

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

**IN RE APPLICATION OF COG
OPERATING LLC FOR COMPULSORY
POOLING, LEA COUNTY, NEW MEXICO**

**OCC Case No. 22474
ORDER NO. R-22167**

ORDER OF THE COMMISSION

THIS MATTER came before the New Mexico Oil Conservation Commission (“Commission”) on COG’s Application for Hearing *De Novo*, seeking an order pooling all uncommitted interests in the WC-025 G-09 S243532M; Wolfbone Pool (98098) underlying a standard 960.16-acre, more or less, horizontal spacing unit (“Unit”) comprised of all of irregular Section 1 and the N/2 of Section 12, Township 25 South, Range 34 East, Lea County, New Mexico. COG sought to dedicate the Unit to the following wells (“Wells”):

- a. Green Eyeshade Fed Com #601H to be drilled from a surface location in the NW/4SE/4 (Unit J) of Section 12 to a bottom hole location in the NE/4NE/4 (Lot 1) of Section 1;
- b. Green Eyeshade Fed Com #602H and Green Eyeshade Fed Com #702H to be drilled from a surface location in the NW/4SE/4 (Unit J) of Section 12 to a bottom hole location in the NW/4NE/4 (Lot 2) of Section 1;
- c. Green Eyeshade Fed Com #603H and Green Eyeshade Fed Com #703H to be drilled from a surface location in the NE/4SW/4 (Unit K) of Section 12 to a bottom hole location in the NE/4NW/4 (Lot 3) of Section 1; and
- d. Green Eyeshade Fed Com #704H to be drilled from a surface location in the NW/4SW/4 (Unit L) of Section 12 to a bottom hole location in the NW/4NW/4 (Lot 4) of Section 1.

The Commission conducted a public merits hearing on April 14, 2022 and convened for deliberation at the Commission’s regular meeting on May 12, 2022. both *via* the WebEx teleconferencing application and pursuant to the Governor’s various COVID 19-related health orders, and having considered the testimony and the records and filings in this case, as well as the arguments of the parties, and being otherwise fully advised, enter the following findings, conclusions and order.

FINDS THAT:

Procedural History

1. Proper notice was given of the application and the hearing of this matter, and the Commission has jurisdiction of the parties and the subject matter herein.

2. The Commission reviewed all admitted exhibits and considered all admitted testimony given in this matter prior to rendering its final decision. In particular, the Commission admitted all party exhibits for its consideration, inclusive of COG Exhibits 1 through 18. The Division's exhibits were comprised of COG's Application, which is part of the record of this case, and the exhibits from the Division hearing, which were incorporated into COG's exhibits. Therefore, all exhibits were admitted in some form.
3. On or about October 5, 2021, COG filed an application for compulsory pooling with the New Mexico Oil Conservation Division ("Division"), seeking the relief described above, opening OCD Case No. 22294.
4. Paige Baird and Norma Loving entered their appearances on October 20, 2021.
5. The Division set Case No. 22294 for hearing on November 4, 2021 before Division Hearing Officer Bill Brancard.
6. At the April 4, 2021 Division hearing, only COG put on evidence. No other party provided the Hearing Officer with documentary, testimonial, or other evidence.
7. The Hearing Officer report for the April 4, 2021 hearing found, among other things:
 - a. The Unit proposed by COG does not meet the requirements for a standard horizontal spacing unit. Hearing Officer's Report at ¶ 12.
 - b. COG failed to apply for a non-standard horizontal spacing unit and failed to satisfy the notice requirements for a non-standard horizontal spacing unit. Hearing Officer's Report at ¶ 13.
 - c. That COG's Application was dismissed without prejudice, but that "COG may reapply for a non-standard horizontal spacing unit with compulsory pooling or for multiple compulsory pooling cases utilizing standard horizontal spacing units." Hearing Officer's Report at ¶ 13.
8. On December 10, 2021, COG filed its Application for Hearing *De Novo* with the Commission, seeking relief from Division Order No. R-21930 for Division Case No. 22294, thereby opening OCC Case No. 22474. The Commission subsequently set this Case for hearing for April 14, 2022.
9. On April 6, 2022, the Division entered its appearance along with a Notice of Intervention.
10. On April 7, 2022, the Parties filed their respective Prehearing Statements ("PHS"), along with each party's exhibits.
11. COG's PHS focused largely on the Division's interpretation of 19.15.16.15(B) NMAC and the Division's reliance on the phrase "the well" as found in that regulation, found in Division Order No. R-21930. COG disagreed with the Division's interpretation, arguing that Division Order No. R-21930 requires "COG to seek approval of a non-standard spacing unit and provide notice to parties in the surrounding tracts even though COG's wells are at orthodox locations within its

