

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:

APPLICATION OF COG OPERATING, LLC CASE NO. 16028
FOR A NONSTANDARD SPACING AND
PRORATION UNIT AND COMPULSORY
POOLING, LEA COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

March 22, 2018

Santa Fe, New Mexico

BEFORE: WILLIAM V. JONES, CHIEF EXAMINER
 DAVID K. BROOKS, LEGAL EXAMINER

This matter came on for hearing before the
New Mexico Oil Conservation Division, William V. Jones,
Chief Examiner, and David K. Brooks, Legal Examiner, on
Thursday, March 22, 2018, 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: Mary C. Hankins, CCR, RPR
 New Mexico CCR #20
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1 APPEARANCES

2 FOR APPLICANT COG OPERATING, LLC:

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1 (11:16 a.m.)

2 EXAMINER JONES: Call Case Number 16028,
3 application of COG Operating, LLC for a nonstandard
4 spacing and proration unit and compulsory pooling in Lea
5 County, New Mexico.

6 Call for appearances.

7 MR. FELDEWERT: May it please the Examiner,
8 Michael Feldewert, with the Santa Fe office of Holland &
9 Hart, appearing on behalf of the Applicant. And I have
10 two witnesses here today.

11 EXAMINER JONES: Any other appearances in
12 this case?

13 MR. FELDEWERT: The witnesses will need to
14 be sworn. Actually, Mr. Solomon's been sworn, but we do
15 have one witness who --

16 EXAMINER JONES: Okay. Can they stand and
17 be sworn again?

18 MATT SOLOMON,
19 after having been first duly sworn under oath, was
20 questioned and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. FELDEWERT:

23 Q. Would you please state your name, identify by
24 whom you're employed and in what capacity?

25 A. Matt Solomon. I am employed by COG Operating,

1 LLC. I'm a staff landman.

2 Q. And, Mr. Solomon, have your responsibilities
3 included the Permian Basin of New Mexico?

4 A. Correct.

5 Q. And you have previously testified before this
6 Division as an expert in petroleum land matters,
7 correct?

8 A. I have.

9 Q. Are you familiar with the application filed in
10 this case?

11 A. I am.

12 Q. And have you conducted a study of the lands in
13 this area?

14 A. I have.

15 MR. FELDEWERT: I would retender
16 Mr. Solomon as an expert witness in petroleum land
17 matters.

18 EXAMINER JONES: He is so qualified.

19 Q. (BY MR. FELDEWERT) Would you please turn to
20 what has been marked as COG Exhibit Number 1, identify
21 it and explain what the company seeks under this
22 application?

23 A. Sure. It's the C-102 that we've filed. And
24 the purpose for filing it was to get a nonstandard
25 spacing and proration unit for our Bonaid Federal Com

1 15H well.

2 Q. Okay. And what nonstandard spacing unit do you
3 seek to create here?

4 A. The unit that is located in the west half of
5 the west half of Sections 17 and 20 in Township 24
6 South, Range 35 East.

7 Q. Now, I think this C-102 has not yet been filed,
8 correct? This is the draft application or draft C-102
9 in the exhibit?

10 A. I'm not absolutely sure of that.

11 Q. Okay. But do we know what pool is involved
12 here?

13 A. My permitting department told me it is going to
14 be a wildcat Bone Spring Pool. A pool code has not yet
15 been assigned.

16 Q. And you're seeking to establish this
17 nonstandard spacing and proration unit in the Bone
18 Spring Formation?

19 A. That's correct.

20 Q. Now, the wildcat pool, will that be governed by
21 the Division statewide rules?

22 A. It will.

23 Q. And will the completed interval for this well
24 comply with those setback requirements?

25 A. It will.

1 **Q. What's the nature of the acreage in the west**
2 **half-west half of Sections 17 and 20?**

3 A. In the west half of the west half of 17, the
4 acreage is a federal lease. In the west half of the
5 northwest quarter of 20, that's fee. And in the west
6 half of the southwest quarter of 20, that is federal
7 acreage.

8 **Q. Let me help you out, if I turn to what's been**
9 **marked as COG Number 2.**

10 A. Oh, okay. Sorry. No. You are right.

11 **Q. Okay.**

12 A. The acreage in the south -- the west half of
13 the southwest quarter of 20 is fee acreage. The rest of
14 the acreage is federal -- is a federal lease.

