

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 compulsory pooling, Lea County,
New Mexico

Case Nos. 22757
22758

TRANSCRIPT OF PROCEEDINGS

May 5, 2022

EXAMINER HEARING

This matter came on for hearing before the New Mexico Oil Conservation Division, William Brancard, Esq., Hearing Examiner, Dean McClure, Technical Examiner, on May 5th, 2022, via Webex Virtual Conferencing Platform hosted by the New Mexico Energy, Minerals and Natural Resources Department

REPORTED BY: SHANON R. MYERS, CCR, RPR, CRR, RMR, CRC
CCR No. 275
PAUL BACA COURT REPORTERS
500 Fourth Street, NW, Suite 105
Albuquerque, NM 87102
(505) 843-9241

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A P P E A R A N C E S

For COG Operating, LLC:

HOLLAND & HART, LLP
P.O. Box 2208
Santa Fe, NM 87504-2208
(505) 988-4421
agrarkin@hollandhart.com

BY: ADAM RANKIN

I N D E X

Cases called	3:1
Summary of cases and exhibits	3:17
Taken under advisement	16:4
Court Reporter's Certificate	17:1

1 (Time noted as 11:14 a.m.)

2 EXAMINER BRANCARD: With that, we look at Items 62
3 and 63 on today's worksheet. These are Cases 22757, 22758,
4 COG Operating.

5 MR. RANKIN: Mr. Examiner, Adam Rankin, with
6 Holland & Hart, appearing on behalf of the applicant in
7 these two cases, COG Operating, LLC.

8 EXAMINER BRANCARD: And then we have an entry of
9 appearance for XTO Energy, Inc., coincidentally also by
10 Holland & Hart.

11 MR. RANKIN: Mr. Examiner, Holland & Hart
12 appearing for XTO. In this case, XTO supports COG's
13 proposed alternative development plans for this acreage.

14 EXAMINER BRANCARD: Thank you. Are there any
15 other interested persons for Cases 22757, 22758? Hearing
16 none, you may proceed, Mr. Rankin.

17 MR. RANKIN: Mr. Examiner, these two cases are a
18 little bit different, and they're different because there
19 are two leases at issue in the acreage that are in uncertain
20 status. The NE/4 of one of the sections is in a current
21 lease validation, lease suspension status with the BLM,
22 which is in an indeterminate period of review, and because
23 of that, COG is proposing to pool two different spacing
24 units simultaneously with the intent of drilling and
25 developing only one, depending on the outcome of the BLM

1 process.

2 Another factor here is that an adjacent tract to that
3 acreage that is under lease suspension is -- has a lease
4 expiration at the end of this year and so, for that reason,
5 COG is proposing two different development plans, one which
6 would include the lease suspension acreage should it be
7 resolved in a timely manner, and another that excludes that
8 acreage so that they can proceed to drill to preserve
9 their -- their lease in the adjacent acreage. So that's
10 sort of an overview to explain the -- what's happening in
11 these two cases and why COG is proceeding as it has proposed
12 here.

13 In the first case, which is COG's preference, which is
14 22757, COG seeks an order that would pool all uncommitted
15 interests in the Wolfcamp formation under an approximate
16 960-acre standard horizontal spacing unit that would be
17 comprised of the E/2 of Sections 8, 17 and 20, all in
18 Township 23 South, Range 33 East, in the Lea County. That
19 spacing unit would be dedicated to three wells known as the
20 Margherita wells, one of which would be a proximity well
21 that would pull in the adjacent tracts allowing for the
22 enlarged spacing unit.

23 In the second case, 22758, which would be the
24 situation if the -- that COG would pursue if BLM is unable
25 to resolve the lease suspension validation issue in the far

1 northeast order, COG seeks to pool all uncommitted owners in
2 the Wolfcamp formation underlying an 800-acre, more or less,
3 standard horizontal spacing unit comprised of the SE/4 of
4 Section 8 and the E/2 of Sections 17 and 20, all in Township
5 23 South, Range 33 East, in Lea County. The second case
6 would be dedicated to three wells known as the Calzone
7 wells, and one of which would be a proximity well pulling in
8 the adjacent tracts on for the enlarged space unit.

9 In each case we filed a set of exhibits, on Tuesday.
10 Exhibit A for both sets have a compulsory pool and checklist
11 that identifies the dedicated acreage that comprises the
12 space unit, the wells that would be dedicated to each, as
13 well as the proximity well, the defining well, that would
14 allow for the enlarged spacing unit by pulling in the
15 adjacent tracts. In addition, it identifies the other
16 elements and factors required by the Division for these
17 pooling cases.

