

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. 20417
FOR COMPULSORY POOLING, LEA COUNTY,
NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

May 2, 2019

Santa Fe, New Mexico

BEFORE: SCOTT DAWSON, CHIEF EXAMINER
 DAVID K. BROOKS, LEGAL EXAMINER

This matter came on for hearing before the
New Mexico Oil Conservation Division, Scott Dawson,
Chief Examiner, and David K. Brooks, Legal Examiner, on
Thursday, May 2, 2019, 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
 New Mexico CCR #20
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1 APPEARANCES

2 FOR APPLICANT COG OPERATING, LLC:

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 4 MICHAEL H. FELDEWERT, ESQ.
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1 (8:35 a.m.)

2 EXAMINER DAWSON: So we'll move on to the
3 next case, 20417, which is an application of COG
4 Operating, LLC for compulsory pooling, Eddy County, New
5 Mexico.

6 Please call for appearances.

7 MS. LUCK: Kaitlyn Luck with the Santa Fe
8 office of Holland & Hart, and I'm grabbing these
9 exhibits.

10 EXAMINER DAWSON: When you're ready.

11 MS. LUCK: Thank you.

12 In Case Number 20417, COG is seeking an
13 order pooling all uncommitted interests in the Bone
14 Spring Formation. That is dedicated to pool code WC-025
15 G-08 S213304D, the Bone Spring pool code, 97895,
16 underlying a 320-acre standard horizontal spacing unit
17 comprised of the west half-west half of Sections 9 and
18 16, Township 21 South, Range 33 East, Lea County, New
19 Mexico.

20 The affidavit of Luke Bedrick, who is a
21 senior landman for COG, is attached in the packet as
22 Exhibit A -- or sorry -- Exhibit 1. He's previously
23 testified before the OCD and has had his credentials
24 accepted. He's familiar with the application as filed,
25 and he is familiar with the status of the lands in

1 question. None of the parties proposed to be pooled in
2 these cases have indicated an opposition.

3 In this case COG seeks to dedicate this
4 horizontal spacing unit to the proposed Boone 16 State
5 Com 4H well to be drilled from a surface location in
6 Unit D of Section 21 to a bottom-hole location in Unit D
7 of Section 9. The completed interval for the well will
8 remain within the standard setback as required by the
9 statewide rules for oil wells.

10 COG Exhibit 1A contains the C-102 for the
11 proposed well.

12 COG Exhibit B1 identifies the tracts of
13 land comprised -- comprising the proposed spacing and
14 proration unit in the case. The exhibit also identifies
15 the interest ownership by tract and ultimately by
16 spacing unit. COG is seeking to pool the working
17 interest owners, the unmarketable title owners and the
18 overriding royalty interest owners identified on the
19 exhibit. And you'll see that the uncommitted working
20 interest owners are highlighted in yellow on Exhibit 1B.
21 All interest owners were locatable in this case.

22 COG Exhibit 1C contains a sample
23 well-proposal letter, along with an AFE that was
24 provided to the working interest owners that COG is
25 seeking to pool. The cost reflected on the AFE are

1 consistent with what operators have incurred for
2 drilling similar horizontal wells in the area. No depth
3 severances exist within these proposed spacing and
4 proration units, and there are no unleased mineral
5 interests in the subject acreage.

6 COG has estimated the overhead and
7 administrative costs for drilling and producing is
8 \$7,000 per month while drilling and \$700 per month while
9 producing, which are consistent with what other
10 operators are charging in the area for similar wells.

11 COG provided Holland & Hart with a list of
12 names and addresses with the owners to be notified of
13 this hearing.

14 COG Exhibits 1A through 1C were prepared by
15 Mr. Bedrick.

16 And then we'll move on to Exhibit 2, which
17 is the affidavit of Candice Pettijohn. She is a
18 geologist with COG, and she has previously testified
19 before the Division and had her credentials accepted.
20 She's familiar with the application filed in this case,
21 and she has conducted a geologic study of the Bone
22 Spring shelf within the Bone Spring Formation underlying
23 the subject acreage. In this case COG is targeting the
24 3rd Bone Spring with its proposed Boone 16 State Com 4H
25 well.

