

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

COG OPERATING LLC'S CLOSING STATEMENT

COG Operating LLC ("COG") submits this closing statement in support of Case No. 21344 heard on Thursday, October 22, 2020.

I. INTRODUCTION

While the Division has two applications for compulsory pooling before it, it is important to keep in mind the only overlapping land the parties are competing for is the W/2 of Section 15, where COG owns 100% of the working interest. As to the competing spacing units, approximately 96% of the working interest is committed to COG's proposed unit. The remaining working interest COG seeks to pool is WPX's 4% working interest. On the other hand, only 50% of the working interest is committed to WPX's unit. COG established that it met all statutory pre-conditions for compulsory pooling and that its 3-mile development plan will prevent waste, protect correlative rights, and avoid drilling unnecessary wells.

At hearing, COG provided testimony and evidence that demonstrate the factors used to compare competing pooling applications weigh in favor of COG's application and development

plans. COG proposed its wells first and actively took further steps – including applying for permits to drill (which have been approved), to prepare for the development of this project. Once COG secured title to the acreage in Section 15, COG immediately re-proposed to the parties for three-mile development and then filed its pooling application. Further, COG is ready to drill these wells within a year from when an order is issued by the Oil Conservation Division (“Division”) and has capital allocated for this project. Additionally, COG engaged in a good-faith effort to obtain voluntary joinder with all working interest owners in COG's proposed spacing unit, including WPX. COG presented expert witness testimony and exhibits demonstrating that its development plan will facilitate the most efficient and economic means of developing all of Sections 3, 10, 15 and 22. Therefore, COG requests that the Division grant COG's application in Case No. 21344 and deny WPX's application.

II. BACKGROUND

In Case 21344, COG seeks an order pooling all uncommitted interests in the Wolfcamp formation, Purple Sage; Wolfcamp Pool (Pool code 98220), underlying a standard 1920-acre, more or less, horizontal spacing unit comprised of all of Sections 3, 10, and 15, Township 26 South, Range 29 East, NMPM, Eddy County, New Mexico. COG’s proposed spacing unit will be dedicated to its Rock Jelly Fed Com 701H, 702H, 703H, 704H, and 705H wells (collectively, “Rock Jelly Wells”).

In Case No. 21371, WPX Energy Permian, LLC (“WPX”) seeks an order pooling all uncommitted interests in the Wolfcamp formation, Purple Sage; Wolfcamp Pool (Pool code 98220), underlying a standard 640-acre, more or less, horizontal spacing unit comprised of the W/2 of Sections 15 and 22, Township 26 South, Range 29 East, NMPM, Eddy County, New

Mexico. WPX's proposed unit will be dedicated to its French 22-15 Fed Com 411H, 421H, 412H, 422H, and 413H wells (collectively, "French Wells").

COG proposes a 1920-acre spacing unit with roughly 96% of the working interest committed to its unit at the time of hearing. WPX owns the remaining 4% of the working interest. Tr. 95. WPX proposes a 640-acre spacing unit with only 50% of the working interest committed to its unit. The remaining 50% of the working interest is entirely owned by COG and has already been committed to its own 3-mile spacing unit in Sections 3, 10, and 15.

III. ARGUMENT

COG has met the statutory pre-conditions required for compulsory pooling and its development plan is preferred when applied to the factors used by the Division in evaluating competing proposals ("Competing Proposal Factors"). Further, COG's 3-mile development plan will prevent waste, protect correlative rights, and avoid drilling unnecessary wells. Therefore, the Division should grant COG's application and deny WPX's application.

A. COG has met the statutory pre-conditions for Compulsory Pooling.

The Oil and Gas Act, NMSA 1978, §70-2-17(C), requires that the Division pool all interests within a proposed spacing unit when an applicant has the right to drill on the subject lands and the applicant has established that its development plan avoids the drilling of unnecessary wells, protects correlative rights, and prevents waste. COG has the right to drill its wells in the proposed spacing unit since it has an interest in every tract within its proposed spacing unit. COG Exhibit A. COG also proposed a development plan to all interest owners that will protect correlative rights, prevent waste, and avoid drilling unnecessary wells in the Wolfcamp formation. *Id.* COG made continuous good-faith efforts to obtain voluntary joinder from the remaining uncommitted working

interest owner. *Id.*; Tr. 32; Tr. 73-74. Thus, COG has met all the statutory pre-conditions for compulsory pooling.

