correct?

22 THE WITNESS: That's correct.

23 MR. BROOKS: And it is producing?

24 THE WITNESS: It is producing, yes.

25 MR. BROOKS: If we were to unitize the

1 Wolfcamp, then the owners of the production from that
2 well would be owned by the owners in the unit that we
3 create, it would seem to me. So it seems to me there's
4 going to have to be some kind of different trait mode of
5 this than what we ordinarily do.

6 MR. BRUCE: Mr. Brooks, if I may, the
7 working interest owners in that existing wellbore own a
8 wellbore only.

9 MR. BROOKS: They have a wellbore
10 assignment?

11 MR. BRUCE: They have a wellbore
12 assignment, and I have one copy. I will provide it.

13 THE WITNESS: Do you want me to read it
14 into the record?

15 MR. BRUCE: Excuse me. I will provide
16 the Examiners with a copy of that. Their predecessor and
17 title received a wellbore only interest.

18 MR. BROOKS: I always wondered about what
19 a wellbore assignment exactly assigned. I read a Texas
20 case that discussed it very extensively about a year ago.
21 I think I'll have to read it again.

22 MR. BRUCE: Mr. Examiner, I have gone and
23 I think Mr. Hall has gone to some seminars where they
24 discuss it, because there are legal and title issues with
25 that.

1 MR. BROOKS: I'm concerned about that in
2 this case. So, yeah, I think we want to talk about that.
3 Now, the other question is this COG proposed well that's
4 shown on here. You said you did not know if there had
5 been an APD filed or application filed for that well?

6 THE WITNESS: Clearly, there's an
7 application filed. The question from Mr. Hall was had it
8 been approved. I acknowledged that it has been filed.
9 I'm sorry. I do not have -- I can't give you an
10 assumption, so I did not answer that question.

11 MR. BROOKS: Has an APD been filed for
12 your proposed well?

13 THE WITNESS: Yes, it has.

14 MR. BROOKS: Has it been approved?

15 THE WITNESS: No, sir, not at this time.

16 MR. BRUCE: It is all federal acreage.

17 MR. BROOKS: So it would be pending before
18 the BLM.

19 MR. BRUCE: Yeah. And I think our next
20 witness can address that more.

21 MR. BROOKS: Thank you. You've asked
22 for -- I assume, since this is a non-standard unit,
23 you've asked for pooling only for the Wolfcamp formation.

24 MR. BRUCE: That's correct.

25 MR. BROOKS: Since you're doing adjacent

1 40-acre units, this is an oil prospect?

2 MR. BRUCE: It is. I believe it's a Dog
3 Canyon Wolfcamp and it is developed on state-wide rules.

4 MR. BROOKS: Wolfcamp is prospective for
5 oil for some places and gas in some --

6 MR. BRUCE: Yes. It is definitely oil for
7 this area in Eddy County.

8 MR. BROOKS: Thank you. That's all I
9 have.

10 MR. WARNELL: I have no questions for Mr.
11 Smith.

12 MR. BRUCE: I just have a couple of
13 follow-ups just to get it in the record from a landman.

14 REDIRECT EXAMINATION

15 BY MR. BRUCE:

16 Q. This is all federal acreage, is it not --
17 federal leases -- Mr. Smith?

18 A. Yes, it is.

19 Q. So, again, in reference to Mr. Hall's
20 question, since it is federal acreage, there are federal
21 leases covering all of the well units?

22 A. That is correct. They are either -- after the
23 expiration of their primary term are held by production
24 and/or in the case of COG, are in their primary term and
25 current.

1 Q. With respect to --

2 MR. BRUCE: And, Mr. Examiner, after the
3 hearing we'll provide Mr. Hall and the examiners with a
4 copy of this.

5 Q. (By Mr. Bruce) But, Mr. Smith, there was an
6 assignment to, I believe, a Cheyenne Energy, predecessor
7 interest in Three Span?

8 A. Yes.

9 Q. What is the recording data on that assignment?

10 A. This instrument is recorded official public
11 record Volume 82, page 355, of the public records of Eddy
12 County, New Mexico.

13 Q. And there were a number of S&Es, and just for
14 the interest of Mr. Hall and the Examiners, there was, at
15 one point, an old -- all the interest owners assigned to
16 Cheyenne Energy, and it was a wellbore-only interest;
17 correct?

