

**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
FOR DESIGNATION OF A NON-STANDARD
OIL SPACING AND PRORATION UNIT AND
FOR COMPULSORY POOLING
(BLACKHAWK "11" FED COM NO. 1-H)
EDDY COUNTY, NEW MEXICO**

CASE NO. 14365

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2009 AUG -5 A 8:50**

**APPLICATION OF COG OPERATING LLC
FOR DESIGNATION OF A NON-STANDARD
OIL SPACING AND PRORATION UNIT AND
FOR COMPULSORY POOLING
(BLACKHAWK "11" FED COM NO. 2-H)
EDDY COUNTY, NEW MEXICO**

CASE NO. 14366

**VERIFIED
CHESAPEAKE ENERGY CORPORATION'S
MOTION TO DISMISS**

Chesapeake Energy Corporation, including Chesapeake Operating Co. (collectively "Chesapeake") moves that the New Mexico Oil Conservation Division dismiss these cases because the applicant, COG Operating LLC ("COG") prematurely filed these cases and failed to comply with the custom and practice of the Division concerning Section 70-2-17.C NMSA 1978 by instituting applications for compulsory pooling prior to proposing these wellbore to Chesapeake and without conducting good faith efforts to reach a voluntary agreement with Chesapeake for these spacing units and the Blackhawk "11" Fed Com Nos. 1-H and 2-H. In addition, COG Operating has obtained approved applications for permits to drill ("APD") by falsely certifying Division Form C-102 for a surface location in which COG Operating has no interest.

And in support states:

RELEVANT FACTS

1. COG Operating has no interest¹ in the SW/4 of Section 11 but despite that lack of an interest and in violation of the Division's Rules and Orders, COG Operating:
 - a. On April 30, 2008 filed a Federal APD² for the Blackhawk "11" Fed Com Well No. 1-H, (API # 30-015-36541) a horizontal wellbore, in which COG Operating does not have any interest in either (a) the surface location or (b) the first 1,604 feet of the producing interval of this wellbore.
 - b. On February 27, 2008 filed an Federal APD³ for the Blackhawk "11" Fed Com Well No. 2-H, (API # 30-015-37106) a horizontal wellbore, in which COG Operating does not have any interest in either (a) the surface location or (b) the first 1,050 feet of the producing interval of this wellbore.
2. In Case 14365, for the Blackhawk Well No. 1-H, COG's seeks a 160-acre non-standard oil spacing unit containing four 40-acre tracts consisting of S/2S/2 of Section 11, T16S, R28E, Eddy County, NM. with a surface location in Unit M and a subsurface bottomhole location in Unit P of Section 11, T16S, R28E, Eddy County. See first page of APD and Division form C-102 attached as Exhibit "B"
3. In Case 14366, for the Blackhawk Well No. 2-H, COG's seeks a 160-acre non-standard oil spacing unit containing three 40-acre tracts consisting of N/2S/2 of Section 11, T16S, R28E, Eddy County, NM. with a surface location in Unit J and a subsurface bottomhole location in Unit H of Section 11, T16S, R28E, Eddy County. See first page of APD and Division form C-102 attached as Exhibit "C"
4. Division Form C-102 filed with each of these well, requires that the Operator certify that: "I hereby certify that the information contained herein is true and complete to the best of my knowledge and belief, and that this organization either owns a working interest or unleased mineral interest in the land including the proposed bottom hole location or has a right to drill this well at this location pursuant to a contract with an owner of such a mineral or working interest, or to a voluntary pooling agreement or a compulsory pooling"

¹ See Locator Map attached as Exhibit "A"

² Although the APD is dated April 30, 2008, the C-102 is dated August 14, 2008 with the APD approved on August 4, 2008

³ Although the APD is dated February 27, 2009, the C-102 is dated October 24, 2008 with the APD approved on May 22, 2008

