

**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:**

**CASE NO. 15568
ORDER NO. R-14304**

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

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on October 27, 2016, at Santa Fe, New Mexico, before Examiner William V. Jones.

NOW, on this 24th day of February, 2017, the Division Director, having considered the testimony, the record and the recommendations of the examiner,

FINDS THAT:

(1) Due public notice has been given, and the Division has jurisdiction of this case and the subject matter.

(2) COG Operating LLC ("Applicant") seeks approval of a 240-acre, more or less, non-standard oil spacing and proration unit and project area (the "Unit") comprising the E/2 W/2 of Section 10 and the E/2 NW/4 of Section 15, all in Township 17 South, Range 32 East, NMPM, Lea County, New Mexico, for oil and gas production from the Yeso formation, Maljamar; Yeso, West Pool (Pool code 44500). Applicant further seeks an order pooling all uncommitted interests in the Unit.

(3) The Unit will be dedicated to Applicant's proposed Nelson Federal Com Well No. 13H (the "proposed well"; API No. 30-025-pending), a horizontal well to be drilled from a surface location 2358 feet from the South line and 1895 feet from the West line (Unit K) of Section 15, to a bottom-hole location 330 feet from the North line and 1650 feet from the West line (Unit C) of Section 10, both in Township 17 South, Range 32 East, NMPM, Lea County, New Mexico. The first take point will be approximately 2310 feet from the North line and 1874 feet from the West line (Unit F) of Section 15, and the last

take point will be approximately at the bottom hole location. The location of the completed interval will be standard for oil production within the Unit.

(4) The proposed well will be completed within the Maljamar; Yeso, West Pool and is subject to Division Rule 19.15.15.9(A) NMAC, which provides for 330-foot setbacks from the unit boundaries and standard 40-acre units each comprising a governmental quarter-quarter section. The proposed Unit and project area consists of six adjacent quarter-quarter sections oriented south to north.

(5) Applicant appeared through counsel and presented the following land and geologic evidence:

- (a) The Yeso formation in this area is suitable for development by horizontal drilling.
- (b) the proposed orientation of the horizontal well from south to north is appropriate for the Unit.
- (c) all quarter-quarter sections to be included in the Unit are expected to be productive in the prospective portion of the Yeso formation, so that the Unit as requested will not impair correlative rights.
- (d) Applicant is requesting to compulsory pool the Yeso formation within the Unit.
- (e) Notice of the application and hearing in this case was provided to lessees or operators of surrounding tracts as affected parties of the proposed non-standard spacing unit.
- (f) Notice by certified mail was provided to all interest owners in the proposed Unit whose interests were evidenced by a conveyance instrument, either of record or known to Applicant when the Application was filed, and to heirs known to Applicant of deceased persons who appear as owners in such instruments, and whose identity and whereabouts could be ascertained by exercise of reasonable diligence.
- (g) Those potentially affected parties whose whereabouts could not be ascertained were noticed by publication as provided in Rule 19.15.4.12.B NMAC.

(6) No other party entered an appearance or otherwise opposed this application.

The Division concludes as follows:

(7) There is an issue concerning notice in this case because of the characterization in an exhibit of certain persons as “unmarketable title owners.” This characterization suggests a possibility that other, possibly unidentified, persons may in fact own interests in the Unit due to defects in the titles of the persons so identified.

(8) The Division does not have jurisdiction to determine who owns any interest in real property or whether or not their interest is marketable. However, the Division does have a responsibility to determine whether all persons entitled to notice by Division rules, or by judicial decisions, have been duly notified. To fulfill this responsibility the Division should require that the Applicant present evidence unequivocally identifying those persons to whom notice is required.

(9) To facilitate the Division’s consideration of notice evidence in future compulsory pooling cases, we encourage the following:

[a] Applicants should distinctly identify those persons described in Rule 19.15.4.12.A(1)(a), whether those persons’ whereabouts are known or not. If Applicant knows that any such person is deceased, that fact should be indicated. If any such person’s whereabouts are unknown, or if personal service by certified mail has failed, so that compliance with the notice requirement of that rule depends upon the validity of publication, Applicant should present testimony, in person or by affidavit, that Applicant “has been unable to locate persons entitled to notice after exercising reasonable diligence” as required by Rule 19.15.4.12.B, and describing the diligence exercised. Persons to whom the rule requires notice must be accorded actual or constructive notice as required whether their titles are marketable or not.

