

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:

ORIGINAL

AMENDED APPLICATION OF COG OPERATING LLC           CASE 15105  
TO AMEND ORDER R-13823 TO LIMIT POOLED           (Re-opened)  
FORMATION AND TO COMPULSORY POOL ADDITIONAL  
MINERAL INTEREST IN THE APPROVED SPACING  
UNIT, LEA COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

MAY 14, 2015

Santa Fe, New Mexico

BEFORE:       MICHAEL McMILLAN, CHIEF EXAMINER  
              ALLISON MARKS, LEGAL EXAMINER

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This matter came on for hearing before the  
New Mexico Oil Conservation Division, Michael McMILLAN,  
Chief Examiner, and Allison Marks, Legal Examiner, on  
May 14, 2015, at the New Mexico Energy, Minerals, and  
Natural Resources Department, Wendell Chino Building,  
1220 South St. Francis Drive, Porter Hall, Room 102,  
Santa Fe, New Mexico.

REPORTED BY:       ELLEN H. ALLANIC  
                      NEW MEXICO CCR 100  
                      CALIFORNIA CSR 8670  
                      PAUL BACA COURT REPORTERS  
                      500 Fourth Street, NW  
                      Suite 105  
                      Albuquerque, New Mexico 87102

1 A P P E A R A N C E S

2 FOR APPLICANT COG OPERATING LLC:

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10 I N D E X

11 CASE NUMBER 15105 CALLED  
12 COG OPERATING LLC CASE-IN-CHIEF

13 E X H I B I T I N D E X

14 Exhibits Offered and Admitted

15		
16		
17	COG Operating LLC Exhibit 4	PAGE 4
18	COG Operating LLC Exhibit 5	4

19		
20		
21		
22		
23	Reporter's Certificate	PAGE 13

24  
25

1 (Time noted 11:31 a.m.)

2 EXAMINER McMILLAN: I would like to call  
3 this hearing back to order. I'd like to call case  
4 15105, Amended Application of COG Operating LLC  
5 to Amend Order R-13823 to Limit Pooled Formation and  
6 to Compulsory Pool Additional Mineral Interest In the  
7 Approved Spacing Unit, Lea County, New Mexico.

8 Call for appearances.

9 MS. KESSLER: Mr. Examiner, Jordan Kessler  
10 for the applicant.

11 EXAMINER McMILLAN: Any other appearances?  
12 (No response.)

13 EXAMINER McMILLAN: You may proceed.

14 MS. KESSLER: Mr. Examiner, this hearing was  
15 initially heard on March 6th. It was to amend COG's  
16 application, first of all, to limit the pooling order to  
17 include only the Third Bone Spring rather than the  
18 entire Bone Spring interval; also to pool additional  
19 royalty owners who did not have pooling language in  
20 their leases at the time.

21 During that hearing, there was some question  
22 by Mr. Gabe Wade about whether or not we needed to  
23 notice all parties within the pool rather than simply  
24 the parties within the Third Bone Spring Pool who were  
25 trying to limit the order.

1           We've now noticed all parties within the  
2 Bone Spring Pool, and I have included two additional  
3 exhibits, an affidavit of publication, Exhibit 4, as  
4 well as a letter which is included as Exhibit 5.  
5 Actually, it's three letters notifying all of the  
6 different interest owners within the Scharb Bone Spring  
7 Pool. So I would simply request that, Mr. Examiner, you  
8 take this under advisement with our additional exhibits,  
9 which reference notice to all parties within the Bone  
10 Spring Pool.

11           EXAMINER McMILLAN: Okay. So we will -- so  
12 the affidavit of publication will be -- I guess it's  
13 updated, right?

14           MS. KESSLER: That's correct.

15           EXAMINER McMILLAN: It's --

16           MS. KESSLER: And, then, Mr. Examiner, an  
17 affidavit representing the -- my office sent letters to  
18 all of the interest owners within the Bone Spring  
19 regardless of whether they were in the Third Bone Spring  
20 or outside of the Third Bone Spring.

21           EXAMINER McMILLAN: Then the updated notices  
22 will be accepted as part of the record.

23           (Whereupon COG OPERATING LLC Exhibits 4  
24 and 5 were offered and admitted as part of  
25 the record.)

1           EXAMINER MARKS: I actually have a number of  
2 questions for you --

3           MS. KESSLER: Okay.

4           EXAMINER MARKS: -- because I'm new to this  
5 case and I got to review it, so lucky you.

6           So can you just brief me a little bit on why  
7 this change is necessary, the change to amend the order?

8           MS. KESSLER: Okay. The amended order on  
9 the March 6th hearing -- so I guess there is a little  
10 confusion. The initial pooling case was heard, I  
11 believe, last October, around then. We had an amended  
12 application that we submitted and went to hearing on  
13 March 6th.

