

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

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IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION DIVISION FOR
THE PURPOSE OF CONSIDERING:

COPY

Case No.: 14699

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

Consolidated with,

Case No.: ¹⁴⁷⁰⁰~~14670~~

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS
EXAMINER HEARING

BEFORE: TERRY WARNELL, Technical Examiner
DAVID K. BROOKS, Legal Examiner

August 4, 2011

Santa Fe, New Mexico

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This matter came on for hearing before the New Mexico Oil Conservation Division, TERRY WARNELL, Technical Examiner, and DAVID K. BROOKS, Legal Examiner, on August 4, 2011, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South St. Francis, Drive, Room 102, Santa Fe, New Mexico.

REPORTED BY: Irene Delgado, NM CCR 253
Paul Baca Professional Court Reporters
500 Fourth Street, NW, Suite 105
Albuquerque, New Mexico 87102

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A P P E A R A N C E S

FOR THE APPLICANT:
BEATTY & WOZNIAK, PC
CAROL LEACH
500 Don Gaspar Avenue
Santa Fe, NM 87504

I N D E X

BRANDON GAYNOR	
Direct Examination by Ms. Leach	04
EXHIBITS 1 THROUGH 4 ADMITTED	15

1 EXAMINER BROOKS: Okay. Very good. And now call Case Number
2 14699, application of COG Operating LLC for compulsory
3 pooling, Eddy County, New Mexico, and Case Number 14700,
4 application of COG Operating for compulsory pooling, Eddy
5 County, New Mexico.

6 There is a motion pending to consolidate those two
7 cases, so that's why I'm calling them together. Call for
8 appearances.

9 MS. LEACH: Carol Leach from the law firm of Beatty
10 and Wozniak from Santa Fe.

11 EXAMINER BROOKS: Any other appearances?

12 (No response.)

13 EXAMINER BROOKS: Well, since the motion to
14 consolidate is your motion, and there is no one else
15 appearing, I guess it's unopposed, so we will proceed with
16 the consolidated cases 14699 and 14700.

17 MS. LEACH: Thank you. I would like to call my
18 first witness, Brandon Gaynor, and I would like to introduce
19 Clay Whitehead. He is the company representative for COG
20 Operating today.

21 EXAMINER BROOKS: Very good.

22 MS. LEACH: And the rest of your audience are
23 interns at COG.

24 EXAMINER BROOKS: Great. Well, so as I told the
25 representative of the Horizontal Well Committee, they're our
best customer.

MS. LEACH: I'm not sure if that's good or bad.

1 Have to think about that for a minute.

2 A brief opening statement. What we have here today
3 are two on applications for compulsory pooling, so two
4 separate 40-acre tracts. We are proposing to basically the
5 attempt to drill the Paddock and Blinebry Wells in either of
6 the spacing units as regular 40-acre spacing units. And so
7 with that, I will -- would you like to swear in Mr. Gaynor.

8 (Oath administered.)

9 EXAMINER BROOKS: You may proceed.

10 BRANDON GAYNOR

11 (Having been sworn testified as follows.)

12 DIRECT EXAMINATION

13 BY MS. LEACH:

14 Q. Mr. Gaynor, would you please state your name for the
15 record?

16 A. Brandon Gaynor.

17 Q. Where do you reside?

18 A. Midland, Texas.

19 Q. For whom do you work?

20 A. Concho Resources.

21 Q. What do you do for Concho Resources?

22 A. I'm a landman.

23 Q. What does a landman do for Concho Resources?

24 A. Clear title for drilling locations, acquire new
25 locations, clean up title problems, things like that.

1 Q. Would you describe your education and training just
2 briefly that qualifies you to be a landman?

3 A. Yes. I went to law school at Indiana University in
4 Bloomington, Indiana. Passed the Texas Bar and worked as a
5 landman for two years.

6 Q. Have you testified before the OCD Hearing Examiners
7 before?

8 A. I have.

9 Q. Were your credentials accepted as an expert
10 petroleum landman in that case?

11 A. Yes, they were.

12 Q. Are you familiar with the application of the two
13 cases we are here on today?

14 A. Yes, I am.

15 Q. Are you familiar with the mineral and the leasehold
16 ownership of the land in the application in both cases?

17 A. Yes, I am.

18 MS. LEACH: At this time I tender Mr. Gaynor as
19 expert in petroleum landman.

20 EXAMINER BROOKS: So qualified.

21 Q. To start, Mr. Gaynor, would you tell us what COG or
22 Concho is seeking with the two applications?

23 A. Yes. We are seeking an order pooling the interest
24 of the Wheatley heirs, in particular, in these tracts so that
25 we can drill the Kiowa State Number 1 and Number 3 Wells.

