

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

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

CASE NO. 21344

**APPLICATION OF WPX ENERGY PERMIAN, LLC
FOR A HORIZONTAL SPACING UNIT
AND COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO**

**CASE NO. 21371
ORDER NO. R-21826**

ORDER

The Director of the New Mexico Oil Conservation Division (“OCD”), having heard these matters through a Hearing Examiner on October 22, 2020, and after considering the testimony, evidence, and recommendation of the Hearing Examiner, issues the following Order.

FINDINGS OF FACT

1. Due public notice has been given as required by law, and OCD has jurisdiction of these cases and the subject matter.
2. These cases involve competing compulsorily pooling applications with overlapping horizontal spacing units filed by COG Operating, LLC (“COG”) and WPX Energy Permian, LLC (“WPX”). These cases were consolidated for hearing and a single order is being issued for the consolidated cases.
3. Both COG and WPX have the right to drill within the proposed spacing units, and each seeks to be named operator of their proposed wells and spacing units.
4. Applications: Case No. 21344. On June 9, 2020, COG submitted an application to compulsorily pool the uncommitted oil and gas interests in the Wolfcamp formation underlying a standard 1920-acre horizontal spacing unit comprised of Sections 3, 10, and 15, Township 26 South, Range 29 East, NMPM, Eddy County, New Mexico. COG proposes to dedicate to this unit five wells with three-mile wellbores to be drilled from a surface location in Section 3 to a bottom hole located in Section 15.
5. Case No. 21371. On July 7, 2020, WPX submitted a competing application to compulsorily pool the uncommitted oil and gas interests in the Wolfcamp formation underlying a standard 640-acre horizontal spacing unit underlying the W/2 of Sections 15 and 22, Township 26 South, Range 29 East, NMPM, Eddy County, New Mexico. WPX proposes to dedicate to this unit five wells with two-mile

wellbores to be drilled from a surface location in Section 22 to a bottom hole located in Section 15.

6. Hearing. Both cases were heard at an OCD hearing docket on October 22, 2020. The hearing, which was conducted on a virtual platform, was conducted in accordance with Section 19.15.4 NMAC. Both COG and WPX presented witnesses and exhibits. No other party presented evidence. Each of the witnesses were sworn, were qualified to present expert opinion testimony and were subject to cross-examination by the other party and by the OCD Hearing Examiners. Following the hearing, COG and WPX submitted written closing statements on November 20, 2020.
7. COG presented three witnesses in support of its application:
 - a. Hunter Hall, a landman, described the proposed unit COG seeks to pool, the wells for the proposed units, COG's efforts to obtain voluntary joinder from all interest owners, estimated costs, and the required notice.
 - b. Will Neely, a geologist, described the proposed path of the wells, a structure map of the formation, which dips to the east-southeast in this area, and the proposed target intervals. He stated that stand-up orientation is preferred in this area to efficiently and economically develop acreage.
 - c. Shane Volk, a reservoir engineer, discussed his economic evaluation of the proposed wells, and the comparative analysis he did of the alternative plans. It is his opinion that COG's development plan will cost approximately \$10 million less than WPX's to fully develop Sections 3, 10, and 15; that COG's plan will allow for more efficient recovery of the area; and that COG's plan will reduce surface and facility usage.
8. WPX presented three witnesses in support of its application:
 - a. Aaron Young, a landman, described WPX's proposed wells, correspondence with the interest owners and with COG, the way COG's plan traps and limits WPX and other owners in Section 22, and WPX's experience with 2-mile wells in the area.
 - b. Keegan dePriest, a petroleum geologist, presented geological information showing a comparison of the companies' proposed scenarios for Section 22, a stratigraphic cross-section, and the Isopach map.
 - c. Justin Stolworthy, a petroleum engineer, presented information showing the difference between 1-mile and 2-mile development plans for Section 22, the stranding of resources there under COG's plan, the increased risks associated with a longer well in the Permian Basin, the economic threshold for a 1-mile well, and COG's well spacing, which would also strand resources.
9. Legal Background. The Oil and Gas Act authorizes OCD to compulsory pool the lands or interests in a spacing unit. When the owners of the interests in a spacing unit have not agreed to voluntarily pool their interests, and when one owner, who has the right to drill, applies to OCD, OCD can pool the lands or interests in the

unit “to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste”. Section 70-2-17.C.

