

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

**APPLICATION OF NEARBURG EXPLORATION COMPANY LLC, SR02 LLC
AND SR03 LLC FOR AN ACCOUNTING AND LIMITATION ON RECOVERY
OF WELL COSTS, AND FOR CANCELLATION OF APPLICATION FOR
PERMIT TO DRILL, EDDY COUNTY, NEW MEXICO.**

CASE NO. 15441 (de novo)

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

CASE NO.15481 (de novo)

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

CASE NO.15482 (de novo)

ORDER NO. _____

ORDER OF THE COMMISSION

These matters came before the Oil Conservation Commission ("Commission") for a *de novo* hearing. All three cases were consolidated for hearing, and a single order is being issued. The Commission having conducted a public hearing on February 28 and March 1, 2017, and having considered the testimony, the record in this case, the arguments of the parties, and being otherwise fully advised, enters the following findings, conclusions and order.

THE COMMISSION FINDS THAT:

(1) Notice has been given of this *de novo* hearing and the Commission has jurisdiction of the parties and the subject matter herein.

(2) In Case No. 15441, Nearburg Exploration Company LLC, SR02 LLC and SR03 LLC (collectively, "Nearburg") seeks an order:

[a] declaring that COG Operating LLC ("COG") did not have the right to drill two horizontal wells, the SRO State Com Well No. 043H (API No. 30-015-41141) and the SRO State Com Well No. 044H (API No. 30-015-41142), that penetrate lands subject to a state lease (V-7450) for which Nearburg is the lessee of record.

[b] declaring that COG violated Sections 14.8.B, 15.16.A and 16.15.F of Division Rules [all included in 19.15 NMAC], by filing forms C-101 and C-102 and eventually drilling the subject wells;

[c] requiring COG to account and pay to Nearburg amounts for which it contends that COG would be liable pursuant to NMSA 1978 Section 70-2-18.B due to COG's alleged failure to obtain Voluntary or compulsory pooling of the project areas dedicated to the subject wells;

[d] cancelling the Division's approval of an Application for Permit to Drill filed by COG for its proposed, but not yet drilled, SRO State Com. Well No. 69H (API No. 30-015-43093) (the "69H Well"), to be located 200 feet FNL and 1980 feet FWL in Unit C, Section 17-26S-28E; and

[e] granting "appropriate relief" regarding the SRO State Com. Well No. 16H (API No. 30-015-38071) (the "16H Well"), located 660 feet FSL and 330 feet FWL in Unit M, Section 20-26S-28E.

(3) In Case No. 15481, COG, as applicant, seeks an order (1) creating a nonstandard 320-acre spacing and proration unit in the Bone Spring formation comprising the W/2 W/2 of Section 17, and the W/2 W/2 of Section 20, Township 26 South, Range 28 East, NMPM, Eddy County, New Mexico; (2) pooling Nearburg's interests in said unit; and (3) dedicating said unit to COG's SRO State Com. Well No. 43H (API No. 30-015-41141), a two-mile long horizontal well having its surface location in the NW/4 NW/4 (Unit D) of Section 17, and its bottomhole location in the SW/4 SW/4 (Unit M) of Section 20.

(4) In Case No. 15482, COG, as applicant, seeks an order (1) creating a nonstandard 320-acre spacing and proration unit in the Bone Spring formation comprising the E/2 W/2 of Section 17, and the E/2 W/2 of Section 20, Township 26 South, Range 28 East, NMPM, Eddy County, New Mexico; (2) pooling Nearburg's interests in said unit; and (3) dedicating said unit to COG's SRO State Com. Well No. 44H (API No. 30-015-41142), a two-mile long horizontal well having its surface location in the NE/4 NW/4 (Unit C) of Section 17, and its bottomhole location in the SE/4 SW/4 (Unit N) of Section 20.

(5) At the hearing, both parties appeared through counsel and presented evidence and argument in support of their respective positions.