1 Exhibit 2A is a project locator map that
2 reflects COG's acreage in yellow. The proposed wellbore
3 for the Bone Spring well is shown by a dashed purple
4 line, and then existing wellbores are shown in the solid
5 purple lines.

6 Moving on to Exhibit 2B, it shows other
7 producing wells in the 3rd Bone Spring Sand, and the
8 stratigraphic map also shows that the formation is
9 gently dipping to the south in this area.

10 Ms. Pettijohn, the geologist, does not observe any
11 faulting, pinch-outs or other geologic impediments to
12 developing the 3rd Bone Spring Shale in this area.

13 Moving on to Exhibit 2C, this is another
14 map that overlays the cross-section line consisting
15 of two -- sorry -- cross section line in green
16 consisting of two wells penetrating the Bone Spring
17 Formation in this area from A to A prime. She considers
18 these wells to be representative of the geology in this
19 case area.

20 Exhibit 2D is a cross section using the
21 representative wells reflected on Exhibit 2C. Each well
22 in the cross section contains gamma ray, resistivity and
23 porosity logs within the proposed target interval in the
24 3rd Bone Spring Sand on the exhibit. The cross section
25 that I'm showing for the target intervals are -- extend

1 across the proposed spacing and proration unit. In her
2 opinion, the stand-up orientation of the proposed wells
3 is the preferred orientation for horizontal well
4 development in the area and is appropriate to
5 efficiently and effectively drain the acreage.

6 Based on her geologic study, the Bone
7 Spring Formation underlying the subject area is suitable
8 for development, and the wells comprising the spacing
9 units will contribute -- or the well comprising the
10 spacing unit will contribute more or less equally to
11 production in the wellbores.

12 In her opinion, the granting of COG's
13 application will be in the best interest of
14 conservation, the prevention of waste and the protection
15 of correlative rights.

16 Finally, turning to Exhibit C -- or Exhibit
17 3, it's an affidavit by me reflecting that notice was
18 provided to all of the interest owners in the proposed
19 spacing unit and reflects that --

20 Oh, one other thing I'd like to mention.
21 This case, there was an issue with the advertisement,
22 and so that's why we're asking for this case to be
23 continued to the next docket, for notice purposes. So
24 notice was provided at the hearing date today, and then
25 we're republishing notice for the continued docket as

1 well.

2 EXAMINER DAWSON: Okay.

3 MS. LUCK: And so at this time, I would
4 move admission of Exhibits 1 through 3, and COG would
5 ask this case be taken under advisement.

6 EXAMINER DAWSON: Okay. There were no
7 opposing attorneys or opposition to this case, so
8 Exhibits 1 through 3 will be taken under advisement --
9 or I mean will be admitted to the record at this time.

10 (COG Operating, LLC Exhibit Numbers 1, 2,
11 and 3 are offered and admitted into
12 evidence.)

13 EXAMINER DAWSON: David, do you have any
14 questions?

15 EXAMINER BROOKS: Yeah.

16 Exhibit C -- no -- B is your table of
17 ownership, right?

18 MS. LUCK: That's correct.

19 EXAMINER BROOKS: And it looks like COG and
20 Advance Energy Partners Hat Mesa are the only persons
21 shown as owning title -- as owning working interests in
22 this tract. Now, these additional interests that are
23 shown under the unit working interests, is that
24 designation explained in the affidavit?

25 MS. LUCK: So it's my understanding that

1 COG, Advance Energy, Chevron and Bullhead Energy are all
2 working interest owners within this proposed spacing
3 unit, but COG and Advance Energy are the only two in
4 Tracts 3 and 4.

5 EXAMINER BROOKS: Well, okay. Now, Chevron
6 U.S.A. and Bullhead are each shown as owning an interest
7 in the unit, but they're not shown as owning an interest
8 in any of the tracts as far as I can tell. So I was
9 wondering if the affidavit explains how those interests
10 arise.