10. OCD and the Oil Conservation Commission (“Commission”) have developed a number of factors to consider in evaluating competing compulsory pooling applications.
11. The Commission, in a 1997 order involving vertical well proposals, concluded that “the most important consideration in awarding operations to competing interest owners is geologic evidence as it relates to well location and recovery of oil and gas and associated risk.” *KCS Medallion Resources, Inc.*, Order R-10731-B, ¶ 23(f) (Feb. 28, 1997). In this Order, the Commission also listed several other factors such as lack of good faith negotiation, differences in proposed risk charge and ability to prudently operate the property but concluded that in the absence of “any reason why one operator would economically recover more oil or gas by virtue of being awarded operations than the other”, “working interest control” would be the “controlling factor”. *Id.* ¶ 24.
12. Since then, OCD and Commission decisions have applied the factors in Order R-10731-B, with some additions, in compulsory pooling cases including those involving horizontal well proposals. In a recent decision, the Commission listed the factors it “may consider” in evaluating competing compulsory pooling applications:
 - a. A comparison of geologic evidence presented by each party as it relates to the proposed well location and the potential of each proposed prospect to efficiently recover the oil and gas reserves underlying the property.
 - b. A comparison of the risk associated with the parties' respective proposal for the exploration and development of the property.
 - c. A review of the negotiations between the competing parties prior to the applications to force pool to determine if there was a "good faith" effort.
 - d. A comparison of the ability of each party to prudently operate the property and, thereby, prevent waste.
 - e. A comparison of the differences in well cost estimates (AFEs) and other operational costs presented by each party for their respective proposals.
 - f. An evaluation of the mineral interest ownership held by each party at the time the application was heard
 - g. A comparison of the ability of the applicants to timely locate well sites and to operate on the surface (the "surface factor").Order R-21420, ¶ 9 (9/17/2020)
13. Proposals. The proposals cover 4 sections within Township 26 South, Range 29 East, NMPM, Eddy County. COG proposes a horizontal spacing unit of 1920 acres which consists of Sections 3, 10 and 15. WPX proposes a unit of 640 acres which

consists of the W/2 of Sections 15 and 22. The overlap between the units is approximately 320 acres: The W/2 of Section 15 (“Overlap Acreage”).

14. These cases involve a particular variation on competing compulsory pooling cases: a partial overlap of proposed spacing units. In two recent cases involving partial overlap, the Commission compared the parties’ proposals and focused on which proposal avoids waste by not stranding acreage, which proposal best protects correlative rights “by presenting the best opportunity for each party to develop its own acreage”, and which party had the greatest interest in their proposed unit. *Marathon Oil Permian LLC*, Order R-21416-A (Sept. 17, 2020); *Novo Oil & Gas Northern Delaware, LLC*, Order R-21420-A (Sept. 17, 2020). In neither case did the Commission’s decision rely on the relative strength of the well proposals (location, density, length, etc.).¹
15. WPX argues that its well development plan for the Overlap Acreage would result in a significant production advantage over COG’s plan. WPX proposes a greater density of wells that are spaced closer together and would develop two vertical horizons (Upper Wolfcamp A and Lower Wolfcamp A) while COG only proposes wells in the Upper Wolfcamp A. COG responds by arguing that its well spacing plan avoids well interference issues and the three mile laterals will be more efficient. OCD finds that the evidence on competing development plans for the Overlap Acreage is contradictory and insufficient to support one plan over the other.
16. WPX argues that its development proposal is superior to COG’s. WPX proposes two mile laterals that would underlie both Section 22 (where WPX has 100% of the interests) and Section 15 (where COG has 100% of the interests). Under WPX’s proposal, COG would be left with the possibility of two mile laterals covering Sections 3 and 10. COG’s proposal involves three mile laterals covering Sections 3, 10 and 15 which leaves WPX with the possibility of one mile laterals in the W/2 of Section 22. WPX argues that COG’s proposal would result in waste and impact correlative rights because a) three mile laterals involve greater risk, and b) one mile laterals are not “practicable” for WPX and therefore would result in the stranding of the W/2 of Section 22².
17. WPX’s argument for stranded acreage is unpersuasive. To find that the W/2 of Section 22 would be stranded under COG’s proposal requires a finding that one mile laterals are no longer practicable. While some operators may favor longer laterals, one mile laterals continue to be drilled in New Mexico. In a recent compulsory pooling case, the Commission was faced with a similar argument and rejected it. *Marathon Oil Permian LLC*, Order R-21416-A, ¶¶ 55-57 (“There is no engineering or geological reason that Marathon cannot complete 1-mile laterals”).

¹ In both cases, the Commission reached the opposite conclusion of the OCD as to the prevailing party.

² WPX states that it can develop the E/2 of Section 22 by combining with a section to the south.