5. In doing so, COG violated the "operator certification" contained in Division Form C-102 by falsely certifying that it had an interest in the surface locations of the tract to be penetrated by these wellbores.
6. On May 1, 2009, Chesapeake filed an application with the Division in Case 14323 seeking an order canceling COG Operating's permit for the Blackhawk "11" Federal Com Well No. 1-H
7. At the time both APD were filed, COG and COG Oil & Gas LP had not proposed either well to Chesapeake or reached a voluntary agreement with Chesapeake or obtained a Division compulsory pooling order pooling the S/2S/2 of Section 11 or for the N/2S/2 of Section 11.
8. On May 29, 2009, COG Operating filed two application with the Division seeking compulsory pooling of (a) the S/2S/2 of Section 11 for the Blackhawk Federal Com Well No. 1-H docketed as Case 14365 and (b) the N/2S/2 of Section 11 for the Blackhawk Federal Com Well No. 2-H and alleged that:
 - a. COG Operating has the right to drill thereon (meaning within SW/4 of Section 11)
 - b. But that COG Operating does not have leases or voluntary agreement.
9. Section 70-2-17(c) of the New Mexico Oil & Gas Act, sets a prerequisite that compulsory pooling proceeding require that the "owner or owners have not agreed to pool their interests...."
10. COG Operating has yet to provide Chesapeake with a written well proposal, including AFE or a proposed Joint Operating Agreement for either wellbore.

ARGUMENT

Point I: No Written Well Proposal by COG Operating

It has been the Division's longstanding interpretation of NMSA 1978 Section 70-2-17.C of the New Mexico Oil & Gas Act that before an applicant can filed for compulsory pooling, an applicant is required to make a good faith effort to obtain the voluntary commitment of interests in a spacing unit before seeking their compulsory pooling. The Division requires that effort be commenced by sending a written well proposal letter, including an AFE, that specifies the spacing unit, the well locations, estimated costs and depth and then waiting approximately 30-day thereafter before filing. The waiting period follows the industry's custom set forth in

standard Joint Operating Agreements and is meaningful because it provides a period for the party to received the proposal, respond and to obtain further information from the proposing party or otherwise and then make an informed decision.

COG Operating applicants state that it "does not have leases or a voluntary agreement" falls short of what the Division requires. COG Operating failed to propose either wellbore to Chesapeake before filing its compulsory pooling applications and therefore COG Operating has not engaged in any effort, good faith or otherwise, to reach a voluntary agreement for these wellbores. It is impossible to have "failure to agree" if COG Operating has not propose any specific well before filing for compulsory pooling. In addition, it appears to constitute "bad faith" for COG Operating to proceed to hearing pooling cases for either spacing unit for which it have not even proposed the drilling of these wells.

POINT II: The C-102s filed COG Operating are flawed

To insure that operators would not obtain APDs until they had reach a voluntary agreement or obtained compulsory pooling orders, the Commission by Order R-12343-E, dated March 16, 2007,⁴ directed the Division to change Division form C-102 concluding as a legal matter that:

"33. To prevent further misunderstandings in the interpretation of the Commission's orders, particularly in Case No. 13153, *Application of Pride Energy Company, etc.*, Order No. R-12108-C and *Application of TMBR/Sharp, Inc.*, Order R11700-B, the Commission approves of the language on Division Form C-102, field 17, concerning the operator's certification and asks the Division to continue its use and to notify the Commission if it plans to discontinue its use. That certification states "I hereby certify that the information contained herein is true and correct to the best of my knowledge and belief and that the organization either owns a working interest or unleased mineral interest in the land, including the proposed bottomhole location, or has a right to drill this well at this location pursuant to a contract with an owner of such mineral or working interests or in a voluntary pooling agreement or compulsory pooling order hereto entered by the Division".

Case Nos. 13492 and 13493 (De Novo) Order No. R-12343-E at Page 6

⁴ a dispute between Samson, Kaiser-Frances and Mewbourne to cancel two APDs obtained by Chesapeake and Chesapeake's attempt to compulsory pool those parties.