(6) Unlike the Division hearing below, Nearburg concedes that pooling the acreage comprising the spacing and proration units for the 43H and 44H wells is now appropriate to protect the correlative rights of the parties while the courts address the parties' contractual rights and obligations. Tr. Vol. II at pp. 21 and 34 (Griffin); Tr. Vol. II at pp. 138-139 (Owen).

(7) COG is the operator of record for the following horizontal wells in Township 26 South, Range 28 East, NMPM, in Eddy County, New Mexico:

- The SRO State 16H (API No. 30-015-38071) dedicated to the W/2 W/2 of Section 20 and drilled by COG on March 4, 2011 (the “16H well”);
- SRO State Com Well No. 043H (API No. 30-015-41141) dedicated to the W/2 W/2 of Sections 17 and 20 and drilled by COG on August 8, 2014 (the “43H Well”); and
- SRO State Com Well No. 044H (API No. 30-015-41142) dedicated to the E/2 W/2 of Sections 17 and 20 (the “44H Well”) and drilled by COG on October 10, 2014.

COG Exs. 7-9 (Well files).

(8) The surface hole locations for the 43H and 44H wells are located on the W/2 of Section 17, a state lease (V-7470) in which Yates Petroleum Corporation is the lessee of record. *Id.*

(9) The 16H well and the bottom hole locations for the 43H and the 44H wells are located in the W/2 of Section 20, a state lease (V-7450) in which Nearburg is the lessee of record. *Id.*

(10) When the 16H well was drilled, but before the 43H and 44H wells were drilled, the lands in Sections 17 and 20 were part of a Voluntary unit established under that Unit Agreement for the Development and Operation of the SRO State Exploratory Unit dated May 8th, 2009. COG Ex. 5. The SRO State Exploratory Unit became effective on June 29, 2009. COG Ex. 5.

(11) COG is the successor operator to Marbob Energy Corporation (“Marbob”), the named operator under an Operating Agreement for the SRO State Exploratory Unit dated May 8, 2009 (“Operating Agreement”). COG Ex. 4.

(12) In June of 2009, the land manager for Nearburg signed a document entitled “Ratification and Joinder of Unit Agreement and Unit Operating Agreement” for the SRO State Unit. *See* COG Ex. 2 at p. 3.

[a] The signed Ratification is a form promulgated by the New Mexico State Land Office (“NMSLO”) for the purpose set forth in the title of the document. *See* COG Ex. 3.

[b] Nearburg’s land manager was knowledgeable about unit agreements and unit operating agreements and signed this Ratification without making any changes to the title or the body of the NMSLO form. Tr. Vol. I at p. 161 (Howard).

[c] At the time Nearburg signed the SLO Ratification form, it held all of the working interest in the Nearburg lease covering the W/2 of Section 20. *See* COG Exs. 1, 2 and 3, last two pages.

(13) Yates Petroleum Corporation, Yates Drilling Company, Myco Industries, Inc. and Abo Petroleum Corporation committed their working interest in the W/2 of Section 17 to the Operating Agreement by executing the same Ratification form as that executed by Nearburg. COG Exhibit 4 (Operating Agreement) at p. 19.

[a] Since 2009, these working interest owners have acted in conformance with their working interest in the contract area committed to the Operating Agreement. Tr. Vol. II at p. 139 (Owen).

[b] Oxy Y-1, a successor to Yates Drilling Company, has likewise acted in conformance with its working interest in the contract area committed to the Operating Agreement. *Id.* at p. 140.

(14) On July 13, 2009, Marbob submitted to the SLO the Ratification forms executed by Nearburg and Chesapeake Exploration along with a “revised ‘Exhibit B’ to the Unit Agreement.” COG Ex. 2 at p. 2.

(15) Marbob’s July 13, 2009, letter to the SLO represented the following: “Chesapeake and Nearburg have both subscribed to the Unit Operating Agreement and will pay their proportionate share of the expenses associated with drilling the SRO State Unit #1H well.” COG Ex. 2 at p. 2.

