

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. 16325

Application of COG Operating, LLC  
for a non-standard oil spacing and  
proration unit and compulsory pooling,  
Eddy County, New Mexico.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

THURSDAY, JULY 26, 2018

SANTA FE, NEW MEXICO

This matter came on for hearing before the  
New Mexico Oil Conservation Division, William B. Jones,  
Examiner, and David Brooks, Esq. Legal Examiner, on  
Thursday, July 26, 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 Therese Macfarlane  
New Mexico CCR 122  
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 the Applicant: Jordan Lee Kessler, Esq.  
 3 Holland & Hart  
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 5 Santa Fe, New Mexico 87501  
 6 (505) 988-4421  
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## 6 I N D E X

7 CASE NUMBER 16325 CALLED PAGE

## 8 APPLICANT WITNESSES:

9 ASHLEY ROUSH  
 10 DIRECT EXAMINATION BY MS. KESSLER: 6  
 11 CROSS EXAMINATION BY MR. JONES: 11  
 12 MATT FISHER.  
 13 DIRECT EXAMINATION BY MS. KESSLER: 13  
 14 CROSS EXAMINATION BY MR. JONES: 16

13

## 14 E X H I B I T I N D E X

15 PAGE

16 APPLICANT COG OPERATING, LLC, EXHIBIT 1 11  
 17 APPLICANT COG OPERATING, LLC, EXHIBIT 2 11  
 18 APPLICANT COG OPERATING, LLC, EXHIBIT 3 11  
 19 APPLICANT COG OPERATING, LLC, EXHIBIT 4 11  
 20 APPLICANT COG OPERATING, LLC, EXHIBIT 5 11  
 21 APPLICANT COG OPERATING, LLC, EXHIBIT 6 11  
 22 APPLICANT COG OPERATING, LLC, EXHIBIT 7 16  
 23 APPLICANT COG OPERATING, LLC, EXHIBIT 8 16  
 24 APPLICANT COG OPERATING, LLC, EXHIBIT 9 16  
 25 APPLICANT COG OPERATING, LLC, EXHIBIT 10 16

1 (Time noted: 8:54 a.m.)

2 MR. JONES: We are on to page 6. Let's call  
3 Case 16325, Application of COG Operating, LLC for a  
4 non-standard spacing proration unit and compulsory pooling  
5 in Eddy County, New Mexico.

6 Is it going to be combined with any other  
7 cases?

8 MS. KESSLER: No.

9 MR. JONES: Okay. Call for appearances.

10 MS. KESSLER: Mr. Examiner, Jordan Kessler from  
11 the Santa Fe office of Holland and Hart on behalf of the  
12 applicant.

13 MR. JONES: Any other appearances?

14 (Note: No response.)

15 So glad you decided to come back.

16 MR. KESSLER: Thank you, Mr. Examiner.

17 (Note: Discussion off the record.)

18 MR. JONES: Okay.

19 MS. KESSLER: Mr. Examiner, two witnesses today  
20 that will need to be sworn, but as an initial matter I'd  
21 like to dismiss our request for a non-standard spacing  
22 unit. Under the new horizontal well rules which are  
23 currently in effect, we do not need a non-standard spacing  
24 unit so we are requesting dismissal of that.

25 MR. JONES: Before you do that, what date was

1     this case advertised, was it submitted?

2                     It looks like July the 26th. Or June the  
3     26th. That was the date that it was -- I got it stamped  
4     in here June 26th.

5                     MS. KESSLER: That would be...

6                     MR. JONES: So the date that it was effective,  
7     the new rule was effective.

8                     MR. BROOKS: That is the date the new rule was  
9     effective. Is that also the date that this case was  
10    filed?

11                    MR. JONES: It's stamped but it probably would  
12    be stamped at the end of the day after it got in. It was  
13    the 25th. So...

14                    MR. BROOKS: If it's filed as of the 26th It's  
15    under the new rule. We don't need to speculate about when  
16    it was actually -- it may have been actually presented  
17    earlier because the -- the stamp date controls. The  
18    application is stamped: Received June 26th.

19                    MR. JONES: Well, but it's 30 days before this  
20    date. Yeah, June.

21                    MR. BROOKS: Thirty days before this date is  
22    June -- right. This is July -- no, this is July 26th. So  
23    it's under the new rule, in my opinion, because -- there's  
24    some dispute about whether you can actually apply judicial  
25    precedence on the OCD, but you can't prove things about

1 the record by evidence dehors the record. And if anybody  
2 had testified that they actually received this before June  
3 26th that would be dehors the record.

4 MS. KESSLER: If it was filed, Mr. Examiner, on  
5 June 26th, it would be under the rule that was in effect  
6 June 26th. It would be under who horizontal rule which  
7 has not yet been stayed, so we would proceed with  
8 dismissing the non-standard spacing unit.

9 MR. JONES: Okay.

10 MR. BROOKS: Have you heard of any applications  
11 to stay?

12 MS. KESSLER: I would defer that to Mr.  
13 Feldewert. I have personally not.

14 MR. BROOKS: I have personally not, either.

15 MR. JONES: Even if it was under the -- even if  
16 we did call it a non-standard spacing unit it would be  
17 automatically converted into a horizontal unit anyway,  
18 correct?

