

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                      CASE NO. 16028  
FOR A NONSTANDARD SPACING AND  
PRORATION UNIT AND COMPULSORY  
POOLING, LEA COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

March 22, 2018

Santa Fe, New Mexico

BEFORE:    WILLIAM V. JONES, CHIEF EXAMINER  
              DAVID K. BROOKS, LEGAL EXAMINER

This matter came on for hearing before the New Mexico Oil Conservation Division, William V. Jones, Chief Examiner, and David K. Brooks, Legal Examiner, on Thursday, March 22, 2018, at the New Mexico Energy, Minerals and Natural Resources Department, Wendell Chino Building, 1220 South St. Francis Drive, Porter Hall, Room 102, Santa Fe, New Mexico.

REPORTED BY:    Mary C. Hankins, CCR, RPR  
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APPEARANCES

FOR APPLICANT COG OPERATING, LLC:  
  
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1 (11:16 a.m.)

2 EXAMINER JONES: Call Case Number 16028,  
3 application of COG Operating, LLC for a nonstandard  
4 spacing and proration unit and compulsory pooling in Lea  
5 County, New Mexico.

6 Call for appearances.

7 MR. FELDEWERT: May it please the Examiner,  
8 Michael Feldewert, with the Santa Fe office of Holland &  
9 Hart, appearing on behalf of the Applicant. And I have  
10 two witnesses here today.

11 EXAMINER JONES: Any other appearances in  
12 this case?

13 MR. FELDEWERT: The witnesses will need to  
14 be sworn. Actually, Mr. Solomon's been sworn, but we do  
15 have one witness who --

16 EXAMINER JONES: Okay. Can they stand and  
17 be sworn again?

18 MATT SOLOMON,  
19 after having been first duly sworn under oath, was  
20 questioned and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. FELDEWERT:

23 **Q. Would you please state your name, identify by**  
24 **whom you're employed and in what capacity?**

25 A. Matt Solomon. I am employed by COG Operating,

1 LLC. I'm a staff landman.

2 Q. And, Mr. Solomon, have your responsibilities  
3 included the Permian Basin of New Mexico?

4 A. Correct.

5 Q. And you have previously testified before this  
6 Division as an expert in petroleum land matters,  
7 correct?

8 A. I have.

9 Q. Are you familiar with the application filed in  
10 this case?

11 A. I am.

12 Q. And have you conducted a study of the lands in  
13 this area?

14 A. I have.

15 MR. FELDEWERT: I would retender  
16 Mr. Solomon as an expert witness in petroleum land  
17 matters.

18 EXAMINER JONES: He is so qualified.

19 Q. (BY MR. FELDEWERT) Would you please turn to  
20 what has been marked as COG Exhibit Number 1, identify  
21 it and explain what the company seeks under this  
22 application?

23 A. Sure. It's the C-102 that we've filed. And  
24 the purpose for filing it was to get a nonstandard  
25 spacing and proration unit for our Bonaid Federal Com

1 15H well.

2 Q. Okay. And what nonstandard spacing unit do you  
3 seek to create here?

4 A. The unit that is located in the west half of  
5 the west half of Sections 17 and 20 in Township 24  
6 South, Range 35 East.

7 Q. Now, I think this C-102 has not yet been filed,  
8 correct? This is the draft application or draft C-102  
9 in the exhibit?

10 A. I'm not absolutely sure of that.

11 Q. Okay. But do we know what pool is involved  
12 here?

13 A. My permitting department told me it is going to  
14 be a wildcat Bone Spring Pool. A pool code has not yet  
15 been assigned.

16 Q. And you're seeking to establish this  
17 nonstandard spacing and proration unit in the Bone  
18 Spring Formation?

19 A. That's correct.

20 Q. Now, the wildcat pool, will that be governed by  
21 the Division statewide rules?

22 A. It will.

23 Q. And will the completed interval for this well  
24 comply with those setback requirements?

25 A. It will.

1           **Q.    What's the nature of the acreage in the west**  
2 **half-west half of Sections 17 and 20?**

3           A.    In the west half of the west half of 17, the  
4 acreage is a federal lease. In the west half of the  
5 northwest quarter of 20, that's fee. And in the west  
6 half of the southwest quarter of 20, that is federal  
7 acreage.

8           **Q.    Let me help you out, if I turn to what's been**  
9 **marked as COG Number 2.**

10          A.    Oh, okay. Sorry. No. You are right.

11          **Q.    Okay.**

12          A.    The acreage in the south -- the west half of  
13 the southwest quarter of 20 is fee acreage. The rest of  
14 the acreage is federal -- is a federal lease.

