

**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 TO CONSIDER:**

**CASE NO. 15811
ORDER NO. R-14498**

**APPLICATION OF COG OPERATING LLC FOR A NON-STANDARD SPACING
AND PRORATION UNIT AND COMPULSORY POOLING, LEA COUNTY, NEW
MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on August 31, 2017, at Santa Fe, New Mexico, before Examiner William V. Jones.

NOW, on this 6th day of November, 2017, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

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

(2) Cases No. 15810 and 15811 were consolidated at the hearing for the purpose of testimony; however, separate orders will be issued for each case.

(3) In Case No. 15811, COG Operating LLC (the "Applicant") seeks approval of a 320-acre non-standard oil spacing and proration unit and project area (the "Unit") for oil and gas production from the Bone Spring formation, WC-025 G-08 S2535340; Bone Spring (Pool Code 97088), comprising the W/2 W/2 of Section 16, Township 25 South, Range 35 East and the W/2 W/2 of Section 21, Township 25 South, Range 35 East, NMPM, Lea County, New Mexico. Applicant further seeks an order pooling all uncommitted interests in the Unit for the Bone Spring formation.

(4) The Unit will be dedicated to Applicant's White Falcon 16 State Com Well No. 12H (the "proposed well"; API No. 30-025-43697), a horizontal well to be drilled from a surface location, 226 feet from the North line and 852 feet from the West line (Unit D) of Section 16, Township 25 South, Range 35 East, to a bottom-hole location, 200 feet from

the South line and 1270 feet from the West line (Unit M) of Section 21, Township 25 South, Range 35 East, NMPM. The location of the completed interval will be standard for this horizontal oil well within the Unit.

(5) The proposed well is within the WC-025 G-08 S253534O(Wildcat);Bone Spring Pool and is subject to Division Rule 19.15.15.9(A) NMAC, which provides for 330-foot setbacks from the unit boundaries and standard 40-acre units each comprising a governmental quarter-quarter section. The proposed Unit and project area consists of eight adjacent quarter-quarter sections oriented north to south.

(6) Applicant appeared through counsel and presented the following land and geologic evidence:

- (a) the Bone Spring formation in this area is suitable for development by horizontal drilling;
- (b) the proposed orientation of the horizontal well from north to south is appropriate for the Unit;
- (c) all quarter-quarter sections to be included in the Unit are expected to be productive in the Bone Spring formation, so that the Unit as requested will not impair correlative rights;
- (d) all parties were located and all pooled parties are either working interests or unmarketable interests;
- (e) the interests proscribed to the Weldon Baird and Beulah M. Baird Trust are considered as "unmarketable" and cannot voluntarily participate in the well and must be compulsory pooled;
- (f) notice by certified mail was provided to all uncommitted interest owners in the proposed Unit whose interests were evidenced by a conveyance instrument, either of record or known to Applicant when the Application was filed, and to heirs known to Applicant of deceased persons who appear as owners in such instruments, and whose whereabouts could be ascertained by exercise of reasonable diligence; and
- (g) those potentially affected parties whose whereabouts could not be ascertained were noticed by publication as provided in Rule 19.15.4.12.B NMAC.

(7) The Weldon Baird and Beulah M. Baird Trust entered an appearance and appeared at the hearing through counsel, arguing the interests of the trust are under lease and should not be compulsory pooled. Counsel for both the Trust and Applicant presented legal briefs after the hearing.

- (8) No other party appeared or otherwise opposed this application.

The Division concludes as follows:

(9) There is clearly disagreement between Applicant and the trustees of the Beulah M. Baird Trust ("the Trust") over whether the Trust's interests are voluntarily committed to the Unit or whether title to those interests is clouded such that compulsory pooling is appropriate. Applicant maintains that the Trust does not have marketable title to the mineral interest it claims and therefore cannot voluntarily commit that interest to the unit until title is cleared. The Trust maintains it has executed a valid lease with a pooling clause that authorizes Applicant as lessee to voluntarily pool the Trust's interest, and the Division cannot pool that interest.

(10) Applicant did not present, or offer to present, direct testimony from a title attorney. The Trust did not present any fact witnesses at the hearing. However, a copy of a purported excerpt from an attorney's title opinion explaining the legal and factual basis for objection to the Trust's title was admitted in evidence without objection. Trust Ex. 2, page 2.

(11) The Division has no jurisdiction to determine the validity of a title or claim of title. Oil Conservation Commission Order No. R-11700-B, issued April 26, 2002 in consolidated Cases Nos. 12731 and 12744, *Applications of TMBR/Sharp Drilling, Inc., etc.* However, in this case Applicant claims that the Trust's title to the interest it claims is doubtful. If the Trust's claim of title should fail, the adverse claimant who thus secured title to that interest would not be bound by the Trust's oil and gas lease which commits its interest to the Unit. The Division should therefore proceed to pool all uncommitted interests, including any claim adverse to the claims of the trust and its assigns.