(16) Nearburg did not present any witness knowledgeable about the company’s intent at the time it signed the Ratification form in June of 2009. Tr. Vol. I at pp. 164-165 (Howard)

(17) By letter dated July 22, 2009, the SLO approved inclusion of Nearburg lease into the SRO State Unit “[i]n accordance with Article 22 of the unit agreement.” COG Ex. 2 at p. 1.

(18) Article 22 of the Unit Agreement, which governs the “subsequent joinder” of acreage into the SRO State Unit, requires the working interest in any subsequently joined acreage to likewise subscribe “to the operating agreement providing for the allocation of costs of exploration, development and operation.” *See* COG Ex. 5.

(19) On August 24, 2009, Nearburg executed a “Term Assignment” conveying its working interest in the W/2 of Section 20 to Marbob and retaining for Nearburg an overriding royalty interest effective July 1, 2009. *See* COG Ex. 1.

(20) The Nearburg-Marbob Term Assignment provides that it continues in force so long as the SRO Unit remains in effect. *See* COG Ex. 1.

(21) The Operating Agreement lists the W/2 of Section 20 as part of the contract area. *See* COG Ex. 4 at p. 22 (Exhibit A).

[a] The Operating Agreement lists the working interest in the W/2 of Section 20 as committed to the Operating Agreement. *See* COG Ex. 4 at pp. 29-30 (Exhibit A-1).

[b] The Exhibit A-1 identifies Nearburg as holding an overriding royalty interest in the contract area by virtue of the execution of the Term Assignment. *Id.* See also Tr. Vol. I at p. 169 (Howard).

[c] NEX's witness confirmed that "one could read" the Exhibit A-1 as indicating the working interest in the Nearburg state lease is committed to the Operating Agreement. Tr. Vol. I at p. 169:19-24 (Howard).

(22) In October 2010, COG succeeded Marbob as the Operator under the Operating Agreement. COG Ex. 7 at p. 3 (Change of Operator form).

(23) In March of 2011, COG drilled and eventually completed the 16H well on the Nearburg lease in the W/2 W/2 of Section 20. See COG Ex. 7 (well file).

(24) It is undisputed the 16H well was drilled by COG pursuant to its authority as operator under the Operating Agreement. See Tr. Vol. 1 at pp. 172-173.

(25) In February 2013, COG filed drilling permits for the 43H and 44H wells on the Yates and the Nearburg leases in the W/2 of Sections 17 and 20. COG Ex. 8 and 9.

(26) It is undisputed the 43H and 44H wells were permitted by COG on the Nearburg and Yates state leases pursuant to its authority as operator under the Operating Agreement. See Tr. Vol. I at p. 176:2-13 (Howard).

(27) On March 1, 2014, the SRO Unit terminated. COG Ex. 8 at p. 3 (C-103 reflecting name change for the well).

(28) Under Article XIII, the Operating Agreement remained in effect for the contract area despite termination of the SRO Unit. COG Ex. 4.

(29) Since 2009, the operator and the non-operators to the Operating Agreement have distributed income and paid expenses for wells within the contract area, including the 16H, 43H and 44H wells, in conformance with the working interests in the Yates and Nearburg state leases committed to the Operating Agreement. Tr. Vol. II at pp. 139-142 (Owen).

(30) In March of 2014, in an email exchange addressing Nearburg's proper percentage of ORRI in the 16H well, COG informed Nearburg of the following:

[a] The acreage in the contract area was held by production and "can be drilled at will subject to the JOA already in place." COG Ex. 10 at p. 3.

[b] "[T]he most pressing issue is that the term assignment from Nearburg to Marbob is effective until the SRO Unit is dissolved so technically it has expired. However, we are moving forward on the assumption that it was intended to keep the assignment and the ORR effective until all the wells in (or formerly in) the unit are plugged, so we will need to paper that

up. However, if that assumption is incorrect please let me know since it will affect the work the title lawyer is doing on the updated opinions for the wells.” *Id.* at p. 2.

