

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

APPLICATION OF COG OPERATING LLC FOR A NON-STANDARD SPACING AND  
PRORATION UNIT AND COMPULSORY POOLING, LEA COUNTY, NEW MEXICO

CASE NO. 15327 (De Novo)

PRE-HEARING MEMORANDUM OF COG OPERATING LLC

COG Operating LLC ("COG") seeks an order (1) approving a 200-acre non-standard oil spacing and proration unit comprised of the S/2 N/2 of Section 9 and the SW/4 NW/4 (Unit E) of Section 10, Township 17 South, Range 32 East, NMPM, Lea County, New Mexico for its Sneed 9 Federal Com. No. 23H Well ("Sneed Well") and (2) pooling all uncommitted interests underlying this surface acreage in the Paddock and Blinebry intervals of the Yeso formation, Maljamar; Yeso West Pool (Code 44500). Every working interest owner in this unit supports COG's proposal to limit the pooled intervals to the Paddock and Blinebry members of the Yeso formation, including the interest owner below the base of the Blinebry interval that will be excluded by this application.

BACKGROUND

The Yeso formation in the subject area is approximately 1500 feet thick and consists of the following discernable intervals (from shallowest to deepest): The Paddock interval, the Blinebry interval, the Tubb interval and the Drinkard interval. In 1950, the Division designated this entire formation and all four intervals as the Maljamar; Yeso, West Pool (Pool Code 44500). *See* Order R-27. However, oil production in this area occurs only from the shallower Paddock and Blinebry intervals of this deep formation. *See* COG Exhibit 2. In 2011, the Division heard two days of evidence on this formation in the context of requests for special rules for a slew of Yeso pools in Eddy and Lea Counties. *See* Case Nos. 14558 and 14577. The Division found that

this formation is "stratigraphic, lenticular and highly compartmentalized" with very low porosity and low permeability and a high degree of heterogeneity. *See* COG Exhibit 20 (Order No. R-13382-E) at Finding (72). The Division concluded that these intervals are so tight that "drilling on the equivalent of 10-acre spacing will not cause interference between wells, will not cause waste, and will not impact correlative rights." *Id.* at Finding (83).

Geologic evidence from the development of the Yeso formation in the subject area demonstrates the deeper Tubb interval contains tight sandstone, is wet and does not contain recoverable hydrocarbons. The Drinkard interval below the Tubb is likewise not subject to development, and evidence has been presented to the Division demonstrating "the Tubb and Drinkard members of the Yeso below the Blinebry are continuous through the area, but are rarely productive." *See* COG Exhibit 20 (Order R-13382-E) at paragraph (50).

Assignment of interests in the Yeso formation have frequently conveyed only the productive upper portions of the Yeso formation, thereby creating vertical differences in ownership within this thick formation. The ownership below the subject acreage is severed at the base of the Blinebry interval such that there is a working interest owner (Este Ltd.) that owns below the base of the Blinebry but does not own any interest above the base of the Blinebry.

COG has proposed a horizontal well over 400 feet above the base of the Blinebry where the ownership is severed. Because the lower Tubb interval is wet and non-productive of hydrocarbons, COG sought an order from the Division pooling only those interest owners above the base of the Blinebry. The interest owner excluded from the proposed pooled interval, Este Ltd, received notice of COG's application, did not object to it, and has issued a letter in support pooling only that portion of the Division-designated pool above the base of the Blinebry. *See* COG Exhibit 5. The Division, however, denied COG's application stating simply: "There is no

rule that allows the Division to compulsory pool a fraction of a pool even if the approved project area contains depth severance clauses." Order No. R-14023, Finding (8).

New Mexico's regulatory scheme is not so restricted. The Commission is required by statute to enter whatever orders are necessary to prevent waste and to protect correlative rights. New Mexico courts have instructed that Commission orders must contain "ultimate findings" on the prevention of waste and the protection of correlative rights. *Continental v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962). Commission orders must likewise contain "subordinate findings" which disclose the reasoning of the Commission and which are supported by substantial evidence. *Fasken v. Oil Conservation Comm'n*, 532 P.2d 588 (1975). The definition of a "proration unit," the doctrine of correlative rights, and prior Commission orders require approval of COG's application to protect the interests of the owners above the base of the Blinbry interval in this deep Division designated pool.

