

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. 20527  
FOR COMPULSORY POOLING, LEA COUNTY,  
NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

June 13, 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, June 13, 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.

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APPEARANCES

FOR APPLICANT COG OPERATING, LLC:  
  
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1 (10:33 a.m.)

2 EXAMINER DAWSON: Okay. Next case 20527,  
3 COG Operating, LLC for compulsory pooling, Lea County,  
4 New Mexico.

5 Please call for appearances.

6 MS. LUCK: Kaitlyn Luck with the Santa Fe  
7 office of Holland & Hart.

8 EXAMINER DAWSON: Any other appearances?

9 Seeing none, when you're ready, Ms. Luck.

10 MS. LUCK: And, Mr. Hearing Examiner,  
11 Mr. Bruce also asked me to advise the Division that he's  
12 also entered as appearance in this case, but he had to  
13 step out, and his entries are on file.

14 EXAMINER DAWSON: So noted.

15 MS. LUCK: Thank you.

16 EXAMINER DAWSON: And when you're ready,  
17 Ms. Luck.

18 Jim Bruce is filing an appearance for who?

19 MS. LUCK: He entered an appearance for  
20 Burlington and also MRC Permian.

21 EXAMINER DAWSON: Burlington and MRC  
22 Permian. Okay.

23 MS. LUCK: And the first witness that COG  
24 is calling in this case is our land witness Megan  
25 Tipton.

1 EXAMINER DAWSON: Okay. Can your witnesses  
2 please stand to be sworn under oath?

3 (Ms. Tipton and Mr. Bacon sworn.)

4 EXAMINER DAWSON: Okay. You may call your  
5 first witness, Ms. Luck.

6 MEGAN TIPTON,  
7 after having been first duly sworn under oath, was  
8 questioned and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. LUCK:

11 Q. Good morning.

12 Please state your name and by whom you're  
13 employed and in what capacity.

14 A. My name is Megan Tipton, and I'm a landman at  
15 COG Operating, LLC.

16 Q. And have you previously testified before the  
17 Division?

18 A. Yes.

19 Q. And were your credentials accepted and made a  
20 matter of public record during those hearings?

21 A. They were.

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

24 A. Yes, I am.

25 EXAMINER BROOKS: Is this Case Number

1 20527?

2 MS. LUCK: That's correct.

3 EXAMINER BROOKS: Okay. Go ahead.

4 **Q. (BY MS. LUCK) And are you familiar with the**  
5 **status of the lands in the subject area?**

6 A. Yes, I am.

7 MS. LUCK: And with that, COG would tender  
8 Ms. Tipton as an expert witness in petroleum land  
9 matters.

10 EXAMINER DAWSON: She will be admitted to  
11 the record as an expert in petroleum land matters at  
12 this time.

13 MS. LUCK: Thank you.

14 **Q. (BY MS. LUCK) Please turn to Exhibit Number 1**  
15 **and identify this exhibit and explain what the company**  
16 **seeks under this application.**

17 A. So COG is seeking the creation of a horizontal  
18 spacing unit comprised of the west-half equivalent of  
19 Section 6 and the west-half equivalent of Section 7,  
20 Township 25 South, Range 35 East, Lea County, New Mexico  
21 and the pooling of all uncommitted interest owners in  
22 the Wolfbone Pool.

23 And so this Exhibit 1, first there is a  
24 little picture denoting the different tracts, and then  
25 ownership is broken up by tract. And at the end is like

1 unit recapitulation, and the interest that we are  
2 seeking to compulsory pool are highlighted in yellow.

3 **Q. And what is the nature of the acreage involved?**

4 A. Federal and fee lands.

5 **Q. And does Exhibit Number 1 identify the parties**  
6 **the company seeks to pool?**

7 A. Yes. And so we are seeking to compulsory pool  
8 all parties highlighted in yellow under unit working  
9 interest, except we have come to a voluntary agreement  
10 with Charlotte S. E. Garza and BEXP I, LP since I  
11 prepared these exhibits.

12 **Q. And is it true in this case COG is seeking to**  
13 **pool working interest owners, unleased mineral interest**  
14 **owners and also unmarketable title owners?**

15 A. Yes. That is correct. And unmarketable title  
16 owners are on the next page of Exhibit 1.

17 **Q. And could you advise the Division what COG**  
18 **means by unmarketable title owners?**

19 A. Yes. And so in this case, unmarketable title  
20 owners are individuals or entities that appear in the  
21 public records as having a claim to an interest in the  
22 ownership of oil, gas or minerals in this proposed  
23 spacing unit, and their ownership is unclear due to  
24 title defects, title disputes, things of that nature.