(31) Nearburg subsequently expressed no disagreement with the understanding outlined in the March 2014 emails. Tr. Vol. I at pp. 182-183 (Howard). Instead,

[a] On May 3, 2014, Nearburg informs COG that it intends to sign the post-unit Division Order for the 16H well. COG Ex. 13.

[b] In June of 2014, Nearburg invoiced COG for payment of the annual lease rental for the Nearburg state lease. *See* COG Ex. 11; Tr. Vol. I at p. 184 (Howard).

(32) On July 9, 2014, COG provided Nearburg with a proposed communitization agreement for the previously permitted 43H well. COG Ex. 12.

(33) Following receipt of the communitization agreement for the 43H well, Nearburg and COG engaged in efforts over the next several months to address the calculation of Nearburg’s ORRI interest in the 43H and 16H wells, and to reach agreement on the form of an extension of the Term Assignment. *See* COG Exs. 12A-19A; Tr. Vol. II at pp. 126-127 (Owen).

[a] Nearburg eventually informed COG it was “agreeable” to the form and language of a “Corrected Term Assignment” (*see* COG Ex. 15-18B; Tr. Vol. I at p. 193 (Howard)); that it would sign the Corrected Term Assignment (*see* COG Ex. 17C and 17D); and Nearburg provided COG updated well information requirements to be attached to the “agreeable” Term Assignment (*see* COG Ex. 19A; Tr. Vol. I at pp. 197-198 (Howard)).

[b] Throughout this period of time, COG continued to operate the 16H well on Nearburg’s state lease without objection. Tr. Vol. I at p. 198 (Howard).

[c] Throughout this period of time, Nearburg continued to receive monthly ORRI payments for the wells within the contract area subject to the Operating Agreement. *See* COG Ex. 24 (July and August 2015 letters revoking Division Orders and requesting no further payment of the ORRI).

[d] During this period of time, COG informed its title attorneys not to credit Nearburg with a working interest under the Operating Agreement because COG understood Nearburg intended to proceed with an ORRI. Tr. Vol. II at pp. 91, 93-94, 129-130 (Owen).

(34) On April 22, 2015, COG, in advance of a planned meeting, provided Nearburg with Communitization Agreements for the spacing units dedicated to the 43H and 44H wells. COG Ex. 18.

(35) On the morning of April 24, 2015, COG and Nearburg met to discuss the Communitization Agreements, a “Corrected Term Assignment,” and data on the SRO Unit wells, including the 43H and 44H wells. COG Ex. 19. Immediately after that meeting, Nearburg sent the following documents via email to COG:

[a] A spreadsheet of the SRO Unit wells showing the “NEX ORRI” and identifying wells for which Nearburg was missing well information. COG Ex. 19.

[b] An “updated Well Information Requirements” to replace those previously attached to the Marbob Term Assignment. COG Ex. 19A; Tr. Vol. I at pp. 197-198 (Howard)

(36) COG’s internal tracking documents in May of 2015 reflect that the 43H and 44H wells were drilled under the Operating Agreement and that Nearburg had not yet signed a corrected term assignment. *See* NEX Ex. 37 at p. 2; Tr. Vol. II at pp. 132-134 (Owen).

(37) On May 5, 2015, COG filed an application to drill the 69H Well, a proposed two-mile horizontal to be completed in the Third Bone Spring [Hay Hollow Bone Spring Pool], in the E/2 W/2 of Sections 17 and 20. Division records reflect that this well has not been drilled and that this permit is due to expire in May of 2017.

(38) In early May of 2015, NEX requested and received information on the 43H and 44H wells. *See* COG Ex. 20; Tr. Vol. II at pp. 35, 38 (Griffin).