proposed unit and do not impact the surrounding tracts.” 19.15.16.15(B) NMAC governs horizontal wells in New Mexico.

12. The Division’s PHS argued that the issue before the Commission is one of regulatory interpretation, arguing that “approval of COG’s application as a ‘standard’ unit would require an interpretation of rule that is inconsistent with the Oil and Gas Act.” The Division further argued that “COG’s application must be noticed and presented as a non-standard spacing unit. . .” based on the language of NMSA 1978, § 70-2-17(B).

Testimony of Matthew Solomon

13. Matthew Solomon testified that he intended to testify in the capacity of a staff land negotiator for COG.

14. Mr. Solomon testified that he has a bachelor’s degree in journalism from San Jose State, followed by a Juris Doctorate from Oklahoma City University. Mr. Solomon further testified that he has fifteen years of experience in the oil and gas industry, having worked for several energy concerns.

15. Mr. Solomon stated that he has testified before the Commission in the past.

16. The Commission, upon COG’s request, deemed Mr. Solomon an expert witness in petroleum land matters.

17. Mr. Solomon detailed COG’s request to the Division, namely a 960 acre spacing unit to develop the Wolfcamp Bone Pool, which was predicated on three proximity wells. Mr. Solomon further explained that the Division denied this request.

18. Mr. Solomon detailed that, in the past, the Division approved spacing units that incorporate acreage for multiple proximity wells on at least two occasions, referring to Division Order No. R-21089 and 21055. The Commission took judicial notice of both Orders.

19. Mr. Solomon then provided a foundation for COG Exhibits 1 through 11, identifying each document.

20. As to COG’s original application, Mr. Solomon testified that:

- a. That COG seeks to develop six wells for the subject unit;
- b. Each of the six wells penetrates every tract included in the spacing unit;
- c. That none of the six wells would be placed in unorthodox locations within the unit (all are further than 330 feet from any outside boundary).

21. Mr. Solomon stated that COG owns approximately 93% of the working interest in the subject unit.

22. Concerning COG's original application with the Division, Mr. Solomon testified that he received no communications from anyone with concerns about COG's proposed pooling plan or its individual parts.

23. Turning to the November 4, 2021 Division hearing on COG's application, Mr. Solomon revealed that COG intends to force pool other interests held by other operators, such as Marathon Oil Permian, MRC Permian Company and Chief Capital. Likewise, COG entered JOA's with other producers. Mr. Solomon explained that all of the above-listed companies are large, experienced concerns that did not raise any objections or concerns regarding COG's plan.

24. Mr. Solomon further testified that COG force pooled around 60 land owners who purportedly possessed unmarketable titles, none of whom objected to COG's plan.

25. Regarding COG Exhibit 10, Mr. Solomon explained that it is a pooling application checklist that he personally created and which is in conformity with Division regulations. Mr. Solomon's testimony included explaining how he identified landowners entitled to notice for a non-standard unit.

26. Mr. Solomon then explained how costly of an effort it was for COG to pull such information and further warned that his estimates for purposes of this hearing could be a fraction of actual land or right holders who would require notice for a non-standard unit.