25 **Q. And were all of the interest owners that you**

1 **seek to pool locatable?**

2 A. Some of the unmarketable title owners were not  
3 locatable.

4 **Q. And what efforts have you undertaken to locate**  
5 **an address for those individuals?**

6 A. We did Google searches. We hired brokers to  
7 try and find them, and then we sent notice to the most  
8 recent address of record, and then we also did notice  
9 via publication.

10 **Q. And what efforts have you undertaken to reach**  
11 **an agreement with the uncommitted -- the remaining**  
12 **uncommitted working interest owners?**

13 A. Currently still negotiating the JOA via email  
14 and phone calls.

15 **Q. Please turn to Exhibit Number 2 and identify**  
16 **what this exhibit is.**

17 A. And so these are the C-102s' plats for all of  
18 the wells.

19 **Q. And is it true that it's your understanding**  
20 **that these wells will be assigned to a wildcat Wolfbone**  
21 **Pool, 98098?**

22 A. Yes. That is correct.

23 **Q. And you mentioned already, is that correct,**  
24 **that these wells do not have API numbers yet?**

25 A. That is correct.

1           **Q.    And will the completed interval for these wells**  
2 **comply with the statewide setbacks?**

3           A.    Yes, they will.  And COG is incorporating  
4 proximity tracts, and so this Stove Pipe Federal Com  
5 602H will be drilled within 330 feet of the  
6 quarter-quarter line, separating the west half-west half  
7 equivalent of Sections 6 and 7 and the east half-west  
8 half of those sections.

9           **Q.    Are there any depth severances in this acreage?**

10          A.    No, there are not.

11          **Q.    Is Exhibit Number 3 a sample well-proposal**  
12 **letter for each well, along with the AFE that was sent**  
13 **to the mineral interest owners, as well as the letter**  
14 **that was sent to those individuals with an unmarketable**  
15 **title requirement?**

16          A.    Yes.  That's correct.

17          **Q.    And are the costs in the AFE consistent with**  
18 **what COG and other operators have incurred for drilling**  
19 **similar horizontal wells?**

20          A.    Yes, they are.

21          **Q.    Has COG made an estimate of overhead and**  
22 **administrative costs while drilling and producing this**  
23 **well?**

24          A.    Yes.  8,000 while drilling and 800 while  
25 producing.

1           **Q.    And are these costs similar to what other**  
2 **operators are charging in this area for these wells?**

3           A.    Yes, they are.

4           **Q.    And is COG requesting an extension of time to**  
5 **complete this well?**

6           A.    Yes, we are.

7                       MS. LUCK:  And with that, I would move the  
8 admission of Exhibit 1 through 3, and I have nothing  
9 further for this witness.

10                      EXAMINER DAWSON:  Okay.  At this time  
11 Exhibits 1 through 3 will be admitted to the record.

12                               (COG Operating, LLC Exhibit Numbers 1  
13 through 3 are offered and admitted into  
14 evidence.)

15                      MS. LUCK:  Thank you, Mr. Hearing Examiner.

16                      THE WITNESS:  Thank you.

17                      EXAMINER BROOKS:  Oh, I have a question.

18   CROSS-EXAMINATION

19 BY EXAMINER BROOKS:

20           **Q.    I'm still confused about the phrase**  
21 **"unmarketable title" as Holland & Hart uses it.  And**  
22 **since nobody else seems to use it, it is a peculiarity.**

23           A.    Yes, sir.

24           **Q.    But I would assume that the purpose of making**  
25 **these requests in compulsory pooling applications is to**

1 be sure that if a court determines at some subsequent  
2 time that -- let's say you've identified the owner as  
3 being Clay Dawes [sic; phonetic], is the owner just  
4 hypothetically. I don't know Clay Dawes. And you have  
5 some reason to believe that -- some legal reason to  
6 believe that somebody else may own it. You would like  
7 to have some assurance that if somebody else does own  
8 it, that it will still be pooled.

9 A. Yes, sir. That is correct. And so these  
10 interests are burdened by title defects or disputes such  
11 as in that situation.

12 Q. Okay. Now, the best example, because the one  
13 that occurs most frequently, I believe, in titles, is  
14 that Clay Dawes is identified in the title instrument as  
15 the interest was conveyed to him, but Clay is dead.  
16 He's in the clay.

17 (Laughter.)

18 A. Poor Clay.

19 (Laughter.)

20 EXAMINER DAWSON: The dirt.

21 Q. (BY EXAMINER BROOKS) And there is a lease to  
22 Clay Dawes, Jr. and you don't know whether he's really  
23 the heir, and there is either no probate or there is no  
24 ancillary probate in New Mexico. But you don't know the  
25 other heirs might be. Well, in that situation, I have

1 advised that you have an obligation to notice people  
2 that you know claim to be heirs or probably heirs even  
3 though they're not identified in the title instrument,  
4 so that notice is not required to them by the rule but  
5 that they have that right under the principles set out  
6 by the Court in the Uhden case, that if you know  
7 somebody has a property interest, you have to notify  
8 them. Well, that's all a relatively simple example.

