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

APPLICATION OF MACK ENERGY CORPORATION FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO

CASE NO. 14763

MOTION TO DISMISS

Siana Oil and Gas LLP and Tom M. Ragsdale, ("Siana"), by and through their undersigned attorneys, Montgomery & Andrews, P.A. (J. Scott Hall), move the Division enter its order dismissing the compulsory pooling Application filed on behalf of Mack Energy Corporation. As grounds for this motion, Siana states: Mack Energy has not fulfilled its duty to negotiate in good faith to obtain the voluntary participation of the Siana interests prior to invoking the Division's compulsory pooling authority.

Background

Mack Energy is asking the Division to enter an order pooling all mineral interests from the surface to the base of the Abo formation underlying the SE/4 NW/4 of Section 32, Township 17 South, Range 33 East, NMPM, to form a standard 40-acre oil spacing and proration unit for (1) the Cockburn A State Well No. 5, (2) the initial consolidation of interests to be dedicated to the well, (3) designation of Applicant as operator, (4) approval and allocation of the costs of recompleting the well, including overhead and supervision charges, and (5) authorizing the operator to assess a risk penalty of costs plus 200% against the interests of non-consenting owners. Mack Energy seeks the consolidation of interests and recovery of costs not for the initial

drilling of a well, but for the proposed fracture recompletion of an existing well that has been producing for a number of years.

Ownership in the 40-acre spacing unit is divided. Siana Oil and Gas LLP (Tom M. Ragsdale, President) is the owner of oil and gas leasehold working interests (approximately 6.25%) located in the spacing and proration unit that is the subject of Mack's Application. Mack Energy assumed operations of the well in 2004 when it was plugged-backed, recompleted and production was established from the Corbin-Abo pool.

The evidence will show that although Mack has operated the well since 2004, it never consolidated and dedicated the divided interests in the spacing unit to the well either by a voluntary agreement or by obtaining an order of the Division pooling the lands. These ongoing acts and omissions violate the Division's rules, as well as the Oil and Gas Act. §70-2-18 NMSA (1978) of the Act provides, in part, as follows:

> B. Any operator failing to obtain voluntary pooling agreements, or failing to apply for an order of the division pooling the lands dedicated to the spacing or proration unit as required by this section, shall nevertheless be liable to account to and pay each owner of minerals or leasehold interest, including owners of overriding royalty interests and other payments out of production, either the amount to which each interest would be entitled if pooling had occurred or the amount to which each interest is entitled in the absence of pooling, whichever is greater.

Further, Mack Energy has not attempted to obtain Siana's voluntary joinder and participation through good faith negotiations. Mack has done little more than send an AFE for a frac job, received by Siana on September 6, 2011. Then, on November 7, 2011 Mack Energy filed an Application for Compulsory Pooling. Afterward, on December 7, 2011, Mack sent to Siana a form joint operating agreement.

The Applicable Standards of Good Faith

On August 11, 2009, the Division entered Order No. R-13155[1] (Exhibit 1, attached.) The order directed that compulsory pooling applications are only to be filed thirty days *after* the operator has furnished to all owners in the proposed unit a formal well proposal, including a proposed form of joint operating agreement and an AFE. Because the requirements set forth under that order were a departure from prior established practice[2] Order No. R-13155 became quickly known by operators, as did the Division's subsequent order of clarification, Order No. R-13165[3] (Exhibit 2, attached.)

Mack Energy Corporation is an experienced operator with long standing in New Mexico and is fully familiar with the practices of the Division. Mack's efforts in this case do not meet the criteria for legitimate well proposals established under Orders R-13155 and R-13165.

Under NMSA 1978, §70-2-18(A), an applicant proposing to dedicate separately-owned lands to a spacing and proration unit has an "obligation" to negotiate a voluntary agreement with the other interest owners to pool their lands. The Division and the Commission require operators to show that they have made a "diligent" and "good faith" effort to negotiate a voluntary agreement before a compulsory pooling application may be filed.[4]

The historic treatment by the agency of its compulsory pooling powers is revealing: The first compulsory pooling orders made by the Commission were made with some reluctance. In many instances, the Commission ordered pooling but further ordered that a continuing effort be made to secure the consent of all the interests involved. Morris, Richard, *Compulsory Pooling of Oil and Gas Interests in New Mexico*, 3 Nat. Resources J. 316 (1963). After a few cases had

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[1] Case Nos. 14365 and 14366: Application of COG Operating LLC for Designation of a Non-Standard Oil Spacing and Proration Unit and for Compulsory Pooling, Eddy County, New Mexico

[2] See Order No. R-11870.