18. The suitability of three-mile laterals is a key issue. While WPX argues that three mile laterals are untested in New Mexico and pose considerable risk, COG testified that it had successfully drilled three mile laterals in Texas and the longer length provides greater efficiency. OCD has approved three mile laterals in other cases. E.g., *COG Operating LLC*, Order R-21633 (Mar. 23, 2021). Prior decisions of the OCD in competing cases provide limited guidance. In a 2018 compulsory pooling case, OCD decided in favor of the competing party proposing longer laterals; the proposals involved two mile and one mile laterals. *Devon Energy Production L.P.*, Order R-20223, ¶ 40 (Nov. 8, 2018) (“wells drilled to increased lengths can have a production and economic advantage and thereby prevent waste and protect correlative rights”).
19. Working Interest Control. The evidence on working interest control is clearer and strongly favors COG. For the COG spacing unit which covers 1920 acres, COG testified that it had control of 96.09% of the acreage and WPX had control of 3.91%. (COG ex. A-2). For the WPX spacing unit which covers 640 acres, WPX and COG each have a 50% working interest control. (WPX ex. A-2). For the Overlap Acreage, both parties agree that COG has working interest control of 100%.
20. No other factor is significant. There are no real disputes about the good faith effort of either party in negotiations or about the ability of either party to operate in a prudent manner. There are no disputes about the underlying geology. The parties disagree over costs but costs “are not significant factors in awarding operations”. Order R-10731-B, ¶ 23(j).
21. OCD concludes that the conflicting evidence over well and overall development proposals do not clearly favor one proposal, while the evidence on working interest control strongly favors the COG proposal. In the absence of other compelling factors, “working interest control...should be the controlling factor in awarding operations”. Order R-10731-B, ¶ 24. Not only does COG control over 95% of the interests in its proposed spacing unit, but COG also controls 100% of the interest in the Overlap Acreage. To avoid the drilling of unnecessary wells, to protect correlative rights, and to avoid waste, the application of COG should be granted.

ORDER

22. The application of COG Operating, LLC (“Operator”), is granted.
23. The application of WPX Energy Permian, LLC, is denied.
24. The uncommitted interests in the Unit are pooled as set forth in Exhibit A. Unit shall be dedicated to the Well(s) set forth in Exhibit A. Operator is designated as operator of the Unit and the Well(s).

25. If the location of a well will be unorthodox under the spacing rules in effect at the time of completion, Operator shall obtain the OCD's approval for a non-standard location in accordance with 19.15.16.15(C) NMAC.
26. The Operator shall commence drilling the Well(s) within one year after the date of this Order, and complete each Well no later than one (1) year after the commencement of drilling the Well.
27. This Order shall terminate automatically if Operator fails to comply with Paragraph 19 unless Operator obtains an extension by amending this Order for good cause shown.
28. The infill well requirements in 19.15.13.9 NMAC through 19.15.13.12 NMAC shall be applicable.
29. Operator shall submit each owner of an uncommitted working interest in the pool ("Pooled Working Interest") an itemized schedule of estimated costs to drill, complete, and equip the well ("Estimated Well Costs").
30. No later than thirty (30) days after Operator submits the Estimated Well Costs, the owner of a Pooled Working Interest shall elect whether to pay its share of the Estimated Well Costs or its share of the actual costs to drill, complete and equip the well ("Actual Well Costs") out of production from the well. An owner of a Pooled Working Interest who elects to pay its share of the Estimated Well Costs shall render payment to Operator no later than thirty (30) days after the expiration of the election period, and shall be liable for operating costs, but not risk charges, for the well. An owner of a Pooled Working Interest who fails to pay its share of the Estimated Well Costs or who elects to pay its share of the Actual Well Costs out of production from the well shall be considered to be a "Non-Consenting Pooled Working Interest."
31. No later than one hundred eighty (180) days after Operator submits a Form C-105 for a well, Operator shall submit to each owner of a Pooled Working Interest an itemized schedule of the Actual Well Costs. The Actual Well Costs shall be considered to be the Reasonable Well Costs unless an owner of a Pooled Working Interest files a written objection no later than forty-five (45) days after receipt of the schedule. If an owner of a Pooled Working Interest files a timely written objection, OCD shall determine the Reasonable Well Costs after public notice and hearing.
32. No later than sixty (60) days after the expiration of the period to file a written objection to the Actual Well Costs or OCD's order determining the Reasonable Well Costs, whichever is later, each owner of a Pooled Working Interest who paid its share of the Estimated Well Costs shall pay to Operator its share of the Reasonable Well Costs that exceed the Estimated Well Costs, or Operator shall pay

to each owner of a Pooled Working Interest who paid its share of the Estimated Well Costs its share of the Estimated Well Costs that exceed the Reasonable Well Costs.