11 MS. LUCK: And I think I would have to
12 clarify with our landman as far as Bullhead, but I
13 understand that Chevron has a working interest in Tract
14 1 and Tract 2, which is reflected on Exhibit --

15 EXAMINER BROOKS: Oh, Chevron. Yeah,
16 Chevron. I'm sorry. I overlooked that.

17 EXAMINER DAWSON: They're on Tracts 1 and
18 2.

19 EXAMINER BROOKS: And Bullhead does not?
20 They don't appear anywhere on the table except the unit
21 working interest?

22 MS. LUCK: That's correct. And I will have
23 to submit a supplement that clarifies what Bullhead's
24 interest is in one of these four tracts.

25 EXAMINER BROOKS: Yeah. We need to know

1 what the nature of that interest is because this exhibit
2 is certainly not self-explanatory.

3 Similarly, we don't know how the
4 unmarketable interests arise. There is a lot of
5 confusion at the OCD about this whole concept of the use
6 of the phrase "unmarketable title." I hope I'm one of
7 the less confused, but that's the best thing I could say
8 about it.

9 Is there any further explanation of this in
10 the affidavit?

11 MS. LUCK: There is not any further
12 explanation of it in the affidavit, so that's why I say
13 that I would have to supplement the record.

14 EXAMINER BROOKS: Well, I think we need a
15 supplemental affidavit.

16 The way I understand the -- COG is
17 basically the only company that does this, and I
18 understand why they do it, but there is never any
19 clarity to it. If you have an ownership in the unit,
20 any interest in the unit, could be a working interest,
21 royalty override -- not a royalty in this because this
22 is all federal, right?

23 MS. LUCK: I think that this -- I just need
24 to clarify. So this is a state com well, so I think
25 they're both state and federal interests.

1 EXAMINER BROOKS: Okay. Well, just because
2 you used the term "record title" on the second table --
3 I mean not you, the geologist -- the landman --

4 MS. LUCK: Okay.

5 EXAMINER BROOKS: I wouldn't necessarily --
6 the geologist used the term "record title," but the
7 landman used the term "record title," and so I assumed
8 that's federal. But the term "record title," although
9 it's not the official term, is very commonly used to
10 refer to the interest of the lessee of record in state
11 leases. So federal or state, that works either way.
12 It's actually the same significance. I'm not really
13 concerned about that. But you have all these other
14 people that are shown in here as unmarketable title.

15 Now, there is no -- am I correct, does this
16 affidavit reflect that there are no fee leases in this
17 proposed unit?

18 MS. LUCK: The affidavit does not reflect
19 whether it's state, federal or fee, and so that might be
20 something that I could also supplement, as well as
21 Bullhead's interest.

22 EXAMINER BROOKS: That would be helpful.

23 MS. LUCK: Okay. I will do that.

24 EXAMINER BROOKS: And as to -- I need to be
25 clear here.

1 MS. LUCK: Okay.

2 EXAMINER BROOKS: What I understand about
3 unmarketable title interest is you credit -- your title
4 examiners credit title to somebody, but note that it's
5 unmarketable for various reasons -- any one of various
6 reasons. And the reason you want to pool those
7 interests -- the reason you want to treat them
8 separately is that if Joe Doakes owns an interest but
9 that interest is unmarketable -- but his title to that
10 interest is unmarketable, that means that Joe Doakes may
11 not, in fact, own it, and somebody else may own it. You
12 think probably not -- your title attorney thinks
13 probably not, but that's the way it is. And so you want
14 to be sure that if Joe Doakes does not own it -- if his
15 title fails and it turns out that Jane Doe owns it, that
16 it will still be in the unit, and, therefore, you want
17 to pool the interests that are -- that would come in to
18 being if the unmarketable -- if the title to the
19 unmarketable interests fail. That's my understanding of
20 why you do that.

21 So what I think -- what I would like to see
22 in these affidavits is an explanation of what title
23 these people hold, not necessarily a decimal. I don't
24 really need a decimal with these interests because you
25 won't get everything in, but what title they hold, an

1 interest in the lease probably. If it's state lands,
2 they probably own an interest in the lease as an
3 operating interest and not a record title interest. So
4 assuming that, then -- or it could be some other type of
5 interest. These are the things we need to know, and
6 then we need to know why they're unmarketable. Are they
7 unmarketable because of -- in most cases, it's
8 unmarketable because there's been no probate on an
9 estate.

