

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 COG OPERATING, Case 15075  
LLC, to re-open Case No. 15075  
to pool the interests of  
additional mineral and leasehold  
owners under the terms of  
Compulsory Pooling Order R-13791,  
Eddy County, New Mexico

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

April 2, 2015

Santa Fe, New Mexico

2015 APR 10 P 1:19

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BEFORE: MICHAEL McMILLAN, Hearing Examiner

GABRIEL WADE, Legal Examiner

This matter came on for hearing before the New  
Mexico Oil Conservation Division, MICHAEL McMILLAN,  
Hearing Examiner, and GABRIEL WADE, Legal Examiner,  
on Thursday, April 2, 2015, in Santa Fe, New Mexico.

REPORTED BY: PAUL BACA, CCR #112  
PAUL BACA COURT REPORTERS  
500 4th Street, NW, Suite 105

A P P E A R A N C E S

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1                   HEARING EXAMINER McMILLAN: I would like  
2 to call Case Number 15075, the application of COG  
3 Operating, LLC, to re-open Case Number 15075, to  
4 pool the interests of additional mineral and  
5 leasehold owners under the terms of compulsory  
6 Pooling Order R-13791, Eddy County, New Mexico.

7                   Call for appearance.

8                   MR. FELDEWERT: May it please the  
9 Examiner.

10                  Michael Feldewert with the Santa Fe office  
11 of Holland & Hart appearing on behalf of the  
12 applicant, and I have one witness here today.

13                  HEARING EXAMINER McMILLAN: Any other  
14 appearances?

15                  MR. PADILLA: Mr. Examiner, I'm Ernest L.  
16 Padilla for Yates Holdings, LLP.

17                  And I don't have any witnesses, and I have  
18 an entry of appearance. I was retained late  
19 yesterday. Apparently Yates Holding was unaware of  
20 the passing of Jim Bruce's wife and couldn't get  
21 ahold of him. So they found out yesterday, and I  
22 was called to represent Yates Holding.

23                  We don't have a prehearing statement or  
24 any of that.

25                  MR. WADE: Is there any objection to the

1 entry of appearance?

2 MR. FELDEWERT: Not to the entry of  
3 appearance, no.

4 HEARING EXAMINER McMILLAN: Okay. It is  
5 accepted as part of the record.

6 MR. FELDEWERT: Mr. Examiner, we'll call  
7 our first witness. He has -- he was sworn in a  
8 previous case. I don't know if we need to re-swear  
9 him for this case or not.

10 STUART DIRKS,  
11 after having been first duly sworn under oath,  
12 was questioned and testified as follows:

13 EXAMINATION

14 BY MR. FELDEWERT:

15 Q. Would you please state your name, identify  
16 by whom you are employed, and in what capacity?

17 A. My name is Stuart Dirks. I'm employed by  
18 COG Operating, LLC, as a landman.

19 Q. And, Mr. Dirks, you previously testified  
20 before this division and had your credentials as an  
21 expert in petroleum land matters accepted and made a  
22 matter of record, correct?

23 A. Yes.

24 Q. And are you familiar with the application  
25 that has been filed in this case?

1           A.     Yes.

2           Q.     Are you familiar with the status of the  
3     lands and the subject area and the reason that this  
4     application has been filed?

5           A.     Yes.

6           MR. FELDEWERT: I would once again tender  
7     Mr. Dirks as an expert witness in petroleum land  
8     matters.

9           HEARING EXAMINER McMILLAN: Any objection?

10          MR. PADILLA: No objections.

11          HEARING EXAMINER McMILLAN: So accepted.

12          Q.     (By Mr. Feldewert) Mr. Dirks, has this  
13     particular acreage been subject to a previous  
14     pooling order entered by the division?

15          A.     Yes, that's correct.

16          Q.     If I turn to what's been marked as COG  
17     Exhibit Number 1, is this a copy of the pooling  
18     order for this acreage that was entered by the  
19     division in February of 2014?

20          A.     Yes, it is.

21          Q.     And what did this do?

22          A.     This pooled the uncommitted interest known  
23     at that time in the west half/west half of Section  
24     3, Township 19 South, Range 26 East, in the Yeso  
25     formation for our proposed Lee 3 Fee Number 1H well.