18 A. Yes, it is a wellbore interest, and I'd be
19 willing to read it into the record.

20 Q. Why don't you read that one paragraph? What's
21 the name of this well again?

22 A. The name of the well is the Crow Flats Federal
23 Com. Number 1, and it is located in Unit K. The
24 instrument I referred to grants to the assignee, which is
25 currently Three Span Oil & Gas, the following rights:

1 "Lots 1, 2, 3, 4, (W/2 W/2) and E/2 W/2 of Section 30,
2 Township 16 South, Range 28 East, NMPM, Eddy County, New
3 Mexico, containing 330.92 acres more or less specifically
4 limited to production from the wellbore only of the Crow
5 Flats Federal Com. Number 1 Well from the top of the San
6 Andres formation at approximately 5,270 feet to the base
7 of the Morrow formation at approximately 9,557 feet.

8 "Assignors expressly reserve all rights above
9 the San Andres formation and below the Morrow formation
10 and Assignor further expressly reserves all depth rights
11 as to the above-described acreage for any wells other
12 than the Crow Flats Federal Com. Number 1 well."

13 Q. You've had discussions with the owners of
14 Three Span, haven't you?

15 A. Yes, I have. Numerous.

16 Q. Has Three Span acknowledged that they only
17 have a wellbore interest?

18 A. Yes, they have.

19 MR. BRUCE: Thank you. I next call Mr.
20 Cate to the stand.

21 As an initial matter, Mr. Examiner, I
22 apologize that my engineer isn't quite as attractive as
23 certain other companies' engineers.

24 RANDALL CATE

25 Having been first duly sworn, testified as follows:

DIRECT EXAMINATION

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BY MR. BRUCE:

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

A. Randall Cate, C-a-t-e, and I live in Midland, Texas.

Q. What is your relationship to RSC Resources?

A. I am the owner and president of RSC Resources Limited Partnership.

Q. By trade, what are you?

A. A petroleum engineer by trade.

Q. And have you previously testified before the Division?

A. Yes.

Q. Were your credentials as an expert petroleum engineer accepted as matter of record?

A. Yes.

Q. Are you familiar with the engineering matters related to this application?

A. Yes, I am.

MR. BRUCE: Mr. Examiner, I tender Mr. Cate as an expert petroleum engineer.

MR. HALL: No objection.

MR. WARNELL: We will accept Mr. Cate as an expert petroleum engineer.

1 Q. (By Mr. Bruce) Mr. Cate, could you identify
2 your Exhibit A and discuss its contents for the Examiner?

3 A. Exhibit A is an activity and production plat
4 of approximately one -- from half a mile to one mile
5 around Section 30, Section 30 being in the center of the
6 plat, and the spacing unit in question here for the Lucky
7 Wolf 2H is noted in red.

8 It shows that there have been some older
9 vertical wells with cumulative production ranging from
10 2,000 barrels up to 4,800 barrels in that Crow Flat Unit
11 Number 1 well that was previously discussed, the vertical
12 well, out of the Dog Canyon Wolfcamp Zone, which now --
13 or just recently, say in the last two years, has become a
14 very good horizontal target.

15 The horizontal wells, though, in this
16 immediate area are brand new. COG, Concho, has a well
17 directly north, which is a short lateral. It would be in
18 the south half of the north half of Section 30 but in the
19 westerly three-quarters, and it offsets a vertical well,
20 also, that had produced almost 42,000 barrels. It is
21 brand new, I think maybe the IP was in, probably,
22 January, and so there is no reported production or
23 history, but we have heard that it is a good well,
24 possibly several hundred barrels a day.

25 The only other horizontal well within --

1 that's actually been drilled within this plat up to the
2 right corner -- my section didn't come out very well --
3 but there's an NC above it. It's in this right corner
4 here. It's a Devon well. Again, no reported production.
5 I want to say maybe a November to December IP time, and
6 we believe that one was not as good, maybe in the 100- to
7 150-barrel-a-day range. Wolfcamp Pay, being a dolomite,
8 there is a lot of variability within this pay for a
9 variability of IPs and even potentially the ultimate
10 reserves.