### ARGUMENT

#### **I. COG's Application Is Consistent With The Commission's Statutory Pooling Authority And The Definition Of A Proration Unit.**

The Oil and Gas Act (Act) authorizes the Commission to compulsory pool oil and gas interests in "all or any part of such lands or interests or both in the spacing or proration unit as a unit." NMSA 1978, §70-2-17.C (emphasis added). Division rules further define a proration unit as "the area in a pool that can be effectively and efficiently drained by one well..." 19.15.2.7.P(17) NMAC.<sup>1</sup> COG's application simply seeks to pool the uncommitted interests in "the area in a pool" that will potentially contribute hydrocarbons to the proposed well and

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<sup>1</sup> "Proration unit means the area in a pool that can be effectively and efficiently drained by one well as determined by the division or commission as well as the area assigned to an individual well for the purposes of allocating allowable production pursuant to a prorationing order for the pool. A proration unit shall be the same size and shape as a spacing unit. All proration units are spacing units but not all spacing units are proration units." 19.15.2.7.P(17) NMAC.

exclude only those interest owners in the lower intervals that will not contribute hydrocarbons to the proposed well. This request is entirely consistent with the language of the pooling statute and the definition of a proration unit.

## II. Granting COG's Application Is Necessary To Protect Correlative Rights And Prevent Waste.

The Commission's primary statutory duty is "to prevent waste prohibited by this act and to protect correlative rights, as in this act provided." NMSA 1978, § 70-2-11(A). This is the fundamental jurisdictional mandate upon which all Commission decisions must rest. *See, Continental v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962). The prevention of waste and the protection of correlative rights is so paramount that the Act empowers the Commission to "make and enforce rules, regulations and orders, and **do whatever may be reasonably necessary** to carry out the purposes of this act, **whether or not indicated or specified in any section of the act.**" NMSA 1978, § 70-2-11(A) (emphasis added). *See also Santa Fe Exploration v. Oil Conservation Comm'n*, 114 N.M. 103, 835 P.2d 819 (1992). Further, the pooling statute provides that all orders affecting pooling "**shall be** upon such terms and conditions as are **just and reasonable** and will afford to the owner or owners of each tract or interest in the unit the opportunity to recover or receive without unnecessary expense his **just and fair share of the oil or gas** or both." NMSA 1978, §70-2-17(C) (emphasis added). Pooling only the owners in the productive Paddock and Blinebry intervals of this deep Division designated pool is necessary to protect correlative rights of these owners.<sup>2</sup>

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<sup>2</sup> "Correlative rights means the opportunity afforded, so far as practicable to do so, to the owner of each property in a pool to produce without waste **his just and equitable share** of the oil or gas or both in the pool, being an amount, so far as can be practicably determined and so far as can be practicably be obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas or both under the property bears to the total recoverable oil or gas or both in the pool and, for such purpose, to use his just and equitable share of the reservoir energy." NMSA 1978, §70-2-33.H (emphasis added).

There is a depth severance in the subject area that causes the ownership of the producing intervals above the base of the Blinebry to be different from the ownership of the non-productive intervals below this depth. If COG is required to pool the entire 1500 foot Yeso formation in this area, the interests of the owners in the productive intervals (the Paddock and the Blinebry) will be diluted by the owner in the non-productive, lower intervals. This will occur because the Oil and Gas Act requires the production from a pooled spacing unit **to be allocated on a straight acreage basis**. *See*, NMSA 1978, §70-2-17.C (Emphasis added). No other allocation option is authorized by statute. As a result, if the owner below the base of the Blinebry is included in the pooling order that owner will receive a share of the production from the well on an “acreage basis” even though that owner is not contributing any hydrocarbons to the wellbore. This result clearly violates the pooling statute and the correlative rights of the owners in the productive intervals above the base of the Blinebry by denying them the opportunity to receive their “just and equitable share” of the oil and gas from the wellbore. *See* NMSA 1978, §70-2-17.C (all pooling orders must afford to the owners their “just and fair share of the oil or gas” recovered). In contrast, if pooling is limited to “the area in the pool” that will potentially contribute hydrocarbons to the proposed well, then the correlative rights of all interest owners in this deep formation are protected.