1 Q. Are you seeking to just pool from 2,000 feet below
2 the surface to 5,000 feet below the surface?

3 A. Yes.

4 Q. And what -- would you tell us what units and
5 townships these tracts are in?

6 A. Yes. This is the Southeast Quarter of the Northwest
7 Quarter and the Southwest Quarter of the Northeast Quarter of
8 Section 36, Township 17 South, Range 27 East.

9 Q. Would you look at what we have marked as Exhibit 1
10 and tell us what that shows.

11 A. Yes. This is a plat showing basically the area that
12 we are seeking an order, and the red box outlines the two
13 proration units.

14 Q. So there are Numbers 1 and 3 above your red box, and
15 those are for the Kiowa State Well Number 1 for one of the
16 40-acre spacing units and Kiowa State 3 for the other 40-acre
17 spacing unit?

18 A. Yes, that's correct.

19 Q. Those circles are where you intend to drill the
20 wells. Is that correct?

21 A. Those are the surface locations, yes.

22 Q. And at the present are the Well Number 1 Blinebry or
23 Paddock Wells in the spacing units?

24 A. No, they are not.

25 Q. And each of those spacing units are 40 acres. Is

1 that correct?

2 A. Yes.

3 Q. Okay. And that's the standard spacing unit in the
4 area?

5 A. Yes, it is.

6 Q. If the pooling applications are granted, what does
7 COG propose to do with the G2 Pool Spacing Units?

8 A. We plan to drill the Kiowa State Wells Number 1 and
9 Number 3.

10 Q. And those will go into the Blinebry Paddock
11 formations?

12 A. Yes, that's right.

13 Q. Has COG already received permits to drill the
14 proposed wells?

15 A. Yes, we have.

16 Q. Can I get you to look at what we will mark as
17 Exhibit 2, please?

18 A. Yes.

19 Q. And tell us what that is.

20 A. This is our permit for the Kiowa State Number 1
21 Well.

22 Q. Is it approved?

23 A. Yes, it is.

24 Q. When was it approved?

25 A. It was approved on January 10 of this year.

1 Q. Does your permit package that is Exhibit 2 also
2 include a C-102 form?

3 A. Yes, it does.

4 Q. And the C-102 shows where you intend to drill the
5 well?

6 A. Yes, it does.

7 Q. I would like you to look at Exhibit 3, please.

8 A. Uh-huh.

9 Q. Will you tell us what that is.

10 A. This is also the permit packet for the Kiowa State
11 Number 3 Well.

12 Q. Has that permit been approved?

13 A. Yes, it has.

14 Q. And is that a little -- what else is in that package
15 besides just the permit approval?

16 A. Also there is a non-standard location approval for
17 the well.

18 Q. Can you find that for us and point it out to the
19 Hearing Examiners?

20 A. It's somewhere towards the back of this package,
21 Yeah, almost two-thirds to the back.

22 Q. Is that Administrative Order NSL-6356?

23 A. Yes.

24 Q. When was that issued?

25 A. April 1 of this year.

1 Q. All right. And it's a non-non-standard location
2 because the surface location does not comport with the
3 setbacks for the spacing unit?

4 A. Yes, that's correct.

5 Q. Okay. But is the production of the completed
6 portion of the well within the setback?

7 A. Yes. The producing interval is the appropriate
8 distance from the lease line.

9 Q. Okay. Thank you. And have you look at Exhibit 4,
10 please.

11 A. Yes.

12 Q. And, just briefly, what is the package of
13 Exhibit 4?

14 A. This package of materials is basically our affidavit
15 that we have given notice to everybody, and it's also a copy
16 of all of our correspondence with the individuals to try to
17 sort something out voluntarily with the other interest
18 owners.

19 Q. And have you been able to sort that out voluntarily
20 with some of the interest owners?

21 A. Yes. We have -- when we started this process, we
22 owned most of the interest, but John W. Gates LLC owned an
23 interest, Leland Price Inc. owned an interest and the
24 Wheatley heirs owned an interest. We have been able to
25 acquire term assignments from John W. Gates and Leland Price,

1 but not from the Wheatley heirs.