15 EXAMINER BROOKS: 20 or 17?

16 **Q. (BY MR. FELDEWERT) You mean 17 perhaps?**

17 A. Correct. In 17, the west half of the west half
18 is federal acreage. In 20, the west half of the
19 north --

20 **Q. I'm going to stop you a minute. Let's turn to**
21 **COG Exhibit Number 2.**

22 A. Okay.

23 **Q. I'm sorry. I should have taken you there.**

24 A. Oh. I'm sorry.

25 **Q. We have a couple of wells here today, so let's**

1 **get to this one.**

2 A. Right. Right. Okay.

3 **Q. Let me ask you this: Does Exhibit Number 2**
4 **correctly reflect the tracts that are involved here?**

5 A. It does.

6 **Q. Okay. Would you just explain what you have**
7 **involved here?**

8 A. Sure. Let me start with 20. In the west half
9 of the west half of Section 20, that's a federal lease.
10 In the west half of the northwest quarter of 17, that is
11 also the same federal lease. And then the fee acreage
12 is in the west half of the southwest quarter of 20 -- of
13 17.

14 **Q. Okay. All right. And then if I look at the**
15 **second page of this exhibit, does this identify the**
16 **interest owners by tract and then by the 320-acre**
17 **spacing units?**

18 A. Correct.

19 **Q. And you had some highlighting here. Are**
20 **these -- the parties that are highlighted, Chevron and**
21 **Katharine Ross Madera Sharbutt --**

22 A. Uh-huh.

23 **Q. -- are these the working interest owners that**
24 **remain to be pooled?**

25 A. Correct.

1 Q. Are there also some nonparticipating royalty
2 interest owners that you seek to pool?

3 A. That's correct.

4 Q. Okay. And we will have a list of those in the
5 Notice of Affidavit, correct?

6 A. Correct.

7 Q. All right. If I then turn to what's been
8 marked as COG Exhibit Number 3, is this a copy of the
9 well-proposal letter that was sent to the working
10 interest owners for this acreage?

11 A. That is correct.

12 Q. And did it include an AFE?

13 A. It did.

14 Q. Are the costs reflected on the AFE consistent
15 with what COG and other operators have incurred for
16 drilling similar horizontal wells?

17 A. They are.

18 Q. Now, if I look at this letter about halfway
19 down, does it identify for the Examiner the overhead and
20 administrative costs that the company seeks in this
21 pooling order?

22 A. It does.

23 Q. And what are those?

24 A. 7,000 for drilling, 700 for producing.

25 Q. And are those rates consistent with what other

1 operators are charging for similar wells?

2 A. They are.

3 Q. Now, with respect to the working -- remaining
4 working interest owners that you seek to pool, what have
5 been your discussions with Chevron after sending this
6 well-proposal letter?

7 A. Chevron has informed us that they intend to
8 participate under any issued forced pooling order.

9 Ms. Sharbutt, we are continuing to try to
10 lease her. My broker has been in constant contact with
11 her, but has yet to be able to get her to sign a lease.

12 Q. In preparation for this hearing today, did the
13 company identify the leased mineral interest owners in
14 the 40-acre tracts surrounding the proposed nonstandard
15 unit?

16 A. We did.

17 Q. And have those interest owners been included in
18 the notice of this hearing today?

19 A. They have.

20 Q. If I then turn to what is marked as COG Exhibit
21 Number 4, is this an affidavit prepared by my office
22 with the attached notice to provide notice of this
23 hearing?

24 A. It is.

25 Q. Now, if I page into this -- so four pages into

1 this exhibit, there is a list of pool parties and then
2 there is an entry for additional pool parties. And it
3 shows a date of 3/9/2018. Do you see that?

4 A. I do.

5 Q. Okay. The parties under that additional pooled
6 parties, are those the nonparticipating royalty interest
7 owners?

8 A. They are.

9 Q. Okay. And it reflects that notice for these
10 particular individuals didn't go out until March 9th?

11 A. That's correct.

12 Q. So these were subsequently discovered?

13 A. Correct.

14 Q. It also -- in flipping through this, did we
15 also notice that there was a -- that -- that Ms. Madera
16 Sharbutt had not yet received her notice of hearing?

17 A. We did.

18 Q. And then there was, likewise, one
19 other nonparticipating royalty interest owner that had
20 not received their notice of hearing, correct?