10 The facts that we have to establish,
11 though, are that these people -- that certain named
12 people own unmarketable interests and that there are
13 other people that may own interests in this unit, and we
14 want to pool those interests. And so we need to know
15 what they are just in general terms, and that's what I
16 would like to see in the supplemental application.

17 MR. FELDEWERT: Mr. Brooks, Michael
18 Feldewert.

19 We have done this, as you know, for a
20 period of time now --

21 EXAMINER BROOKS: Yes.

22 MR. FELDEWERT: -- for the company. And I,
23 in fact, know that you issued an order at one point in
24 time describing what -- who should be listed and how
25 unmarketable title owner should be addressed.

1 EXAMINER BROOKS: I did. And I don't -- I
2 don't remember exactly what I said.

3 MR. FELDEWERT: I don't either.

4 EXAMINER BROOKS: I think I'm going the
5 same direction now that I was then, but, you know, if I
6 have said something -- if you go by what I said in the
7 past, that should work, with me anyway.

8 MR. FELDEWERT: I think that's what we're
9 trying to do. I mean, the difficulty here is -- as you
10 know, this arises out of a title opinion, generally.

11 EXAMINER BROOKS: Yeah. I would assume it
12 does.

13 MR. FELDEWERT: And so, you know, it seems
14 to me it's -- I don't know if you want a copy of the
15 title opinion page. I mean, that would seem a little
16 odd to me.

17 And number two, at times, because they
18 don't know the extent, you know, to -- they don't know
19 who owns what for a lot of different reasons.

20 EXAMINER BROOKS: Right.

21 MR. FELDEWERT: Okay?

22 And I'm not sure that you're able, in an
23 affidavit, in every case to sit down and explain, Well,
24 Mr. Joe has unmarketable title because A, B, C, D and E,
25 and Mrs. Smith has unmarketable title because of D, E,

1 F, G and H. It's going to get very convoluted and very
2 complicated, and I'm not sure what purpose it serves you
3 as the Division, because I've always understood in the
4 past that what you wanted to be done is to identify all
5 the potential heirs when you're dealing with the State
6 and then all parties that are involved with respect to
7 any dispute over title, and list them in your pooling
8 order and give them notice so that for whatever interest
9 they may have or may not have for whatever reason is
10 covered. And I'm concerned that if we get into an
11 affidavit where we're explaining the basis why everybody
12 has a problem with their title, it's going to get very
13 convoluted.

14 EXAMINER BROOKS: Right. And that is not
15 necessary in a compulsory pooling application -- or
16 order.

17 MR. FELDEWERT: I think that's right.

18 EXAMINER BROOKS: What is necessary is to
19 establish that these people own -- that there are
20 certain people who appear in the title as owners of
21 interests in this unit. And in this case, I feel
22 reasonably sure it's going to be interests in the leases
23 because they're basically state leases. And if there
24 are any fee interests -- in a case where they are fee
25 interests, we need to say that they own unleased mineral

1 interests or they own lease interests. But in this
2 case, probably just that they own lease interests would
3 probably cover interest in the lease, would probably
4 cover it, or that they appear in the title as owners --
5 or potential owners of, that their titles are
6 unmarketable and that there are other people who may own
7 these interests.

8 And we do not require those people -- those
9 other people to be identified. We have no reason to
10 require those other people -- other persons to be
11 identified by name because they're not required to be
12 served with notice. But they are required to be
13 identified as owners, and you can use their name or just
14 say there are such people and that all of them have
15 been -- that you want all of those interests to be
16 pooled, whatever they may be. I think that there is no
17 problem with identifying them by name, but you won't
18 always know their names.