1 Q. Okay. If I then turn to what's been  
2 marked as COG Exhibit Number 2, is that the C-102  
3 that was filed for that initial well in this  
4 160-acre spacing unit?

5 A. Yes, it is.

6 Q. And identified as the pool that's  
7 involved, and we also have an API number for this  
8 well, correct?

9 A. Yes, correct.

10 Q. Now, has this particular well been drilled  
11 yet, Mr. Dirks?

12 A. No, it has not.

13 Q. Okay. And recognizing that the pooling  
14 order was entered in February of 2014, did the  
15 company obtain an extension of the time to drill  
16 this initial well from the division?

17 A. Yes, we did.

18 Q. And if I turn to what's been marked as COG  
19 Exhibit Number 3, is that the extension -- or is  
20 that the letter issued by the division extending the  
21 time to commence the drilling of the initial well on  
22 this pool spacing unit?

23 A. Yes, it is.

24 Q. Okay. Why has the company, Mr. Dirks,  
25 come back to the division for additional action?

1           A.     We have identified additional owners that  
2     were not included in the first order.

3                     And also, our operating agreement covering  
4     this acreage and this well has expired, and not all  
5     of the interest owners have signed our extension to  
6     the operating agreement.

7           Q.     Okay.  If I then turn to what's been  
8     marked as COG Exhibit Number 4, does this exhibit  
9     identify the additional interest owners that the  
10    company seeks to add to this pooling application by  
11    this pooling order?

12          A.     Yes, it does.

13          Q.     And does it reflect, then, that this  
14    particular acreage is comprised of three tracts of  
15    land?

16          A.     That's correct.

17          Q.     And as in prior exhibits, have you broken  
18    down the ownership by tract and then shown the total  
19    ownership and spacing unit on the last page of this  
20    exhibit?

21          A.     Yes, that's correct.

22          Q.     How have you identified additional parties  
23    that require pooling?

24          A.     In italics.

25          Q.     Okay.  Now, you mentioned that there were

1 some parties that had not previously been pooled,  
2 and there are some parties that are subject -- or  
3 that are not currently under an agreement because  
4 the JOA expired?

5 A. That's correct.

6 Q. Okay. Do you have a breakdown of those  
7 parties for us?

8 A. The parties that were not previously  
9 pooled would be the Yates brothers in Tract 1, and  
10 Oxy Y1 in Tract 2.

11 Q. Okay. And then the remaining parties that  
12 you identify on the second page of this exhibit are  
13 the parties that have yet to execute an extension of  
14 the JOA?

15 A. That's correct.

16 Q. Okay. And so at this point you seek to  
17 add them to the pooling order as well?

18 A. Yes, I do.

19 Q. Have you been able to locate all of these  
20 interest owners?

21 A. Yes.

22 Q. And if I turn to what's been marked as COG  
23 Exhibit Number 5, does this contain a copy of the  
24 letter that was sent to the parties that you seek to  
25 have an extension of the JOA?



1 A. That's correct, yes.

2 Q. Okay. And was this same letter sent to  
3 all of the interest owners that are subject to the  
4 expired JOA?

5 A. Yes, it was.

6 Q. And have some of those interest owners  
7 executed an extension of the JOA as a result of your  
8 efforts?

9 A. Yes, they did.

10 Q. Okay. If I then turn to what has been  
11 marked as COG Exhibit Number 6, is this a copy of  
12 the letter that was sent to the other group of  
13 interest owners; that is, the interest owners that  
14 were previously unknown or that -- for whom the  
15 lease had expired?

16 A. Yes, that's correct.

17 Q. And this first letter was sent -- you  
18 mentioned it was Oxy Y1 was one of the companies.  
19 First, Exhibit Number 6, that's the letter that was  
20 sent to Oxy Y1 in October?

21 A. Yes, that's correct.

22 Q. Okay. If I then -- turn then to COG  
23 Exhibit Number 7.

24 A. (Witness complies.)

25 Q. Is that the well proposal letter that was

1 then sent to the second interest owner in  
2 February of 2015?

3 A. Yes, it is.

4 Q. Okay. And this is the party where you had  
5 the lease that expired?

6 A. That's correct.

7 Q. This February 2015 letter, as well as the  
8 previous letter that was sent to Oxy Y1, they both  
9 contain an AFE, do they not?

