

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:

APPLICATION OF COG OPERATING, LLC                      CASE NO. 16117,  
FOR A NONSTANDARD SPACING AND    16188  
PRORATION UNIT AND COMPULSORY POOLING,  
EDDY COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

October 30, 2018

Santa Fe, New Mexico

BEFORE:   MICHAEL McMILLAN, CHIEF EXAMINER  
          DAVID K. BROOKS, LEGAL EXAMINER

This matter came on for hearing before the New Mexico Oil Conservation Division, Michael McMillan, Chief Examiner, and David K. Brooks, Legal Examiner, on Thursday, October 30, 2018, at the New Mexico Energy, Minerals and Natural Resources Department, Wendell Chino Building, 1220 South St. Francis Drive, Porter Hall, Room 102, Santa Fe, New Mexico.

REPORTED BY:   Mary C. Hankins, CCR, RPR  
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1	INDEX	
2		PAGE
3	Case Numbers 16117 and 16188 Called	4
4	Cases Presented by Affidavit	4
5	Proceedings Conclude	16
6	Certificate of Court Reporter	17
7		
8		
9		
10	EXHIBITS OFFERED AND ADMITTED	
11	COG Operating, LLC Exhibit Number 1	7
12		
13	COG Operating, LLC Exhibit Numbers 2 through 4	10
14		
15		
16		
17		
18		
19		
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(9:19 a.m.)

EXAMINER McMILLAN: With that in mind, I'd like to call Case Number 16117, application of COG Operating, LLC for a nonstandard spacing and proration unit and compulsory pooling, Eddy County, New Mexico.

Call for appearances.

MR. FELDEWERT: May it please the examiner, Michael Feldewert, with the Santa Fe office of Holland & Hart, appearing on behalf of the Applicant.

We would ask that this case be consolidated with 16188, where COG is also the Applicant.

And I have two affidavits -- a set of affidavits to present here today.

MS. BRADFUTE: Mr. Examiner, Jennifer Bradfute, with Modrall, Sperling, on behalf of Marathon Oil Permian, LLC, and I have no witnesses.

MR. BRUCE: Mr. Examiner, Jim Bruce entering an appearance on behalf of MRC Permian Company and Tap Rock Resources, LLC.

EXAMINER McMILLAN: And there is no objection to combining the cases?

MS. BRADFUTE: No objection.

MR. BRUCE: No.

EXAMINER McMILLAN: Okay. Please proceed.

MR. FELDEWERT: Yes. Mr. Examiner, we

1 have -- in the packet before you, we have four separate  
2 exhibits. They are four separate affidavits, and with  
3 respect to each affidavit, there are some attachments.

4 COG Exhibit 1, in each of these  
5 consolidated cases, is the hearing affidavit of Ashley  
6 Roush, which has three attachments to it. And in her  
7 affidavit, Ms. Roush notes that COG, in each of these  
8 cases, is seeking to create -- or seeking to pool a  
9 640-acre standard horizontal well spacing unit in the  
10 Wolfcamp Formation for the wells that are set forth in  
11 Exhibit 1A, which are draft C-102s for the Hambone  
12 Federal 25H and the Hambone Federal 26H, one of which is  
13 devoted to the -- the first which is devoted to the  
14 west-half acreage and the second which is devoted to the  
15 east-half acreage in Sections 5 and 8, which are at  
16 issue here today.

17 Exhibit B to her affidavit, Mr. Examiner,  
18 contains the breakdown of the interest owners in each of  
19 the proposed 640-acre spacing units. The first two  
20 pages of Exhibit 1B deal with, what we'll call, the  
21 west-half acreage, and she has highlighted on there the  
22 parties that the company seeks to pool. They're  
23 highlighted in yellow. And you'll see that there is a  
24 mixture of working interest ownership, as well as  
25 royalty interest, overriding royalty interest and NPRI

1 interest, net profits royalty interest -- or net  
2 proceeds royalty interest, I should say, and a record  
3 title owner.

4 With respect to the east-half acreage,  
5 which is the second part of Exhibit 1B, you'll likewise  
6 see a breakdown for each tract, and highlighted, again,  
7 the parties the company seeks to pool, which in that  
8 case involves working interests, as well as an  
9 overriding royalty interest owner.