21 A. That's correct.

22 Q. And we had some concerns about the address that
23 was utilized?

24 A. For Madera Sharbutt, we had some concerns. Not
25 for Ms. Barnes [phonetic], who we subsequently have

1 spoken to over the phone. And we sent her a copy via
2 email of the letter and the DPU we're asking her to
3 ratify, and she has told us she is amenable to that.

4 Q. Okay. So we have two interest owners that --
5 let me step back.

6 We have one interest owner, that being a
7 working interest owner, that we need to provide adequate
8 notice to, correct?

9 A. Correct.

10 Q. So we're going to ask that this case be
11 continued to the April 5th docket to provide that
12 notice?

13 A. Correct.

14 Q. Now, in the event that you're able to lease
15 from her, we can then inform the Division that she no
16 longer needs to be pooled, and we can then dismiss her
17 and ask that the matter be taken under advisement?

18 A. Correct.

19 Q. Does that work for you?

20 A. Yes.

21 Q. Were Exhibits 1 through 3 prepared by you or
22 compiled under your direction and supervision?

23 A. They were prepared by me.

24 MR. FELDEWERT: Mr. Examiner, I'd move
25 admission into evidence of COG Exhibit Numbers 1 through

1 4.

2 EXAMINER JONES: Exhibits 1 through 4 are
3 admitted.

4 (COG Operating, LLC Exhibit Numbers 1
5 through 4 are offered and admitted into
6 evidence.)

7 MR. HALL: And that concludes my
8 examination of this witness.

9 CROSS-EXAMINATION

10 BY EXAMINER BROOKS:

11 Q. Is Katharine Madera Sharbutt the actress?

12 A. Oh, you mean Katharine Ross as in "Butch
13 Cassidy and the Sundance Kid" and "The Graduate"?

14 Q. Yes.

15 A. That's a good question. I don't know.

16 Q. I was curious because people in the acting
17 profession often have multiple marriages -- well,
18 successive marriages. Let me correct myself.

19 A. I have read that the Katharine Ross you are
20 referring to has, in fact, had several marriages.

21 Q. Well, I had also, actually. But I didn't know
22 the names. And, you know, it's often a question what
23 someone's legal name is.

24 A. I think you and I read the same story.

25 Q. Might be (laughter). I was curious.

1 **That's all I have.**

2 **CROSS-EXAMINATION**

3 BY EXAMINER JONES:

4 **Q. So the additional pooled parties, are they --**
5 **are they unleased mineral owners?**

6 A. No. They are nonparticipating royalty interest
7 owners. And the issue here is their royalty interest is
8 attached to the fee acreage.

9 EXAMINER BROOKS: Yes. So it's a fee
10 royalty.

11 THE WITNESS: Right.

12 EXAMINER BROOKS: Sometimes called a --

13 THE WITNESS: So that fee acreage is very
14 atomized, and -- so it's undivided. And one of the fee
15 owners is unleased. Therefore, because a certain
16 fractional percentage of that fee acreage is unleased,
17 we can't tie a pooling clause to those owners for that
18 particular undivided interest.

19 EXAMINER JONES: Okay. Okay.

20 EXAMINER BROOKS: That's a question -- then
21 I would have a question. And I'm not as knowledgeable
22 about this as I should be, but I would have a question
23 of whether or not a fee royalty that's up -- that's up
24 the chain of title rather than down the chain of title
25 from the lease is subject to the -- to -- I guess

1 arguably it is. It would be if there were an express --
2 if there were an express executive right granted to the
3 lessor, then it would be. We don't have to worry about
4 that, though, in this case because we've got this one
5 case where they are definitely not because it's not a
6 lease, right? Okay. I'm happy with that.

7 **Q. (BY EXAMINER JONES) Will the location of the**
8 **well change? Have you done an on-site or anything?**

9 A. Yeah. No. We're set. We're going to drill
10 this.

11 **Q. And there is no newspaper notice in this case,**
12 **but you might post one; is that right?**

13 MR. FELDEWERT: Well, we will -- we didn't
14 because, you know, we were confident -- we thought we
15 had the right addresses. We didn't have any
16 unlocatable -- we've been able to locate everyone and
17 speak with everyone, but it turns out that Ms. Sharbutt
18 no longer has her place in Ruidoso. So we need to get
19 her a notice of this hearing in the event that she does
20 not actually lease.

