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(9:19 a.m.)

EXAMINER McMILLAN: With that in mind, I'd like to call Case Number 16117, application of COG Operating, LLC for a nonstandard spacing and proration unit and compulsory pooling, Eddy County, New Mexico.

Call for appearances.

MR. FELDEWERT: May it please the examiner, Michael Feldewert, with the Santa Fe office of Holland & Hart, appearing on behalf of the Applicant.

We would ask that this case be consolidated with 16188, where COG is also the Applicant.

And I have two affidavits -- a set of affidavits to present here today.

MS. BRADFUTE: Mr. Examiner, Jennifer Bradfute, with Modrall, Sperling, on behalf of Marathon Oil Permian, LLC, and I have no witnesses.

MR. BRUCE: Mr. Examiner, Jim Bruce entering an appearance on behalf of MRC Permian Company and Tap Rock Resources, LLC.

EXAMINER McMILLAN: And there is no objection to combining the cases?

MS. BRADFUTE: No objection.

MR. BRUCE: No.

EXAMINER McMILLAN: Okay. Please proceed.

MR. FELDEWERT: Yes. Mr. Examiner, we

1 have -- in the packet before you, we have four separate
2 exhibits. They are four separate affidavits, and with
3 respect to each affidavit, there are some attachments.

4 COG Exhibit 1, in each of these
5 consolidated cases, is the hearing affidavit of Ashley
6 Roush, which has three attachments to it. And in her
7 affidavit, Ms. Roush notes that COG, in each of these
8 cases, is seeking to create -- or seeking to pool a
9 640-acre standard horizontal well spacing unit in the
10 Wolfcamp Formation for the wells that are set forth in
11 Exhibit 1A, which are draft C-102s for the Hambone
12 Federal 25H and the Hambone Federal 26H, one of which is
13 devoted to the -- the first which is devoted to the
14 west-half acreage and the second which is devoted to the
15 east-half acreage in Sections 5 and 8, which are at
16 issue here today.

17 Exhibit B to her affidavit, Mr. Examiner,
18 contains the breakdown of the interest owners in each of
19 the proposed 640-acre spacing units. The first two
20 pages of Exhibit 1B deal with, what we'll call, the
21 west-half acreage, and she has highlighted on there the
22 parties that the company seeks to pool. They're
23 highlighted in yellow. And you'll see that there is a
24 mixture of working interest ownership, as well as
25 royalty interest, overriding royalty interest and NPRI

1 interest, net profits royalty interest -- or net
2 proceeds royalty interest, I should say, and a record
3 title owner.

4 With respect to the east-half acreage,
5 which is the second part of Exhibit 1B, you'll likewise
6 see a breakdown for each tract, and highlighted, again,
7 the parties the company seeks to pool, which in that
8 case involves working interests, as well as an
9 overriding royalty interest owner.

10 Attachment 1C to her affidavit contains the
11 well-proposal letters for each well, the 25H and the
12 26H, as well as the AFE that was sent out at the time to
13 the interest owners. Ms. Roush testifies to that AFE
14 and the reasonableness of the costs therein and further
15 testifies that this was sent to all the parties, working
16 interest parties, that they seek to pool.

17 In her affidavit, she requests that the
18 Division approve, as the overhead, 7,000 per month while
19 drilling and 700 per month while producing.

20 Finally, I think pertinent here is
21 Ms. Roush testifies in paragraph seven of her affidavit
22 that there are no depth severances underlying this
23 acreage and that all of the parties that we seek to pool
24 have been located with the exception -- one exception --
25 and that is -- if you go back to Exhibit 1B, which is

1 the tract map for the west-half acreage, you'll see a
2 Tract 5 is federal acreage. And that has recently been
3 released, but the company has been unable to ascertain
4 from the BLM who the lessee is. They haven't released
5 that yet. So we don't know the owner of that particular
6 acreage. But the BLM, of course, has been notified of
7 this hearing. So that's the only interest that is
8 unknown at this time.

9 With that, we would move the admission of
10 Exhibit Number 1.

11 EXAMINER McMILLAN: Objections?

12 MS. BRADFUTE: No objection.

13 MR. BRUCE: No objection.

14 EXAMINER McMILLAN: Exhibit 1 may now be
15 accepted as part of the record.

16 (COG Operating, LLC Exhibit Number 1 is
17 Offered and admitted into evidence.)

18 MR. FELDEWERT: Then in the packet before
19 you, there is a second affidavit by Matt Fisher.
20 Mr. Fisher is a geologist employed by the company. He
21 points out that the target of both of these wells is the
22 Wolfcamp D interval, D, as in dog, for both the Hambone
23 25H and the 26H.