(12) The Division makes the following findings regarding the interest in the Unit claimed by the Trust:

(a) The Trust acquired an unleased mineral interest in a portion of the Unit from the purported personal representative of Beulah M. Baird deceased. The Trust then leased that interest to Applicant. The lease contains a pooling clause.

(b) The Trust contends that its interest is voluntary pooled, and therefore cannot be compulsory pooled, citing NMSA 1978, Section 70-2-17(B), which limits the Division's pooling authority to situations where "such owner or owners have not agreed to pool their interests."

(c) Applicant responds that the Trust's title is "unmarketable" because the Texas personal representative did not have power, absent authorization from a New Mexico court, to convey the interest of the decedent in New Mexico real estate.

(d) The purported title opinion excerpt admitted in evidence indicates that a title attorney objected to title on this basis and required that title be cured by an ancillary probate proceeding in a New Mexico court. No reason was shown why the suggested procedure would not cure the suggested title defect, and the Division has no notice of any adverse claim.

(e) Applicant contends, however, that the mere fact that the Trust's title may be legally unmarketable renders the interest subject to compulsory pooling.

(f) Having no authority to adjudicate title, the Division does not have jurisdiction to determine whether a party agreeing to voluntary pooling has a legal right to commit any particular interest to a unit. However, under the doctrine of jurisdiction to determine jurisdiction, the Division has the power to determine whether a party has taken the necessary action to voluntarily pool whatever interest it owns.

(g) The Division concludes that the Trust's interest, whatever it may be, has been voluntarily pooled and is not subject to compulsory pooling. Thus, Applicant remains obligated to pay to the Trust the contractual royalty, subject to the Oil and Gas Proceeds Payment Act, NMSA 1978, Sections 70-10-1 through 70-10-6, as amended, unless a title defect is demonstrated in a court of competent jurisdiction. No provision of this order is intended, or should be construed, to mandate a different result.

(h) The Division further concludes, however, that any interest in the Unit claimed by, through or under Beulah M. Baird, deceased, adversely to the personal representative's deed which is the basis of the Trust's claim, is an "uncommitted interest" subject to the Division's authority to compulsory pool such interests, and should be so pooled to effectuate the presumed intention of the legislature to protect the operator from claims of owners of un-pooled interests.

(13) Two or more separately owned tracts are embraced within the Unit, and/or there are royalty interests and/or undivided interests in oil and gas minerals in one or more tracts included in the Unit that are separately owned.

(14) Applicant is owner of an oil and gas working interest within the Unit. Applicant has the right to drill and proposes to drill the proposed well to a common source of supply within the Unit at the proposed location.

(15) There are interest owners in the Unit that have not agreed to pool their interests.

(16) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford to the owner of each interest in the Unit the opportunity to recover or receive without unnecessary expense a just and fair share of hydrocarbons, this

application should be approved by pooling all uncommitted interests, whatever they may be, in the oil and gas within the Unit.

(17) COG Operating LLC (OGRID 229137) should be designated the operator of the proposed well and the Unit.

(18) Any pooled working interest owner who does not pay its share of estimated well costs should have withheld from production its share of reasonable well costs plus an additional 200% thereof as a reasonable charge for the risk involved in drilling the proposed well.

(19) Reasonable charges for supervision (combined fixed rates) should be fixed at \$7000 per month per well while drilling and \$700 per month per well while producing, provided that these rates may be adjusted annually pursuant to the overhead adjustment provision of the COPAS form titled "*Accounting Procedure-Joint Operations*."

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to the application of COG Operating LLC, a 320-acre non-standard oil spacing and proration unit and project area (the "Unit") is hereby established for oil and gas production from the Bone Spring formation, WC-025 G-08 S253534O; Bone Spring (Pool Code 97088), comprising the W/2 W/2 of Section 16, Township 25 South, Range 35 East and the W/2 W/2 of Section 21, Township 25 South, Range 35 East, NMPM, Lea County, New Mexico.

(2) All uncommitted interests, whatever they may be, in the oil and gas in the Bone Spring formation underlying the Unit, are hereby pooled.

(3) The Unit shall be dedicated to Applicant's White Falcon 16 State Com Well No. 12H (the "proposed well"; API No. 30-025-43697), a horizontal well to be drilled from a surface location, 226 feet from the North line and 852 feet from the West line (Unit D) of Section 16, Township 25 South, Range 35 East, to a bottom-hole location, 200 feet from the South line and 1270 feet from the West line (Unit M) of Section 21, Township 25 South, Range 35 East, NMPM. The location of the completed interval will be standard for this horizontal oil well within the Unit.