In addition, "An operator shall not file an application for permit to drill or drill a well unless it owns an interest in the proposed well location or has a right to drill the well as stated in Division Form C-102" See Finding 19 of Order R-12343-B (Case 13492 and 134939denovo). While the certification appears to have been written with vertical wellbores in mind, it seems reasonable to apply the certification to horizontal wellbores by interpretation that the operator must have an interest in any tract penetrated by a horizontal wellbore.

Compulsory pooling application should not be decided based upon which applicant was first to obtain an approved APD. COG's APDS are attempts to block Chesapeake from deciding how to develop its tracts--a practice that is not permitted by the Division:

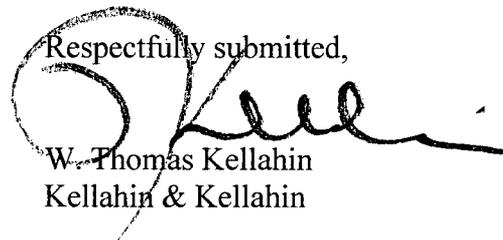
"(17) The mere fact that an applicant obtained an APD first which has not been revoked does not necessarily guarantee that the applicant should be designated the operator *of the* wells and of the units under the compulsory pooling procedures. The Division does not want to decide this case based on a race to obtain an APD. Doing so would encourage potential operators to file for APD's strategically, to block other potential operators."

See Order R-12451

CONCLUSION

The actions by COG Operating display either a total lack of knowledge of or a total disregard for the Division's rules, procedures and practices. If allowed by the Division, this will encourage COG Operating and others to obtaining an APD affecting acreage its does not control and to use compulsory pooling as a negotiating weapon rather than as a remedy of last resort. The Division's files are replete with cases that were dismissed for the same reasons these COG Operating's cases should be dismissed. For example of premature compulsory pooling cases See NMOCD Cases 9939, 106635, 10636, 11107, 11434, 11461, 11927, 11999 and 12014. For authority for not filing an application for permit to dill unless it owns an interest in the proposed well location is Commission Order R-12343-E decretory paragraph 19.

Respectfully submitted,



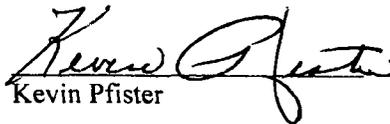
W. Thomas Kellahin
Kellahin & Kellahin

Kellahin & Kellahin
706 Gonzales Road
Santa Fe, NM 87501
Attorneys for Chesapeake

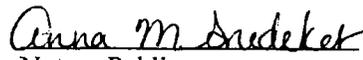
VERIFICATION

STATE OF OKLAHOMA)
)
COUNTY OF OKLAHOMA) SS

Kevin Pfister, being duly sworn upon his oath, deposes and states: He is a senior petroleum landman employed by Chesapeake Operating Co, that he is familiar with the factual statement set forth in this motion to dismiss and the statements therein are true and correct to the best of his knowledge.


Kevin Pfister

SUBSCRIBED AND SWORN to before me this 4 day of August 2009, by Kevin Pfister


Notary Public

My commission expires: 11/27/11



CERTIFICATION OF SERVICE

I hereby certify that a copy of this pleading was served upon the following counsel of record this 5 day of August 2009, by hand delivery.

David K Brooks, Esq.
Oil Conservation Division
1220 South St. Francis Drive
Fax: 505-476-3462