(39) On May 20, 2015, NEX’s land manager executed the Communitization Agreements provided by COG in April for the spacing units dedicated to the 43H and 44H wells. *See* COG Exs. 26 and 27; Tr. Vol. I at p. 223 (Howard).

[a] The executed Communitization Agreements are effective prior to the drilling of the 43H and 44H wells. *Id.* at p. 1.

[b] The executed Communitization Agreements state in bolded type that COG is the “Operator of said communitized area and all matters of operation shall be determined and performed by COG Operating LLC.” *Id.* at ¶ 8.

[c] Nearburg understood the Communitization Agreements inform the public that COG is the operator of the Nearburg state lease. Tr. Vol. I at p. 229 (Howard).

(40) Nearburg eventually expressed a desire that the Communitization Agreements be limited to the second bone spring interval of the Bone Spring formation, but testified it was unclear whether the NMSLO Commissioner would accept that limitation. Tr. Vol. I at p. 225 (Howard).

(41) COG, Yates Petroleum and Nearburg eventually agreed to limit the Communitization Agreements to the 2nd Bone Spring interval. *See* COG Ex. 23.

[a] Due to a clerical error, when COG filed the Communitization Agreements with the SLO, the first page failed to reflect that they were limited to the 2nd Bone Spring interval. Tr. Vol. II at pp. 153-154 (Owen).

[b] COG subsequently informed the SLO of this clerical error and provided substitute pages limiting the Communitization Agreements to the 2nd Bone Spring interval. *See* COG Ex. 28; Tr. Vol. II at pp. 155-156 (Owen).

(42) SLO records reflect the Communitization Agreements are in effect and that the SLO has distributed royalties pursuant to these agreements. *See* COG Ex. 31; Tr. Vol. II at pp. 156-157.

(43) On May 28, 2015, Nearburg suggested to COG for the first time that it was unaware of any Operating Agreement governing the working interest in the Nearburg lease covering the W/2 of Section 20. *See* COG Ex. 22; Tr. Vol. I at p. 234 (Howard).

(44) In July of 2015, Nearburg informed COG that it would not sign a corrected term assignment and no longer desired to be paid an ORRI for the wells in the contract area subject to the Operating Agreement. Tr. Vol. I at p. 231 (Howard); Tr. Vol. II at pp. 130-131 (Owen); COG Exs. 24 and 30.

(45) On November 24, 2015, Nearburg filed a Complaint in Santa Fe County State District Court requesting, among other relief, that the Court declare Nearburg is “not subject to the Operating Agreement” and that no Voluntary agreement authorizes COG to develop the acreage in the W/2 of Section 20. COG Exhibit 6.

(46) On November 24, 2015, Nearburg also filed its Application with the Division.

(47) COG’s witness testified the company did not seek pooling orders prior to drilling the 43H and 44H wells because it understood that the working interests in the Yates and Nearburg state leases were committed to the Operating Agreement. Tr. Vol. II at pp. 150-151 (Owen).

(48) Nearburg’s witness agreed that if COG understood the working interest in the Nearburg state lease had been committed to the Operating Agreement, a pooling order was unnecessary at the time the 43H and 44H wells were drilled. Tr. Vol. I at pp. 159-160 (Howard).

(49) COG did not provide Nearburg with well proposals, AFE’s or elections to participate in the 43H and 44H wells because it understood Nearburg desired to continue with an ORRI in the contract area under an extension of the Term Assignment. Tr. Vol. II at p. 143-144 (Owen).

(50) Nearburg’s witness agreed that if COG understood at the time the 43H and 44H wells were permitted and drilled that Nearburg desired to proceed with an overriding royalty interest under an extension of the Term Assignment, it was reasonable for COG to not provide Nearburg with a well proposal, an AFE or an election to participate in these wells. Tr. Vol. I at 160 (Howard).

(51) Payments for production from the 16H, 43H and 44H wells are being held in suspense as a result of Nearburg's repudiation of the Operating Agreement, the Corrected Term Assignment, and the Division Orders. Tr. Vol. II at pp. 32-33 (Griffin); Tr. Vol. II at p. 115 (Owen).