(4) The operator of the Unit shall commence drilling the proposed well on or before November 30, 2018, and shall thereafter continue drilling the proposed well with due diligence to test the Bone Spring formation.

(5) In the event the operator does not commence drilling the proposed well on or before November 30, 2018, Ordering Paragraphs (1) and (2) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause demonstrated by satisfactory evidence.

(6) Should the proposed well not be drilled and completed within 120 days after commencement thereof, then Ordering Paragraphs (1) and (2) shall be of no further effect, and the Unit and project area created by this order shall terminate, unless operator appears before the Division Director and obtains an extension of the time for completion of the proposed well for good cause shown by satisfactory evidence. If the proposed well is not completed in all of the standard spacing units included in the proposed project area (or Unit) then the operator shall apply to the Division for an amendment to this order to contract the Unit so that it includes only those standard spacing units in which the well is completed.

(7) Upon final plugging and abandonment of the proposed well and any other well drilled on the Unit pursuant to Division Rule 19.15.13.9 NMAC, the pooled Unit shall terminate, unless this Order has been amended to authorize further operations.

(8) COG Operating LLC (OGRID 229137) is hereby designated the operator of the well and the Unit.

(9) After pooling, uncommitted working interest owners are referred to as pooled working interest owners. ("Pooled working interest owners" are owners of working interests in the Unit, including unleased mineral interests, who are not parties to an operating agreement governing the Unit.) After the effective date of this order, the operator shall furnish the Division and each known pooled working interest owner in the Unit an itemized schedule of estimated costs of drilling, completing and equipping the proposed well ("well costs").

(10) Within 30 days from the date the schedule of estimated well costs is furnished, any pooled working interest owner shall have the right to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production as hereinafter provided, and any such owner who pays its share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges. Pooled working interest owners who elect not to pay their share of estimated well costs as provided in this paragraph shall thereafter be referred to as "non-consenting working interest owners."

(11) The operator shall furnish the Division and each known pooled working interest owner (including non-consenting working interest owners) an itemized schedule of actual well costs within 90 days following completion of the proposed well. If no objection to the actual well costs is received by the Division, and the Division has not objected, within 45 days following receipt of the schedule, the actual well costs shall be deemed to be the reasonable well costs. If there is an objection to actual well costs within the 45-day period, the Division will determine reasonable well costs after public notice and hearing.

(12) Within 60 days following determination of reasonable well costs, any pooled working interest owner who has paid its share of estimated costs in advance as provided above shall pay to the operator its share of the amount that reasonable well costs

exceed estimated well costs and shall receive from the operator the amount, if any, that the estimated well costs it has paid exceed its share of reasonable well costs.

(13) The operator is hereby authorized to withhold the following costs and charges from each non-consenting owner's share of production from each well:

- (a) The proportionate share of reasonable well costs attributable to such interest; and
- (b) As a charge for the risk involved in drilling the well, 200% of the above costs.

(14) The operator shall distribute the costs and charges withheld from production, proportionately, to the parties who advanced the well costs.

(15) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$7000 per month per well while drilling and \$700 per month per well while producing, provided that these rates may, at the election of the operator, be adjusted annually pursuant to the overhead adjustment provisions of the COPAS form titled "*Accounting Procedure-Joint Operations*." The operator is authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well(s), not more than what are reasonable, attributable to each pooled working interest owner.

(16) Except as provided above, all proceeds from production from the proposed well that are not disbursed for any reason shall be held for the account of the person or persons entitled thereto pursuant to the Oil and Gas Proceeds Payment Act (NMSA 1978 Sections 70-10-1 through 70-10-6, as amended). If not disbursed, such proceeds shall be turned over to the appropriate authority as and when required by the Uniform Unclaimed Property Act (NMSA 1978 Sections 7-8A-1 through 7-8A-31, as amended).

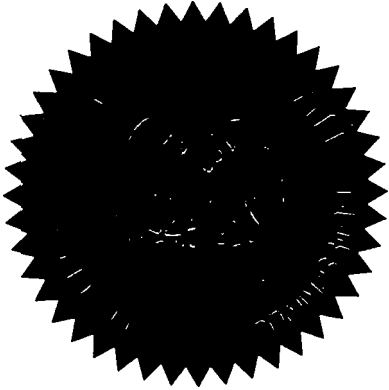
(17) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for allocating costs and charges under this Order. Any well costs or charges that are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(18) Should all the parties to this compulsory pooling order reach voluntary agreement after entry of this order, this order shall thereafter be of no further effect.

(19) The operator of the well and the Unit shall notify the Division in writing of the subsequent voluntary agreement of parties subject to the compulsory pooling provisions of this order.

(20) 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.



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

David R. Catanach

DAVID R. CATANACH
Director