Additionally, “underground waste” is defined in the Act as the producing of any well in a manner that will “tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from a pool,…” NMSA 1978, §70-2-3(A) (Emphasis added). Nothing about COG's application will cause waste. Conversely, requiring the owners in the Paddock and Blinebry intervals to share the production with owners in the lower, non-production intervals of

Yeso formation will make development of this acreage less appealing and thereby tend to reduce the total quantity of oil produced, causing waste.

**III. Excluding From Pooling The Interest Owners In The Non-Productive Intervals Is Consistent With Commission And Division Precedent.**

First, the Commission should note that the Division has approved an application by at least one other operator to pool only a portion of a Division designated pool due to a depth severance in ownership. In August of 2014, the Division granted Mewbourne's application to pool only a portion of the Bone Spring formation "from the base of the Second Bone Spring Carbonate to the base of the Bone Spring formation." *See* Order No. R-13882, Ordering Paragraph (2). The record in Case No. 15158 demonstrates this limited pooling was requested due to ownership differences above the designated interval. The Division granted this limited pooling request even though the Tamano-Bone Spring Pool (pool code 58040) includes the entire Bone Spring formation. *See* Order R-7958 (establishing the Tamano-Bone Spring Pool).

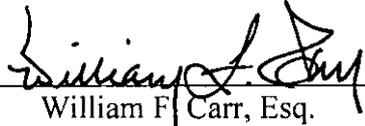
More importantly, pooling only the Paddock and Blinebry intervals of the Yeso formation here is consistent with the Commission's decision in Order No. R-13228-F. This Order reflects that the Commission refused to combine four contiguous 40-acre surface tracts for a proposed horizontal well after it was shown that two of the four tracts will not contribute equitably to the production from the wellbore. The Commission found that because the statute only allows allocation of production on a straight acreage basis, correlative rights are violated if the owners of the productive acreage are required to share production with the owners of less or non-productive acreage. *See* Order R-13228-F at Conclusions (8)-(13). COG's application simply takes this same reasoning and applies it vertically to the depth ownership differences in the Yeso formation. Just as non-productive surface tracts must be excluded from a pooled unit to protect correlative rights when there are ownership differences, non-productive depth

intervals underlying a pooled unit must be excluded when there are ownership differences to protect the correlative rights of the owners in those intervals that will potentially contribute hydrocarbons to the proposed well. The fact that the Division currently designates the entire Yeso formation as a single pool does not mean the Commission must blindly follow that designation and pool all intervals in that formation. Instead, pursuant to the Commission's primary statutory duty, it must pool as necessary to protect correlative rights and prevent waste.

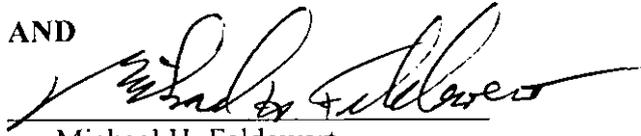
**CONCLUSION**

For the reason set forth above, COG requests that the Commission issue a pooling order that only consolidates under the subject acreage the interest owners in the productive Paddock and Blinebry intervals and exclude from pooling the interest owners below the base of the Blinebry that *will not* contribute hydrocarbons to the proposed well. This action is necessary to protect correlative rights and is therefore authorized by the Oil and Gas Act.

Respectfully submitted,

  
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William F. Carr, Esq.  
Senior Counsel  
**COG Operating LLC**  
1048 Paseo de Peralta  
Santa Fe, New Mexico 87501  
(505) 780-8000  
wcarr@concho.com

AND

  
\_\_\_\_\_  
Michael H. Feldewert  
**HOLLAND & HART LLP**  
Post Office Box 2208  
Santa Fe, New Mexico 87504-2208  
(505) 988-4421  
mfeldewert@hollandhart.com

**ATTORNEY FOR COG OPERATING, LLC**