33. The reasonable charges for supervision to drill and produce a well ("Supervision Charges") shall not exceed the rates specified in Exhibit A, provided however that the rates shall be adjusted annually pursuant to the COPAS form entitled "Accounting Procedure-Joint Operations."
34. No later than within ninety (90) days after Operator submits a Form C-105 for a well, Operator shall submit to each owner of a Pooled Working Interest an itemized schedule of the reasonable charges for operating and maintaining the well ("Operating Charges"), provided however that Operating Charges shall not include the Reasonable Well Costs or Supervision Charges. The Operating Charges shall be considered final unless an owner of a Pooled Working Interest files a written objection no later than forty-five (45) days after receipt of the schedule. If an owner of a Pooled Working Interest files a timely written objection, OCD shall determine the Operating Charges after public notice and hearing.
35. Operator may withhold the following costs and charges from the share of production due to each owner of a Pooled Working Interest who paid its share of the Estimated Well Costs: (a) the proportionate share of the Supervision Charges; and (b) the proportionate share of the Operating Charges.
36. Operator may withhold the following costs and charges from the share of production due to each owner of a Non-Consenting Pooled Working Interest: (a) the proportionate share of the Reasonable Well Costs; (b) the proportionate share of the Supervision and Operating Charges; and (c) the percentage of the Reasonable Well Costs specified as the charge for risk described in Exhibit A.
37. Operator shall distribute a proportionate share of the costs and charges withheld pursuant to paragraph 29 to each Pooled Working Interest that paid its share of the Estimated Well Costs.
38. Each year on the anniversary of this Order, and no later than ninety (90) days after each payout, Operator shall provide to each owner of a Non-Consenting Pooled Working Interest a schedule of the revenue attributable to a well and the Supervision and Operating Costs charged against that revenue.
39. Any cost or charge that is paid out of production shall be withheld only from the share due to an owner of a Pooled Working Interest. No cost or charge shall be withheld from the share due to an owner of a royalty interests. For the purpose of this Order, an unleased mineral interest shall consist of a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest.

40. Except as provided above, Operator shall hold the revenue attributable to a well that is not disbursed for any reason for the account of the person(s) entitled to the revenue as provided in the Oil and Gas Proceeds Payment Act, NMSA 1978, Sections 70-10-1 *et seq.*, and relinquish such revenue as provided in the Uniform Unclaimed Property Act, NMSA 1978, Sections 7-8A-1 *et seq.*
41. The Unit shall terminate if (a) the owners of all Pooled Working Interests reach a voluntary agreement; or (b) the well(s) drilled on the Unit are plugged and abandoned in accordance with the applicable rules. Operator shall inform OCD no later than thirty (30) days after such occurrence.
42. OCD retains jurisdiction of this matter for the entry of such orders as may be deemed necessary.

**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**



ADRIENNE SANDOVAL
DIRECTOR
AES/bb

Date: 8/31/2021

Exhibit "A"


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COMPULSORY POOLING APPLICATION CHECKLIST	
ALL INFORMATION IN THE APPLICATION MUST BE SUPPORTED BY SIGNED AFFIDAVITS	
Case: 21344	APPLICANT'S RESPONSE
Date	October 22, 2020
Applicant	COG Operating LLC
Designated Operator & OGRID (affiliation if applicable)	OGRID # 229137
Applicant's Counsel:	Ocean Munds-Dry, Michael Rodriguez
Case Title:	Application of COG Operating LLC for Compulsory Pooling, Eddy County, New Mexico
Entries of Appearance/Intervenors:	WPX Energy Permian, LLC
Well Family	Rock Jelly
Formation/Pool	
Formation Name(s) or Vertical Extent:	Wolfcamp
Primary Product (Oil or Gas):	Gas
Pooling this vertical extent:	Wolfcamp A
Pool Name and Pool Code:	Purple Sage Wolfcamp Gas Pool (98220)
Well Location Setback Rules:	Statewide
Spacing Unit Size:	~1920 acres
Spacing Unit	
Type (Horizontal/Vertical)	Horizontal
Size (Acres)	~1920 acres
Building Blocks:	Quarter-quarter
Orientation:	Standup
Description: TRS/County	All of Sections 3, 10, and 15, Township 26 South, Range 29 East, Eddy County, New Mexico.
Standard Horizontal Well Spacing Unit (Y/N), If No, describe	Yes
Other Situations	
Depth Severance: Y/N. If yes, description	No
Proximity Tracts: If yes, description	Yes
Proximity Defining Well: if yes, description	The completed interval for the proposed Rock Jelly Fed Com 703H will be within 330' of the line separating the W/2E/2 and the E/2W/2 of Sections 3, 10, and 15, which allows the inclusion of this acreage into a standard 1920-acre, more or less, horizontal spacing unit.
Applicant's Ownership in Each Tract	A-2
Well(s)	
Name (API [if assigned]); Surface hole location; Bottom hole location; Completion target (TVD); Orientation, Completion status (standard or non-standard).	A-1
Well #1	Rock Jelly Federal Com #701H (API # Pending) SHL: ~ 210 FNL, 1055 FEL, OR LOT 1, 3-26S-29E