24 He provides, as Exhibit 2A, a depiction of
25 the area that shows the existing development. And

1 you'll see that there is very little. There is
2 certainly no Wolfcamp D development within a mile, and
3 there is no Wolfcamp development -- very little Wolfcamp
4 development within two miles of this particular acreage.
5 That's shown on Exhibit 2A.

6 But one thing he does point out in this
7 affidavit is that the development that is out there is
8 on a stand-up orientation.

9 Exhibit 2B contains a structure map that is
10 prepared by Mr. Fisher. He notes the contouring at 25
11 feet. He also provides the data points that were
12 utilized for his -- for his map, and he reflects that --
13 in his affidavit, that you'll see that the structure
14 gently dips to the east, but, more importantly, he
15 observes no faulting, pinch-outs or any other geologic
16 impediments to developing this acreage with horizontal
17 wells.

18 Exhibit 2C is a map that identifies the
19 three well logs that he utilized to create his sub-cross
20 section. He notes in his affidavit that these were the
21 only log wells available in the area that were usable
22 and extend into the Wolfcamp Formation and that he
23 considers them to be representative, and that's what he
24 utilized to create his cross section, which is Exhibit
25 2D.

1 And on Exhibit 2D, he not only identifies
2 the Wolfcamp D interval but also the target for the
3 laterals that they intend to place within this
4 particular productive zone. He notes that each of these
5 three logs has a gamma ray, resistivity and porosity
6 logs by various colors, and he states, for the record,
7 that the targeted interval extends across the subject
8 acreage.

9 And he concludes in his affidavit that the
10 proposed acreage to form the standard spacing units will
11 contribute more or less equally to the production from
12 the wellbore. So he concludes that this is an area that
13 can be developed by horizontal wells, that the acreage
14 will contribute and that the granting of these
15 applications is in the best interest of conservation,
16 the prevention of waste and the protection of
17 correlative rights.

18 Finally, Exhibits 3 and 4 are simply the
19 notice affidavits prepared by my office with the
20 attached letter, as well as the status of the notice.
21 And you'll see that every party that we seek to pool has
22 been notified of this particular hearing and has
23 received notice of this hearing.

24 Mr. Examiner, that concludes our
25 presentation.

1 I would move the admission into evidence
2 the remaining exhibits, 2, 3 and 4.

3 MS. BRADFUTE: No objection.

4 MR. BRUCE: No objection.

5 EXAMINER McMILLAN: Exhibits 2, 3 and 4 may
6 now be accepted as part of the record.

7 (COG Operating, LLC Exhibit Numbers 2
8 through 4 are offered and admitted into
9 evidence.)

10 EXAMINER McMILLAN: Cross?

11 MS. BRADFUTE: No cross.

12 MR. BRUCE: No.

13 EXAMINER McMILLAN: Okay. Is it -- the
14 first question I've got is: Is it 640 acres? Is it
15 more or less? I see a lot in there.

16 MR. FELDEWERT: Yeah. It would be more or
17 less. I think the lots -- I don't know the lot size,
18 but it's pretty close. It's 640, more or less.

19 EXAMINER McMILLAN: Okay. "More or less."

20 MR. FELDEWERT: I did neglect one thing,
21 now that you raise it, and that is that we've been
22 informed these wells will be placed in the Purple Sage;
23 Wolfcamp. Ms. Roush testifies to that in paragraph
24 five.

25 EXAMINER McMILLAN: Yeah. That's in the

1 applications.

2 EXAMINER BROOKS: There is a lot of Purple
3 Sage down in Eddy County.

4 MR. FELDEWERT: Yes, sir.

5 EXAMINER McMILLAN: So what is the net
6 proceeds? That's essentially an override, isn't it?

7 MR. FELDEWERT: It's akin to an override.

8 MS. BRADFUTE: Is it a nonparticipating, or
9 is it a net profits?

10 MR. FELDEWERT: That is an NPRI.

11 MS. BRADFUTE: It could be either/or.

12 MR. FELDEWERT: Yeah.

13 EXAMINER BROOKS: Get in trouble with
14 acronyms sometimes.

15 MR. FELDEWERT: Yeah, I know.

16 EXAMINER BROOKS: Ambiguity.

17 MR. FELDEWERT: I'm not sure she says and
18 I'm not sure I asked, so I don't know. But it would be
19 a nonparticipating interest, non-cost-bearing interest.

20 EXAMINER McMILLAN: So sounds like
21 derivation [sic] of the royalty.

22 MR. FELDEWERT: I think that's a fair
23 statement.

24 MS. BRADFUTE: Yeah.

25 EXAMINER McMILLAN: And for -- let's make

1 sure -- I guess my question -- I'm trying to understand.
2 In essence, there are unlocatable interests, but it's
3 the BLM that's unlocatable; is that right? Stated
4 wrong?

5 MR. FELDEWERT: Well, there was an unleased
6 federal tract, it is now leased, but the lessee -- the
7 name of the lessee has not been released yet.