J. Scott Hall, Esq.
Attorney for COG Operating LLC

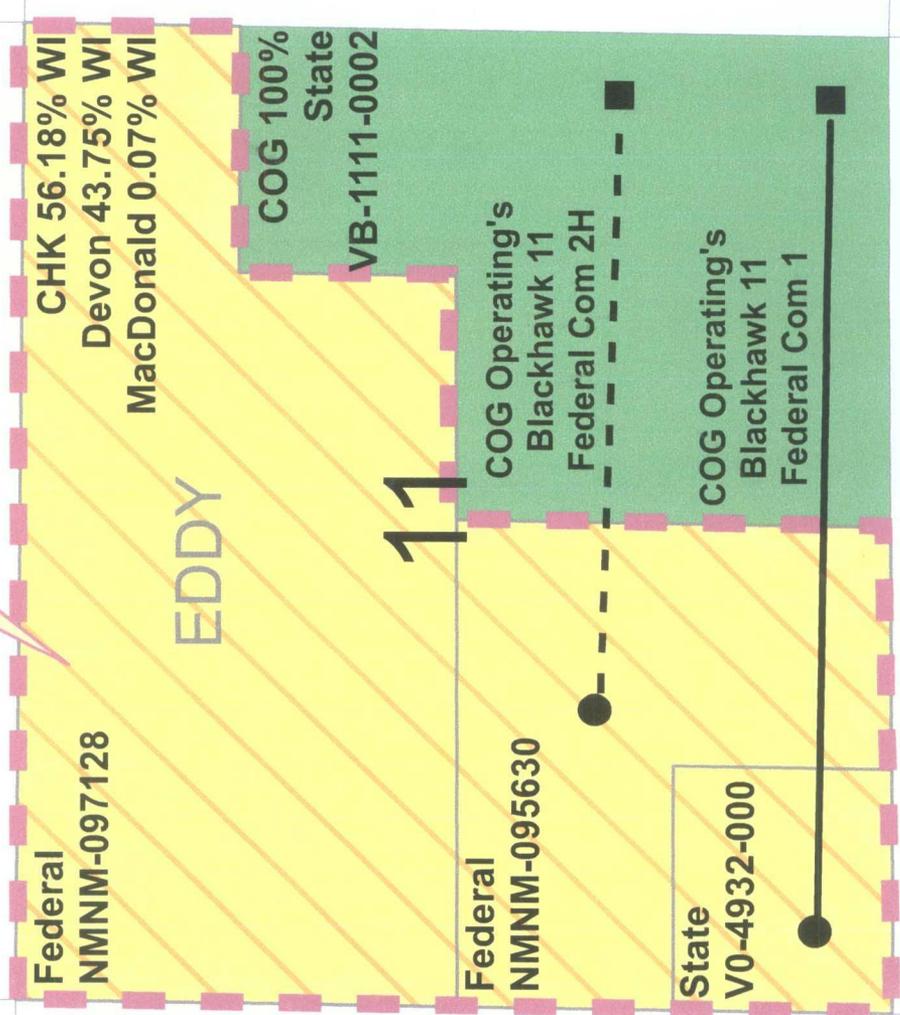


JOA Dated January 26, 1998

Contract Area:

All of Section 11 from surface to base of Morrow
Leases not subject to JOA:

#VB-1111-0002, covering SENE & SE



Legend	
■	BHL
●	SHL
Permits	
—	APD Approved
- - - -	APD Not Approved
Owners	
■	CHK
■	COG
■	Devon

Section 11 APDs 11-16S-28E Eddy Co., New Mexico	
Scale: 1:4,368	Projection: GCS North American 1927
Date: 4/22/2009	Author: Erin Fay

OCD-ARTESIA

ATS-08-118
E1-08-1146

S

AUG - 6 2008

Form 3160-3
(February 2005)