(52) Shortly before filing its Complaint in Santa Fe County District Court, Nearburg executed Assignments with subsidiaries SRO2 and SRO3 creating depth severances within the Bone Spring formation underlying the Nearburg state lease in the W/2 of Section 20. Tr. Vol. II at pp. 26, 31-32 and 42 (Griffin); NEX Ex. 17 (Assignments).

(53) Nearburg and COG presented evidence that pooling the acreage comprising the spacing and proration units dedicated to the 43H and 44H wells is now appropriate to protect the correlative rights of the parties while the courts address the parties' contractual rights and obligation. Tr. Vol. II at pp. 21 and 34 (Griffin); Tr. Vol. II at pp. 138-139 (Owen).

(54) The evidence presented by Nearburg in support of pooling demonstrates the following:

[a] The 16H, the 43H and the 44H wells are all completed in the Hay Hollow Bone Spring Pool (pool code 30215) which currently covers the entire Bone Spring formation in this area. Tr. Vol. II at p. 29 (Griffin); COG Exs. 7-9 (well files).

[b] The 43H and 44H wells are located in the 2nd Bone Spring interval of the Bone Spring formation. Tr. Vol. II at p. 22 (Griffin).

[c] The Bone Spring formation (including the 2nd Bone Spring interval) is continuous across the acreage that comprises the spacing and proration units for the 43H and 44H wells. Tr. Vol. II at pp. 23-24, 30 (Griffin); NEX Exs. 34D and 33E (cross sections).

[d] The Bone Spring formation in this area is suitable for development by horizontal drilling and no structural or geologic impediments exist within the Bone Spring formation that will impede development with horizontal wells. Tr. Vol. II at p. 30 (Griffin)

[e] All quarter-quarter sections comprising the spacing and proration units for the 43H and 44H wells are productive in the Bone Spring formation, so that creation of these spacing and proration units by compulsory pooling will not impair correlative rights. *Id.*

[f] Division records reflect that the E/2 of Sections 17 and 20 have been developed with two-mile standup horizontal wells completed in the Second Bone Spring interval of the Hay Hollow; Bone Spring Pool.

[g] Two mile horizontal wells effectively drain more acreage than one-mile horizontal wells due to the partial elimination of well setback requirements. Tr. Vol. II at p. 47 (Griffin).

(55) The overhead rates and administrative costs under the Operating Agreement are \$6,000 per month while drilling and \$600 per month while producing, subject to COPAS adjustments. Tr. Vol. II at p. 151 (Owen).

THE COMMISSION CONCLUDES THAT

(56) The Commission does not have jurisdiction to determine the contractual rights of the parties as “[e]xclusive jurisdiction of such matters resides in the courts of the State of New Mexico.” Order R-11700-B (*TMBR/Sharp*) at ¶27. Accordingly, the declarations and legal interpretations requested under paragraphs A, C, and E of Nearburg’s Application are not properly before the Commission.

(57) The relief requested under paragraphs B and D of Nearburg’s Application is properly before the Commission and subject to a determination as to whether COG had a good faith belief that it “either owns a working interest or unleased mineral interest in the land, including the proposed bottomhole location, or has a right to drill this well at this location pursuant to a contract with an owner of such mineral or working interests or in a Voluntary pooling agreement or compulsory pooling order hereto entered by the Division”. See Order R-12343-E (*Samson*) at p. 6.

(58) The evidence establishes COG had the requisite good faith belief when it permitted and drilled the 43H and 44H Wells, and when it permitted the 69H well.

[a] The purpose of the SLO-prescribed form of Ratification, the circumstances under which that Ratification was executed by Nearburg, the representations of the parties with knowledge at the time the Ratification was executed, and the “subsequent joinder” requirement in paragraph 22 of the SRO Unit Agreement support a good faith belief that Nearburg committed the working interest in the W/2 of Section 20 to the Operating Agreement in 2009.