27. Mr. Solomon also explained that, under a plan conforming to Division Order No. R-21930, COG would not benefit from any offsets and, in fact, might make the situation worse by requiring wells that are 1,000 feet from any boundary, rather than 330 feet.

28. Mr. Solomon testified that COG's application did not affect the correlative rights of any interests in surrounding land tracts. Similarly, Mr. Solomon averred that providing notice to such interest-holders would be given leverage in negotiating with COG, thereby harming COG.

29. Mr. Solomon asserted that an operator seeking approval for non-standard spacing units such as those sought by COG would increase burdens on COG, for collecting and collating all title information coupled with issuing notices to interest-holders, and the Division, in the form of processing notices, applications, and hearing forced pooling matters.

30. Mr. Solomon testified that, in his opinion, what the Division ordered should not be necessary given that no interest outside the proposed unit would be threatened.

31. Mr. Solomon's understanding of Division Order No. R-21930 would mean, if the proposed unit only contained one well, COG would not be obligated to notify surrounding tract interest-holders; Mr. Solomon stated that the contrary factual hypothetical *would* require COG to notify surrounding tract interest-holders. Ultimately, Mr. Solomon opined that there is no substantive difference between either hypothetical.

32. Finally, Mr. Solomon opined that granting COG's application would prevent waste, prevent the drilling of unnecessary wells, and protect correlative rights.

33. Upon cross-examination by Division Counsel, Mr. Solomon was unable to confirm that the applications that led to Division Order Nos. 21089 and 21055 identified the proposed spacing units as non-standard units.

34. Mr. Solomon acknowledged that, under COG's plan, COG would encroach on interior boundaries of 330 feet, but countered that COG would be 1,000 feet from any exterior boundary.

35. Mr. Solomon explained that while costs under Division Order No. 21930 would be significant, costs is but one concern. Mr. Solomon contended that the primary concern for COG is reducing the number of facilities on-site. Mr. Solomon subsequently stated that COG's primary concern is the requirement that COG give notice to parties that do not possess correlative rights that are impacted by COG's proposed unit.

Testimony of Ira Bedford

36. Mr. Bedford testified that he was present at this hearing to testify for COG as a geoscientist. Mr. Bedford stated he has not testified before the Commission prior to April 14, 2022.

37. Mr. Bedford obtained his Bachelors of Science in Geology in 2003, Masters in Geology in 2007, and has worked in the industry as a geoscientists since 2007.

38. The Commission deemed Mr. Bedford an expert witness in geology.

39. Mr. Bedford then provided a foundation for COG Exhibits 12 through 16, identifying each document.

40. Mr. Bedford stated that the land subject to COG's plan are suitable for development with horizontal wells. Mr. Bedford further stated that all proposed wells are oriented properly, the target interval is continuous across the unit, and there are no faults, pinch-outs, or geologic impediments to development.

41. Mr. Bedford testified that each tract subject to COG's plan will contribute more or less equally to production.

42. Mr. Bedford believes that granting COG's application will best protect correlative rights, prevent waste, and prevent drilling of unnecessary wells.

Testimony of Eric Angelos

43. Mr. Angelos testified that he was present at this hearing to testify for COG as a reservoir engineering supervisor. Mr. Angelos stated he has not testified before the Commission prior to April 14, 2022.

44. Mr. Anegelos obtained a Bachelor of Science degree in petroleum and natural gas engineering. Mr. Angelos possesses eight years of experience in the industry.

45. The Commission deemed Mr. Angelos an expert witness in reservoir engineering.

46. Mr. Angelos professed knowledge of COG's application and the particulars of Division Order No. R-21930.

47. Mr. Angelos opined that, under Division Order No. R-21930, COG is left with two options:

- a. Propose a non-standard spacing unit; or
- b. Break up the unit into multiple units.

48. Mr. Angelos explained that the breaking up of the unit into multiple units creates an evident business risk to COG as parties may object who have no rights at risk.