[3] Case Nos. 14368-14372: Application of Cimarex Energy Co. for a Non-Standard Spacing Unit and Compulsory Pooling, Chaves County, New Mexico

[4] The "good faith" requirement has been expressly codified in the compulsory unitization procedures of the Statutory Unitization Act at NMSA 1978, §70-7-6-A(5).

been decided, the Commission adopted the attitude toward compulsory pooling that still remains today. In each case there is an inquiry concerning the efforts made by the operator to secure the consent of the interests being pooled. The reasonableness of the offer may also be questioned. Morris, Richard, *Compulsory Pooling of Oil and Gas Interests in New Mexico*, 3 Nat. Resources J. 316, 318 (1963). The Division and the Commission continue to recognize the importance of good faith efforts to negotiate before commencing compulsory pooling actions, and use it as one criterion to determine if the application will be accepted or denied.

Until recently, the Division has been circumspect about defining the parameters of what constitutes a "good faith" effort. Now, those parameters have been more sharply defined with the issuance of Orders R-13155 and R-13165. Those orders makes clear: compulsory pooling applications are to be filed no sooner than thirty days after the operator has furnished to all owners in the proposed unit a formal well proposal sufficiently informative to allow the owners to evaluate the proposal and to determine the terms of its participation. Mack's conduct falls short of the standards that the industry and the Division now expect an operator to meet when negotiating for an interest owner's voluntary participation in a well proposal. Consequently, its Application should be dismissed.

Respectfully submitted,
MONTGOMERY & ANDREWS, P.A.

By: _____

J. Scott Hall, Esq.
Post Office Box 2307
Santa Fe, New Mexico 87504
(505) 982-3873
Attorneys for Siana Oil and Gas LLP and
Tom M. Ragsdale

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was hand delivered to counsel of record on the 5th day of January, 2012.

James Bruce, Esq.
P. O. Box 1056
Santa Fe, NM 87504
(505) 982-2151 fax

J. Scott Hall

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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:

CASE NO. 14365

APPLICATION OF COG OPERATING LLC FOR DESIGNATION OF A NON-STANDARD OIL SPACING AND PRORATION UNIT AND FOR COMPULSORY POOLING (BLACKHAWK 11 FED COM NO. 1-H), EDDY COUNTY, NEW MEXICO.

CASE NO. 14366

APPLICATION OF COG OPERATING LLC FOR DESIGNATION OF A NON-STANDARD OIL SPACING AND PRORATION UNIT AND FOR COMPULSORY POOLING (BLACKHAWK 11 FED COM NO. 2-H), EDDY COUNTY, NEW MEXICO.

ORDER NO. R-13155

ORDER OF THE DIVISION

BY THE DIVISION:

These cases came on for consideration at a pre-hearing conference held on August 10, 2009, at Santa Fe, New Mexico, before Examiners David K. Brooks and Richard I. Ezeanyim.

NOW, on this 11th day of August, 2009, the Division Director, having considered the testimony, the record and the recommendations of the Examiners,

FINDS THAT:

(1) Due notice has been given, and the Division has jurisdiction of the subject matter of this case.

(2) In these applications, COG Operating LLC (COG) seeks establishment of two non-standard spacing units, comprising respectively the N/2 S/2 and the S/2 S/2 of Section 11, Township 16 South, Range 28 East, NMPM, in Eddy County, New Mexico, and compulsory pooling of each of these non-standard units, for the drilling of horizontal oil wells in the Wolfcamp formation.

(3) Chesapeake Energy Corporation (Chesapeake), an owner of interests in each of the proposed units, has moved to dismiss these applications because COG has not provided Chesapeake with a well proposal setting forth the terms of participation and projected costs of the wells.

(4) COG does not dispute that Chesapeake is an owner within each of the proposed units and that no well proposal has been furnished.

(5) Although no statute or rule specifically requires an applicant for compulsory pooling to furnish interests owners a well proposal prior to filing the application, the Division, by long-standing practice, has required such a proposal in order to afford the owners a reasonable opportunity to reach a voluntary agreement.

(6) There are undoubtedly circumstances in which a prior well proposal should not be required, as, for example, where the consequent delay will jeopardize an applicant's leasehold interest. However, no contention was advanced that such factors applied in these cases.

(7) Accordingly, these cases should be dismissed without prejudice to re-filing after COG has furnished a well proposal to all owners in the proposed units.

IT IS THEREFORE ORDERED THAT:

(1) COG's applications in Cases 14365 and 14366 are hereby dismissed without prejudice. Each application may be re-filed 30 days after COG has furnished to all owners in the proposed unit a formal well proposal, including a proposed form of joint operating agreement and an authorization for expenditures (AFE) setting forth the estimated cost of the well to be proposed in such application.

(2) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

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STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

MARK E. FESMIRE, P.E.
Director

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:

ORDER NO. R-13165

APPLICATION OF CIMAREX ENERGY CO. FOR A NON-STANDARD SPACING UNIT AND COMPULSORY POOLING, CHAVES COUNTY, NEW MEXICO.