[b] The exhibits to the Operating Agreement, which COG inherited from Marbob Energy in October of 2010, support a good faith belief that the working interest in the Nearburg state lease was committed to the Operating Agreement.

[c] The course of performance under the Operating Agreement by the operators and non-operators in the contract area since 2009, including the sharing of expenses and revenues, and the undisputed fact that COG drilled the 16H Well and the permitted the 43H and 44H Wells without objection pursuant to its authority as operator under the Operating Agreement, further confirm a good faith belief that the working interest in the Nearburg state lease was committed to the Operating Agreement.

[d] COG could also have believed, based on Nearburg’s actions and communications after termination of the SRO Unit, that it was authorized to continue development of the Nearburg lease “at will subject to the JOA already in place” and that Nearburg desired “to keep the [Term] assignment and the ORR effective.” See COG Exhibit 10.

[e] The fact that COG was operating the 16H Well on the Nearburg lease without objection at the time it drilled the 43H and 44H Wells, the continued exchange of emails evidencing intention on the part of both parties to renew the term assignment after those wells were drilled, likewise supports the conclusion that COG believed, in good faith, that it was authorized to continue to develop the Nearburg lease at the time it drilled the 43H and 44H Wells.

[f] Finally, Nearburg's execution of Communitization Agreements in May of 2015, which confirm COG's status as operator of the acreage dedicated to the 43H and 44H Wells and contain an effective date preceding the drilling of the 43H and 44H Wells, supports the conclusion COG believed, in good faith, that it was authorized to continue to develop the Nearburg lease at the time it drilled the 43H and 44H wells.

(59) For these reasons, Nearburg's requests under paragraphs B and D of its Application that the Commission find that COG violated Division rules when it permitted and drilled the 43H and 44H Wells, and to cancel the permitted 69H Well, should be denied.

(60) At the Commission hearing, both Nearburg and COG requested that the Commission now pool the acreage comprising the spacing and proration units for the 43H and 44H Wells in order to protect the correlative rights while the courts address the parties' contractual rights and obligations. Tr. Vol. II at pp. 21 and 34 (Griffin); Tr. Vol. II at pp. 138-139 (Owen).

(61) NMSA 1978 Section 70-2- 17.C directs the Commission/Division to pool a spacing unit where: (1) the owners have not agreed to pool their interests; and (2) an owner who has the right to drill has drilled or proposes to drill a well to a common source of supply.

(62) In this case, since Nearburg has repudiated the Operating Agreement under which the 43H and 44H Wells were drilled, and there is not dispute that COG was authorized to operate on the Yates lease where the surface holes for these wells are located, the Commission should pool the acreage that has been dedicated to the 43H and 44H Wells under terms that are just and reasonable.

(63) The pooling orders "shall be effective from the first date of production" (NMSA 1978, § 70-2-18(A)) and should conform to the Communitization Agreements currently in effect and approved by the NMSLO.

(64) COG Operating LLC should be designated operator of the subject wells and the dedicated spacing and proration units.

(65) Under the pooling orders, Nearburg should be afforded an opportunity to challenge the reasonableness of the well costs and to elect to participate or not participate in the 43H and 44H Wells and any future wells in the dedicated spacing units.

(66) COG has not requested a risk penalty and the Commission concludes a risk penalty is not warranted under the facts of this case.

(67) Reasonable charges for supervision (combined or fixed rates) should be charged at the rates fixed by the Operating Agreement governing operations of the W/2 of Section 17 where approximately half of the 43H and 44H wellbores are located.

(68) The pooling orders should further provide that if the parties reach a voluntary agreement with respect to the pooled spacing and proration units, or a final non-appealable determination is made by a New Mexico court that the acreage is subject to a voluntary agreement, then this order shall thereafter be of no further effect.