15                   EXAMINER BROOKS: 20 or 17?

16          **Q.    (BY MR. FELDEWERT) You mean 17 perhaps?**

17          A.    Correct. In 17, the west half of the west half  
18 is federal acreage. In 20, the west half of the  
19 north --

20          **Q.    I'm going to stop you a minute. Let's turn to**  
21 **COG Exhibit Number 2.**

22          A.    Okay.

23          **Q.    I'm sorry. I should have taken you there.**

24          A.    Oh. I'm sorry.

25          **Q.    We have a couple of wells here today, so let's**

1 get to this one.

2 A. Right. Right. Okay.

3 Q. Let me ask you this: Does Exhibit Number 2  
4 correctly reflect the tracts that are involved here?

5 A. It does.

6 Q. Okay. Would you just explain what you have  
7 involved here?

8 A. Sure. Let me start with 20. In the west half  
9 of the west half of Section 20, that's a federal lease.  
10 In the west half of the northwest quarter of 17, that is  
11 also the same federal lease. And then the fee acreage  
12 is in the west half of the southwest quarter of 20 -- of  
13 17.

14 Q. Okay. All right. And then if I look at the  
15 second page of this exhibit, does this identify the  
16 interest owners by tract and then by the 320-acre  
17 spacing units?

18 A. Correct.

19 Q. And you had some highlighting here. Are  
20 these -- the parties that are highlighted, Chevron and  
21 Katharine Ross Madera Sharbutt --

22 A. Uh-huh.

23 Q. -- are these the working interest owners that  
24 remain to be pooled?

25 A. Correct.

1 Q. Are there also some nonparticipating royalty  
2 interest owners that you seek to pool?

3 A. That's correct.

4 Q. Okay. And we will have a list of those in the  
5 Notice of Affidavit, correct?

6 A. Correct.

7 Q. All right. If I then turn to what's been  
8 marked as COG Exhibit Number 3, is this a copy of the  
9 well-proposal letter that was sent to the working  
10 interest owners for this acreage?

11 A. That is correct.

12 Q. And did it include an AFE?

13 A. It did.

14 Q. Are the costs reflected on the AFE consistent  
15 with what COG and other operators have incurred for  
16 drilling similar horizontal wells?

17 A. They are.

18 Q. Now, if I look at this letter about halfway  
19 down, does it identify for the Examiner the overhead and  
20 administrative costs that the company seeks in this  
21 pooling order?

22 A. It does.

23 Q. And what are those?

24 A. 7,000 for drilling, 700 for producing.

25 Q. And are those rates consistent with what other

1 operators are charging for similar wells?

2 A. They are.

3 Q. Now, with respect to the working -- remaining  
4 working interest owners that you seek to pool, what have  
5 been your discussions with Chevron after sending this  
6 well-proposal letter?

7 A. Chevron has informed us that they intend to  
8 participate under any issued forced pooling order.

9 Ms. Sharbutt, we are continuing to try to  
10 lease her. My broker has been in constant contact with  
11 her, but has yet to be able to get her to sign a lease.

12 Q. In preparation for this hearing today, did the  
13 company identify the leased mineral interest owners in  
14 the 40-acre tracts surrounding the proposed nonstandard  
15 unit?

16 A. We did.

17 Q. And have those interest owners been included in  
18 the notice of this hearing today?

19 A. They have.

20 Q. If I then turn to what is marked as COG Exhibit  
21 Number 4, is this an affidavit prepared by my office  
22 with the attached notice to provide notice of this  
23 hearing?

24 A. It is.

25 Q. Now, if I page into this -- so four pages into

1 this exhibit, there is a list of pool parties and then  
2 there is an entry for additional pool parties. And it  
3 shows a date of 3/9/2018. Do you see that?

4 A. I do.

5 Q. Okay. The parties under that additional pooled  
6 parties, are those the nonparticipating royalty interest  
7 owners?

8 A. They are.

9 Q. Okay. And it reflects that notice for these  
10 particular individuals didn't go out until March 9th?

11 A. That's correct.

12 Q. So these were subsequently discovered?

13 A. Correct.

14 Q. It also -- in flipping through this, did we  
15 also notice that there was a -- that -- that Ms. Madera  
16 Sharbutt had not yet received her notice of hearing?

17 A. We did.

18 Q. And then there was, likewise, one  
19 other nonparticipating royalty interest owner that had  
20 not received their notice of hearing, correct?

21 A. That's correct.

22 Q. And we had some concerns about the address that  
23 was utilized?

24 A. For Madera Sharbutt, we had some concerns. Not  
25 for Ms. Barnes [phonetic], who we subsequently have

1 spoken to over the phone. And we sent her a copy via  
2 email of the letter and the DPU we're asking her to  
3 ratify, and she has told us she is amenable to that.