9           But generally speaking, your owners of  
10 unmarketable title will be both sides of any controversy  
11 if they're identified in the record. Let's say there  
12 is a -- there is a conveyance instrument in the record  
13 from Alan Alda to Joe Schmo. Then there is another  
14 conveyance -- well, let's say no deed out of Joe Schmo.  
15 And then later Alan Alda conveyed it to somebody else.  
16 Well, that somebody else's title is unmarketable because  
17 there is a prior deed out on it, but unless you know who  
18 claims that -- who might claim that interest, you have  
19 no way to notify them, that I'm aware of, unless you  
20 notify unknown heirs. Is that your policy, to notify  
21 known heirs by name -- not by name (laughter); you can't  
22 do that -- but identified as unknown heirs of X?

23           A. Yes, sir. You are correct. Ancillary probate  
24 problems are typically the number one reason we  
25 compulsory pool for unmarketable title. And so in that

1 situation, whenever we're compulsory pooling the estate,  
2 that last-had marketable title, we give notice to  
3 everyone, all the probable heirs and potential heirs.  
4 So anyone who could have a claim to it, we notice all of  
5 them per NMOCD instruction.

6 **Q. So when you identify a list of people as**  
7 **unmarketable title owners, that includes both sides of**  
8 **any title controversy you've identified?**

9 A. Yes, sir.

10 **Q. Okay. Thank you.**

11 A. Uh-huh.

12 EXAMINER DAWSON: I have no further  
13 questions. Thank you.

14 MS. LUCK: With that, we'll call our next  
15 witness, Cody Bacon.

16 EXAMINER DAWSON: Okay. When you're ready.

17 CODY BACON,  
18 after having been previously sworn under oath, was  
19 questioned and testified as follows:

20 DIRECT EXAMINATION

21 BY MS. LUCK:

22 **Q. Good morning.**

23 **Please state your name, by whom you're**  
24 **employed and in what capacity.**

25 A. My name is Cody Bacon, and I'm employed by COG

1 Operating, LLC as a geologist.

2 Q. And have you previously testified before the  
3 Division as an expert in petroleum geology?

4 A. Yes, I have.

5 Q. And were your credentials accepted and made a  
6 matter of public record in these proceedings?

7 A. They were.

8 Q. And are you familiar with the application filed  
9 in this case?

10 A. Yes, I am.

11 Q. Have you conducted a geologic study of the  
12 lands that are the subject of this hearing?

13 A. I have.

14 MS. LUCK: And with that, I would tender  
15 Mr. Bacon as an expert in petroleum geology.

16 EXAMINER DAWSON: Okay. Seeing no  
17 objections, Mr. Bacon will be admitted to the record as  
18 an expert petroleum geologist at this time.

19 MS. LUCK: Thank you.

20 Q. (BY MS. LUCK) Will you please turn to Exhibit  
21 Number 4 and identify what is shown on these exhibits.

22 A. Okay. Exhibit 4 is a location map of the Stove  
23 Pipe Fed Com wells. The red-dashed lines show COG's  
24 Wolfcamp horizontal locations. The solid red lines show  
25 producing Wolfcamp wells. The dashed purple lines show

1 COG's 3rd Bone Spring horizontal locations, and the  
2 solid purple lines show producing 3rd Bone Spring wells.  
3 The yellow shading indicates COG's acreage as seen in  
4 Exhibits 6 and 7.

5 Q. And just behind the first map, is it broken out  
6 into just the Wolfcamp wells and then just the Bone  
7 Spring wells?

8 A. That is correct.

9 Q. So essentially these maps reflect the same  
10 information, but it has both layers on the first map and  
11 then just the Wolfcamp and just the Bone Spring?

12 A. That is correct.

13 Q. And is it true that these wells will be drilled  
14 into the Wolfbone Pool?

15 A. Correct.

16 Q. Okay. And have you prepared a structure map  
17 and cross section of the Wolfbone Pool --

18 A. Yes, I have.

19 Q. And please turn to Exhibit Number 5 and  
20 identify what's shown on this map.

21 A. This is the same as the location map, except in  
22 addition, it now has the top of the Wolfcamp structure  
23 map. It is in subsea, and the contour interval is 50  
24 feet. It shows a very consistent structure across  
25 Sections 6 and 7. There is no indication of faulting or

1 pinch-outs or any other geologic impediments.