FORM APPROVED
OMB No 1004-0137
Expires March 31, 2007

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

OCD-ARTESIA

APPLICATION FOR PERMIT TO DRILL OR REENTER

1a. Type of work <input checked="" type="checkbox"/> DRILL <input type="checkbox"/> REENTER		5 Lease Serial No. NM 400044 95630
1b. Type of Well <input checked="" type="checkbox"/> Oil Well <input type="checkbox"/> Gas Well <input type="checkbox"/> Other <input checked="" type="checkbox"/> Single Zone <input type="checkbox"/> Multiple Zone		6 If Indian, Allottee or Tribe Name N/A
2 Name of Operator COG OPERATING, LLC		7 If Unit or CA Agreement, Name and No
3a Address 550 W. Texas Suite 1300 Midland, Texas 79701		8 Lease Name and Well No. 37327 Blackhawk "11" Federal Com #1
3b Phone No. (include area code) 432-683-7443		9 API Well No. 30-015-36541
4. Location of Well (Report location clearly and in accordance with any State requirements *) At surface 430' FSL & 430' FWL At proposed prod zone 330' FSL & 330' FEL		10 Field and Pool, or Exploratory Wolfcamp-Crow Flats
14 Distance in miles and direction from nearest town or post office*		11 Sec, T R M or Blk and Survey or Area Section 11 T16S R28E
15 Distance from proposed* location to nearest property or lease line, ft (Also to nearest drg unit line, if any) 330'	16 No of acres in lease	12 County or Parish Eddy County
17 Spacing Unit dedicated to this well 160	18 Distance from proposed location* to nearest well, drilling, completed, applied for, on this lease, ft	13 State NM
19 Proposed Depth 11130' MD 6680' TVD	20 BLM/BIA Bond No. on file NMB 000215	
21 Elevations (Show whether DF, KDB, RT, GL, etc) 3570 GL	22 Approximate date work will start* 06/01/2008	23 Estimated duration 45 days

24. Attachments

The following, completed in accordance with the requirements of Onshore Oil and Gas Order No 1, must be attached to this form

- | | |
|---|--|
| 1. Well plat certified by a registered surveyor | 4. Bond to cover the operations unless covered by an existing bond on file (see item 20 above) |
| 2. A Drilling Plan | 5. Operator certification |
| 3. A Surface Use Plan (if the location is on National Forest System Lands, the SUPO must be filed with the appropriate Forest Service Office) | 6. Such other site specific information and/or plans as may be required by the BLM. |

25 Signature <i>Lee Ann Rollins</i>	Name (Printed Typed) Lee Ann Rollins	Date 04/30/2008
Title Agent		

Approved by (Signature) <i>/s/ James Stovall</i>	Name (Printed Typed) <i>/s/ James Stovall</i>	Date AUG 04 2008
Title FIELD MANAGER	Office CARLSBAD FIELD OFFICE	

Application approval does not warrant or certify that the applicant holds legal or equitable title to those rights in the subject lease which would entitle the applicant to conduct operations thereon.
Conditions of approval, if any, are attached.

APPROVAL FOR TWO YEARS

Title 18 USC Section 1001 and Title 43 USC Section 1212, make it a crime for any person knowingly and States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction

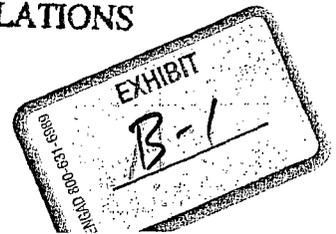
NOTE: NEW PIT RULE
19-15-17 NMAC PART 17
A form C-144 must be approved before starting drilling operations.

*(Instructions on page 2)

ROSWELL CONTROLLED WATER BASIN

SEE ATTACHED FOR
CONDITIONS OF APPROVAL

APPROVAL SUBJECT TO
GENERAL REQUIREMENTS
AND SPECIAL STIPULATIONS
ATTACHED



RKD

DISTRICT I
1625 N. French Dr., Hobbs, NM 88240

DISTRICT II
1301 W. Grand Avenue, Artesia, NM 88210

DISTRICT III
1000 Rio Brazos Rd., Aztec, NM 87410

DISTRICT IV
1220 S. St. Francis Dr., Santa Fe, NM 87500

State of New Mexico
Energy, Minerals and Natural Resources Department

Form C-102
Revised October 12, 2005

Submit to Appropriate District Office
State Lease - 4 Copies
Fee Lease - 3 Copies

S OIL CONSERVATION DIVISION
1220 South St. Francis Dr.
Santa Fe, New Mexico 87505