2 Q. The Wheatley heirs are basically the group that have
3 a special agency relationship with a bank?

4 A. Yes.

5 Q. And what bank is that?

6 A. First American Bank in Artesia.

7 Q. What percentage of an interest do the Wheatley heirs
8 own?

9 A. Collectively they own 3/48.

10 Q. So the rest of the 45/48 is now either with term
11 assignment or owned by COG. Is that correct?

12 A. That is correct.

13 Q. And will you tell us what efforts you have made to
14 basically contact the Wheatley heirs, what your process was.

15 A. Sure. Initially I called the bank to ensure that
16 the special agency agreement was still in force, and, when I
17 did that, I spoke to them about what we were trying to do,
18 and they asked for us to send a proposal, so I did. I sent a
19 proposal letter.

20 Q. And then what happened after the proposal letter?
21 Did you talk to them?

22 A. I did. I called back again, and Thomas Mitchell was
23 the account manager at the time, and he looked at it and said
24 that generally they send all of their proposals to a man
25 named Charles Joy who lives there in town -- he is an

1 engineer -- to review everything and that I would be hearing
2 from him in the next few days.

3 And I did hear from Charles Joy who called me to
4 talk about this, but he didn't like our form of term
5 assignment. He didn't like our form of operating agreement.
6 I asked him what the problems were, what kind of terms he was
7 looking for, and he had a form that he would prefer that we
8 use.

9 And basically it's been very difficult to deal with
10 him, and he -- at one point in time I called and asked if I
11 could come into town and take him to lunch because I thought
12 we had sort of a misunderstanding, and he told me that he
13 would not sit down and eat with me.

14 Q. Okay. Let's go through some of the materials in
15 Exhibit 4. And the affidavit was prepared by me as part of
16 my role in this case in the applications. But I used Exhibit
17 A that has two names on it. Did you provide me with a list
18 in Exhibit A?

19 A. Yes.

20 Q. And where did you come up with those names from?

21 A. That came from a title opinion prepared by Bob
22 Bledso from the accountant Bledso Firm.

23 Q. Okay. And at this point, you have an agreement with
24 Leland Price. Is that correct?

25 A. Yes, that's correct.

1 Q. So the only party that's subject to the compulsory
2 pooling is First American Bank, Thomas Mitchell on behalf the
3 Wheatley heirs. Is that correct?

4 A. Yes. Yes.

5 Q. So if you will look at Tab 1 in there and tell us
6 what that is.

7 A. This is our initial proposal to the Wheatley heirs.
8 It's a combination well proposal request for term assignment.

9 Q. And you sent that to them certified mail?

10 A. Yes, I did.

11 Q. And attached to that well proposal and -- what
12 documents are attached to that well proposal?

13 A. Well, first of all, there was a title curative
14 requirement that I wanted to make them aware of so that they
15 could clean up their own title, and so I sent that along with
16 it. There is also a plat showing their interest and -- net
17 revenue interest and the AFE.

18 Q. And the AFE is the authority for the expenditure for
19 drilling?

20 A. Yes.

21 Q. What does it show the cost of the proposed completed
22 well is?

23 A. The completed well is \$1,300,000.

24 Q. And the dry hole well cost?

25 A. \$440,000.

1 Q. And did you send the Wheatley heirs also in care of
2 the bank a letter about the Kiowa State 3 proposed well in
3 the tract on which it is located?

4 A. Yes. It's almost an identical letter. The AFE is
5 slightly different.

6 Q. And it also was sent by certified mail?

7 A. Yes.

8 Q. And you said the AFE was slightly different. How is
9 that?

10 A. On the Kiowa State Number 3, since it's
11 directionally drilled from the surface so that it perforates
12 the appropriate distance from the lease line, it's slightly
13 more expensive. It's \$1,417,000 completed.

14 Q. And ask you to look at Tab 5 in Exhibit 4. And
15 that's my letter to First American Bank to the Wheatley
16 heirs, and I sent that with the application at your
17 direction. Is that correct?

18 A. Yes.

19 Q. And we have all the material for the Leland Price
20 Inc, but we don't really need to talk about those since they
21 signed a term assignment. And the other documents in the
22 package are what I sent out on letterhead, the original
23 letters -- more letters, so you have the complete package
24 basically talking about the wells you intend to drill. Are
25 the costs that you described in the AFE similar to the cost

1 of COG for other wells?

2 A. Yes.

3 Q. Are they similar to the cost that COG sees in
4 operations by other operators in the area?

5 A. Yes. These are well within the ordinary range.

6 Q. Do you have a proposed overhead or administrative
7 rate during drilling and during production for these wells?

8 A. Yes. 6,000 for drilling and 600 for producing.

9 Q. So do you want the overhead cost to be incorporated
10 into the compulsory pooling order of OCD?

11 A. Yes.

12 Q. And do you want the order to include adjustments
13 consistent with COPAS Accounting Procedures?

14 A. Yes.

15 Q. Do you want a risk factor included in the orders for
16 compulsory pooling?

17 A. Yes, we do.

18 Q. You want that risk factor to be set at 200 percent
19 for any interest owner who does not voluntary commit his or
20 her interest?