10 Attachment 1C to her affidavit contains the  
11 well-proposal letters for each well, the 25H and the  
12 26H, as well as the AFE that was sent out at the time to  
13 the interest owners. Ms. Roush testifies to that AFE  
14 and the reasonableness of the costs therein and further  
15 testifies that this was sent to all the parties, working  
16 interest parties, that they seek to pool.

17 In her affidavit, she requests that the  
18 Division approve, as the overhead, 7,000 per month while  
19 drilling and 700 per month while producing.

20 Finally, I think pertinent here is  
21 Ms. Roush testifies in paragraph seven of her affidavit  
22 that there are no depth severances underlying this  
23 acreage and that all of the parties that we seek to pool  
24 have been located with the exception -- one exception --  
25 and that is -- if you go back to Exhibit 1B, which is

1 the tract map for the west-half acreage, you'll see a  
2 Tract 5 is federal acreage. And that has recently been  
3 released, but the company has been unable to ascertain  
4 from the BLM who the lessee is. They haven't released  
5 that yet. So we don't know the owner of that particular  
6 acreage. But the BLM, of course, has been notified of  
7 this hearing. So that's the only interest that is  
8 unknown at this time.

9 With that, we would move the admission of  
10 Exhibit Number 1.

11 EXAMINER McMILLAN: Objections?

12 MS. BRADFUTE: No objection.

13 MR. BRUCE: No objection.

14 EXAMINER McMILLAN: Exhibit 1 may now be  
15 accepted as part of the record.

16 (COG Operating, LLC Exhibit Number 1 is  
17 Offered and admitted into evidence.)

18 MR. FELDEWERT: Then in the packet before  
19 you, there is a second affidavit by Matt Fisher.  
20 Mr. Fisher is a geologist employed by the company. He  
21 points out that the target of both of these wells is the  
22 Wolfcamp D interval, D, as in dog, for both the Hambone  
23 25H and the 26H.

24 He provides, as Exhibit 2A, a depiction of  
25 the area that shows the existing development. And

1   you'll see that there is very little. There is  
2   certainly no Wolfcamp D development within a mile, and  
3   there is no Wolfcamp development -- very little Wolfcamp  
4   development within two miles of this particular acreage.  
5   That's shown on Exhibit 2A.

6                   But one thing he does point out in this  
7   affidavit is that the development that is out there is  
8   on a stand-up orientation.

9                   Exhibit 2B contains a structure map that is  
10   prepared by Mr. Fisher. He notes the contouring at 25  
11   feet. He also provides the data points that were  
12   utilized for his -- for his map, and he reflects that --  
13   in his affidavit, that you'll see that the structure  
14   gently dips to the east, but, more importantly, he  
15   observes no faulting, pinch-outs or any other geologic  
16   impediments to developing this acreage with horizontal  
17   wells.

18                   Exhibit 2C is a map that identifies the  
19   three well logs that he utilized to create his sub-cross  
20   section. He notes in his affidavit that these were the  
21   only log wells available in the area that were usable  
22   and extend into the Wolfcamp Formation and that he  
23   considers them to be representative, and that's what he  
24   utilized to create his cross section, which is Exhibit  
25   2D.



1                   And on Exhibit 2D, he not only identifies  
2   the Wolfcamp D interval but also the target for the  
3   laterals that they intend to place within this  
4   particular productive zone. He notes that each of these  
5   three logs has a gamma ray, resistivity and porosity  
6   logs by various colors, and he states, for the record,  
7   that the targeted interval extends across the subject  
8   acreage.

9                   And he concludes in his affidavit that the  
10   proposed acreage to form the standard spacing units will  
11   contribute more or less equally to the production from  
12   the wellbore. So he concludes that this is an area that  
13   can be developed by horizontal wells, that the acreage  
14   will contribute and that the granting of these  
15   applications is in the best interest of conservation,  
16   the prevention of waste and the protection of  
17   correlative rights.

18                  Finally, Exhibits 3 and 4 are simply the  
19   notice affidavits prepared by my office with the  
20   attached letter, as well as the status of the notice.  
21   And you'll see that every party that we seek to pool has  
22   been notified of this particular hearing and has  
23   received notice of this hearing.

24                  Mr. Examiner, that concludes our  
25   presentation.

1 I would move the admission into evidence  
2 the remaining exhibits, 2, 3 and 4.

3 MS. BRADFUTE: No objection.

4 MR. BRUCE: No objection.

5 EXAMINER McMILLAN: Exhibits 2, 3 and 4 may  
6 now be accepted as part of the record.

7 (COG Operating, LLC Exhibit Numbers 2  
8 through 4 are offered and admitted into  
9 evidence.)