AUG 15 2008

OCD-ARTESIA AMENDED REPORT

WELL LOCATION AND ACREAGE DEDICATION PLAT

API Number 30-015-	Pool Code 97102	Pool Name CROW FLATS: WOLFCAMP
Property Code	Property Name BLACKHAWK "11" FEDERAL COM	Well Number 1
OGRID No. 229137	Operator Name C.O.G. OPERATING L.L.C.	Elevation 3570'

Surface Location

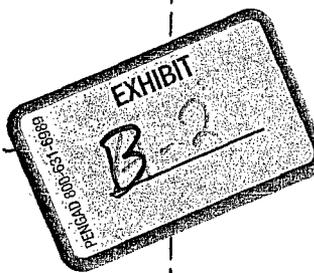
UL or lot No.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
M	11	16 S	28 E		430	SOUTH	430	WEST	EDDY

Bottom Hole Location If Different From Surface

UL or lot No.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
P	11	16 S	28 E		330	SOUTH	330	EAST	EDDY

Dedicated Acres 160	Joint or Infill	Consolidation Code	Order No.
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NO ALLOWABLE WILL BE ASSIGNED TO THIS COMPLETION UNTIL ALL INTERESTS HAVE BEEN CONSOLIDATED OR A NON-STANDARD UNIT HAS BEEN APPROVED BY THE DIVISION



SURFACE LOCATION LAT.: N 32°55'55.47" LONG.: W104°09'13.98" SPC- N.: 702870.627 E.: 596395.029 (NAD-83)	BOTTOM HOLE LOCATION LAT.: N 32°55'54.42" LONG.: W104°08'21.77" SPC- N.: 702772.089 E.: 600844.111 (NAD-83)
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PROJECT AREA

PRODUCING AREA

PENETRATION POINT

OPERATOR CERTIFICATION

I hereby certify that the information contained herein is true and complete to the best of my knowledge and belief, and that this organization either owns a working interest or unleased mineral interest in the land including the proposed bottom hole location pursuant to a contract with an owner of such a mineral or working interest, or to a voluntary pooling agreement or a compulsory pooling order heretofore entered by the division.

Phyllis A. Edwards 8-14-08
 Signature Date

Phyllis A. Edwards
 Printed Name Regulatory Analyst

SURVEYOR CERTIFICATION

I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervision and that the same is true and correct to the best of my belief.

DECEMBER 16, 2007

Date Surveyed

Signature of Surveyor

Professional Seal


 W.C. ADAMS

Certificate No. Gary L. Jones 7977

BASIN SURVEYS

OCD-ARTESIA

11500704
EA-09-523
RM

Form 3160-3
(April 2004)

MAY 27 2009

FORM APPROVED
OMB No 1004-0137
Expires March 31, 2007

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

APPLICATION FOR PERMIT TO DRILL OR REENTER

5. Lease Serial No. NM-95630	
6. If Indian, Allottee or Tribe Name N/A	
7. If Unit or CA Agreement, Name and No N/A	
8. Lease Name and Well No Black Hawk 11 Fed Com #2	
9. API Well No. 30-015-37106	
10. Field and Pool, or Exploratory Crown Flats, Abo Wildcat	
11. Sec., T. R. M. or Blk and Survey or Area Sec 11, T16S, R28E	
12. County or Parish Eddy	13. State NM
14. Distance in miles and direction from nearest town or post office* 2.5 miles north of Loco Hills, NM	
15. Distance from proposed* location to nearest property or lease line, ft (Also to nearest drig. unit line, if any) 1590'	16. No. of acres in lease 1760
17. Spacing Unit dedicated to this well 46/20	18. Distance from proposed location* to nearest well, drilling, completed, applied for, on this lease, ft. 450'
19. Proposed Depth Pilot Hole 6850' TVD 6690', MD 9950' 6686' 9109'	20. BLM/BIA Bond No on file NMB000215
21. Elevations (Show whether DF, KDB, RT, GL, etc) 3576' GL	22. Approximate date work will start* 04/01/2009
23. Estimated duration 10 days	

24. Attachments

The following, completed in accordance with the requirements of Onshore Oil and Gas Order No. 1, shall be attached to this form:

- 1. Well plat certified by a registered surveyor.
- 2. A Drilling Plan.
- 3. A Surface Use Plan (if the location is on National Forest System Lands, the SUPO shall be filed with the appropriate Forest Service Office).
- 4. Bond to cover the operations unless covered by an existing bond on file (see Item 20 above).
- 5. Operator certification
- 6. Such other site specific information and/or plans as may be required by the authorized officer.