IT IS THEREFORE ORDERED THAT:

[1] The Application of Nearburg in Case No. 15441 for an order declaring that COG "did not have the right to drill" the 43H and 44H wells into the Bone Spring formation underlying the W/2 of Section 20, Township 26 South, Range 28 East, NMPM is hereby dismissed for lack of jurisdiction.

[2] The Application of Nearburg in Case No. 15441 for an order declaring that COG violated Division Rules by permitting and drilling the 43H and 44H Wells is hereby denied.

[3] The Application of Nearburg in Case No. 15441 for an order requiring COG to account to Nearburg for proceeds of production from the 43H and 44H Wells without recovery of reasonable well costs and expenses is hereby denied.

[4] The Application of Nearburg in Case No. 15441 for an order cancelling the Division's approval of COG's Application for Permit to Drill its proposed 69H Well (API No. 30-015-43093) is hereby denied.

[5] The Application of Nearburg in Case No. 15441 for "appropriate relief" with respect to the SRO State 16H Well (API No. 30-015-38071) dedicated to the W/2 W/2 of Section 20 is dismissed for lack of jurisdiction.

[6] The Applications of COG in Cases Nos. 15481 and 15482 for creation of two 320-acre non-standard spacing and proration units in the Bone Spring formation (Hay Hollow Bone Spring Pool, 30215) comprising, respectively, the W/2 W/2 and the E/2 W/2 of Sections 17 and 20, Township 26 South, Range 28 East, NMPM, in Eddy County, New Mexico, currently dedicated to the SRO State Com Well No. 43 (API No. 30-015-41141) and the SRO State Com Well No. 44 (API No. 30-015-41142), respectively, and for compulsory pooling of these dedicated spacing and proration units so created, are hereby granted.

[7] Upon final plugging and abandonment of the subject well or any other well drilled in the respective spacing and proration unit pursuant to Division rules, the pooled unit created by this Order 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 wells and of the dedicated spacing and proration units.

[9] After the effective date of this order, COG shall furnish Nearburg an itemized schedule of actual well costs for the drilling, completing and equipping the 43H and 44H Wells.

[10] Within 30 days from the date the actual well costs are furnished, Nearburg shall either pay its share of the actual well costs or to elect to have its share of reasonable well costs paid out of production.

[11] Within 45 days of receipt of the actual well costs, Nearburg may file an objection to the well costs with COG and the Division. If no objection to the actual well costs is received by the Division within 45 days following receipt of the actual well costs, they shall be deemed to be the reasonable well costs. If an objection to actual well costs is filed within the 45-day period, the Division will determine reasonable well costs after public notice and hearing.

[12] The operator is hereby authorized to withhold the following costs and charges from the production from each well:

(a) The proportionate share of reasonable well costs attributable to Nearburg's working interest; and

(b) The proportionate share of both the supervision charges and the actual expenditures required for operating each well, not in excess of what are reasonable, attributable to Nearburg's working interest.

[13] No risk penalty shall be imposed for drilling, completing and equipping the wells.

[14] Reasonable charges for supervision (combined fixed rates) are hereby fixed at the rates charged under the Operating Agreement governing operations of the W/2 of Section 17 where approximately half of the 43H and 44H wellbores are located. These rates shall be adjusted annually pursuant to Section III.1.A.3 of the COPAS form titled "Accounting Procedure-Joint Operations."

[15] Except as provided herein, all proceeds from production from the wells 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 under the Uniform Unclaimed Property Act (NMSA 1978 Sections 7-8A-1 through 7-8A-31, as amended).

[16] Should the parties to this compulsory pooling order reach a Voluntary agreement with respect to the pooled spacing and proration units subsequent to the entry of this Order, or if

a final non-appealable determination is made by a New Mexico court that the acreage is subject to a voluntary agreement, then this order shall thereafter be of no further effect.

[17] The Jurisdiction of these cases is retained for the entry of such further orders as may be deemed necessary.