10 A. Yes, they do.

11 Q. If I look at COG Exhibit Number 7, does  
12 that particular exhibit, on the last page, contain  
13 the most updated AFE?

14 A. Yes, it does.

15 Q. And as -- actually, if you compare the  
16 two, the one that was sent to Oxy back in October  
17 and those AFE costs, can you look at the AFE that  
18 was sent to the Yates brothers in February of this  
19 year?

20 In that AFE we see that the costs have  
21 actually decreased for this proposal -- or the  
22 anticipated costs have actually decreased there?

23 A. That's correct.

24 Q. Okay. Now, the costs that are reflected  
25 in this most recent AFE, are they consistent with

1 what the company has incurred for drilling similar  
2 wells?

3 A. Yes.

4 Q. Now, aside from sending these letters,  
5 what other efforts did the company undertake to  
6 reach a voluntary agreement with these interest  
7 owners?

8 A. E-mail contact, phone call contact, up to  
9 as recently as this past Tuesday was the last  
10 contact.

11 Q. Okay.

12 Mr. Dirks, let me hand you what has been  
13 offered today as the entry of appearance by a  
14 company known as Yates Holdings.

15 If I look at Exhibit Number 4, do your  
16 records show any interest held by Yates Holdings?

17 A. No, it does not.

18 Q. And does Exhibit Number 4 reflect your  
19 company's most recent review of the title --

20 A. Yes, it does.

21 Q. -- for this area?

22 Okay.

23 When does the company expect to drill this  
24 initial well under the existing pooling order?

25 A. In May of this year.

1 Q. Okay. Is that why the -- you're here  
2 before the division asking that they add the  
3 additional parties identified on Exhibit Number 4 in  
4 italics to the existing pooling order?

5 A. Yes.

6 Q. Okay. And finally, if I turn to COG  
7 Exhibit Number 8, is this an affidavit prepared by  
8 my office with attached letters providing notice of  
9 this hearing to these additional parties that you  
10 seek to add to the pooling order?

11 A. Yes, it is.

12 Q. Mr. Dirks, were COG Exhibits 1 through 7  
13 prepared by you or compiled under your direction and  
14 supervision?

15 A. Yes.

16 MR. FELDEWERT: Mr. Examiner, at this time  
17 I would move the admission into evidence of COG  
18 Exhibits 1 through 8, which includes my affidavit.

19 HEARING EXAMINER McMILLAN: Any  
20 objections?

21 MR. PADILLA: No objections.

22 HEARING EXAMINER McMILLAN: Okay.  
23 Exhibits 1 through 8 now may be accepted as part of  
24 the record.

25 MR. FELDEWERT: And that concludes my

1 examination of this witness.

2 HEARING EXAMINER McMILLAN: Cross-  
3 examination?

4 EXAMINATION

5 BY MR. PADILLA:

6 Q. Mr. Dirks, I have just a couple of  
7 questions.

8 Do you know whether Yates Holding, LLP, is  
9 the operating company for the Yates brothers?

10 A. I do not know yes or no to that answer.

11 Q. Okay. Let me ask you to direct your  
12 attention to your Exhibit Number 5.

13 A. (Witness complies.)

14 Q. That is a letter dated February 25, 2015,  
15 from you to Yates Petroleum Corporation, right?

16 A. Yes. Yes, sir.

17 Q. In your -- in the last paragraph of that  
18 letter it states:

19 "If we do not reach an agreement within 30  
20 days of the date of this letter COG will apply to  
21 the New Mexico Oil Conservation Division for  
22 compulsory pooling of your interest into a spacing  
23 unit for the proposed well."

24 And my question is: When did that 30 days  
25 expire?

1           A.     Well, for Yates -- for the Yates brothers,  
2     we actually said that they would be -- they would be  
3     named in the application.

4                     For Yates Petroleum, I've talked to Janet  
5     Richardson, and she had no concerns.

6           Q.     And Janet Richardson works for Yates  
7     Petroleum Corporation, right?

8           A.     Yes.

9           Q.     And you have been in communication with a  
10    gentleman by the name of Jim Ball for the Yates  
11    brothers, correct?