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	BHL: ~ 200 FSL, 330 FEL, OR UNIT P, 15-26S-29E Completion Target: Wolfcamp formation (Approx. 10100 feet TVD) Completion status: Standard
Well #2	Rock Jelly Federal Com #702H (API # Pending) SHL: ~ 210 FNL, 1085 FEL, OR LOT 1, 3-26S-29E BHL: ~ 200 FSL, 1485 FEL, OR UNIT O, 15-26S-29E Completion Target: Wolfcamp formation (Approx. 10100 feet TVD) Completion status: Standard
Well #3	Rock Jelly Federal Com #703H (API # Pending) SHL: ~ 350 FNL, 1530 FWL, OR LOT 3, 3-26S-29E BHL: ~ 200 FSL, 2630 FWL, OR UNIT N, 15-26S-29E Completion Target: Wolfcamp formation (Approx. 10100 feet TVD) Completion status: Standard
Well #4	Rock Jelly Federal Com #704H (API # Pending) SHL: ~ 350 FNL, 1500 FWL, OR LOT 3, 3-26S-29E BHL: ~ 200 FSL, 1530 FWL, OR UNIT N, 15-26S-29E Completion Target: Wolfcamp formation (Approx. 10100 feet TVD) Completion status: Standard
Well #5	Rock Jelly Federal Com #705H (API # Pending) SHL: ~ 350 FNL, 1470 FWL, OR LOT 3, 3-26S-29E BHL: ~ 200 FSL, 430 FWL, OR UNIT M, 15-26S-29E Completion Target: Wolfcamp formation (Approx. 10100 feet TVD) Completion status: Standard
Horizontal Well First and Last Take Points	A-1
Completion Target (Formation, TVD and MD)	2-D
AFE Capex and Operating Costs	
Drilling Supervision/Month \$	\$8,000
Production Supervision/Month \$	\$800
Justification for Supervision Costs	Exhibit A
Requested Risk Charge	200%
Notice of Hearing	
Proposed Notice of Hearing	Exhibit D
Proof of Mailed Notice of Hearing (20 days before hearing)	Exhibit D
Proof of Published Notice of Hearing (10 days before hearing)	Exhibit D
Ownership Determination	
Land Ownership Schematic of the Spacing Unit	A-2
Tract List (including lease numbers and owners)	A-2
Pooled Parties (including ownership type)	A-2
Unlocatable Parties to be Pooled	N/A
Ownership Depth Severance (including percentage above & below)	N/A
Joinder	
Sample Copy of Proposal Letter	A-3
List of Interest Owners (ie Exhibit A of JOA)	A-2

Chronology of Contact with Non-Joined Working Interests	Exhibit A (¶ 15)
Overhead Rates in Proposal Letter	N/A
Cost Estimate to Drill and Complete	A-3
Cost Estimate to Equip Well	A-3
Cost Estimate for Production Facilities	A-3
Geology	
Summary (including special considerations)	Exhibit B
Spacing Unit Schematic	Attachment A
Gunbarrel/Lateral Trajectory Schematic	N/A
Well Orientation (with rationale)	Exhibit B
Target Formation	Wolfcamp
HSU Cross Section	Attachments C, D
Depth Severance Discussion	N/A
Forms, Figures and Tables	
C-102	A-1
Tracts	A-2
Summary of Interests, Unit Recapitulation (Tracts)	A-2
General Location Map (including basin)	Attachment A
Well Bore Location Map	Attachment A
Structure Contour Map - Subsea Depth	Attachment B
Cross Section Location Map (including wells)	Attachment C
Cross Section (including Landing Zone)	Attachment D
Additional Information	N/A
CERTIFICATION: I hereby certify that the information provided in this checklist is complete and accurate.	
Printed Name (Attorney or Party Representative):	Michael Rodriguez
Signed Name (Attorney or Party Representative):	
Date:	10/27/2020