11 The rest of the horizontal lines on this plat
12 are permits that have been picked up by my search engine,
13 which is called Drilling Info is what I used and these
14 have now been picked up. But those are the only two
15 horizontals that have been drilled to date.

16 Q. What does Exhibit B contain?

17 A. Exhibit B is a structure on top of the
18 Wolfcamp Pay. The significance of this, there is no
19 indicated faulting in this area. It's pretty much
20 regional, 100- to 150-foot dip to the east, pretty much a
21 standard dip. So there's nothing abnormal that would be
22 expected based on the structure.

23 Q. Okay. And what is Exhibit C?

24 A. Exhibit C is a type log -- actually, Exhibit B
25 showed the type log, which is the well that we also

1 discussed that is now operated by Three Span that was
2 originally drilled by Eagle Oil back in 1980, and
3 completed as a Morrow producer and then, subsequently,
4 Cheyenne, which the conveyance that Mr. Smith read into
5 the record, has then since passed from Cheyenne into
6 Three Span, now the operator. And Eagle and Cheyenne --
7 I'm sorry. Cheyenne had actually done the completion in
8 the Wolfcamp.

9 The top of the Wolfcamp is approximately 2,800
10 feet. The Wolfcamp dolomite is highlighted in red. And,
11 again, you can see the variability of the porosities over
12 that 100-foot interval. They can range from 2 percent to
13 almost zero percent up to 10 percent and higher. In the
14 area, the average is probably around 8 percent porosity.
15 You can have some water production associated with the
16 dolomite. In this area the vertical wells really have
17 maybe a 10 percent water cut or less, so we're hopeful
18 that water won't be a big issue.

19 Just a side, but the horizontal plan that you
20 will see next, the idea is to stay in the upper third of
21 the dolomite package here and then just follow it down.

22 Q. Let's move on to the directional plan, and
23 maybe just discuss Exhibits D and E together, Mr. Cate.

24 A. D is a plan that was developed by Black Viper,
25 who is a directional drilling company. They actually

1 steer the well according to the plan. The horizontal
2 technology is excellent these days, and if you really
3 wish to, you can stay within a five-foot window, but
4 that's not expedient.

5 In association with Exhibit E, which is our
6 C-102 that has been filed, our plan is to drill at
7 approximately 2,300 feet from the south and in an
8 easterly direction until we have passed the vertical
9 well, so we would stay a minimum of approximately 300
10 feet. Now, within that producing area boundary to the
11 north, that would be 330 feet, so there is some room
12 within the tolerances of the directional drilling. So
13 what I'm saying is our plan is, basically, to stay 300
14 feet north of that vertical well.

15 Q. That vertical well is at 1,980 from the south
16 line?

17 A. That's correct. It is at 1,980.

18 Q. So in order to stay orthodox, you have to --
19 either skirting the north side or the south side of that
20 well, you are at about the maximum distance from that
21 well in order to stay orthodox?

22 A. That's right. After we pass the vertical
23 wellbore by approximately 660 feet, then we will slowly
24 turn to the south and the east for a term set at 330 from
25 the east and 1,980 from the south.

1 Q. Now, one question on the -- COG's Donner 30
2 Federal Number 2, to the best of your knowledge, that APD
3 has been approved?

4 A. Yes, it is.

5 Q. It was filed some time ago?

6 A. It was filed in August of '07, almost going on
7 two years ago.

8 Q. But it has not been drilled?

9 A. It has not been drilled. They have not
10 proposed the well to interest owners. Mr. Smith and
11 myself, we have ownership in that east of the north --
12 of the southeast -- sorry. Let me try again -- northeast
13 of the southeast, and we would have received a proposal
14 had they intended to drill, but we have not received one.

15 Q. With respect to your proposed well path, have
16 you discussed that with COG's geologist?

17 A. Yes. I have personally been in two meetings
18 with Ted Galowski, who is the geologist, and all
19 indications are that COG prefers my location, my well
20 plan, over theirs.