49. Mr. Angelos believes that the break-up approach also puts COG, interest owners, and the public at risk, as well.

50. Mr. Angelos then provided a foundation for COG Exhibits 16 through 18, identifying each document.

51. Turning to COG Exhibit 17, Mr. Angelos opined that COG would need to develop what amounts to a full duplicate of the facilities as described in COG's Application, impacting an additional 3.7 acres, a 21% increase in surface use not including additional roads or flowlines needed. Mr. Angelos further explained that such an increase in surface use would result in negative environmental impact, such as doubling the number of DHG emission points and risk increased fugitive emissions through pneumatic devices, an additional eight tanks, and other combustion sources.

52. Mr. Angelos averred that COG's proposed unit will cause less environmental damage and curb waste more effectively than that required under Division Order No. R-21930.

53. Through COG Exhibit 18, Mr. Angelos explained how Division Order No. R-21930 would impact COG's proposed plan, which in turn would more effectively produced from the underlying reserves. Mr. Angelos detailed other issues with COG complying with Division Order No. R-21930, such as violating spacing rules and the risk of sub-optimal development.

54. Mr. Angelos testified that the COG's proposed plan complies with all Division regulations with the exception of the one upon with the Division based Order No. R-21930.

55. Mr. Angelos expressed concern that Division Order No. R-21930 indicates that the Division may have issues with many of COG's other spacing units, which involve more than one well due to technological evolution in the industry. Again, Mr. Angelos pointed out that such evolutions prevent waste and protect correlative rights.

56. Mr. Angelos summarized his opinion, testifying that COG's proposed unit and well spacing will protect correlative rights, prevent waste, and prevent drilling of unnecessary wells, as well as prevent surface waste, economic waste, and will best protect human health and the environment.

57. Upon cross-examination, Mr. Angelos agreed that COG is concerned about business risks for non-standard spacing units, which would not be a concern if COG submitted applied for standard spacing units.

Division witnesses

58. The Division called no witnesses to testify at the April 14, 2022 hearing in this matter.

Exhibits admitted into evidence

59. During the course of COG's presentation, the Commission admitted COG's Exhibits 1 through 18. The Division provided one exhibit, Exhibit A, which consisted of a COG's Application *De Novo* and the evidence provided to the Division for its consideration. COG's Application is part of the record of this case and the exhibits from the Division hearing were incorporated into COG's exhibits. Therefore, all exhibits were admitted in some form.

CONCLUSIONS

60. The Commission has jurisdiction over the parties and the subject matter of this case.

61. Proper public notice has been given for the merits hearing in this matter.

62. The Oil and Gas Act, NMSA 1978 Sections 70-2-1 et seq. (Act), prohibits the waste of oil and gas and delegates to the Division the authority to prevent waste and protect correlative rights.

63. 19.15.16.15 NMAC governs COG's application, generally, but 19.15.16.15 (B) NMAC is specifically applicable to the case before the Commission.

64. That Division Order No. R-21930 was and is valid.

65. That the Commission upholds and readopts Division Order No. R-21930.

66. That the Commission finds no conflict between 19.15.16.15(B) NMAC and the Oil and Gas Act.

67. That the Division did not violate its guiding principles or governing law in entering Division Order No. R-21930.

68. Jurisdiction over this case is retained for the entry of such further orders as the Commission may deem necessary.

ORDER

69. Division Order No. R-21930 is **UPHELD**;

70. Division Order No. R-21930 is **ADOPTED** by the Commission in its entirety as of the entry of this Order.

IT IS SO ORDERED.

DONE at Santa Fe, New Mexico, on the 9th Day of June 2022.

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**

**DR. WILLIAM AMPOMAH, PhD
MEMBER**

William Ampomah

GREG BLOOM, MEMBER

Gregory Bloom

ADRIENNE SANDOVAL, M.E., CHAIR

SEAL

Adrienne Sandoval