19 Now, in the case of heirs, I said that if
20 you know their names, you have to certify that you have
21 given them notice, even though that's not required by
22 the pooling statute, because I believe it's
23 required -- I believe it's arguably required by due
24 process, if you know who the potential heirs are. If
25 you do not have them identified, I don't think it's

1 necessary to do that, but you can just refer to them as
2 unknown heirs.

3 MR. FELDEWERT: So it sounds like what I'm
4 hearing you want the landman to do in the affidavit --

5 EXAMINER BROOKS: Yeah.

6 MR. FELDEWERT: -- is state that there is a
7 group of unmarketable title owners pooled and then
8 explain what he means by unmarketable title --

9 EXAMINER BROOKS: Yes.

10 MR. FELDEWERT: -- along the lines of:
11 Here is the title of the potential owners of --

12 EXAMINER BROOKS: Right.

13 MR. FELDEWERT: Is that what you need?

14 EXAMINER BROOKS: Well, if I were writing
15 one of those affidavits, I would say: There are
16 interests owned in these oil and gas leases which are
17 working interests in this unit that are -- that appear
18 of record to be owned by the following people, but the
19 titles are unmarketable. Then you would say: If these
20 interests are not owned by the persons identified, they
21 may be owned by a person or persons unknown. And I
22 think then you just say: Well, we request that the
23 interests, whoever owns them, may be -- may be -- that
24 the interest, whoever owns them, be pooled. And then
25 you have to say -- then you need to say -- because if

1 that person -- if you have two people that arguably
2 own -- each of whom arguably owns a certain interest in
3 the land and they're both identified, then I think you
4 need to serve both of those -- you need to notice both
5 of those people. If they're not identified in the
6 instruments of record, then you don't need to serve
7 them.

8 The simple example is a probate, because in
9 a probate, you have the deceased person as the owner of
10 record. And if you know the person is -- if you don't
11 know the person is deceased, you have to try to send
12 notice to that person, which is extremely difficult, and
13 at least to get a signed receipt anyway. Otherwise, you
14 need to identify them as a person or persons unknown or
15 heirs -- unknown heirs of X-Y, and then say: We have
16 served all the ones we know and identified. And the
17 ones that we can't identify -- no, we really don't need
18 to say anything about the ones we can't identify because
19 you can't serve them if you can't identify them. Just
20 say unknown -- the unknown claimants or whatever,
21 however you characterize them. Then you would have to
22 say: And we have served -- we have noticed all heirs of
23 deceased persons whose interests appear in the title
24 whose identity we know, we have actual knowledge at the
25 time of filing the application, then I think you've got

1 it covered. I may have left something out, but that's
2 easy to do in something so complicated.

3 I'll talk to you about it privately.

4 MR. FELDEWERT: Okay. That may be better.

5 EXAMINER BROOKS: I did make an order on it
6 one time, and I think that order is probably still
7 valid. I just don't remember it.

8 MR. FELDEWERT: I hope so.

9 EXAMINER BROOKS: Well, it's still valid as
10 an order, whether it's valid as a concept.

11 No further questions. I apologize for
12 taking so much time on the matter at this time, but it
13 had to be done sometime.

14 EXAMINER DAWSON: I have no further
15 questions either.

16 Do any of you have anything further?

17 MS. LUCK: We'd just like to ask that the
18 case be continued for notice purposes to the May 16th
19 docket.

20 MR. FELDEWERT: Thank you.

21 EXAMINER DAWSON: At this time Case Number
22 20417 will be continued to the next available docket. I
23 am going to mark down May 16th for the case to be
24 continued to, but that will be decided as we look at our
25 caseload on the 16th.

1 MR. FELDEWERT: This is going to be really
2 short.

3 EXAMINER DAWSON: All right. Thank you.

4 MS. LUCK: Thank you, Mr. Hearing
5 Examiners.

6 EXAMINER DAWSON: We will note that and
7 tell them it'll be really short.

8 (Case Number 20417 concludes, 9:02 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 21st day of May 2019.

21

22

23 MARY C. HANKINS, CCR, RPR
24 Certified Court Reporter
25 New Mexico CCR No. 20
Date of CCR Expiration: 12/31/2019
Paul Baca Professional Court Reporters