

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

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

APPLICATIONS OF BURNETT OIL CO., INC.
FOR COMPULSORY POOLING, EDDY COUNTY,
NEW MEXICO.

Case Nos. 14640 & 14641

RESPONSE IN OPPOSITION TO COG'S MOTION TO STAY

Burnett Oil Co., Inc. and Hudson Oil Company of Texas (collectively, "Burnett") submit this response in opposition to the motion to stay Order No. R-13450 filed by COG Operating LLC ("Concho").

1. Order: Order No. R-13450 was entered on August 26, 2011, granting Burnett's applications to pool Concho in the Glorieta-Yeso formation in the SW/4SW/4 of Section 13 and the SW/4SW/4 of Section 24, Township 17 south, Range 31 East, NMPM. The order force pools two (vertical) well units which are part of Burnett's overall plan to develop three sections of land (Sections 12, 13, and 24 in the foregoing township).

2. Standards in granting a stay: In considering stay motions, the Division uses the general factors for granting an injunction under District Court rules. **NMRA 1-066**. Under those standards Concho must show, at a minimum, (a) a likelihood of success on the merits, and (b) a balancing equities which would favor Concho. Concho cannot succeed on either element.

3. Success on the merits: Concho bases its entire case on the statement that "if Burnett is allowed to drill its proposed vertical wells before this matter is final, the wells will

cause waste and permanently violate Concho's correlative rights." This statement is put forth without any supporting evidence or without any basis in the record. The record shows:

- (a) Burnett proposes drilling several vertical wells in the three sections to gather sufficient data to propose a horizontal drilling plan. **Testimony of Mark Jacoby (Burnett engineer)**. This is being done to *prevent* waste.
- (b) Burnett's vertical and horizontal wells produce more reserves than Concho's vertical and horizontal wells. **Id.** Thus, Concho's correlative rights will be *protected* by allowing Burnett to commence drilling.
- (c) Division regulations allow up to four oil wells per well unit, which is what COG *argued for* in a related pool rules case. **Order No. R-13382-E**. Drilling two wells in a vertical well unit or horizontal well unit is permissible under the Division's rules, and will maximize recovery of reserves.
- (d) Burnett owns or controls 2/3's of the working interest in the three sections of land. Majority working interest ownership is perhaps the major factor in awarding operations in a case like this. **Commission Order No. R-10731-B (at pp. 9-10)**.

The order entered by the Division was well reasoned, and COG pointed to no specific provision of the order which justifies it being stayed or overturned.

4. Balancing of Equities: A review of the equities in the case shows that they favor Burnett. These factors include:

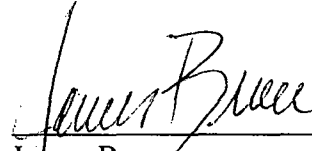
- (a) Again, drilling vertical wells will provide critical data for further development of the Glorieta-Yeso reservoir underlying the three sections.
- (b) Concho has, for six months, claimed that under a farmout with the Ard interests it must commence drilling in these three sections by late October (although it has refused to

show anyone the agreement). In addition, Concho has stated on the record that Burnett is delaying drilling to cause the Ard farmout to lapse. **The reality is that Burnett has expressed its willingness to commence wells to save the farmout.**

Thus, balancing of the equities favors Burnett.

WHEREFORE, for the foregoing reasons Burnett requests that COG's motion be denied.

Respectfully submitted,




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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 28th day of September, 2011 by facsimile transmission:

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