

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

APPLICATIONS OF COG OPERATING LLC FOR
NON-STANDARD OIL SPACING AND PRORATION
UNITS AND COMPULSORY POOLING, EDDY
COUNTY, NEW MEXICO.

Case Nos. ~~14706-14718~~

COG OPERATING, LLC'S RESPONSE IN OPPOSITION TO MOTION TO COMPEL
AND MOTION FOR PROTECTIVE ORDER

COG Operating, LLC ("Concho"), responds in opposition to Burnett Oil Co., Inc. and Hudson Oil Company of Texas's (collectively "Burnett") motion to compel Concho to comply with the Oil Conservation Division's second subpoena duces tecum, issued on August 11, 2011. In furtherance thereof, Concho hereby moves the Division to issue a protective order prohibiting the disclosure of the requested document pursuant to 19.15.4.16 NMAC. In support of the foregoing, Concho states as follows:

ARGUMENT

Burnett seeks disclosure of the term assignment of oil and gas leases from Ard Oil, LTD, and Ard Energy Group, LTD, to Concho, for the purpose of substantiating Concho's claim that the term assignment dictates a fast pace of development and because if Burnett is appointed operator "it will need the entire agreement for its development plans and title opinions." See Motion at 1. Burnett's arguments for disclosure are without merit. First, if Burnett wants to substantiate the claim that the term assignment dictates a fast pace of development, Concho already has established the validity of that claim by disclosing that the term assignment dictates a primary term of six months. Concho can present a witness to testify to that fact under oath at the hearing, but it should not be compelled to produce the entire term assignment, which otherwise constitutes confidential commercial information that is protected from disclosure. See e.g. NMRA Rule 1-026(C). Also, Concho did disclose the recorded Memorandum of Agreement to

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Burnett. Second, whether Burnett should be appointed operator is a matter that is being contested. The fact that Burnett may be appointed operator does not support or justify its demand for disclosure of a confidential agreement now. On balance, Burnett's demand for production of the term assignment does not outweigh Concho's demonstration of injury resulting from the disclosure of such confidential commercial information, especially since Concho already has disclosed the essential information and can and will testify to the same.

I. The Term Assignment Constitutes Confidential Commercial Information

Confidential information is information sought that has been considered and treated as confidential by the party resisting production. *Pincheira v. Allstate Ins. Co.*, 2007-NMCA-094, ¶ 49, 142 N.M. 283, 154 P.3d 982. "The confidentiality of a document does not indicate the harm that might occur if the document is disclosed." *Id.* Accordingly, the Rule 1-026(C) requirement that a protective order be conditioned on a showing of good cause is applicable to a request for a protective order under a claim of confidentiality. *Id.* The burden of proving good cause for a protective order rests upon the party asserting such a claim. *See Krahling v. Executive Life Ins. Co.*, 1998-NMCA-071, ¶ 15, 125 N.M. 228, 959 P.2d 562. Good cause is established by showing that disclosure will work a clearly defined and serious injury to the party seeking closure that must be shown with specificity. *Id.* (citations omitted). A balancing process is applied to determine whether a party has made a showing of good cause for the issuance of a protective order. *Id.* This balancing weighs the party's need for information against the injury that might result. *Id.* (citation omitted).

The term assignment sought by Burnett is confidential commercial information because Concho and its assignor have agreed to treat the document as confidential with respect to all outside parties. The confidential term assignment should be protected from production to

Burnett because it contains sensitive, negotiated information, which if disclosed to Burnett, will result in serious commercial injury to Concho, as Concho and Burnett are in fierce competition in the oil fields of southeastern New Mexico. The term assignment contains sensitive confidential information regarding the assignor, who has a long and contentious family relationship with the Hudson Oil Company of Texas and its principals, that has no bearing on this proceeding or its issues. If produced and disclosed, this information likely will make Concho's operations in the lease area more difficult by exacerbating what is essentially a family dispute.

These specific concerns, and the injuries that would result, warrant the issuance of a protective order denying Burnett's motion to compel when considered in balance with Burnett's stated need for the document. Concho already has and can again substantiate its claim that the term assignment demands fast-paced development. Burnett and Hudson Oil Company of Texas have attempted everything in their power to impede the development and production of Concho's mineral interests in this area. The information contained in this term assignment will provide both companies with additional means to achieve those improper ends. The purpose of Rule 1-026(C) is to provide a mechanism to prevent such abuses of discovery. *See Pincheira*, 2007-NMCA-094, ¶ 24. Under these circumstances, where the need for the requested information can be achieved without the production of sensitive, confidential commercial information, it is proper and fitting to deny Burnett's motion to compel under Rule 1-026(C).

CONCLUSION

For the foregoing reasons, Concho respectfully requests that the hearing examiner enter an order denying Burnett's motion to compel compliance with the Oil Conservation Division's second subpoena duces tecum.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on 8/24/2011 I served a copy of the foregoing document to the following by *facsimile*:

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