4 Q. Okay. So we have two interest owners that --  
5 let me step back.

6 We have one interest owner, that being a  
7 working interest owner, that we need to provide adequate  
8 notice to, correct?

9 A. Correct.

10 Q. So we're going to ask that this case be  
11 continued to the April 5th docket to provide that  
12 notice?

13 A. Correct.

14 Q. Now, in the event that you're able to lease  
15 from her, we can then inform the Division that she no  
16 longer needs to be pooled, and we can then dismiss her  
17 and ask that the matter be taken under advisement?

18 A. Correct.

19 Q. Does that work for you?

20 A. Yes.

21 Q. Were Exhibits 1 through 3 prepared by you or  
22 compiled under your direction and supervision?

23 A. They were prepared by me.

24 MR. FELDEWERT: Mr. Examiner, I'd move  
25 admission into evidence of COG Exhibit Numbers 1 through

1 4.

2 EXAMINER JONES: Exhibits 1 through 4 are  
3 admitted.

4 (COG Operating, LLC Exhibit Numbers 1  
5 through 4 are offered and admitted into  
6 evidence.)

7 MR. HALL: And that concludes my  
8 examination of this witness.

9 CROSS-EXAMINATION

10 BY EXAMINER BROOKS:

11 Q. Is Katharine Madera Sharbutt the actress?

12 A. Oh, you mean Katharine Ross as in "Butch  
13 Cassidy and the Sundance Kid" and "The Graduate"?

14 Q. Yes.

15 A. That's a good question. I don't know.

16 Q. I was curious because people in the acting  
17 profession often have multiple marriages -- well,  
18 successive marriages. Let me correct myself.

19 A. I have read that the Katharine Ross you are  
20 referring to has, in fact, had several marriages.

21 Q. Well, I had also, actually. But I didn't know  
22 the names. And, you know, it's often a question what  
23 someone's legal name is.

24 A. I think you and I read the same story.

25 Q. Might be (laughter). I was curious.

1                   **That's all I have.**

2                   **CROSS-EXAMINATION**

3                   BY EXAMINER JONES:

4                   **Q.    So the additional pooled parties, are they --**  
5                   **are they unleased mineral owners?**

6                   A.    No.  They are nonparticipating royalty interest  
7                   owners.  And the issue here is their royalty interest is  
8                   attached to the fee acreage.

9                   EXAMINER BROOKS:  Yes.  So it's a fee  
10                  royalty.

11                  THE WITNESS:  Right.

12                  EXAMINER BROOKS:  Sometimes called a --

13                  THE WITNESS:  So that fee acreage is very  
14                  atomized, and -- so it's undivided.  And one of the fee  
15                  owners is unleased.  Therefore, because a certain  
16                  fractional percentage of that fee acreage is unleased,  
17                  we can't tie a pooling clause to those owners for that  
18                  particular undivided interest.

19                  EXAMINER JONES:  Okay.  Okay.

20                  EXAMINER BROOKS:  That's a question -- then  
21                  I would have a question.  And I'm not as knowledgeable  
22                  about this as I should be, but I would have a question  
23                  of whether or not a fee royalty that's up -- that's up  
24                  the chain of title rather than down the chain of title  
25                  from the lease is subject to the -- to -- I guess

1 arguably it is. It would be if there were an express --  
2 if there were an express executive right granted to the  
3 lessor, then it would be. We don't have to worry about  
4 that, though, in this case because we've got this one  
5 case where they are definitely not because it's not a  
6 lease, right? Okay. I'm happy with that.

7 **Q. (BY EXAMINER JONES) Will the location of the**  
8 **well change? Have you done an on-site or anything?**

9 A. Yeah. No. We're set. We're going to drill  
10 this.

11 **Q. And there is no newspaper notice in this case,**  
12 **but you might post one; is that right?**

13 MR. FELDEWERT: Well, we will -- we didn't  
14 because, you know, we were confident -- we thought we  
15 had the right addresses. We didn't have any  
16 unlocatable -- we've been able to locate everyone and  
17 speak with everyone, but it turns out that Ms. Sharbutt  
18 no longer has her place in Ruidoso. So we need to get  
19 her a notice of this hearing in the event that she does  
20 not actually lease.

