

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

**IN RE APPLICATION OF COG OPERATING LLC  
FOR COMPULSORY POOLING,  
LEA COUNTY, NEW MEXICO**

**CASE NO. 22474**

**OIL CONSERVATION DIVISION'S CLOSING ARGUMENT**

The New Mexico Oil Conservation Division ("OCD") submits this Closing Argument in support of its Opposition to COG Operating, LLC's ("COG") Application for Compulsory Pooling in Lea County, New Mexico.

**I. THE RULE IS UNAMBIGUOUS**

Standard spacing units for horizontal wells are defined in rule 19.15.16.15 (B) NMAC as:

- (1) **Standard horizontal spacing units for horizontal oil wells.** In lieu of an oil spacing unit described in Subsection A of 19.15.15.9 NMAC, the operator shall dedicate to each horizontal oil well a standard horizontal spacing unit that meets the following criteria:
  - (a) The horizontal spacing unit shall comprise *one or more contiguous tracts that the horizontal oil well's completed interval penetrates*, each of which consists of a governmental quarter-quarter section or equivalent.
  - (b) In addition to tracts the horizontal oil well penetrates, the operator may include quarter-quarter sections or equivalent tracts in the standard horizontal spacing unit that are located within 330 feet of the proposed horizontal oil wells completed interval (measured along a line perpendicular to the proposed completed interval or its tangent). [...] (*emphasis added*).

The plain language of the rule unambiguously limits standard spacing units to, at most, two adjacent quarter-quarter sections oriented along the well lateral. Standard horizontal spacing units for gas wells are identically defined. 19.15.16.15(B)(3) NMAC. There is no language within the definition of standard horizontal spacing units that implies such units may be defined by more than one well. COG's application and interpretation conflict with the unambiguous definition of standard horizontal spacing units.

Non-standard horizontal spacing units are separately permitted in rule 19.15.16.15 (B) (5) as:

- (a) **Administrative approval.** The division may approve non-standard horizontal spacing units for horizontal oil or gas wells *after notice and opportunity for hearing, if necessary to prevent waste or protect correlative rights*, in accordance with the procedures provided for director

approval of non-standard spacing units in Paragraphs (3) through (5) of Subsection B of 19.15.15.11 NMAC.

**(b) Notice.** The *operator shall give notice of any application for approval of a non-standard horizontal spacing unit*, by certified mail, return receipt requested, to *affected persons in all tracts that*:

- i. are excluded from the horizontal spacing unit, if the horizontal spacing unit would be a standard horizontal spacing unit except for the exclusion of such tracts; or
- ii. *adjoin the non-standard horizontal spacing unit*, in all other cases.

**(c) Form of notice.** The notice shall comply with Paragraph (4) of Subsection B of 19.15.15.11 NMAC.

**(d)** Unless otherwise authorized by the division, the *operator shall not commence drilling in the proposed non-standard spacing unit until the division issues a final order* granting the application. [*emphasis added*].

The rule implicitly defines non-standard horizontal spacing units as any units outside the expressly limited definition of standard horizontal spacing units. Further, the applicable rules explicitly distinguish standard horizontal spacing units and non-standard horizontal spacing units differently in four significant ways. First, approval of non-standard horizontal spacing units may occur “after notice and opportunity for hearing.” Notice and opportunity for hearing are not required for standard horizontal spacing units. Second, additional notice requirements apply to non-standard horizontal spacing units (as opposed to standard applications which require more limited notice and hearing for other reasons – i.e. compulsory pooling – or certain standard spacing units which may not require either notice or hearing). Specifically, applicants for non-standard horizontal spacing units must provide notice “to affected persons in all tracts that adjoin the non-standard horizontal spacing unit.” Third, the rule prohibits drilling in non-standard horizontal spacing units until a final order is issued by OCD. This prohibition does not apply to standard horizontal spacing units. Fourth, the rule expressly limits approval of non-standard horizontal spacing units to those applications where it is demonstrated that a non-standard unit is necessary to prevent waste or protect correlative rights.