B. COG’s proposal will prevent waste, protect correlative rights and avoid drilling unnecessary wells.

When comparing the competing applications COG’s development plan will prevent waste, protect correlative rights, and avoid the drilling of unnecessary wells.

1. COG’s Development Plan Will Prevent Waste.

The New Mexico Oil and Gas Act defines “underground waste” as:

Those words are generally understood in the oil and gas business, and in any event to embrace the inefficient, excessive or improper, use or dissipation of the reservoir energy, including gas energy and water drive, of any pool, and the locating, spacing, drilling, equipping, operating or producing, of any well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from any pool.

NMSA 1978, §70-2-3 (A) (emphasis added).

COG’s proposed development plan will prevent waste because it is the most efficient and economic way to produce the underlying reservoir. COG Exhibits C-1 through C-5; Tr. 43; Tr. 45 (“...[W]e are confident that our development plan in Sections 3, 10 and 15 will be the most efficient way to develop it and prevent waste.”). COG has carefully planned the length and spacing of its proposed laterals in a manner that will avoid the inefficient and uneconomic production of oil and gas. Tr. 47. COG’s development plan includes 3-mile laterals, which result in greater economic and operational efficiencies which prevent waste. *See* Division Order R-20223, ¶ 40 (the Division concluded that increased laterals have production and economic advantages). COG’s 3-mile development plan increases completed lateral length per section due to stimulating internal setback acreage that would be unstimulated under WPX’s plan. COG Exhibit C, ¶ 7; COG Exhibit

C-4. On the other hand, WPX’s proposal would limit COG to less-productive 2-mile laterals thereby creating waste.

Longer laterals are “extremely lucrative without doubling the costs,” and have advantages over shorter laterals that include “reduced surface impact; less need to drill overburden rocks; less pumping equipment, separation, power lines, tanks, and hookups.” *See* Order R-20223. COG’s 3-mile development plan is efficient and cost-effective, whereas WPX’s less efficient 2-mile development plan would cause substantial physical and economic waste. COG Exhibit C, ¶ 4-8. WPX’s plan requires an additional \$9.9 million of additional capital expenses compared to COG’s plan to recover a similar amount of reserves in Sections 3, 5, and 15. Tr. 48; COG Exhibit C-2. WPX’s plan would also require 50% more surface locations than COG’s plan. COG Exhibit C, ¶ 6; COG Exhibit C-3. Most importantly, when evaluating all these considerations as a whole, WPX’s development plan would result in a \$7 million net loss to all parties involved. COG Exhibit C-5; COG Exhibit C, ¶ 8. Therefore, COG’s 3-mile development plan will allow for less surface disturbance, increased completed laterals per section, and superior economics, thereby preventing waste.

In short, COG’s 3-mile development plan prevents waste by efficiently and economically developing the underlying reserves, while WPX’s less-productive 2-mile plan would create waste.

2. **COG’s Development Plan Will Protect Correlative Rights.**

“Correlative rights” is defined, in part, as the *opportunity* afforded to an owner to produce, without waste, the owner’s just and equitable share of the hydrocarbons. NMSA 1978, §70-2-33(H) (emphasis added). COG established that its development plan will protect the correlative rights of all mineral owners in Sections 3, 10, and 15. Additionally, COG’s proposed plan does not impact the correlative rights of the interest owners in or “strand” the W/2 of Section 22. Under

COG's development plan, WPX retains multiple *opportunities* to develop its own acreage efficiently and economically thereby protecting WPX's correlative rights along with all interested mineral owners.

WPX's various counter arguments fail to demonstrate that COG's development plan would impair its correlative rights. First, WPX claims that COG's development plan would impair WPX's correlative rights in the W/2 of Section 22 because it would "trap" and "limit" it to develop its acreage with shorter-than-proposed laterals. Tr. 92-93. However, the option to choose a certain lateral length is not a correlative right. Additionally, under COG's development plan, WPX has numerous *opportunities* to develop the W/2 of Section 22. Tr. 87-92. WPX can drill stand-up, one-mile wells in the W/2 of Section 22. *Id.* WPX agreed that there are no geological or operational impediments to drilling one-mile wells in its acreage. Tr. 119; Tr. 133. WPX can also drill lay-down wells extending east into Section 23. Tr. 91. WPX can also farm out its acreage to another operator. Tr. 92.