10 EXAMINER McMILLAN: Cross?

11 MS. BRADFUTE: No cross.

12 MR. BRUCE: No.

13 EXAMINER McMILLAN: Okay. Is it -- the  
14 first question I've got is: Is it 640 acres? Is it  
15 more or less? I see a lot in there.

16 MR. FELDEWERT: Yeah. It would be more or  
17 less. I think the lots -- I don't know the lot size,  
18 but it's pretty close. It's 640, more or less.

19 EXAMINER McMILLAN: Okay. "More or less."

20 MR. FELDEWERT: I did neglect one thing,  
21 now that you raise it, and that is that we've been  
22 informed these wells will be placed in the Purple Sage;  
23 Wolfcamp. Ms. Roush testifies to that in paragraph  
24 five.

25 EXAMINER McMILLAN: Yeah. That's in the

1 applications.

2 EXAMINER BROOKS: There is a lot of Purple  
3 Sage down in Eddy County.

4 MR. FELDEWERT: Yes, sir.

5 EXAMINER McMILLAN: So what is the net  
6 proceeds? That's essentially an override, isn't it?

7 MR. FELDEWERT: It's akin to an override.

8 MS. BRADFUTE: Is it a nonparticipating, or  
9 is it a net profits?

10 MR. FELDEWERT: That is an NPRI.

11 MS. BRADFUTE: It could be either/or.

12 MR. FELDEWERT: Yeah.

13 EXAMINER BROOKS: Get in trouble with  
14 acronyms sometimes.

15 MR. FELDEWERT: Yeah, I know.

16 EXAMINER BROOKS: Ambiguity.

17 MR. FELDEWERT: I'm not sure she says and  
18 I'm not sure I asked, so I don't know. But it would be  
19 a nonparticipating interest, non-cost-bearing interest.

20 EXAMINER McMILLAN: So sounds like  
21 derivation [sic] of the royalty.

22 MR. FELDEWERT: I think that's a fair  
23 statement.

24 MS. BRADFUTE: Yeah.

25 EXAMINER McMILLAN: And for -- let's make

1     sure -- I guess my question -- I'm trying to understand.  
2     In essence, there are unlocatable interests, but it's  
3     the BLM that's unlocatable; is that right?   Stated  
4     wrong?

5                   MR. FELDEWERT:   Well, there was an unleased  
6     federal tract, it is now leased, but the lessee -- the  
7     name of the lessee has not been released yet.

8                   EXAMINER McMILLAN:   So where is it -- so  
9     looking at your -- so notice falls upon the BLM, right?  
10                   Is that a safe statement?

11                   EXAMINER BROOKS:    I don't know.

12                   MR. FELDEWERT:   Well, we can't -- we can't  
13     pool the BLM royalty, so at this point, there would be  
14     no one to notice, although the lease would be subject to  
15     the pooling order.

16                   EXAMINER McMILLAN:   But then you'd have to  
17     notify the BLM, right?   This is goofy.

18                   EXAMINER BROOKS:    I believe we require  
19     notice to the BLM nowadays, but I'm a little confused on  
20     that.   We changed that on some things recently.

21                   MR. FELDEWERT:    So there wouldn't really be  
22     any reason to notice the BLM.

23                   EXAMINER BROOKS:    No.   Well, I remember one  
24     time being in a meeting with the BLM and we asked them  
25     if they wanted notice of certain things, and they said,

1 "No. We monitor your dockets, and if there is anything  
2 in there we don't like, we'll let you know."

3 MR. FELDEWERT: You know, the company has  
4 been in touch with the BLM, and they've attempted to  
5 obtain the name of the lessee, but they can't release  
6 it.

7 EXAMINER BROOKS: Well, I guess you'll just  
8 have to bring a supplemental application when you find  
9 out who it is, because I don't see how we can compulsory  
10 pool an undisclosed party.

11 MR. FELDEWERT: Unless the lease is already  
12 subject to the pooling.

13 EXAMINER BROOKS: Well, I guess that's  
14 true. But if the name of the lessee is undisclosed, I  
15 suppose the terms of the lease are also undisclosed. Is  
16 that correct?