21 Q. And, again, you're continuing to work with COG
22 in the development of this acreage?

23 A. Yes, we are.

24 Q. Finally, Exhibit F. What is that?

25 A. Exhibit F is the AFE that had been prepared

1 for this well back in -- December 9th, that showed a
2 total completed well cost of almost \$3.8 million. With
3 horizontal drilling, just as a note, it's -- you,
4 basically, have to spend all the money on the AFE in
5 order to know what kind of well you have. It's not like
6 drilling a vertical well and you get a log and then you
7 can make a case-in-point election and maybe you cut your
8 exposure. When you're drilling these horizontal wells,
9 you have to spend the entire amount of money, then you
10 get to find out what you have.

11 Q. Are these well costs reasonable and in line
12 with the cost of other wells drilled at this depth in
13 this area of New Mexico?

14 A. Yes. My company personally has ownership in
15 three, four other horizontal wells within this township,
16 and -- but I will say that the drilling and completion
17 costs are coming down and, as the rules require, we will
18 have to submit a new AFE to any parties, and I anticipate
19 it could be as much as 20 percent less.

20 Q. And you say, basically, you have to spend this
21 money to see what you have, but, in your opinion, will
22 the entire lateral area be productive?

23 A. Yes, it is. If you go back to Exhibit A,
24 there is oil production in virtually every direction and
25 Morrow well logs in every direction that -- the dolomite

1 is there. Again, the risk will be just how productive it
2 is, but I believe that it will be productive across the
3 entire lateral.

4 Q. In your opinion, because of the horizontal
5 laterals encountering Morrow reservoir, does that
6 increase the chances of a commercial well?

7 A. Yes, it does.

8 Q. One final thing on the APD. You have -- RSC
9 has filed an APD with the Bureau of Land Management?

10 A. That's correct.

11 Q. Have you been in touch with the Bureau of Land
12 Management to determine the progress of that APD?

13 A. Yes. My NOS actually went out and was
14 recorded at the Bureau on January 22nd. I did receive a
15 deficiency letter and talked to Wesley Ingram earlier
16 this week. He's one of the Bureau engineers. And I can,
17 basically, correct and submit two or three pages, and he
18 was satisfied, and then that would be it. I also do have
19 to submit an archaeological study, and then the APD will
20 be complete.

21 Q. When it is complete, did the BLM indicate they
22 would approve the APD?

23 A. Yes.

24 Q. Were Exhibits A through F prepared by you or
25 under your supervision?

1 A. Yes, they were.

2 Q. In your opinion, is the granting of this
3 application in the interest of conversation and
4 prevention of waste?

5 A. Yes.

6 Q. One final thing. RSC does have some upcoming
7 time deadlines with respect to drilling of the well, does
8 it not?

9 A. That's correct

10 Q. So would you appreciate a quick order on this
11 case?

12 A. Yes, we would appreciate a quick order. It
13 definitely would help our plans.

14 MR. BRUCE: Mr. Examiner, I move admission
15 of Exhibits A through F.

16 MR. HALL: No objection.

17 MR. WARNELL: Exhibits A through F are
18 admitted.

19 (Exhibits A through F were admitted.)

20 MR. BRUCE: I pass the witness.

21 CROSS-EXAMINATION

22 BY MR. HALL:

23 Q. Mr. Cate, briefly, we looked to your Exhibit
24 A, your area production activity map. First of all, let
25 me ask you, as well, as of today, you don't have a

1 written agreement with COG on how to develop this unit?

2 A. That's correct.

3 Q. You continue to work with them and negotiate
4 with them; is that right?

5 A. Yes.

6 Q. Your application is not asking for COG's APD
7 to be cancelled; correct?

8 A. No, it is not.

9 Q. And neither does your application ask for
10 approval of multiple operators in this unit. Do you
11 agree?

12 A. Well, yes and no. I mean, may I give my
13 opinion on that? I don't know that an APD on a federal
14 lease actually designates COG as an operator. So in the
15 Three Span issue, we own those rights to drill through
16 that acreage, so I don't know -- I'm not willing to,
17 actually say, that -- the multiple operator thing, I
18 guess, is beyond my expertise. But my opinion is that we
19 shouldn't have to deal with them. And, furthermore, I
20 believe that this well plan submitted by RSC is a better
21 well than a short lateral that COG has as an APD right
22 now.

23 Q. Understand. Is it accurate to say that nobody
24 really contemplates that both RSC and COG will each have
25 wells in this unit?