[b] In addition, applicants should distinctly identify persons whom it knows or believes to be owners of interests in the proposed unit even if they are not named in any conveyance instrument (for example, persons known or believed to own interests as heirs of a deceased record owner whose estate has not been the subject of probate). Such persons would be constitutionally entitled to notice if their identity and whereabouts are ascertainable under the Supreme Court’s holding in *Uhdén v. OCC*, 112. NM 528, 531 (1991). Constructive notice to persons whose whereabouts are unknown, however, is not required by the *Uhdén* opinion, and accordingly should not be required except as to persons described in Rule 19.15.4.12.A(1)(a).

[c] In uncontested cases, or in absence of objection, the testimony of a qualified land man by reference to a sponsored exhibit or otherwise will be accepted as fulfilling the above requirements.

[d] Nothing in this discussion should be construed as disapproving or discouraging any applicant’s giving notice to additional persons in an abundance of caution and providing evidence of such notice at the hearing.

(10) Although the evidence in the present case is not as detailed as recommended above, the Division concludes that it is sufficient to demonstrate due notice.

(11) Accordingly, the proposed non-standard unit should be approved to enable Applicant to drill a horizontal well that will efficiently produce the reserves underlying the Unit, thereby preventing waste and protecting correlative rights.

(12) Two or more separately owned tracts are embraced within the Unit, and/or there are royalty interests and/or undivided interests in oil and gas minerals in one or more tracts included in the Unit that are separately owned.

(13) Applicant is owner of an oil and gas working interest within the Unit. Applicant has the right to drill and proposes to drill the proposed well to a common source of supply within the Unit at the proposed location.

(14) There are interest owners in the Unit that have not agreed to pool their interests.

(15) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford to the owner of each interest in the Unit the opportunity to recover or receive without unnecessary expense a just and fair share of hydrocarbons, this application should be approved by pooling all uncommitted interests, whatever they may be, in the oil and gas within the Unit.

(16) COG Operating LLC should be designated the operator of the proposed well and the Unit.

(17) Any pooled working interest owner who does not pay its share of estimated well costs should have withheld from production its share of reasonable well costs plus an additional 200% thereof as a reasonable charge for the risk involved in drilling the proposed well.

(18) Reasonable charges for supervision (combined fixed rates) should be fixed at \$7,000 per month, per well, while drilling and \$700 per month, per well, while producing, provided that these rates should be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations.*"

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to the application of COG Operating LLC, a 240-acre, more or less, non-standard oil spacing and proration unit and project area (the "Unit") comprising the E/2 W/2 of Section 10 and the E/2 NW/4 of Section 15, all in Township 17 South, Range 32 East, NMPM, Lea County, New Mexico, is hereby established for oil and gas production from the Yeso formation, Maljamar; Yeso, West Pool (Pool code 44500).

(2) All uncommitted interests, whatever they may be, in the oil and gas in the Yeso formation underlying the Unit, are hereby pooled.

(3) The Unit shall be dedicated to Applicant's proposed Nelson Federal Com Well No. 13H (the "proposed well"; API No. 30-025-pending), a horizontal well to be drilled from a surface location 2358 feet from the South line and 1895 feet from the West line (Unit K) of Section 15, to a bottom-hole location 330 feet from the North line and 1650 feet from the West line (Unit C) of Section 10, both in Township 17 South, Range 32 East, NMPM, Lea County, New Mexico. The first take point will be approximately 2310 feet from the North line and 1874 feet from the West line (Unit F) of Section 15, and the last take point will be approximately at the bottom hole location. The location of the completed interval will be standard for oil production within the Unit.

(4) The operator of the Unit shall commence drilling the proposed well on or before January 31, 2018, and shall thereafter continue drilling the proposed well with due diligence to test the Paddock interval within the Yeso formation.

(5) In the event the operator does not commence drilling the proposed well on or before January 31, 2018, Ordering Paragraphs (1) and (2) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause demonstrated by satisfactory evidence.