8 EXAMINER McMILLAN: So where is it -- so
9 looking at your -- so notice falls upon the BLM, right?
10 Is that a safe statement?

11 EXAMINER BROOKS: I don't know.

12 MR. FELDEWERT: Well, we can't -- we can't
13 pool the BLM royalty, so at this point, there would be
14 no one to notice, although the lease would be subject to
15 the pooling order.

16 EXAMINER McMILLAN: But then you'd have to
17 notify the BLM, right? This is goofy.

18 EXAMINER BROOKS: I believe we require
19 notice to the BLM nowadays, but I'm a little confused on
20 that. We changed that on some things recently.

21 MR. FELDEWERT: So there wouldn't really be
22 any reason to notice the BLM.

23 EXAMINER BROOKS: No. Well, I remember one
24 time being in a meeting with the BLM and we asked them
25 if they wanted notice of certain things, and they said,

1 "No. We monitor your dockets, and if there is anything
2 in there we don't like, we'll let you know."

3 MR. FELDEWERT: You know, the company has
4 been in touch with the BLM, and they've attempted to
5 obtain the name of the lessee, but they can't release
6 it.

7 EXAMINER BROOKS: Well, I guess you'll just
8 have to bring a supplemental application when you find
9 out who it is, because I don't see how we can compulsory
10 pool an undisclosed party.

11 MR. FELDEWERT: Unless the lease is already
12 subject to the pooling.

13 EXAMINER BROOKS: Well, I guess that's
14 true. But if the name of the lessee is undisclosed, I
15 suppose the terms of the lease are also undisclosed. Is
16 that correct?

17 MR. FELDEWERT: I do not know. I assume --
18 well, I don't know the terms of the lease. I just know
19 the winning party is undisclosed at this point.

20 EXAMINER BROOKS: Well, like you say, I
21 assume that if the lease says that it is -- may be
22 pooled by the OCD and the lease is subject to that
23 action, then perhaps we can pool -- pool it without a
24 hearing -- without a notice and hearing. Otherwise, I
25 think it's unconstitutional, and it also runs afoul of

1 the Uhden case, so that's a subject of some concern.

2 MR. FELDEWERT: I understand.

3 EXAMINER McMILLAN: So, in essence, are we
4 going to have to continue the case?

5 MR. FELDEWERT: I don't think so. I think
6 it would be up to -- my point would be if the company is
7 in a position where they feel like they need to pool the
8 new lessee because either they can't reach an agreement
9 or the lease doesn't provide for pooling, they will come
10 back and re-open the case.

11 EXAMINER BROOKS: That is kind of what I
12 was thinking. The practical thing to do would be to go
13 ahead and grant the pooling and then allow for a
14 re-opening.

15 MR. FELDEWERT: I think that's the only way
16 we can deal with it.

17 MS. BRADFUTE: No objection to that.

18 EXAMINER McMILLAN: Jim?

19 MR. BRUCE: I have no comment on it. I
20 probably would have gone ahead and notified the BLM and
21 said, "The heck with it" (laughter).

22 EXAMINER McMILLAN: Okay.

23 EXAMINER BROOKS: Well, I guess you've got
24 a point, Jim. I hadn't thought about that.

25 Well, but it's a constitutional issue. For

1 the notice issues -- for the notice requirements, you're
2 okay because the notice only requires to a party who is
3 named in an instrument that's of record or you have
4 knowledge of, and this instrument is not of record and
5 you don't have knowledge of it so far as the lessee is
6 concerned. The only question then would be: Does it
7 create a right to notice under the due process? And
8 that would be questionable because I've never really
9 tried to figure out whether a person has a right to due
10 process if you don't know who he is. There's been a
11 supposition over centuries that that was the case.
12 That's why we serve unknown heirs.

13 MR. FELDEWERT: I would ask that the case
14 move forward. If there is any concern about -- well, I
15 would ask that the case move forward, that the pooling
16 application be granted, noting that Tract 5 is, at this
17 point, not subject to the pooling order.

18 EXAMINER BROOKS: I think that's a good --
19 I think that's a reasonable way to approach it.

20 EXAMINER McMILLAN: (Indicating.)

21 MS. BRADFUTE: No objection with that.

22 MR. BRUCE: No objection.

23 EXAMINER McMILLAN: Okay. Well, then --
24 okay. So the east half had no unlocatable interests,
25 correct?

1 MR. FELDEWERT: Correct.

2 EXAMINER McMILLAN: There's no depths
3 severances.

4 Okay. Then Case 16117 and Case 16188 shall
5 be taken under advisement.

6 MR. FELDEWERT: Thank you.

7 EXAMINER McMILLAN: And this hearing shall
8 be concluded.

9 (Case Numbers 16117 and 16188 conclude,
10 9:33 a.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 30th day of October 2018.

21

22

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

25