18 Exhibit B in each case exhibit packet is the
19 application that was filed in both of these cases,
20 reflecting the acreage and the wells to be dedicated.
21 Exhibit C is the affidavit of COG's landman, Mr. Brian Dart.
22 He's previously testified before the Division and has
23 previously been qualified as an expert in petroleum land
24 matters. His affidavits review the proposed spacing units
25 for each case, identify the dedicated wells for each case,

1 and explains the nature of the issue with the federal
2 acreage involved, requiring these alternative plans.

3 His Exhibit C1 is a copy of the notice that COG
4 provided to the working interest owners who are involved in
5 this acreage, explaining to them why COG is proposing these
6 different alternative proposals at the same time, and
7 reflects that they do not intend to drill both sets of wells
8 and only will drill one, depending on the outcome of the
9 timing of the BLM's review of the lease suspension issue.

10 Exhibit C2 in both cases are the C-102s for the
11 initial wells that are proposed and dedicated to these
12 spacing units. They demonstrate that the wells will meet
13 the Statewide setback requirements, oil wells in each
14 spacing unit, and will be dedicated to the Brinninstool
15 Wolfcamp West pool. There are no ownership depth severances
16 in any of these cases in this acreage. C3 are -- is his
17 ownership land plat that identifies the tracts of land that
18 comprise each of the proposed spacing units in each case and
19 reflects the status of those lands. C3 also identifies the
20 ownership interests that COG -- that comprise each of the
21 tracts within the spacing unit and on a unit basis. It also
22 identifies the parties that -- uncommitted parties that
23 COG's seeking to pool, including the working interest as
24 well as a list of override royalty owners in each case.

25 C4 is a chronology of contacts reflecting COG's

1 efforts to reach agreement with the owners of a working
2 interest in the proposed spacing units. C5 is a copy of the
3 well proposal letters that went out to each of the owners
4 with a working interest in both of these cases identifying
5 the wells and the TBDs and target intervals.

6 Exhibit D is the affidavit of Joseph Dishron, who is
7 the geologist for COG. He's previously testified and has
8 been qualified as an expert in petroleum and geology.

9 Exhibits D1 through D4 identify the acreage at issue, and
10 you'll see, Mr. Examiner, that he's helpfully identified, on
11 his geology exhibits, the quarter section at issue that is
12 subject to lease validation review by the BLM. So that's
13 the acreage that is at issue. If it cannot be included if
14 in a spacing unit, then COG would pursue the Calzone case,
15 which is shortened by approximately 160 acres to exclude
16 that acreage. Mr. Dishron's geology analysis confirms that,
17 in his review, he's determined there are no impediments or
18 geologic hazards that would impair the development of the
19 acreage using horizontal wells, and that each of the tracts
20 would contribute, more or less, equally to production from
21 the proposed wells.

22 His cross-section confirms that the target intervals
23 are consistent and appear across the spacing unit in his
24 opinion. Exhibit E in both cases is a copy of the affidavit
25 that we prepared reflecting that we provided notice timely

1 to each of the parties that COG is seeking to pool as well
2 as the delivery status of the certified mail that went out
3 to each of those parties. And, finally, confirm that we
4 caused notice to be published in the newspaper by
5 April 17th. And if I didn't say so, the delivery status of
6 the certified mail was updated as of April 27th, and that --
7 that postal report is included in the packet of exhibits.

8 Exhibit F is the affidavit of publication that was
9 provided to us by the newspaper confirming that the -- the
10 notice was -- was published in the newspaper on that date.

11 And with that, Mr. Examiner, you-all may have
12 questions, but I hope that we have laid out the reasons here
13 that we are seeking this little bit unusual proposal for
14 these two wells. I will note that in our prehearing
15 statement, we identified what we think would be a suitable
16 language in the pooling orders that would address the issues
17 and timing for when COG determines that it's going to
18 proceed under one order or the other and have proposed that
19 language in the prehearing statement. I think that would
20 address maybe the -- I believe it might address the
21 Division's concerns about how it would go about issuing two
22 orders for the same spacing unit and confirming that COG
23 would not develop both, but only one.

24 With that, Mr. Examiner, I will ask that these
25 exhibits be taken into the record and the cases be taken

1 under advisement. I stand for any questions.

2 EXAMINER BRANCARD: Thank you. I assume you have
3 no questions of yourself on behalf of XTO.

4 MR. RANKIN: No. I will say that, you know, XTO
5 reached out to us and asked that we would enter an
6 appearance in support of the alternative development plans.

7 EXAMINER BRANCARD: All right. Mr. McClure.

8 TECHNICAL EXAMINER McCLURE: Yes. Mr. Rankin,
9 XTO's in support of the alternative, as in the
10 two-and-a-half mile, is that what you mean, or what?