1 A. No. That would not be beneficial to either
2 party.

3 Q. Okay. Again, referring back to your Exhibit
4 Number A, you're showing a proposed location for another
5 horizontal well in the south half of the south half of
6 the section? Is that you?

7 A. South half of the south half, that is, also, a
8 COG APD called the Donner.

9 Q. South half of south half; isn't that your
10 well?

11 A. We also have one, yes, but the difference is
12 that their -- the well plan shown here, I believe, is,
13 actually, the Donner APD, which started 330 feet from the
14 east line and 330 from the south. That's their surface.
15 And RSC's APD starts on the west side, and it's,
16 actually, 860 from the south and 100 from the west.

17 Q. This is confusing. There's more than one
18 Donner APD.

19 A. Well, Donner -- we're talking specific to the
20 south half of the south half; right?

21 Q. Yes. So that would be Donner Number 1; is
22 that right?

23 A. Right.

24 Q. And the COG well in the north half of south
25 half is the Donner 30 Federal Number 2, just so we're

1 clear about that

2 A. You said the north half of south half?

3 Q. Yes.

4 A. I think that's right.

5 Q. And you have a compulsory pooling application
6 pending for hearing on March 19th for the south half,
7 south half; correct?

8 A. That's right. Originally, we -- originally
9 RSC's application, basically, mirrored the Donner Number
10 1, COG's APD. However, in trying to save money -- and
11 these days we have to do everything we can -- in going
12 out and surveying the acreage to the west, I believe it
13 will be much less expensive. To get to those locations,
14 it requires less road, and the topographicals over on the
15 east side will require a lot more cut and fill, so I
16 believe that our locations on the west side will be more
17 expedient. And so with the change of location, we are
18 having to come back and re-file that.

19 Q. Is it your plan to come back to Santa Fe on
20 March 19th?

21 A. I believe we'll continue that at this point.

22 Q. Would you have any objection to continuing
23 this case for an additional two to four weeks to allow
24 COG further opportunity to work with you and to comment?

25 A. Yes, I do have an objection to that. We have

1 given COG every opportunity for six months -- literally
2 six months, since before Thanksgiving -- we've been in
3 contact with them, and we need to move forward. And if
4 COG and RSC cannot come to an agreement, RSC intends to
5 go forward and operate and drill the well. So I would
6 not agree, you know, to a continuance like that. We
7 already granted one, you know, for two weeks.

8 MR. HALL: That's all I have, Mr.
9 Examiner.

10 MR. BROOKS: What are the nature of your
11 concerns that cause you to want an expedited order in
12 this case? Do you have expiration issues?

13 THE WITNESS: We do have some acreage that
14 begins to expire. As Mr. Smith had said, we had over 30
15 or something different owners with different agreements
16 and different time dates. This was a very difficult
17 acreage to put together, and it has taken a long time,
18 and we will start to see some of these leases expire, and
19 there's no guarantee that we can actually go and either
20 extend or renew.

21 The best thing for us now is to go ahead and
22 be allowed to drill our well in a timely manner. If, for
23 some reason, we're forced to go de novo or something, we
24 could, actually -- if we don't get a very quick ruling,
25 we could see a case where we might be pushing our time

1 limit there if the de novo were to happen.

2 MR. BROOKS: This is federal acreage;
3 right?

4 THE WITNESS: Yes.

5 MR. BROOKS: And is it a case where any of
6 the federal leases might expire or is it subleases?

7 MR. BRUCE: Mr. Examiner, it is farmouts
8 and term assignments. The leases, themselves, are not in
9 danger of expiring.

10 MR. BROOKS: I was tending to assume that.
11 That's why I asked the question.

12 MR. BRUCE: It is farmouts and term
13 assignments.

14 MR. BROOKS: But all -- or a portion of
15 RSC's interests might be subject to termination some time
16 in the not-too-distant future?

17 THE WITNESS: Yes.

18 MR. BRUCE: Exhibit 1, Mr. Examiner, if
19 you look, you'll see -- the only upcoming lease
20 expiration, you'll note, is the west half, east half,
21 which is COG's lease, and that will expire in a year.
22 Although -- I guess it won't expire, because they just
23 drilled a well and completed it in -- I think the lateral
24 to the north, that Mr. Cate was discussing, terminates in
25 the -- either starts or terminates in the southwest,

1 northeast quarter. And the other leases are -- you can
2 see by the lease numbers that they are older federal
3 leases that are well into their secondary terms.