21 **Q. (BY EXAMINER JONES) Okay. So two tracts and**  
22 **federal fee com agreement.**

23 A. Right.

24 **Q. I guess I don't have any questions.**

25 A. Okay. Thank you.

1 MR. FELDEWERT: Call our next witness.

2 EXAMINER JONES: Yes.

3 HENRY ZOLLINGER,

4 after having been previously sworn under oath, was  
5 questioned and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. FELDEWERT:

8 Q. Would you please state your name, identify by  
9 whom you're employed and in what capacity?

10 A. My name is Henry Zollinger. I'm employed by  
11 COG Operating as a geologic supervisor.

12 Q. And, Mr. Zollinger, how long have you had that  
13 position?

14 A. A little over five years.

15 Q. And do your responsibilities include the  
16 Permian Basin of New Mexico?

17 A. Yes, it does.

18 Q. And you have also previously testified before  
19 this Division as an expert in petroleum geology,  
20 correct?

21 A. Yes, I have.

22 Q. Are you familiar with the application filed in  
23 this case?

24 A. Yes, I am.

25 Q. And have you conducted a geologic study on the

1     **lands that are the subject of this hearing?**

2           A.     Yes.

3                         MR. FELDEWERT:    I would retender  
4     Mr. Zollinger as an expert in petroleum geology.

5                         EXAMINER JONES:   He's qualified as an  
6     expert in petroleum geology.

7           **Q.     (BY MR. FELDEWERT) Would you please identify**  
8     **for the Examiner the targeted interval for the proposed**  
9     **area?**

10           A.     It is the 3rd Bone Spring Sand of the Bone  
11     Spring Formation.

12           **Q.     And have you prepared a structure map with a**  
13     **cross section for this zone for the Examiners?**

14           A.     Yes, I have.

15           **Q.     If I turn to what's been marked as Exhibit**  
16     **Number 6 -- let me stop right there.**

17                         MR. FELDEWERT:    Mr. Examiner, I noticed we  
18     do not have an Exhibit 5, so we're on Exhibit Number 6.

19                         EXAMINER JONES:    Okay.

20           **Q.     (BY MR. FELDEWERT) If you turn to what's been**  
21     **marked as Exhibit Number 6, identify it and explain what**  
22     **is shown on this exhibit.**

23           A.     Sure.   Exhibit Number 6 is a land plat with the  
24     COG acreage colored in yellow.   The proposed wellbore is  
25     the purple-dashed line.   There is a producing well in

1 the 3rd Bone Spring offset down to the southwest, which  
2 is a solid purple line, and then the structure contours  
3 are subsea on the top of the Wolfcamp, which is about 50  
4 to 70 feet below our target of this proposed well. You  
5 can see the structure is dipping downdip to the south.

6 Q. And is the -- what do you observe about the --  
7 about the structure? Do you see any faulting or  
8 pinch-outs or any geologic impediments to horizontal  
9 wells?

10 A. No, I do not.

11 Q. And you mentioned you created a cross section?

12 A. Yes.

13 Q. If I turn to what's been marked as COG Exhibit  
14 Number 7, does this identify the wells that you utilized  
15 to create your cross section?

16 A. It does.

17 Q. Why did you choose these particular wells?

18 A. They're representative of the target that we  
19 are targeting for this well and in line with the  
20 drilling of this well also.

21 Q. If I turn to what's been marked as COG Exhibit  
22 Number 8, is this a stratigraphic cross section that  
23 corresponds with the wells shown on Exhibit 7?

24 A. Yes, it is.

25 Q. And have you noted for the Examiners the

1     **formation tops on this exhibit?**

2           A.    I have, yes.

3           **Q.    How are they designated?**

4           A.    They're designated as the top TBSG, which is  
5   the top of the 3rd Bone Spring Sand, which is the  
6   horizontal line at the top of the section.  The top of  
7   Wolfcamp is the flat solid line at the bottom of the  
8   section, which this cross section has been flattened on.

9           **Q.    Have you likewise identified for the Examiner**  
10   **the targeted interval or the landing zone for this**  
11   **proposed well?**

12          A.    Yes, I have.  It's the green bracket on the  
13   left of the farthest left well.

14          **Q.    What do you observe about the continuity of**  
15   **this targeted zone as you move across the acreage at**  
16   **issue?**

17          A.    It's fairly high iso packets [sic] for the  
18   entire 3rd Bone Spring Sand -- from A to A prime, and  
19   the zone is present and contiguous [sic] throughout this  
20   cross section.

21          **Q.    In your opinion, is this interval in this area**  
22   **suitable for development by horizontal wells?**

23          A.    Yes.

24          **Q.    And do you expect each quarter-quarter section**  
25   **within the proposed nonstandard unit to contribute more**

1 or less equally to the production from the wellbore?