The rule language unambiguously defines standard horizontal spacing units as defined by tracts (as well as adjoining tracts if the well is situated within 330 feet of a quarter-quarter boundary) which are penetrated by a single well. The rule further distinguishes between standard and non-standard horizontal spacing units in applying notice, hearing, and drilling restriction requirements to non-standard horizontal spacing units. COG’s application does not meet the definition of a standard horizontal spacing unit, because

it encompasses tracts which are penetrated by more than one well. COG's application necessarily constitutes a non-standard horizontal spacing unit. Consequently, COG also failed to notice affected persons in tracts that adjoin the non-standard unit. OCD cannot approve COG's application as submitted.

## **II. OCD'S STATUTORY AUTHORITY TO CREATE SPACING UNITS IS LIMITED AND CONSISTENT WITH OCD'S RULE INTERPRETATION**

OCD's authority to approve standard spacing units is limited by language of the Oil and Gas Act. "The division may establish a proration unit for each pool, *such being the area that can be efficiently and economically drained and developed by one well*, [...]." N.M.S.A. 1978, § 70-2-17 (B) (*emphasis added*). Spacing units are not independently defined in the statute. 'Spacing' and 'proration' units serve separate functions under the Act, however, for purposes of distinguishing between standard and non-standard units, the Oil and Gas Act uses the terms 'spacing' and 'proration' interchangeably. *See* N.M.S.A. 1978, § 70-2-18. The structure of the Act supports OCD's interpretation that standard horizontal spacing units are limited to tracts penetrated by a single well. Further, there was no argument that the unambiguous rule definition of standard spacing units facially violates the Oil and Gas Act.

## **III. OCD'S CLOSING ARGUMENT AND RESPONSE TO QUESTIONS WAS APPROPRIATE**

At hearing, COG objected to portions of the undersigned's verbal closing and response to questions from the Commissioners as technical. Counsel limited responses to outlining certain options permitted under rule and did not discuss any technical aspects of the application. OCD requests that the Commission consider the argument and responses presented, affording them the weight Commissioners consider appropriate.

## **IV. COG'S ARGUMENTS REGARDING WASTE AND CORRELATIVE RIGHTS LACK MERIT AND WEIGHT**

OCD's interpretation does not implicate waste or correlative rights because it does not dictate a change in COG's development plan. Rather, OCD's interpretation simply requires COG to appropriately apply for the type of spacing unit that corresponds with its development plan and to meet the appropriate notice requirements. COG may choose to pursue a non-standard unit or separate standard spacing units. COG's concerns regarding re-application and notice requirements constitute normal business risks and burdens which may incur in any venture. To the extent that COG suggests OCD's interpretation may result in waste due to modification of its development plan, this represents a business decision made by the operator rather than a necessary result of OCD's interpretation. COG's business risks, decisions, and notice expenses should not sway the Commission. Rather, COG must conform applications and notice to the unambiguous rule requirements.

#### **V. OCD ORDERS REFERENCED BY COG DO NOT CONTROL**

Division Orders R-21089 and R-21055 should not be considered for precedential value and do not require the Commission to issue an Order in COG's favor. Rulings and decisions of lower bodies do not hold controlling precedential value on appeal or rehearing. This case is a de novo rehearing of OCD case number 22294. Order R-21930, issued by OCD in that case, specifically considered the distinction between standard and non-standard horizontal spacing units and rejected COG's interpretation. The Orders referenced by COG do not directly address this question. COG's argument asks the Commission to look beyond the plain language of rule to act consistent with prior decisions at the Division level, which may have been issued in error. OCD submits that the Commission should disregard COG's argument as to the precedential value of prior Division Orders, considering instead the unambiguous language of the rule and the implicit limitations in the Oil and Gas Act.

#### **VI. CONCLUSION**

COG's application for a standard horizontal spacing unit defined by more than one well must be rejected as in conflict with the definition of standard horizontal spacing units and for failing to notice affected persons of the non-standard unit. The rule unambiguously limits standard horizontal spacing units

as consisting of tracts (as well as certain proximity tracts) penetrated by a single well. This plain language and OCD's interpretation is consistent with the language of the Oil and Gas Act.

Respectfully submitted,

*Jesse Tremaine*

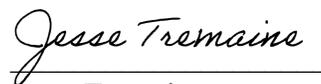
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this pleading was mailed electronically on May 5, 2022, to:

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