4 MR. BROOKS: Back to what you were saying,
5 it's not a lease expiration issue. It would be a
6 sub-lease or term assignment expiration?

7 MR. BRUCE: Correct.

8 MR. BROOKS: But it would affect RSC's
9 interest?

10 THE WITNESS: Yes.

11 MR. BROOKS: Would it affect all or only
12 part of RSC's interests?

13 THE WITNESS: Say that again.

14 MR. BROOKS: Would it affect all of RSC's
15 entire interest in the unit or just part?

16 THE WITNESS: Well, eventually.

17 MR. BROOKS: Well, yeah. But I'm talking
18 about what might be within the next month or so. You
19 haven't given us any dates.

20 THE WITNESS: No. But starting in August
21 is when pieces start to fall away, and then it -- I mean,
22 it's been so hard to even get it together. But I think
23 Kirk would not appreciate having to try to keep it all
24 together. And, again, we've made efforts for six months
25 with Concho. We really have.

1 MR. BROOKS: Your first expiration
2 deadline is in August?

3 THE WITNESS: It is in August, yes.

4 MR. BROOKS: Thank you.

5 MR. WARNELL: Mr. Cate, if this
6 application were approved, when would you plan on
7 spudding the well?

8 THE WITNESS: Assuming that there were no
9 further objections, May to June.

10 MR. WARNELL: I suppose there's not a big
11 problem getting a rig right now?

12 THE WITNESS: No, I have not. This is
13 kind of in a state of flux and I have not. But I have
14 contacted or have been in contact with several in the
15 past month or so. And one of the benefits right now is
16 that if you can build your location for a certain type of
17 rig and wait for these rigs to have windows, if they're
18 already in the area, you can save up to like \$70,000 just
19 in a rig move than if you have to bring them out of the
20 yard and load them into the location. So that type of
21 flexibility and the way the rig situation is right now,
22 we should be able to get a rig of that nature and save on
23 the rig mobility cost probably within a 30-day window, I
24 think, now.

25 MR. WARNELL: I'm looking here at the type

1 log or Schlumberger's Compensated Neutron, and I believe
2 that's Exhibit C. I must have missed something there.
3 Maybe you can help me out. It looks to me like,
4 according to the log, the log depth to the top of the
5 Wolfcamp, 6,388?

6 THE WITNESS: Yes.

7 MR. WARNELL: But yet over to the right of
8 the log, someone has written in there, "top of Wolfcamp
9 Pay, 2,823 feet."

10 THE WITNESS: Yes. That's Sub C. That's
11 the Sub C marker. I'm sorry. I should have put that.

12 MR. WARNELL: This is the log of what's
13 now been referred to as the Three Span well?

14 THE WITNESS: That's correct.

15 MR. WARNELL: I have no further questions.
16 Mr. Bruce?

17 MR. BRUCE: I have no further questions of
18 the witness. I have one that I think Mr. Hall and I have
19 discussed briefly, Mr. Brooks. You know, we did not file
20 to cancel COG's Donner Fed Number 2 APD. I was looking
21 at it and I was thinking that's a federal APD. I don't
22 know what jurisdiction the Division would have over
23 canceling a federal APD.

24 MR. BROOKS: I don't know if it's been
25 approved by the Division. We wouldn't approve it until

1 after the Feds approved it. We can cancel our own
2 approval and that, obviously, doesn't cancel the federal
3 approval. And whether you control it with their approval
4 and not ours is a question that I don't believe the
5 federal courts have actually ruled on.

6 MR. BRUCE: But the parties are trying to
7 work together. And at this point, I saw it as a needless
8 effort.

9 MR. BROOKS: Mr. Hall, COG hasn't filed
10 any cross-application at this time, have they?

11 MR. HALL: They have not. Again, I'm
12 going to emphasize, Concho is trying to cooperate. They
13 don't have a deal today. They don't want to see anyone
14 lose farmout, certainly not. I have misunderstood. I
15 thought this case was being continued, so I didn't have
16 anyone here. And I think in view of that -- I don't have
17 any exhibits or anything to give you -- I'd ask the
18 Division to take notice of the APD in its files. The API
19 number for the Donner 30 Federal Well Number 2 is
20 3001535819.