12          A.     That's correct.

13          Q.     Did you send the Yates brothers a similar  
14    letter?

15          A.     I sent them a similar letter, Exhibit 7,  
16    which states that we would name them, and that if we  
17    did not reach an agreement within 30 days their  
18    interest would be named in the application.

19          Q.     Okay. The way I read this is that if at  
20    the end of 30 days the Yates brothers did not agree,  
21    that you would file an application to compulsory  
22    pool their interest.

23                     Is that fair to say?

24                     MR. FELDEWERT: Object to the form of the  
25    question. I think it's inconsistent with what the

1 letter says.

2 MR. WADE: I think if you want to rephrase  
3 your question, please.

4 Q. (By Mr. Padilla) Well, let me ask this.

5 When would the -- I think I originally  
6 asked you -- when did the 30 days expire?

7 A. For the Yates brothers' letter?

8 Q. Yes.

9 A. It would have been from -- 30 days from  
10 February 20.

11 Q. And that would be about March 25 sometime?

12 A. Something like that.

13 Q. When did you file your application in this  
14 case?

15 A. I'm not sure. I would have to look that  
16 up.

17 Q. Ballpark?

18 A. I'm not sure. I filed it before the  
19 deadline.

20 Q. So you didn't really give them -- you  
21 would agree that you didn't give them the full 30  
22 days, right?

23 A. Before the application?

24 Q. Yes.

25 A. We -- there was not 30 days between this

1 letter and the application, but we've given them a  
2 full 30 days for negotiations.

3 Q. The way I read this -- and I don't want to  
4 be argumentative with you. But it seems to say that  
5 if you don't agree, then you would apply at the end  
6 of the 30 days for compulsory pooling of their  
7 interest.

8 A. That's correct. And if we reached an  
9 agreement yesterday, we would have pulled their  
10 name.

11 Q. Okay. But in fact, you did file your  
12 application before the 30 days expired?

13 A. That's correct.

14 Q. Okay.

15 MR. PADILLA: That's all I have,  
16 Mr. Examiner.

17 HEARING EXAMINER McMILLAN: Okay. I have  
18 no further questions for the witness.

19 FURTHER EXAMINATION

20 BY MR. FELDEWERT:

21 Q. Mr. Dirks, I want to make sure. I think I  
22 asked this question, but I want to make sure.

23 The company has an extension of the  
24 drilling deadline for this well from the division,  
25 correct?



1 A. The first pooling order?

2 Q. Yes.

3 A. Yes, that's correct.

4 Q. And you had this well on your drilling  
5 schedule?

6 A. For a long time, yes.

7 Q. Okay. And is it due to be drilled on  
8 May 1st?

9 A. Yes, it is.

10 Q. Okay. And is that why you're here today  
11 before this division on April 2, hoping to get a  
12 pooling order in place before you have that well  
13 scheduled to be drilled?

14 A. Yes. That's correct.

15 MR. FELDEWERT: Okay. That's all the  
16 questions I have.

17 MR. WADE: Do you have any other  
18 witnesses?

19 MR. FELDEWERT: That's all the witnesses I  
20 have.

21 MR. WADE: So I guess I have questions for  
22 the lawyers.

23 First of all, do you want to make any kind  
24 closing statement? And then I can ask my questions,  
25 because maybe you'll be answering my questions in

1 the process.

2 So I'll give Mr. Feldewert the opportunity  
3 for a closing statement.

4 MR. FELDEWERT: At this point I'm not sure  
5 exactly what the real issue is, so I don't have a  
6 statement to make.

7 MR. WADE: That's what I want to get to.

8 MR. PADILLA: Well, the point we're trying  
9 to make is that the Yates brothers considered the 30  
10 days to run sometime -- well, 30 days following the  
11 date of the letter, and they thought they had the  
12 full 30 days within which to negotiate.

13 And in fact, if I had a witness here --  
14 and I think Mr. Dirks would concur that they'd been  
15 talking about -- well, they'd been negotiating.

16 But they were under the impression that  
17 they had at least maybe two more weeks to talk about  
18 joining this well and finalizing the terms of  
19 whatever agreement they were negotiating.