14           That was held for two purposes, first of  
15 all, to include royalty interest owners who did not have  
16 pooling language in their leases. So we wanted them to  
17 be included in the pooling order. They were all noticed  
18 for the March 6th hearing.

19           We also sought to limit the interval that  
20 was pooled under the initial order to the Third Bone  
21 Spring. That's due to depth severance issues.

22           At the time we did not notice all of the  
23 interest owners within the Bone Spring Pool. Now, we  
24 had a phone call from the Division following that  
25 hearing asking us to provide additional notice to all of

1 the owners within the Bone Spring Pool. So that's what  
2 we're doing here.

3 EXAMINER MARKS: Okay. So if this proposed  
4 application is granted, how do we protect the  
5 correlative rights of the other interest owners in the  
6 Bone Spring?

7 MS. KESSLER: Well, I think there are a  
8 couple of issues there. All of the evidence was  
9 presented at the initial hearing to amend the  
10 application, I believe, and is included in the affidavit  
11 from Mr. Lyerly. That was an exhibit to the hearing on  
12 March 6th. And there should be have been information on  
13 protecting correlative rights in that affidavit.

14 EXAMINER MARKS: To protect the correlative  
15 rights with this amendment?

16 MS. KESSLER: With this amendment.

17 EXAMINER MARKS: In whose affidavit?

18 MS. KESSLER: Mr. Jeff Lyerly, with the  
19 landman.

20 EXAMINER MARKS: Is there a rule in the  
21 OCD's rules to cover vertical segregation of a pool?

22 MS. KESSLER: I don't believe that there  
23 is -- there were two orders that I provided to Mr. Wade  
24 during that hearing on March 6th, which I don't have in  
25 front of me now but that should be part of the record,

1 that authorized pooling only to a certain depth. So for  
2 example, surface to 4,000 feet. There were two orders  
3 from the Division that did allow that.

4 The reason that the notice became an issue  
5 is because it is unclear under the rules whether or not  
6 you need to notify the entire pool in the event that  
7 you're only drilling to a certain depth.

8 EXAMINER MARKS: So when I looked at the  
9 application, I was a little confused as to what makes  
10 this a non-standard proration unit.

11 MS. KESSLER: The reason I believe that this  
12 is a non-standard proration unit -- and forgive me, I  
13 don't have the original application in front of me --  
14 but I believe it was because we were pooling for four  
15 40-acre tracts, which is not directly authorized under  
16 the rules -- under the statute. So the way the Oil and  
17 Gas Statute reads they can only pool one spacing unit.  
18 So first you form a non-standard spacing unit and then  
19 you pool the whole set of --

20 EXAMINER McMILLAN: The whole project area.

21 EXAMINER MARKS: Okay. The legal  
22 description is a legal description of the surface,  
23 right?

24 MS. KESSLER: Can you refer me to the legal  
25 description that you are looking at?

1 EXAMINER MARKS: The hearing examiner has  
2 the application, unless it's in this.

3 Let's see. In our rules -- it has public  
4 land surveys and I'm not sure if there were rules when  
5 looking if the acreage assessment actually has -- excuse  
6 me -- a legal description that provides for this.

7 If you will just look at 19.15.15.11 in our  
8 rules, I am just a little confused if the legal  
9 description falls within our rules.

10 MS. KESSLER: The legal description with the  
11 township and range?

12 (Discussion off the record between the  
13 Examiners.)

14 EXAMINER McMILLAN: Go ahead, continue.

15 EXAMINER MARKS: So if you would look at the  
16 rules, let's look at -- what you are seeking in the  
17 amendment, how does that fit into the legal description  
18 in B2? B2 seems to have a surface area description;  
19 whereas, the legal description -- the description  
20 provided was a land legal description; whereas, what you  
21 are seeking seems to be a portion of the pool. So I'm  
22 not sure --

23 MS. KESSLER: I would just say that any  
24 pooling case seeks to pool not just the surface. I mean  
25 the legal description for all cases would be described

1 as the surface or would be the surface description.  
2 But, in particular, we sought to pool a particular  
3 interval within a pool as it was defined.

4 And the pools are subject to description by  
5 the stratographic interval, which is what we did in our  
6 pool --

7 EXAMINER MARKS: Sure. So would you just  
8 say that the rule isn't probably descriptive enough or  
9 the rule doesn't comport with what you have to notice?