21 I'd like to do what I can to facilitate
22 further negotiations between the parties. The problem I
23 think we have is that they're not successful. COG would
24 like the opportunity to address the situation further
25 with the Division. I think from the testimony today, the

1 scope of relief that RSC is requesting from the Division
2 exceeds what's stated on the face of the application.
3 There may be a notice issue with respect to having
4 approval from multiple operators in the area right now,
5 as well.

6 And it would seem to me that under Rule 1512,
7 you might be obliged to continue the case, keep it open
8 for another two weeks anyway, give the parties an
9 additional two weeks to talk to work things out. If not,
10 then we ask that we reconvene the case on March 19, and
11 I'd like to be able to present my witnesses.

12 MR. BROOKS: What is the notice issue?

13 MR. HALL: We have multiple operators
14 within a single proposed unit, and I think Rule 1512
15 requires notice to go out 20 days in advance of the
16 application if you're proposing more than one operator,
17 and that was not done in this case. But I think if we
18 continue the case for two weeks, that problem will be
19 cured, or we can establish that all objections to that
20 would be waived.

21 MR. BROOKS: I would assume -- maybe you
22 know the answer. Mr. Bruce, apparently, is not clear on
23 this. Since an API number has been assigned to your
24 proposal, I would assume that means that our district,
25 obviously, approved the APD. Do you know that to be a

1 fact?

2 MR. HALL: I think we've been through this
3 in a couple of other cases. What we do know is the BLM
4 will approve multiple APDs. The Division will not. If
5 there is a previously-approved APD by the Division, that
6 precludes anyone else from submitting their own APD to
7 the Division.

8 MR. BROOKS: We would generally approve
9 the first one we receive from BLM, but if we -- I'm not
10 sure how they do it, either, frankly. But my assumption
11 is that if we assigned an API number -- because we assign
12 the API number -- so my assumption would be if we
13 assigned an API number, that our additional goverances
14 approve the APD.

15 MR. HALL: That is my assumption, as well.
16 I think that's the way the system operates.

17 MR. BRUCE: The thing is, this is
18 different because it's federal, but it's even more
19 different because, you know, you're not dealing with two
20 wells with the same well units.

21 MR. BROOKS: However, they include the
22 same portion -- they include portions of the same,
23 because their unit is the north half of the southeast
24 quarter only. I guess my recommendation to the Examiner
25 would be that we continue this for two weeks to allow

1 this to be clarified.

2 MR. WARNELL: Well, I'd like to see RSC
3 and COG continue to talk, because if I have to make a
4 ruling on it, then I always figure that one side wins and
5 one side loses. If you continue to talk, maybe you can
6 reach a win/win scenario, as they say. So I will take
7 Mr. Brooks's advice and will continue Case 14277 for the
8 next docket in two weeks.

9 MR. BRUCE: I have nothing further in this
10 matter.

11 MR. WARNELL: Then that will conclude
12 Docket Number 7-09, and we stand adjourned. Thank you.

13 * * *

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17 I do hereby certify that the foregoing is
18 a complete record of the proceedings in
the Examiner hearing of Case No. _____
heard by me on _____

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_____, Examiner
Oil Conservation Division

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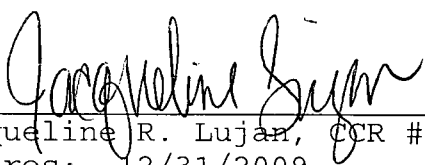
REPORTER'S CERTIFICATE

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I, JACQUELINE R. LUJAN, New Mexico CCR #91, DO
HEREBY CERTIFY that on March 5, 2009, proceedings in the
above captioned case were taken before me and that I did
report in stenographic shorthand the proceedings set
forth herein, and the foregoing pages are a true and
correct transcription to the best of my ability.

I FURTHER CERTIFY that I am neither employed by
nor related to nor contracted with any of the parties or
attorneys in this case and that I have no interest
whatsoever in the final disposition of this case in any
court.

WITNESS MY HAND this 16th day of March, 2009.



Jacqueline R. Lujan, CCR #91
Expires: 12/31/2009