11 MR. RANKIN: No, it's in support of proceeding
12 with both --

13 TECHNICAL EXAMINER McCLURE: Oh, with both of
14 them. Okay. I guess what my actual question was, the lease
15 that's in question, it was the NMNM 020073, correct?

16 MR. RANKIN: It is on Exhibit C3. There are two
17 federal leases in Section 8, okay. If you see in both
18 cases, it's the same -- it's a similar exhibit that shows
19 the status of those lands. And I'll start in Case
20 Number 22757. If you see -- it's on Page 28 of the pdf.
21 It's the first page of Exhibit C3.

22 TECHNICAL EXAMINER McCLURE: Yeah, yeah. I'm
23 sorry; go ahead. Keep going.

24 MR. RANKIN: So you'll see that there's two
25 federal leases identified there, one in yellow and one in

1 green. The one in yellow is the lease that is at issue for
2 the lease validation under suspension, and the one in green
3 is the lease that has a primary term expiration deadline at
4 the end of this year.

5 TECHNICAL EXAMINER McCLURE: Okay. I was just
6 wanting to confirm for sure, because I was going to say this
7 does -- this does align with what we have on our GIS. I was
8 just sitting here looking at this lease that in the NE/4, I
9 was going to say what -- on the BLM site, is it's currently
10 authorized, so do you know when it was suspended, I guess?
11 Is their site not up to date? I guess, do you have any more
12 details regarding that?

13 MR. RANKIN: I don't. I don't know the -- I don't
14 know when it was under suspension or under review, so I
15 can't answer that question. If it's important for the
16 Division, I do believe we have one of COG's landmen
17 available who can answer that question if you think it's
18 something that you would like an answer to today.

19 TECHNICAL EXAMINER McCLURE: Well, in theory, if
20 it actually is authorized to -- then, I mean, essentially
21 you wouldn't need the alternative case, correct?

22 MR. RANKIN: Correct. My understanding,
23 Mr. Examiner, is that it is in suspension and there is --
24 and COG is unable to proceed to drill that acreage at this
25 time.

1 TECHNICAL EXAMINER McCLURE: All right. I'm just
2 assuming that what the BLM has on their online resources,
3 then, must be out of date, then, or maybe the suspension is
4 very recently, then. Is that kind of your understanding, is
5 maybe it's a very recent suspension, then, and they haven't
6 updated their files yet?

7 MR. RANKIN: I couldn't even hazard a guess, so
8 I'd refrain from indicating one way or the other because I
9 just don't know.

10 TECHNICAL EXAMINER McCLURE: I'm going to assume
11 that COG knows, I guess, whether they're able to drill or
12 not, so I guess I'll just assume that it is suspended and
13 what I'm seeing publicly available here from the BLM is
14 incorrect, is what I'm going to assume.

15 I guess, beyond that, I -- I don't have any further
16 questions, Mr. Brancard.

17 EXAMINER BRANCARD: Thank you. Okay. So,
18 Mr. Rankin, you were just pointing to this Exhibit C3. So
19 the second page has the BLM lease or this Tract 1, that's
20 the one you're referring to.

21 MR. RANKIN: Yeah. And, Mr. Examiner, I just -- I
22 just did get an e-mail from Mr. Dart, and he's informing me
23 that the issue involving that NE/4 of Section 8 was
24 designated under review as of November 24th, 2021.

25 EXAMINER BRANCARD: There, again, I may be just

1 beating a dead horse here, but "under review" means the
2 lease still exists.

3 MR. RANKIN: It exists, but it is -- my
4 understanding -- and, again, if you want more detail on
5 this, my understanding is that this is the validation,
6 the -- whether it's a valid lease currently is under review
7 by the BLM, so I think -- my understanding is that they are
8 suspended that lease and are not permitting any APDs or
9 drilling to occur at this time, as of November 24th, 2021.

10 EXAMINER BRANCARD: So -- sorry. Go ahead,
11 Mr. McClure.

12 TECHNICAL EXAMINER McCLURE: Oh, I'm sorry, I was
13 just going to ask, there's an entry in the BLM file here
14 that a suspension operations production application was
15 filed in November of '21. I guess I just assumed it must
16 have been addressed since the overall status is still
17 authorized. Maybe that's my own misunderstanding as to how
18 the BLM is labeling the status of their leases, though,
19 then.

20 I'm sorry, Mr. Brancard. Go ahead.

21 EXAMINER BRANCARD: All right. I just wanted to
22 be clear because there's nothing in your exhibit here that
23 had a little asterisk or anything with this lease, that's
24 all. But I guess the question I have about this exhibit is
25 not that tract, but Tract 4, so the second page of the

1 exhibit shows Tract 4 having one party you seek to pool,
2 Suzanna Moore, but when you go to the next page, the
3 cumulative page, it indicates that both Suzanna Moore and
4 Rorke's Drift are parties you seek to pool.