25. Signature <i>Phyllis A. Edwards</i>	Name (Printed/Typed) Phyllis A. Edwards	Date 02/27/2009
Title Regulatory Analyst		

Approved by (Signature) <i>/s/ Don Peterson</i>	Name (Printed/Typed) /s/ Don Peterson	Date MAY 22 2008
Title FIELD MANAGER		
Office CARLSBAD FIELD OFFICE		

Application approval does not warrant or certify that the applicant holds legal or equitable title to those rights in the subject lease which would entitle the applicant to conduct operations thereon.
Conditions of approval, if any, are attached.

APPROVAL FOR TWO YEARS

Title 18 U.S.C. Section 1001 and Title 43 U.S.C. Section 1212, make it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

*(Instructions on page 2)

SEE ATTACHED FOR
CONDITIONS OF APPROVAL

APPROVAL SUBJECT TO
GENERAL REQUIREMENTS
AND SPECIAL STIPULATIONS
ATTACHED



DISTRICT I
1625 N. French Dr., Hobbs, NM 88240

DISTRICT II
1801 W Grand Avenue, Artesia, NM 88210

DISTRICT III
1000 Rio Brazos Rd., Aztec, NM 87410

DISTRICT IV
1820 E. St. Francis Dr., Santa Fe, NM 87505

State of New Mexico
Energy, Minerals and Natural Resources Department

Form C-102
Revised October 12, 2005

Submit to Appropriate District Office
State Lease - 4 Copies
Fee Lease - 3 Copies

OIL CONSERVATION DIVISION
1220 South St. Francis Dr.
Santa Fe, New Mexico 87505

AMENDED REPORT

WELL LOCATION AND ACREAGE DEDICATION PLAT

API Number 30-015-37106	Pool Code	Pool Name Wildcat CROW FLATS; ABO
Property Code 37327	Property Name BLACKHAWK "11" FEDERAL COM	Well Number 2H
OGRID No. 229137	Operator Name C.O.G. OPERATING L.L.C.	Elevation 3576'