Although COG's plan does not physically strand the W/2 of Section 22, WPX contends that its correlative rights would be impaired because the acreage is "effectively stranded." WPX believes that, although a project may be economic, it is still "effectively stranded" if it is not economic enough to meet its internal metrics at the time it is considered. Tr. 85-86. Specifically, WPX would not pursue one-mile well development in the W/2 of Section 22 because it does not meet its internal economic thresholds under the current market conditions. Tr. 83-84. However, the reserves in the W/2 of Section 22 remain in place under COG's plan, and as pricing conditions and internal metrics change, WPX may find that developing those reserves with one-mile laterals would be desirable. Tr. 138. The mere fact that WPX prefers other projects in its portfolio over

developing the W/2 of Section 22 with one-mile wells does not economically strand this acreage. In short, COG's plan does not physically or economically strand the W/2 of Section 22.

WPX also claims that the correlative rights of a handful of overriding royalty interest owners exclusively located in the W/2 of Section 22 would be impaired under COG's development plan. Tr. 94. This is simply untrue. The correlative rights of these owners are independent of COG's development plans in offsetting acreage. Tr. 94-95. Further, WPX has numerous opportunities to develop the reserves in Section 22 under both development plans, which would provide these owners their fair and just share of the reserves. WPX develops drilled one-mile wells but it does not consider drilling one-mile projects. Tr. 94. Therefore, WPX's claim that somehow COG's development plan infringes on the correlative rights of the overriding royalty interest owners exclusively in the W/2 of Section 22 is entirely baseless.

In conclusion, COG's development plan protects the correlative rights of all mineral interest owners in Sections 3, 10, 15, and the W/2 of Section 22 by avoiding physically or economically stranding any acreage while allowing both parties to produce its fair and just share of underlying reserves.

3. COG's Development Plan Will Avoid Drilling Unnecessary Wells.

COG's development plan not only takes into consideration the benefits of longer laterals but also the number and spacing between wells to most effectively and efficiently produce the underlying reservoir. COG's spacing limits interference between wells, avoids drilling unnecessary wells and provides better production. Tr. 55 (“[W]e believe the best way to optimize spacing is to limit interference between wells, and we believe that our plan is the most efficient and economic way to do that.”). While the parties may disagree about what the right spacing should be, they do agree that it is a company's internal assessment based on science and data in order to

“[create] value, not [destroy] it.” Tr. 140 (“When your spacing gets too loose or your spacing gets too tight, you are destroying value.”), Tr.142. Although WPX argued that COG’s spacing was too wide based on other operators’ production, it also admitted that there are a variety of reasons why production may vary between operators and between wells. Tr. 144-145.

C. COG’s Development Plan is Preferred When Applied to the Division’s Competing Proposal Factors.

When there are competing pooling applications, the Division evaluates each parties’ development plan and considers the following seven Competing Proposal Factors with respect to the parties’ proposals¹:

1. *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.*

Both parties agree that the geology underlying Sections 3, 10, 15, and 22 is uniform and no geological impediments prohibit lateral development of the underlying reserves in either development plan. COG Exhibit B; Tr. 38-39; Tr. 113.

2. *A comparison of the risk associated with the parties’ respective proposal for the exploration and development of the property.*

COG’s development plan minimizes operational and economic risk by utilizing longer laterals in a more appropriate well-spacing program. COG’s development plan utilizes 3-mile wells that generate additional economic and operational efficiencies over WPX’s 2-mile development plan. WPX agrees that longer laterals are more economic to develop and remain productive for a longer duration than shorter laterals. Tr. 85. Although, COG has not drilled any 3-mile wells in New Mexico, its 3-mile Rock Jelly wells are similar in design to other 3-mile wells COG has

¹ See, e.g., Order No. R-21416-A. The Commission evaluated the parties’ development plans and considered these factors with respect to the parties’ proposals.

successfully drilled and completed in Texas. *See* Case Nos. 21219 & 21220, COG Exhibit D (Testimony of COG’s Drilling Engineer); *See* Case Nos. 21219 & 21220, COG Exhibit E (Testimony of COG’s Completions Engineer). In a previous hearing, COG presented extensive expert testimony and exhibits demonstrating COG’s expertise in designing and executing successful 3-mile laterals that create more value and less risk to develop the property. *Id.* In that same hearing, COG also demonstrated how it confirmed that the entire producing interval in each of its 3-mile wells was contributing to the overall production of the wells. Case Nos. 21219 & 21220, COG Exhibit E, ¶ 14. WPX also presented evidence showing a producing 3-mile well six miles away from COG’s proposed outperforming the other 2-mile wells. Tr. 158-159; WPX Exhibit D-5.