21 A. Yes.

22 Q. Who do you propose to be the operator of these
23 wells?

24 A. Concho.

25 Q. Why?

1 A. Because we proposed the well and we have the
2 majority interest.

3 Q. So you want the order to designate Concho or COG as
4 operator in both units? //

5 A. Yes.

6 Q. Would the granting of the application be in the
7 interest of conservation and prevention of waste and protect
8 correlative rights?

9 A. Yes, it will.

10 Q. Does granting the order allow Concho to drill the
11 wells?

12 A. Yes, it does.

13 Q. Were Exhibits 1 through 4, were they prepared by you
14 or under your direction by COG and are they are now part of
15 the permits approved by OCD?

16 A. Yes.

17 MS. LEACH: With that, I move Exhibits 1 through 4.

18 EXAMINER BROOKS: 1 through 4 admitted.

19 (Exhibits 1 through 4 admitted.)

20 MS. LEACH: And that's our case.

21 EXAMINER BROOKS: Okay. The Wheatley heirs are the
22 only interest to be pooled. Is that correct?

23 THE WITNESS: Yes, that's correct.

24 EXAMINER BROOKS: And collectively how much do they
25 own?

1 THE WITNESS: Three forty-eighths.

2 EXAMINER BROOKS: Three forty-eighths of the total?

3 THE WITNESS: Yes.

4 EXAMINER BROOKS: And is this -- is this an unleased
5 mineral interest?

6 THE WITNESS: These are -- these are two different
7 state leases.

8 EXAMINER BROOKS: So they own interest in the lease,
9 not in the mineral interest?

10 THE WITNESS: Yes.

11 EXAMINER BROOKS: And what is basis of your
12 conclusion that the First American Bank represents them? Is
13 that based on the bank's representations?

14 THE WITNESS: In the title opinion, there is a note
15 that there is a special agency agreement --

16 EXAMINER BROOKS: Oh, okay.

17 THE WITNESS: -- that's in force.

18 EXAMINER BROOKS: Okay. Now, 2000 to 5000, that's
19 the depth interval?

20 THE WITNESS: There are depth severances in the
21 ownership.

22 EXAMINER BROOKS: So that's the limit of the
23 ownership -- that's the limit of COG's ownership?

24 THE WITNESS: Yes.

25 EXAMINER BROOKS: Is all of that interval in this

1 same pool?

2 THE WITNESS: This all the Northeast Red Lake
3 Glorieta-Yeso Pool.

4 EXAMINER BROOKS: Its all in the Glorieta-Yeso?

5 THE WITNESS: Yes.

6 EXAMINER BROOKS: Okay. Chuck Joy, if he is the
7 same one I used to know must be pretty darn old now.

8 THE WITNESS: He sounds old.

9 EXAMINER BROOKS: If I'm not mistaken, he used to
10 work for Ernest Davinger when Ernest Davinger was the
11 contract engineer for David Asking, and that was before 1965
12 when I was in high school.

13 UNIDENTIFIED SPEAKER: Don't talk to Mr. Gaynor
14 about things in the listless past. He doesn't understand
15 that.

16 EXAMINER BROOKS: He is a young man.

17 MS. LEACH: I made the mistake using the term,
18 "broken record." I don't think he understood that.

19 EXAMINER BROOKS: Anybody who was working when I was
20 in high school has got to be pretty old now. Okay. I can't
21 think of anything else to ask about. If there is nothing
22 further, cases 14699 and 14700 will be taken under
23 advisement.

24 MS. LEACH: Thank you.

25

* * * * *
I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. 14699-14700
heard by me on 8-4-11

David K. B...
Examiner

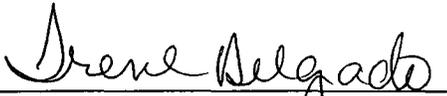
REPORTER'S CERTIFICATE

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I, IRENE DELGADO, New Mexico CCR 253, DO HEREBY CERTIFY THAT ON August 4, 2011, proceedings in the above-captioned case were taken before me and that I did report in stenographic shorthand the proceedings set forth herein, and the foregoing pages are a true and correct transcription to the best of my ability.

I FURTHER CERTIFY that I am neither employed by nor related to nor contracted with any of the parties or attorneys in this case and that I have no interest whatsoever in the final disposition of this case in any court.

WITNESS MY HAND this _____ day of August 2011.


Irene Delgado, CCR 253
Expires: 12-31-2011