(6) Should the proposed well not be drilled and completed within 120 days after commencement thereof, then Ordering Paragraphs (1) and (2) shall be of no further effect, and the Unit and project area created by this order shall terminate, unless operator appears before the Division Director and obtains an extension of the time for completion of the proposed well for good cause shown by satisfactory evidence. If the proposed well is not completed in all of the standard spacing units included in the proposed project area (or Unit), then the operator shall apply to the Division for an amendment to this order to contract the Unit so that it includes only those standard spacing units in which the well is completed.

(7) Upon final plugging and abandonment of the proposed well and any other well drilled on the Unit pursuant to Division Rule 19.15.13.9 NMAC, the pooled Unit created by this order shall terminate, unless this Order has been amended to authorize further operations.

(8) COG Operating LLC (OGRID 229137) is hereby designated the operator of the well and the Unit.

(9) After pooling, uncommitted working interest owners are referred to as pooled working interest owners. ("Pooled working interest owners" are owners of working interests in the Unit, including unleased mineral interests, who are not parties to an operating agreement governing the Unit.) After the effective date of this order, the operator shall furnish the Division and each known pooled working interest owner in the Unit an itemized schedule of estimated costs of drilling, completing and equipping the proposed well ("well costs").

(10) Within 30 days from the date the schedule of estimated well costs is furnished, any pooled working interest owner shall have the right to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production as hereinafter provided, and any such owner who pays its share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges. Pooled working interest owners who elect not to pay their share of estimated well costs as provided in this paragraph shall thereafter be referred to as "non-consenting working interest owners."

(11) The operator shall furnish the Division and each known pooled working interest owner (including non-consenting working interest owners) an itemized schedule of actual well costs within 90 days following completion of the proposed well. If no objection to the actual well costs is received by the Division, and the Division has not objected, within 45 days following receipt of the schedule, the actual well costs shall be deemed to be the reasonable well costs. If there is an objection to actual well costs within the 45-day period, the Division will determine reasonable well costs after public notice and hearing.

(12) Within 60 days following determination of reasonable well costs, any pooled working interest owner who has paid its share of estimated well costs in advance as provided above shall pay to the operator its share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator the amount, if any, that the estimated well costs it has paid exceed its share of reasonable well costs.

(13) The operator is hereby authorized to withhold the following costs and charges from production from each well:

- (a) The proportionate share of reasonable well costs attributable to each non-consenting working interest owner; and
- (b) As a charge for the risk involved in drilling the well, 200% of the above costs.

(14) The operator shall distribute the costs and charges withheld from production, proportionately, to the parties who advanced the well costs.

(15) Reasonable charges for supervision (combined fixed rates) for the well are hereby fixed at \$7,000 per month, per well, while drilling and \$700 per month, per well, while producing, provided that these rates shall be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations.*" The operator is authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to pooled working interest owners.

(16) Except as provided in Paragraphs (13) and (15) above, all proceeds from production from the proposed well that are not disbursed for any reason shall be held for the account of the person or persons entitled thereto pursuant to the Oil and Gas Proceeds Payment Act (NMSA 1978 Sections 70-10-1 through 70-10-6, as amended). If not disbursed, such proceeds shall be turned over to the appropriate authority as and when required by the Uniform Unclaimed Property Act (NMSA 1978 Sections 7-8A-1 through 7-8A-31, as amended).

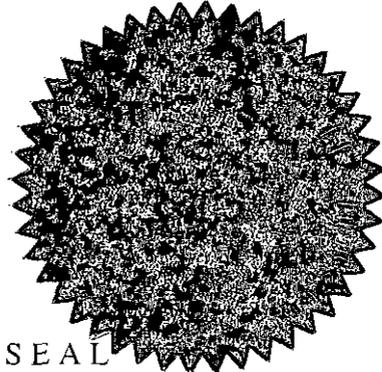
(17) Any unleased mineral interests shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under this Order. Any well costs or charges that are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(18) Should all the parties to this compulsory pooling order reach voluntary agreement after entry of this order, this order shall thereafter be of no further effect.

(19) The operator of the well and the Unit shall notify the Division in writing of the subsequent voluntary agreement of all persons subject to the compulsory pooling provisions of this order.

(20) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

David R. Catanach

DAVID R. CATANACH
Director