2 Q. So have you prepared a cross section of logs to  
3 determine the relative thickness and porosity in this  
4 area?

5 A. Yes, I have.

6 Q. And do you consider the wells to be  
7 representative of the Wolfbone area near the proposed  
8 spacing unit?

9 A. Yes.

10 Q. Please turn to Exhibit Number 6. Please  
11 identify and describe this exhibit.

12 A. This is the location map. And instead of the  
13 structure map, it now shows cross-section line A to A  
14 prime.

15 Q. And on this map -- sorry. Could you turn to  
16 Exhibit Number 7 and explain these logs and what they  
17 mean?

18 A. Sure. This is the cross section, A to A prime,  
19 that we saw on the previous map. It shows -- excuse me.  
20 It is a stratigraphically hung cross section on the top  
21 of the Wolfcamp. You can see that by the red line. And  
22 then at the top, the purple line, it shows the top of  
23 the 3rd Bone Spring. And at the bottom, on the far left  
24 log, the Pitchfork, it shows the Wolfcamp B in black.  
25 And just above the word "Wolfcamp," you'll see a green

1 bracket that shows the sand target. This is where the  
2 600 Series wells will be. And below the word  
3 "Wolfcamp," there is another green bracket showing shale  
4 targets. That will be where the 700 Series will be.

5 Q. And do these logs show continuity across the  
6 proposed standard spacing unit?

7 A. It does. The thickness is consistent, and the  
8 targets are correlative across the area.

9 Q. And is the Wolfbone Pool in this area suitable  
10 for development by horizontal wells?

11 A. Yes, it is.

12 Q. Is the proposed orientation of the horizontal  
13 well appropriate for this area?

14 A. Yes, it is.

15 Q. And do you expect that each quarter-quarter  
16 section within the proposed standard spacing unit to  
17 contribute more or less equally to production from the  
18 wellbores?

19 A. Yes.

20 Q. And in your opinion, is the granting of COG's  
21 application in the best interest of conservation, the  
22 prevention of waste and the protection of correlative  
23 rights?

24 A. Yes.

25 Q. And where were Exhibits 6 through 9 prepared by

1     **you or under your direction and supervision?**

2           A.     Yes, they were.

3                   MS. LUCK:   And with that, I would move  
4 admission of COG Exhibits 6 through 9.

5                   EXAMINER DAWSON:   Okay.  At this point  
6 Exhibit 6 through 9 --

7                   MS. LUCK:   I apologize.  4 through 7.

8                   EXAMINER DAWSON:   At this point Exhibits 4  
9 through 7 will be admitted to the record.

10                   (COG Operating, LLC Exhibit Numbers 4  
11 through 7 are offered and admitted into  
12 evidence.)

13                   EXAMINER DAWSON:   Do you have any  
14 questions?

15                   EXAMINER BROOKS:   No questions.

16                                   CROSS-EXAMINATION

17     BY EXAMINER DAWSON:

18           **Q.     This Wolfbone Pool, are you producing from this**  
19 **Wolfbone Pool nearby?**

20           A.     Yes, sir.

21           **Q.     That pool has been around awhile?**

22           A.     It has.  I'm not sure how long.

23           **Q.     Okay.  It's fairly new, though, right?**

24           A.     I believe so.

25           **Q.     And that was per Paul Kautz, the Wolfbone?  Did**

1     **they dedicate these wells to the Wolfbone Pool?**

2           A.     Yes.

3           **Q.     That's all the questions I have. Thank you**  
4 **very much?**

5                   MS. LUCK: And with that, COG would request  
6 that this case be taken under advisement.

7                   EXAMINER DAWSON: Okay. So at this time,  
8 Case Number 20527 will be taken under advisement.

9                   Thank you very much.

10                   MS. LUCK: Oh, and I apologize. I'm sorry.  
11 I'm asking that the case be continued to the next  
12 available docket to perfect notice in this case. So I  
13 apologize. The case can't be taken under advisement  
14 quite yet. We need to perfect notice. And so that's  
15 why none of those exhibits were included with the  
16 packet.

17                   EXAMINER DAWSON: So you're asking that  
18 this be continued to July 11th?

19                   MS. LUCK: The July 25th docket is fine if  
20 that's what the Division prefers, but we'll leave it to  
21 the preference of the Division. We would ask to be  
22 advised of the hearing date so we can provide proper  
23 notice.

24                   EXAMINER DAWSON: Okay. We will continue  
25 this case to July 25th.

1 MS. LUCK: Thank you, Mr. Hearing Examiner.

2 EXAMINER DAWSON: Thank you.

3 So Case Number 20527 will be continued to  
4 July 25th.

5 (Case Number 20527 concludes, 10:51 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 June 2019.

21

22

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

25