21 **Q. (BY EXAMINER JONES) Okay. So two tracts and**
22 **federal fee com agreement.**

23 A. Right.

24 **Q. I guess I don't have any questions.**

25 A. Okay. Thank you.

1 MR. FELDEWERT: Call our next witness.

2 EXAMINER JONES: Yes.

3 HENRY ZOLLINGER,

4 after having been previously sworn under oath, was
5 questioned and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. FELDEWERT:

8 Q. Would you please state your name, identify by
9 whom you're employed and in what capacity?

10 A. My name is Henry Zollinger. I'm employed by
11 COG Operating as a geologic supervisor.

12 Q. And, Mr. Zollinger, how long have you had that
13 position?

14 A. A little over five years.

15 Q. And do your responsibilities include the
16 Permian Basin of New Mexico?

17 A. Yes, it does.

18 Q. And you have also previously testified before
19 this Division as an expert in petroleum geology,
20 correct?

21 A. Yes, I have.

22 Q. Are you familiar with the application filed in
23 this case?

24 A. Yes, I am.

25 Q. And have you conducted a geologic study on the

1 lands that are the subject of this hearing?

2 A. Yes.

3 MR. FELDEWERT: I would retender
4 Mr. Zollinger as an expert in petroleum geology.

5 EXAMINER JONES: He's qualified as an
6 expert in petroleum geology.

7 Q. (BY MR. FELDEWERT) Would you please identify
8 for the Examiner the targeted interval for the proposed
9 area?

10 A. It is the 3rd Bone Spring Sand of the Bone
11 Spring Formation.

12 Q. And have you prepared a structure map with a
13 cross section for this zone for the Examiners?

14 A. Yes, I have.

15 Q. If I turn to what's been marked as Exhibit
16 Number 6 -- let me stop right there.

17 MR. FELDEWERT: Mr. Examiner, I noticed we
18 do not have an Exhibit 5, so we're on Exhibit Number 6.

19 EXAMINER JONES: Okay.

20 Q. (BY MR. FELDEWERT) If you turn to what's been
21 marked as Exhibit Number 6, identify it and explain what
22 is shown on this exhibit.

23 A. Sure. Exhibit Number 6 is a land plat with the
24 COG acreage colored in yellow. The proposed wellbore is
25 the purple-dashed line. There is a producing well in

1 the 3rd Bone Spring offset down to the southwest, which
2 is a solid purple line, and then the structure contours
3 are subsea on the top of the Wolfcamp, which is about 50
4 to 70 feet below our target of this proposed well. You
5 can see the structure is dipping down dip to the south.

6 Q. And is the -- what do you observe about the --
7 about the structure? Do you see any faulting or
8 pinch-outs or any geologic impediments to horizontal
9 wells?

10 A. No, I do not.

11 Q. And you mentioned you created a cross section?

12 A. Yes.

13 Q. If I turn to what's been marked as COG Exhibit
14 Number 7, does this identify the wells that you utilized
15 to create your cross section?

16 A. It does.

17 Q. Why did you choose these particular wells?

18 A. They're representative of the target that we
19 are targeting for this well and in line with the
20 drilling of this well also.

21 Q. If I turn to what's been marked as COG Exhibit
22 Number 8, is this a stratigraphic cross section that
23 corresponds with the wells shown on Exhibit 7?

24 A. Yes, it is.

25 Q. And have you noted for the Examiners the

1 **formation tops on this exhibit?**

2 A. I have, yes.

3 **Q. How are they designated?**

4 A. They're designated as the top TBSG, which is
5 the top of the 3rd Bone Spring Sand, which is the
6 horizontal line at the top of the section. The top of
7 Wolfcamp is the flat solid line at the bottom of the
8 section, which this cross section has been flattened on.

9 **Q. Have you likewise identified for the Examiner**
10 **the targeted interval or the landing zone for this**
11 **proposed well?**

12 A. Yes, I have. It's the green bracket on the
13 left of the farthest left well.

14 **Q. What do you observe about the continuity of**
15 **this targeted zone as you move across the acreage at**
16 **issue?**

17 A. It's fairly high iso packets [sic] for the
18 entire 3rd Bone Spring Sand -- from A to A prime, and
19 the zone is present and contiguous [sic] throughout this
20 cross section.

21 **Q. In your opinion, is this interval in this area**
22 **suitable for development by horizontal wells?**

23 A. Yes.

24 **Q. And do you expect each quarter-quarter section**
25 **within the proposed nonstandard unit to contribute more**

1 or less equally to the production from the wellbore?

2 A. Yes.

3 Q. And in your opinion, is the granting of this
4 application in the best interest of conservation, the
5 prevention of waste and the protection of correlative
6 rights?