20 I'm not privy to any of that information.  
21 But based on the letter that was sent to Yates  
22 Petroleum that's in evidence here, and the similar  
23 letter that was sent to the Yates brothers, it would  
24 seem to me that fairness would dictate some kind of  
25 an extension on an entry of an order which would

1 allow further negotiation, rather than go to  
2 hearing.

3 So -- and in my -- my thinking is that  
4 normally you would require 20 days of forced pooling  
5 notice. So 20 days added to March 25 would still  
6 expire before May 1, but it would give the parties  
7 additional time within which to negotiate.

8 MR. WADE: So you -- do you think that  
9 there is -- I understand what you're saying.

10 Do you think that goes to more just good  
11 faith dealing and negotiations than anything else  
12 with compulsory pooling, or are you -- do you think  
13 that there's actually a rule that governs the date  
14 the letter should be issued and the application  
15 should be made?

16 MR. PADILLA: I don't want to quarrel with  
17 the compulsory pooling hearing today. I just -- I  
18 just think that looking at this thing and the way I  
19 interpret this 30-day time period, is that no forced  
20 pooling would be issued or applied for before the 30  
21 days expired.

22 MR. WADE: So what relief, exactly, are  
23 you asking for?

24 MR. PADILLA: Well, I would ask for an  
25 extension of at least two weeks before any kind of

1 entry of an order.

2 MR. WADE: Mr. Feldewert?

3 MR. FELDEWERT: Well, I think -- assuming  
4 that Yates Holdings is the operating entity of the  
5 Yates brothers, which I don't know if that's true or  
6 not. I haven't seen an entry of appearance by the  
7 Yates brothers, the interest owner here. We see an  
8 entry of appearance by Yates Holdings.

9 But this letter dated February 20  
10 indicates, at the end of the paragraph, that they  
11 will be named in the application, the pooling  
12 application.

13 There has been -- the evidence is that  
14 there has been discussions between the parties since  
15 the issuance of this letter.

16 And keep in mind that in addition to  
17 receiving this letter two weeks -- over two weeks  
18 later they received a copy of the pooling  
19 application as part of the proceedings here in this  
20 case, and there has been discussions after that.

21 We all know that a pooling order takes --  
22 you guys tell me -- 30 days to get out. Okay? The  
23 time is getting -- is getting pretty quick on it,  
24 but it takes a little while to get these pooling  
25 orders out, number one. It takes time.

1           And as is always the case, if the parties  
2   reach an agreement they will be released from the  
3   pooling order.

4           Now, Mr. Padilla said that he has no  
5   quarrel with the proceedings here today. His  
6   concern is that the -- whether or not they are going  
7   to be subject to the pooling order. And they will  
8   not be subject to the pooling order if they can  
9   reach an agreement. They have been discussing,  
10   based on the time line, an agreement for 45 days or  
11   longer.

12           Now, it doesn't mean they may not -- they  
13   may be able to reach an agreement over the next two  
14   weeks. If they do, they'll have an agreement before  
15   the pooling order is issued. And as a result, they  
16   will be released from the pooling order.

17           But there shouldn't be -- there's no  
18   reason here today to delay the process of the  
19   issuance of a pooling order, particularly when  
20   they're -- this is on their drilling schedule for  
21   May 1.

22           So we would ask that this case proceed in  
23   its normal course of events. The parties will  
24   continue their discussions, and if they reach an  
25   agreement -- and if we need to say this on the

1 record we can. But if they reach an agreement, they  
2 will be released from the pooling order, as is  
3 always the case.

4 So there's no reason to delay the  
5 proceedings here today.

6 HEARING EXAMINER McMILLAN: Okay. With  
7 that in mind, Case Number 15075 will be taken under  
8 advisement.

9 MR. FELDEWERT: Thank you.

10 HEARING EXAMINER McMILLAN: Thank you.

11 (The proceedings concluded at 8:59 a.m.)  
12  
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I do hereby certify that the foregoing is  
a complete record of the proceedings in  
the Examiner hearing of Case No. 15075,  
heard by me on 3-02-2015.  
Michael McMILLAN, Examiner  
Oil Conservation Division

## CERTIFICATE

I, Paul Baca, RPR, CCR in and for the  
State of New Mexico, do hereby certify that the  
above and foregoing contains a true and correct  
record, produced to the best of my ability via  
machine shorthand and computer-aided transcription,  
of the proceedings had in this matter.



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