10 MS. KESSLER: I would say that the rule is  
11 unclear, so we did the best that we could to describe  
12 the particular interval that we were looking to pool  
13 under the pooling --

14 EXAMINER MARKS: Okay, okay. Is there a  
15 separate source of supply here?

16 MS. KESSLER: That is not something that I  
17 can answer because I'm not a geologist. However, I know  
18 that in testimony -- and I am trying to remember if it  
19 was a first or second hearing -- there was discussion  
20 about isolation of the interval by certain formations.  
21 So I guess I would say that -- I don't know, but I  
22 believe that a review of the prior testimony would  
23 answer that question.

24 EXAMINER MARKS: Okay. And how are  
25 allowables handled here?

1 MS. KESSLER: Again, that would be something  
2 that I would need to discuss with COG prior to giving  
3 you a firm answer. And I am happy to supplement the  
4 record in that case.

5 But I believe that the discussion of  
6 allowables was that we would follow the rules and that  
7 they would be shared within the pool as described by the  
8 statewide rules.

9 EXAMINER McMILLAN: So if you -- go ahead.

10 MS. KESSLER: So, for example, if there were  
11 two wells within the same pool --

12 EXAMINER McMILLAN: Yeah, within the same  
13 project area. Close enough.

14 MS. KESSLER: Within the same project area,  
15 then they would share allowables.

16 EXAMINER MARKS: So if we go to 2012, we  
17 have a depth range here. We wouldn't be carving out  
18 something special just in this --

19 MS. KESSLER: No.

20 EXAMINER McMILLAN: The Scharb is in 80?

21 MS. KESSLER: I believe it is in 80.

22 EXAMINER McMILLAN: So you'd have an  
23 allowable of 355 or 400?

24 MS. KESSLER: Correct. Whatever the --

25 EXAMINER McMILLAN: I am not sure exactly

1 the measured depth.

2 EXAMINER MARKS: I have no other legal  
3 questions.

4 MS. KESSLER: Again, I would just reiterate  
5 that this was additional notice provided at the request  
6 of the Division. We were under the impression that COG  
7 did not at the time need to notify all of the parties  
8 within the Bone Spring, and we were trying to just  
9 comply with the Division's requests for this additional  
10 notice.

11 EXAMINER McMILLAN: So then how will you  
12 handle a situation where -- let's say you frac out of  
13 the Third and landed in the Second; how are you going to  
14 handle that issue, if you frac out of the Third?

15 MS. KESSLER: That's not something I can  
16 answer, Mr. Examiner.

17 EXAMINER MARKS: That was kind of the  
18 questioning I was getting at at the correlative rights.

19 MS. KESSLER: Again, I think that testimony  
20 from prior hearings would reflect that there is a cap at  
21 the top of the Second Bone Spring. But, again, this --  
22 we did not bring a geologist to this hearing because we  
23 were told specifically by examiners from the Division  
24 that this would just be a notice hearing.

25 So all of these questions were intended to

1 be addressed at the initial hearing on March 6th when we  
2 amended the application. And I would just refer you to  
3 the hearing Examiners at those times, who then called us  
4 and said, Can you please notice these additional  
5 parties.

6 And that was what that was intended to be  
7 for.

8 EXAMINER McMILLAN: Okay. Well, then, with  
9 that issue, why don't we, the OCD, request a signed  
10 letter from the geologist who presented his case that  
11 there is a barrier between the Second and Third.

12 EXAMINER MARKS: And notarized.

13 EXAMINER McMILLAN: Excuse me?

14 EXAMINER MARKS: And notarized. I have  
15 nothing further.

16 EXAMINER McMILLAN: Anything further?

17 MS. KESSLER: No.

18 EXAMINER McMILLAN: Case No. 15105 will be  
19 taken under advisement pending the information requested  
20 from the OCD.

21 I do hereby certify that the foregoing is  
22 a complete record of the proceedings in  
23 the examiner hearing of Case No. \_\_\_\_\_,  
24 heard by me on \_\_\_\_\_.

25 \_\_\_\_\_, Examiner  
(Oil Conservation Division a.m.)

1 STATE OF NEW MEXICO )  
2 ) ss.  
3 COUNTY OF BERNALILLO )  
4  
5  
6

7 REPORTER'S CERTIFICATE  
8

9 I, ELLEN H. ALLANIC, New Mexico Reporter CCR  
10 No. 100, DO HEREBY CERTIFY that on Thursday, May 14,  
11 2015, the proceedings in the above-captioned matter were  
12 taken before me, that I did report in stenographic  
13 shorthand the proceedings set forth herein, and the  
14 foregoing pages are a true and correct transcription to  
15 the best of my ability and control.

16 I FURTHER CERTIFY that I am neither employed by  
17 nor related to nor contracted with (unless excepted by  
18 the rules) any of the parties or attorneys in this case,  
19 and that I have no interest whatsoever in the final  
20 disposition of this case in any court.

21 

22 

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25