7 A. Yes.

8 Q. Were COG Exhibits 6 through 8 prepared by you
9 or compiled under your direction and supervision?

10 A. Yeah.

11 MR. FELDEWERT: Mr. Examiner, I'd move
12 admission into evidence of COG Exhibits 6 through 8.

13 EXAMINER JONES: Exhibits 6 through 8 are
14 admitted.

15 (COG Operating, LLC Exhibit Numbers 6
16 through 8 are offered and admitted into
17 evidence.)

18 MR. FELDEWERT: That concludes my
19 examination of this witness.

20 EXAMINER JONES: Mr. Brooks?

21 EXAMINER BROOKS: No questions.

22 CROSS-EXAMINATION

23 BY EXAMINER JONES:

24 Q. Is this -- the 3rd Bone Spring, is that the
25 common target out here in this area?

1 A. It's one of the common targets. Another one is
2 also the Wolfcamp A and the Wolfcamp B, from the
3 previous hearings.

4 Q. Oh, okay.

5 Okay. Thank you very much. I appreciate
6 you coming up here.

7 A. Yeah.

8 MR. FELDEWERT: Mr. Examiner, we'd like to,
9 I guess provisionally, continue this matter to the April
10 5th docket to allow us to get a copy of the application
11 and notice of hearing to Ms. Sharbutt. But in the event
12 we're able to lease her, I'd like to have the option to
13 notify the Division, and then we would no longer need
14 that hearing on the 5th.

15 EXAMINER BROOKS: Okay. And if you're able
16 to lease her, then she'll no longer be a party.

17 MR. FELDEWERT: Correct.

18 EXAMINER BROOKS: And everybody else
19 already has notice?

20 MR. FELDEWERT: Yeah. I'm going to
21 double-check. I believe so, but --

22 EXAMINER BROOKS: If everybody else already
23 has notice, they were on the notice of this hearing, so
24 we will -- I think we can do that.

25 MR. FELDEWERT: Okay.

1 EXAMINER JONES: Okay. But as far as
2 telling Florene how to create the docket --

3 EXAMINER BROOKS: Make it an ordinary
4 continuance, and then if they're able to lease this
5 party, we can enter an order of dismissal.

6 EXAMINER JONES: Except for Chevron.

7 EXAMINER BROOKS: Well, yeah. That's
8 right. We're going to have to enter an order, but.

9 MR. FELDEWERT: I can give you notice, and
10 then we can just indicate it was not -- we can indicate
11 it April 5th that the hearing is no longer -- that the
12 continuance is no longer necessary. I just don't want
13 it to hold up putting together a pooling order.

14 EXAMINER JONES: We won't do that.

15 EXAMINER BROOKS: Well, you're not really
16 thinking you're going to get it before April 5th?

17 MR. FELDEWERT: No. No.

18 EXAMINER JONES: Well --

19 EXAMINER BROOKS: We can give it to Mike to
20 write.

21 EXAMINER JONES: No. I'm through with a
22 big one that has taken all my time. I don't hope to see
23 that ever again.

24 EXAMINER BROOKS: I'm holding my breath
25 until the director approves it.

1 EXAMINER JONES: Okay. Well, we'll go down
2 as -- as far as Florene goes, for a continuance to the
3 5th of April.

4 MR. FELDEWERT: Yes, sir.

5 EXAMINER JONES: So 1:30 then.

6 (Recess, 11:36 a.m. to 1:32 p.m.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

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4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, Certified Court
6 Reporter, New Mexico Certified Court Reporter No. 20,
7 and Registered Professional Reporter, do hereby certify
8 that I reported the foregoing proceedings in
9 stenographic shorthand and that the foregoing pages are
10 a true and correct transcript of those proceedings that
11 were reduced to printed form by me to the best of my
12 ability.

13 I FURTHER CERTIFY that the Reporter's
14 Record of the proceedings truly and accurately reflects
15 the exhibits, if any, offered by the respective parties.

16 I FURTHER CERTIFY that I am neither
17 employed by nor related to any of the parties or
18 attorneys in this case and that I have no interest in
19 the final disposition of this case.

20 DATED THIS 10th day of April 2018.

21

22 MARY C. HANKINS, CCR, RPR
23 Certified Court Reporter
24 New Mexico CCR No. 20
25 Date of CCR Expiration: 12/31/2018
Paul Baca Professional Court Reporters

24

25