Surface Location

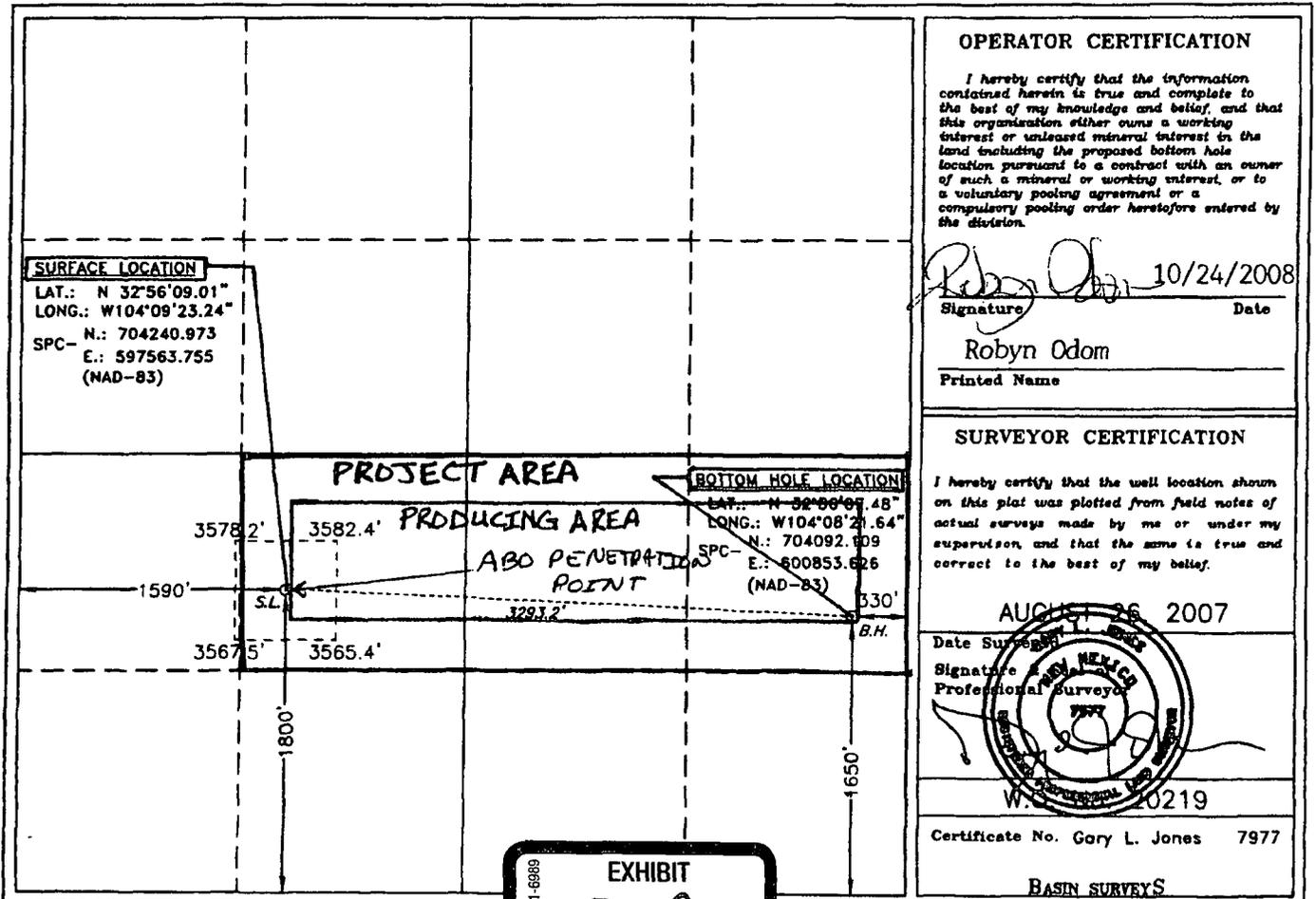
UL or lot No.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
K	11	16 S	28 E		1800	SOUTH	1590	WEST	EDDY

Bottom Hole Location If Different From Surface

UL or lot No.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
I	11	16 S	28 E		1650	SOUTH	330	EAST	EDDY

Dedicated Acres 120	Joint or Infill	Consolidation Code	Order No.
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NO ALLOWABLE WILL BE ASSIGNED TO THIS COMPLETION UNTIL ALL INTERESTS HAVE BEEN CONSOLIDATED OR A NON-STANDARD UNIT HAS BEEN APPROVED BY THE DIVISION



OPERATOR CERTIFICATION

I hereby certify that the information contained herein is true and complete to the best of my knowledge and belief, and that this organization either owns a working interest or unleased mineral interest in the land including the proposed bottom hole location pursuant to a contract with an owner of such a mineral or working interest, or to a voluntary pooling agreement or a compulsory pooling order heretofore entered by the division.

Signature: *Robyn Odum* Date: 10/24/2008
Printed Name: Robyn Odum

SURVEYOR CERTIFICATION

I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervision, and that the same is true and correct to the best of my belief.

Date Surveyed: AUGUST 26 2007
Signature: *Gary L. Jones*
Professional Surveyor
Certificate No. Gary L. Jones 7977

BASIN SURVEYS

EXHIBIT
C-2

PENGAD 800-631-6989