CASE NO. 14368

APPLICATION OF CIMAREX ENERGY CO. FOR A NON-STANDARD SPACING UNIT AND COMPULSORY POOLING, CHAVES COUNTY, NEW MEXICO.

CASE NO. 14369

APPLICATION OF CIMAREX ENERGY CO. FOR A NON-STANDARD SPACING UNIT AND COMPULSORY POOLING, CHAVES COUNTY, NEW MEXICO.

CASE NO. 14370

APPLICATION OF CIMAREX ENERGY CO. FOR A NON-STANDARD SPACING UNIT AND COMPULSORY POOLING, CHAVES COUNTY, NEW MEXICO.

CASE NO. 14372

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing on various parties' Motions to Dismiss at 8:15 a.m. on September 3, 2009, at Santa Fe, New Mexico, before Examiner Terry Warnell.

NMOCD Case # 14763
January 5, 2012
SIANA O & G EXH. 2

NOW, on this 15th day of September, 2009, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

(1) Due notice has been given, and the Division has jurisdiction of the subject matter of these cases.

(2) Because all of the Motions to Dismiss present the same issue, a consolidated hearing was held on these motions, and one order is being issued ruling on the motions in all of the cases. However, the cases remain separate and will be heard separately unless the Division subsequently determines otherwise.

(3) Fuel Products, Inc., Pear Resources and Hyde Oil and Gas Corporation, respondents in Cases 14368, 14369 and 14370, and MeTex Supply Company, a respondent in Case No. 14372, (herein collectively called Movants) filed motions to dismiss the application in these cases. Movants contend that no valid well proposals have been submitted for their consideration because: (a) the well proposals do not contain specific footage locations; (b) the applicant did not furnish a proposed form of joint operating agreement with its well proposal; and (c) the proposals in the separate cases, collectively, constitute a multi-well drilling program, and applicant's correspondence indicates uncertainty as to whether it will actually drill all of the proposed wells.

(4) With respect to the omission of a proposed form of joint operating agreement, Movants cite Division Order No. R-13155 in which the Division dismissed a compulsory pooling application and ordered that a well proposal including a proposed form of joint operating agreement be furnished prior to re-filing.

(5) Because past Division practice has not been entirely consistent, and because some language in Order No. R-13155 was not intended to apply to all cases, the Division takes this opportunity to clarify the requirements that it will ordinarily apply in compulsory pooling cases as follows:

(a) At least thirty days prior to filing a compulsory pooling application, in the absence of extenuating circumstances, an applicant should send to locatable parties it intends to ask the Division to pool a well proposal identifying the proposed depth and location and target formation, together with a proposed Authorization for Expenditures (AFE) for the well. The proposal should specify the footages from section lines of the intended location, and, in the case of a directional well, of the intended point of penetration and bottomhole location. The Division understands these requirements to be comparable to the proposal requirements included in forms operating agreements generally used in the industry.

(b) Although exact footage locations for the proposed well should be specified in the well proposal, the exact footage locations need not necessarily be

specified in the application filed with the Division or in formal notices of hearing. These documents (the application and formal hearing notices) establish the Division's jurisdiction, and, if an exact location for the well is specified in such documents, any modification may require new notices and a further hearing. There may be perfectly legitimate reasons for varying the well location at the hearing, such as federal or private surface owner requirements. If a more generalized location is specified in the application and legal notices, and it becomes necessary to change the location prior to the hearing, reasons for such variation can be explained at the hearing and approved by the Division in its order, without the necessity of further proceedings.

(c) A proposed form of joint operating agreement should not be required in every case but should be furnished with reasonable promptness if requested.

(d) The issue of compliance with the more subjective requirement the Division has customarily recognized for good faith negotiation is better examined in these cases, and in most cases, at the compulsory pooling hearing, based upon a full evidentiary record, rather than upon a preliminary motion to dismiss.

(6) In these cases, unlike Cases 14365 and 14366, which were the subject of Order No. R-13155, Movants have received well proposals and AFEs though these proposals were deficient in not identifying the footage locations of the wells. These cases have been re-set for hearing on a date more than thirty days from the date of this Order to allow applicant to furnish Movants with a more specific proposal and with other documents Movants have requested and to afford the parties time for further negotiations. Accordingly the Division concludes that it is not necessary to dismiss these cases and require that they be re-filed in order for the applicant to proceed. If additional time proves necessary for good faith negotiations, Movants may request a further continuance.

IT IS THEREFORE ORDERED THAT:

(1) Movants Motions to Dismiss are hereby overruled. As announced at the motion hearing, these cases are continued until October 15, 2009.

(2) Applicant will furnish Movants with documents complying with Finding Paragraphs 5(b) and (c) at least 30 days prior to the hearings.

(3) The issue of whether or not adequate good faith negotiation has occurred may be further considered at the hearings.

(4) Jurisdiction of these cases is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

MARK E. FESMIRE, P.E.
Director

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