Throughout WPX’s exhibits and testimony, WPX maintained conflicting positions regarding risk associated with the Parties’ development plans. For instance, WPX maintained that 3-mile wells introduce unnecessary operational risks. WPX Exhibit A, pg. 7. Yet, WPX testified that it would consider electing into COG’s 3-mile Rock Jelly wells in the E/2. Tr. 82. Similarly, WPX asserts that 2-mile wells minimize risk and optimize resource development compared to one-mile wells. Tr. 116-117. But, WPX currently operates several one-mile wells. Tr. 117. Similarly, WPX claims that 2-mile laterals are the “tried and true” length because 2-mile laterals minimize risk and maximize resource development. Tr. 77; WPX Exhibit B, pg. 3. However, WPX chose to develop its offsetting Horn wells as 2.3-mile laterals instead of the “tried and true” 2-mile length even though it admitted that the additional lateral created more risk to the project. Tr. 116.

To summarize, COG has not only successfully drilled 3-mile laterals in Texas, it has extensively considered potential risks of drilling and completing a 3-mile laterals in this development project.

3. *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.*

Both parties agree that, although COG and WPX did not reach an agreement regarding the underlying acreage, both parties acted in good faith. Tr. 32; Tr. 73-74.

4. *A comparison of the ability of each party to prudently operate the property and, thereby, prevent waste.*

COG is an experienced operator that has an established history of successfully utilizing extended laterals to develop the Wolfcamp A shale efficiently and economically within the area. COG Exhibit E. Just this year, COG successfully drilled and completed nine 2.5-mile wells targeting the Wolfcamp A interval a mile-and-a-half east of its proposed 3-mile Rock Jelly wells. COG Exhibit E; Tr. 172. COG relied on its extensive spacing and operator pressure data from several representative operations within two miles of its proposed Rock Jelly wells to determine that its development plan would most efficiently and economically develop the area. Tr. 172. As such, COG's development plan is the most efficient and economic means of developing all of Sections 3, 10, 15, and 22. Tr. 11.

5. *A comparison of the differences in well cost estimates (AFE's) and other operational costs presented by each party for their respective proposals.*

COG's development plan is superior to WPX's plan since it requires five less wells and roughly \$10 million less in capital to produce the same amount of reserves in Sections 3, 10, 15, and the W/2 of Section 22. COG Exhibit C-1.²

² Paragraph B(1) herein provides an in-depth economic analysis regarding each parties' development plan.

6. *An evaluation of the mineral interest ownership held by each party at the time the application was heard.*

The only overlapping land the parties are competing for is the W/2 of Section 15, which COG owns 100% of the working interest in. COG Exhibit A-2. As to the competing spacing units, approximately 96% of the working interests is committed to COG's 3-mile unit. COG Exhibit A-2; Tr. 10. The remaining working interest COG seeks to pool is WPX's 4% working interest. Tr. 10; Tr. 72. On the other hand, only 50% of the working interest is committed to WPX's unit while the other half of the working interest is owned entirely by COG and has already been committed to COG's proposed unit.

7. *A comparison of the ability of the applicants to timely locate well sites and to operate on the surface (the "surface factor").*

COG has federally approved permits to drill its proposed Rock Jelly wells, has capital allocated to drill and complete these wells in 2021, and takes priority in its drill schedule. In contrast, WPX does not have approved permits to drill its proposed French wells, these wells are not on its drill schedule, and it does not have capital specifically allocated to these wells. Tr. 80-81.

IV. CONCLUSION

Concho has the right to drill the subject acreage, proposed the wells to all interest owners, and made good-faith efforts to reach an agreement with all working-interest owners including Mewbourne. Concho also demonstrated that its well development plan will avoid the drilling of unnecessary wells, prevent waste, and protect correlative rights. Further, as applied to the Division's Competing Pooling Test, Concho's development plan is the preferred plan when evaluated against each factor and when evaluated as a whole. For the foregoing reasons, Concho requests the Division grant its application in Case No. 21344.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2020, I filed with the Division clerk the foregoing document and served a copy of the foregoing document to the following counsel of record via e-mail:

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