

# Campbell Trial Law, LLC

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June 23, 2011

## VIA HAND DELIVERY

Florene Davidson  
OCD Staff Specialist  
Oil Conservation Division  
Department of Energy, Minerals  
And Natural Resources  
1220 St. Francis Drive  
Santa Fe, New Mexico 87505

**Re: OCD Case Nos. 14558 and 14577 (Consolidated)**

Dear Ms. Davidson:

On behalf of ConocoPhillips Company, I've enclosed for filing in the above referenced case six copies of its Response in Opposition to COG's Motion to Limit Testimony and Argument.

Thank you for your attention to this matter.

Very truly yours,



Michael Campbell

Cc: Counsel of Record, with enc.

**Campbell Trial Law, LLC**

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

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

APPLICATION OF MARBOB ENERGY  
CORPORATION FOR A VERTICAL  
EXPANSION OF THE BURCH KEELY UNIT,  
EDDY COUNTY, NEW MEXICO

CASE NO. 14558  
ORDER NO. R-7900-C

and

APPLICATION OF COG OPERATING, LLC  
FOR VERTICAL EXTENSION OF THE  
GRAYBURG-JACKSON (SEVEN RIVERS-  
QUEEN-GRAYBURG-SAN ANDRES) POOL  
TO CORRESPOND WITH THE UNITIZED  
FORMATION OF THE BURCH KEELY UNIT,  
EDDY COUNTY, NEW MEXICO.

CASE NO. 14577  
ORDER NO. R-10067-B

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CONOCOPHILLIPS' RESPONSE IN OPPOSITION  
TO COG'S MOTION TO LIMIT TESTIMONY AND ARGUMENT

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COG's Motion posits that ConocoPhillips Company (ConocoPhillips) intends in this proceeding to "propose" imposition of a vertical "buffer zone," that such a proposal can be addressed only in a "rulemaking" proceeding, and demands that the Commission enter an order preventing ConocoPhillips from raising the "restraints it wants" during these *de novo* proceedings. See COG's Motion at 1, 7.

COG is chasing ghosts. ConocoPhillips has not "proposed" anything in this proceeding. It has not sought, and will not seek, imposition of any type of vertical "buffer zone" rule in this case, or in any case.

Rather, ConocoPhillips simply seeks in these *de novo* proceedings a reversal of the Division Orders permitting expansion of the Grayburg Jackson Pool (and Burch Keely Unit) to a depth of 5,000 feet below the surface, immediately on top of ConocoPhillips' ownership rights beginning at 5,000 feet below the surface..

ConocoPhillips will demonstrate that extending the Grayburg Jackson Pool (and Burch Keely Unit) to 5,000 feet – when coupled with COG's aggressive cookie-cutter perforation and hydraulic fracturing techniques – will indisputably result in adverse impact on ConocoPhillips' correlative rights below 5,000 feet. Facts demonstrate that the productive Yeso formation is homogenous in this area; there is no geologic feature that would prevent impairment of ConocoPhillips' correlative rights below the 5,000 feet.

Further, ConocoPhillips will demonstrate that it was the U.S. Geological Survey, not ConocoPhillips, that established the artificial 5000 foot boundary during the creation of the Grayburg Deep Federal Unit in 1954. ConocoPhillips will also demonstrate that Marbob (now COG) recognized the existence of the 5000 foot boundary and attempted to purchase only the interest above 5000 feet in an unsolicited proposal to Phillips Petroleum Company in 1992.

Further, ConocoPhillips will demonstrate that even maintenance of the *status quo ante* – that is, maintenance of the Grayburg Jackson Pool (and Unit) at its *current* vertical limit, not extended as COG seeks – imperils ConocoPhillips' correlative rights.

Finally, ConocoPhillips will refute COG's proposed solution to the problem – i.e. that to protect its correlative rights ConocoPhillips' only option is to drill its own wells in its Grayburg Deep Unit. COG cites Texas law – *Coastal Oil & Gas v. Garza* – for this

proposition. **Garza was not a regulatory case**; it was a tort case where one private mineral owner asserted that a second private mineral owner had trespassed on its rights by hydraulically fracturing into its formation. The Court held that plaintiff's trespass action could not stand in the face of its own refusal to drill an offset well to prevent drainage. *Garza* has no application to this regulatory proceeding. COG's logic would dictate that the Commission has no role in the protection of correlative rights; that mineral owners are left to their own devices by fighting each other in court over mineral trespass. Acceptance of COG's argument will result in the complete abdication of the Commission's statutory "duty" to "protect correlative rights." NMSA 1978 71-5-7. The Commission should reject COG's argument to ignore the indisputable evidence that grant of COG's Application will impair ConocoPhillips' correlative rights.

In substance, ConocoPhillips in these *de novo* proceedings seeks only to maintain the *status quo ante* regarding the vertical limits of the Grayburg Jackson Unit. To do otherwise will severely impair ConocoPhillips' correlative rights.

RESPECTULLY SUBMITTED,

CAMPBELL TRIAL LAW LLC



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**ATTORNEYS FOR CONOCOPHILLIPS**

## CERTIFICATE OF SERVICE

I certify that on June 23, 2011, I served a copy of this pleading to the following persons by e-mail:

Carol Leach  
Beatty & Wozniak, P.C.  
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ATTORNEYS FOR APPLICANT

  
Michael Campbell