17 MR. FELDEWERT: I do not know. I assume --  
18 well, I don't know the terms of the lease. I just know  
19 the winning party is undisclosed at this point.

20 EXAMINER BROOKS: Well, like you say, I  
21 assume that if the lease says that it is -- may be  
22 pooled by the OCD and the lease is subject to that  
23 action, then perhaps we can pool -- pool it without a  
24 hearing -- without a notice and hearing. Otherwise, I  
25 think it's unconstitutional, and it also runs afoul of

1 the Uhden case, so that's a subject of some concern.

2 MR. FELDEWERT: I understand.

3 EXAMINER McMILLAN: So, in essence, are we  
4 going to have to continue the case?

5 MR. FELDEWERT: I don't think so. I think  
6 it would be up to -- my point would be if the company is  
7 in a position where they feel like they need to pool the  
8 new lessee because either they can't reach an agreement  
9 or the lease doesn't provide for pooling, they will come  
10 back and re-open the case.

11 EXAMINER BROOKS: That is kind of what I  
12 was thinking. The practical thing to do would be to go  
13 ahead and grant the pooling and then allow for a  
14 re-opening.

15 MR. FELDEWERT: I think that's the only way  
16 we can deal with it.

17 MS. BRADFUTE: No objection to that.

18 EXAMINER McMILLAN: Jim?

19 MR. BRUCE: I have no comment on it. I  
20 probably would have gone ahead and notified the BLM and  
21 said, "The heck with it" (laughter).

22 EXAMINER McMILLAN: Okay.

23 EXAMINER BROOKS: Well, I guess you've got  
24 a point, Jim. I hadn't thought about that.

25 Well, but it's a constitutional issue. For

1 the notice issues -- for the notice requirements, you're  
2 okay because the notice only requires to a party who is  
3 named in an instrument that's of record or you have  
4 knowledge of, and this instrument is not of record and  
5 you don't have knowledge of it so far as the lessee is  
6 concerned. The only question then would be: Does it  
7 create a right to notice under the due process? And  
8 that would be questionable because I've never really  
9 tried to figure out whether a person has a right to due  
10 process if you don't know who he is. There's been a  
11 supposition over centuries that that was the case.  
12 That's why we serve unknown heirs.

13 MR. FELDEWERT: I would ask that the case  
14 move forward. If there is any concern about -- well, I  
15 would ask that the case move forward, that the pooling  
16 application be granted, noting that Tract 5 is, at this  
17 point, not subject to the pooling order.

18 EXAMINER BROOKS: I think that's a good --  
19 I think that's a reasonable way to approach it.

20 EXAMINER McMILLAN: (Indicating.)

21 MS. BRADFUTE: No objection with that.

22 MR. BRUCE: No objection.

23 EXAMINER McMILLAN: Okay. Well, then --  
24 okay. So the east half had no unlocatable interests,  
25 correct?

1 MR. FELDEWERT: Correct.

2 EXAMINER McMILLAN: There's no depths  
3 severances.

4 Okay. Then Case 16117 and Case 16188 shall  
5 be taken under advisement.

6 MR. FELDEWERT: Thank you.

7 EXAMINER McMILLAN: And this hearing shall  
8 be concluded.

9 (Case Numbers 16117 and 16188 conclude,  
10 9:33 a.m.)

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1 STATE OF NEW MEXICO  
2 COUNTY OF BERNALILLO

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4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, Certified Court  
6 Reporter, New Mexico Certified Court Reporter No. 20,  
7 and Registered Professional Reporter, do hereby certify  
8 that I reported the foregoing proceedings in  
9 stenographic shorthand and that the foregoing pages are  
10 a true and correct transcript of those proceedings that  
11 were reduced to printed form by me to the best of my  
12 ability.

13 I FURTHER CERTIFY that the Reporter's  
14 Record of the proceedings truly and accurately reflects  
15 the exhibits, if any, offered by the respective parties.

16 I FURTHER CERTIFY that I am neither  
17 employed by nor related to any of the parties or  
18 attorneys in this case and that I have no interest in  
19 the final disposition of this case.

20 DATED THIS 30th day of October 2018.

21

22

23 MARY C. HANKINS, CCR, RPR  
24 Certified Court Reporter  
New Mexico CCR No. 20  
Date of CCR Expiration: 12/31/2018  
Paul Baca Professional Court Reporters

25