2 A. Yes.

3 Q. And in your opinion, is the granting of this  
4 application in the best interest of conservation, the  
5 prevention of waste and the protection of correlative  
6 rights?

7 A. Yes.

8 Q. Were COG Exhibits 6 through 8 prepared by you  
9 or compiled under your direction and supervision?

10 A. Yeah.

11 MR. FELDEWERT: Mr. Examiner, I'd move  
12 admission into evidence of COG Exhibits 6 through 8.

13 EXAMINER JONES: Exhibits 6 through 8 are  
14 admitted.

15 (COG Operating, LLC Exhibit Numbers 6  
16 through 8 are offered and admitted into  
17 evidence.)

18 MR. FELDEWERT: That concludes my  
19 examination of this witness.

20 EXAMINER JONES: Mr. Brooks?

21 EXAMINER BROOKS: No questions.

22 CROSS-EXAMINATION

23 BY EXAMINER JONES:

24 Q. Is this -- the 3rd Bone Spring, is that the  
25 common target out here in this area?

1           A.    It's one of the common targets.  Another one is  
2   also the Wolfcamp A and the Wolfcamp B, from the  
3   previous hearings.

4           **Q.    Oh, okay.**

5                       **Okay.  Thank you very much.  I appreciate**  
6   **you coming up here.**

7           A.    Yeah.

8                       MR. FELDEWERT:  Mr. Examiner, we'd like to,  
9   I guess provisionally, continue this matter to the April  
10  5th docket to allow us to get a copy of the application  
11  and notice of hearing to Ms. Sharbutt.  But in the event  
12  we're able to lease her, I'd like to have the option to  
13  notify the Division, and then we would no longer need  
14  that hearing on the 5th.

15                      EXAMINER BROOKS:  Okay.  And if you're able  
16  to lease her, then she'll no longer be a party.

17                      MR. FELDEWERT:  Correct.

18                      EXAMINER BROOKS:  And everybody else  
19  already has notice?

20                      MR. FELDEWERT:  Yeah.  I'm going to  
21  double-check.  I believe so, but --

22                      EXAMINER BROOKS:  If everybody else already  
23  has notice, they were on the notice of this hearing, so  
24  we will -- I think we can do that.

25                      MR. FELDEWERT:  Okay.

1 EXAMINER JONES: Okay. But as far as  
2 telling Florene how to create the docket --

3 EXAMINER BROOKS: Make it an ordinary  
4 continuance, and then if they're able to lease this  
5 party, we can enter an order of dismissal.

6 EXAMINER JONES: Except for Chevron.

7 EXAMINER BROOKS: Well, yeah. That's  
8 right. We're going to have to enter an order, but.

9 MR. FELDEWERT: I can give you notice, and  
10 then we can just indicate it was not -- we can indicate  
11 it April 5th that the hearing is no longer -- that the  
12 continuance is no longer necessary. I just don't want  
13 it to hold up putting together a pooling order.

14 EXAMINER JONES: We won't do that.

15 EXAMINER BROOKS: Well, you're not really  
16 thinking you're going to get it before April 5th?

17 MR. FELDEWERT: No. No.

18 EXAMINER JONES: Well --

19 EXAMINER BROOKS: We can give it to Mike to  
20 write.

21 EXAMINER JONES: No. I'm through with a  
22 big one that has taken all my time. I don't hope to see  
23 that ever again.

24 EXAMINER BROOKS: I'm holding my breath  
25 until the director approves it.

1                   EXAMINER JONES:  Okay.  Well, we'll go down  
2  as -- as far as Florene goes, for a continuance to the  
3  5th of April.

4                   MR. FELDEWERT:  Yes, sir.

5                   EXAMINER JONES:  So 1:30 then.

6                   (Recess, 11:36 a.m. to 1:32 p.m.)

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1 STATE OF NEW MEXICO  
2 COUNTY OF BERNALILLO

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4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, Certified Court  
6 Reporter, New Mexico Certified Court Reporter No. 20,  
7 and Registered Professional Reporter, do hereby certify  
8 that I reported the foregoing proceedings in  
9 stenographic shorthand and that the foregoing pages are  
10 a true and correct transcript of those proceedings that  
11 were reduced to printed form by me to the best of my  
12 ability.

13 I FURTHER CERTIFY that the Reporter's  
14 Record of the proceedings truly and accurately reflects  
15 the exhibits, if any, offered by the respective parties.

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

20 DATED THIS 10th day of April 2018.

21

22 MARY C. HANKINS, CCR, RPR  
23 Certified Court Reporter  
24 New Mexico CCR No. 20  
25 Date of CCR Expiration: 12/31/2018  
Paul Baca Professional Court Reporters

25