

**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, EDDY COUNTY,
NEW MEXICO.**

Case No. 21292

**APPLICATION OF COG OPERATING LLC
FOR COMPULSORY POOLING, EDDY COUNTY,
NEW MEXICO.**

Case No. 21293

**MEWBOURNE OIL COMPANY'S REPLY IN SUPPORT OF ITS
MOTION TO DISMISS**

Mewbourne Oil Company ("Mewbourne") submits this reply in support of its motion to dismiss the above applications.

A. INTRODUCTION.

Mewbourne filed its motion to dismiss based primarily due to an agreement between Mewbourne and COG Operating LLC ("COG") to develop certain acreage voluntarily under a Joint Operating Agreement between the parties. COG filed a response, stating that the Division has no jurisdiction to determine contractual disputes. While that narrow issue is correct, COG's actions contradict the pooling statutes and ignore the Division's responsibility to consider "good faith negotiations" between the parties in a pooling case.

B. FACTS.

1. In Case No. 21292 COG seeks an order pooling all mineral interests in the Wolfcamp formation underlying the East halves of Section 5, 8, and 17, Township 25 South, Range 28 East, NMPM.

In Case No. 21293 COG seeks an order pooling all mineral interests in the Wolfcamp formation underlying the West halves of Section 5, 8, and 17, Township 25 South, Range 28 East, NMPM.

2. All of Sections 5 and 8, Township 25 South, Range 28 East, NMPM are subject to a Joint Operating Agreement dated December 15, 2018, which covers depths below the Second Bone Spring Sand zone within the Bone Spring formation (the "Pale Rider" JOA). Mewbourne is

the designated operator under the JOA. *COG signed the mutually negotiated JOA on July 31, 2019, less than a year ago.*¹ This was done after Mewbourne and COG completed an acreage trade, and part of that agreed-upon trade was that Mewbourne would operate Sections 5 and 8.

3. Mewbourne has proposed eight (8) two mile Wolfcamp wells under the JOA (described in the motion). *Significantly, COG signed AFEs to voluntarily participate in all of these wells 2-3 months ago.*

4. Mewbourne has incurred the cost to obtain approved APDs for the wells, and has commenced building locations, *based on what COG agreed to.* COG is contractually bound to participate in the drilling of the eight wells, and Mewbourne has incurred costs based on COG's agreement to drill the wells in Sections 5 and 8.

5. In order to obtain pooling orders on its proposed wells, COG must show evidence of good faith negotiations with Mewbourne. **Division Order No. R-13165; NMSA 1978 §§70-2-17, 18.**

C. ARGUMENT.

COG's applications should be dismissed for the following reasons:

(a) There is a voluntary agreement covering all of Sections 5 and 8, agreed to by COG. Thus, NMSA 1978 §70-2-17.C cannot and should not be invoked to compulsory pool that acreage in the Wolfcamp formation.

(b) COG agreed that Mewbourne should be operator of the Wolfcamp formation underlying Sections 5 and 8. It should not be allowed to use NMSA 1978 §70-2-17.C to breach that agreement.

(c) COG approved the drilling of the eight wells just a couple months ago. This is further evidence that COG voluntarily agreed that the Wolfcamp formation in Sections 5 and 8 should be developed independently of other acreage.

(d) NMSA 1978 §70-2-17.C states in part:

When two or more separately owned tracts of land are embraced within a spacing or proration unit, or where there are owners of royalty interests or undivided interests in oil and gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit, **the owner or owners thereof may validly pool their interests and develop their lands as a unit.** Where, however, such owner or owners have **not agreed** to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to

¹ COG refers to the JOA as a 2018 agreement. However, after substantial negotiations COG signed the agreement only in late July 2019. The dates just show that it took well over one-half year of negotiations between the parties to obtain COG's signature to the binding agreement.

protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit.

(e) In this case Mewbourne and COG have “validly pooled” their interests. Thus, Sections 5 and 8 cannot be pooled.

(f) Moreover, in every contract in New Mexico there is an implied duty of good faith and fair dealing. COG’s actions show it has not complied with this duty, and thus it cannot show the “good faith” necessary to obtain pooling orders.

(g) Furthermore, COG can drill three miles laterals to the South with all of Sections 17, 20, and 29, Township 25 South, Range 28 East, NMPM, which it already operates.

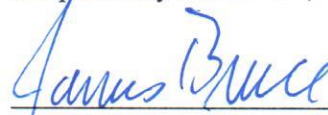
(h) Mewbourne has demonstrated itself to be a competent operator of two-mile lateral wells in New Mexico. In conjunction with that fact, COG has not drilled any three-mile lateral wells in New Mexico.

D. CONCLUSION.

Based on the foregoing, Sections 5 and 8 cannot and should not be pooled with Section 17. Moreover, COG is renegeing on its recent voluntary agreement with Mewbourne under which it agreed to develop Sections 5 and 8 with Mewbourne as operator. Compulsory pooling should not be countenanced by the Division under these circumstances.

WHEREFORE, Mewbourne requests that COG’s applications be dismissed without need of a hearing.

Respectfully submitted,



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Attorney for Mewbourne Oil Company

VERIFICATION

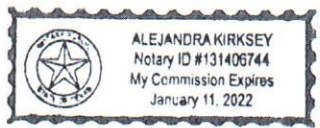
STATE OF TEXAS)
) ss.
COUNTY OF MIDLAND)

Mitch Robb, being duly sworn upon his oath, deposes and states that: He is a landman for Mewbourne Oil Company; he is authorized to make this verification on its behalf; he has read the foregoing motion, and knows the contents thereof; and the facts set forth in Section B above true and correct to the best of his knowledge, information, and belief.

Mitch Robb
Mitch Robb

SUBSCRIBED AND SWORN TO before me this *14th* day of July, 2020 by Mitch Robb.

My Commission Expires: *January 11, 2022* *Alejandra Kirksey*
Notary Public



CERTIFICATE OF SERVICE

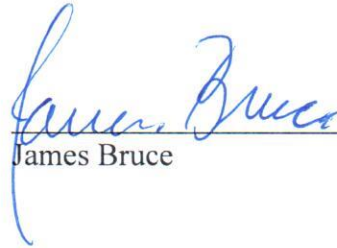
I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 7th day of July, 2020 by e-mail:

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