5 MR. RANKIN: Mr. Examiner?

6 EXAMINER BRANCARD: One of those is correct; one
7 is not.

8 MR. RANKIN: Yeah. I believe -- one moment. I
9 believe that Rorke's Drift has entered an agreement with
10 COG, and I'd like to just -- I can confirm that here
11 shortly. I believe that is the case, and it may need to
12 just be updated on that capitulation, which I think I
13 missed.

14 Yeah. Mr. Examiner, confirming right now, and I will
15 amend this exhibit to correct that representation, but
16 Rorke's Drift has reached agreement with COG, should be --
17 not be in red on that recapitulation page.

18 EXAMINER BRANCARD: Okay.

19 MR. RANKIN: They're not being pooled.

20 EXAMINER BRANCARD: All right. So it's the same
21 issue for the other unit.

22 MR. RANKIN: Yeah.

23 EXAMINER BRANCARD: And from the chronology of
24 contacts, it appears that the only discussions COG has had
25 with working interest owners has been with XTO. I didn't

1 see any discussions with -- well, you must have had
2 something with Rorke's Drift, but it's not listed in here.

3 MR. RANKIN: Yeah, my -- Mr. Examiner, my
4 understanding is they have reached out to all of the parties
5 with a working interest at least twice to try to reach
6 agreement. I believe that the summaries reflect the ongoing
7 discussions with the parties who have been engaged with
8 them, actually, in trying to reach agreement.

9 EXAMINER BRANCARD: Okay. All right. So then the
10 big question is how -- if we're going to put this in an
11 order, what do we make an order look like? Or is it one
12 order, is it two orders? It's probably two orders, but they
13 need to be connected somehow. And so your language is in
14 the prehearing statement; is that correct?

15 MR. RANKIN: It is. It is, Mr. Examiner.

16 EXAMINER BRANCARD: So I think what we would want,
17 and I think you kind of get there, is that once you decide,
18 you have to request to dismiss the other order.

19 MR. RANKIN: Yeah. And we thought the appropriate
20 time would be when -- under the normal order language, COG
21 would send out its updated AFEs and what proposals
22 subsequent to issuance of them, or that way when they do so,
23 they can notify parties which plan they're pursuing, then at
24 that time, notify the Division and dismiss the other case.

25 EXAMINER BRANCARD: Okay. As long as the burden's

1 on your client, not on us to figure it out.

2 MR. RANKIN: That's understandable.

3 EXAMINER BRANCARD: All right. We can work with
4 this language, I think.

5 MR. RANKIN: Okay. Mr. Examiner, if there are any
6 questions or anything else that come up, I'm happy to try to
7 address them and work with you to resolve those questions
8 that come up with language. We appreciate the
9 consideration.

10 EXAMINER BRANCARD: Anything further, Mr. McClure?

11 All right. With that, are there any other interested
12 persons for Cases 22757, 22758?

13 Hearing none, the exhibits will be admitted into the
14 record.

15 Mr. Rankin, you will provide us with a revised
16 Exhibit C2?

17 MR. RANKIN: For both cases, yes.

18 EXAMINER BRANCARD: Both cases. And we will take
19 these cases under advisement. So I mean, my understanding
20 is you have to make a decision -- probably your driving
21 issue is the fact that one of your leases is going to go
22 away.

23 MR. RANKIN: That is ultimately the driving issue,
24 and so depending on --

25 EXAMINER BRANCARD: Well, BLM is still sitting on

1 the other lease and you have to make a -- you have to make a
2 call, right?

3 MR. RANKIN: Correct.

4 EXAMINER BRANCARD: Okay. Given how well our
5 federal cousins quickly act, I would bet on the shorter
6 alternative. All right. Thank you. So these cases will be
7 taken under advisement.

8 MR. RANKIN: Thank you.

9 (Proceedings concluded at 11:37 a.m.)

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1 STATE OF NEW MEXICO
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REPORTER'S CERTIFICATE

I, SHANON R. MYERS, New Mexico Certified Court Reporter, CCR #275, do hereby certify that I reported the foregoing virtual proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings to the best of my ability.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case and that I have no interest in the final disposition of this case.

I FURTHER CERTIFY that the virtual proceeding was of extremely poor to good quality.

Dated this 2nd day of June 2022.

/s/ Shanon R. Myers

SHANON R. MYERS, CCR, RPR, CRR, RMR, CRC
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