19 MR. BROOKS: Yeah.

20 MR. JONES: So you still want to go with  
21 dismissal?

22 MR. BROOKS: I think we should call it a  
23 non-standard -- or a standard horizontal spacing unit if  
24 that is what it is and this was filed on June 26th.

25 MR. JONES: Sounds good. Sounds good.

1           MR. BROOKS: If it was filed on June 25th we  
2 would have to use an entirely different...

3           MR. JONES: Will the witnesses stand and be  
4 sworn.)

5           (Whereupon the designated witnesses were  
6 duly sworn.

7                       ASHLEY ROUSH,  
8           having been duly sworn, testified as follows:

9                       DIRECT EXAMINATION

10          BY MS. KESSLER:

11               **Q.    Would you please state your name for the record**  
12 **and tell the examiners by whom you are employed.**

13               A.    My name is Ashley Roush. I'm employed at COG  
14 Operating as a Senior Landman.

15               **Q.    Have you previously testified before the**  
16 **Division?**

17               A.    Yes, I have.

18               **Q.    And were your credentials accepted and made a**  
19 **matter of record?**

20               A.    Yes, they were.

21               **Q.    Are you familiar with the application that has**  
22 **been filed in this case?**

23               A.    Yes.

24               **Q.    And are you also familiar with the status of the**  
25 **lands in the subject area?**

1           A.    Yes.

2                   MS. KESSLER:  Mr. Examiner, I would tender Ms.  
3   Roush as an expert in petroleum land matters.

4                   MR. JONES:  Excuse me, how do you spell your  
5   last name?

6                   THE WITNESS:  R-o-u-s-h.

7                   MR. JONES:  I'm sorry.  I don't hear very well.  
8   Thank you.

9                   MS. KESSLER:  Is she qualified, Mr. Examiner?

10                  MR. JONES:  Yes, she is very well qualified.

11                  MR. BROOKS:  You have the unenviable task, all  
12   of you who are here today presenting your cases to two  
13   examiners who are deaf.

14                  MS. KESSLER:  We will try and speak up.

15                  MR. JONES:  We didn't ask for hearing aids today  
16   for our meeting.  We got to do that 10 days before the  
17   meeting, I think.

18                  MR. BROOKS:  At least.

19                  **Q.    (BY MS. KESSLER)  Ms. Roush, can you please turn**  
20   **to Exhibit 1, identify this exhibit and explain what COG**  
21   **seeks under the this application.**

22                  A.    This is the C-102 for the Big Papi Fed Com 12H  
23   well.  We seek to create a 320-acre spacing unit for the  
24   west half of the east half of Sections 4 and 9, Township  
25   26 south, Range 29 East in Eddy County New Mexico, and we

1 seek to pool the uncommitted owners on the Bone Spring  
2 formation.

3 Q. Is this pool governed by Division statewide  
4 rules?

5 A. Yes, it is.

6 Q. No special rules?

7 A. Correct. No special rules.

8 Q. Has an API been approved for this well?

9 A. Yes, it has.

10 Q. And the API number is reflected on this C-102?

11 A. Correct.

12 Q. What is the character of these lands?

13 A. Federal.

14 Q. Are there any depth severances in the pool?

15 A. No depth severances.

16 Q. Let's turn to Exhibit 2. Is this an ownership  
17 outline that shows ownership by tract in the area?

18 A. Yes, it is.

19 Q. And what interests do you seek to pool?

20 A. The uncommitted working interest owners,  
21 production payment owner, and the overriding royalty  
22 interest owners. And I have highlighted those that we  
23 seek to pool in yellow.

24 Q. Turning to Exhibit 3, is this a copy of the Well  
25 Proposal letters that you sent to all of working interest



1 owners?

2 A. Yes, it is.

3 Q. This is just an example, but it was sent to  
4 everybody, correct?

5 A. Correct.

6 Q. On what date was the letter sent?

7 A. May 17th.

8 Q. And did it include an AFE?

9 A. Yes.

10 Q. Are the costs on the AFE consistent with what  
11 others in the area are charging for similar wells?

12 A. Yes, they are.

13 Q. What additional efforts did you make to reach an  
14 agreement with the working interest owners that you're  
15 seeking to pool?

16 A. We have sent them both an operating agreement  
17 and a communitization agreement. We are currently  
18 negotiating the operating agreement and I have yet to get  
19 an election back from Oxy.

20 Q. But you have been in touch with both?

21 A. Yes, I have been working with both of them.

22 Q. Have you estimated overhead and administrative  
23 costs for drilling and producing?

24 A. \$7,000 for drilling and \$700 for producing.

25 Q. Are those costs in line with what COG and other

1     drillers in the area incur?

2             A.     Yes.

3             Q.     Do you ask those costs be incorporated into the  
4     Order resulting from this hearing?

5             A.     Yes.

6             Q.     Do you ask that they periodically be adjusted in  
7     accordance with COPAS accounting procedures?

8             A.     Yes.

9             Q.     With the uncommitted working interest owners,  
10    are you requesting a \$200 risk penalty?

11            A.     Yes.

12            Q.     Do you also seek to pool production owners and  
13    overriding royalty interest owners?

14            A.     Yes.

15            Q.     If you turn to Exhibit 4, is that a copy of  
16    ratification of the communitization agreement that was  
17    sent to overriding royalty interest owners?

18            A.     Yes, it is.

19            Q.     And you request that they ratify that?

20            A.     (Note: Nods head.)

21            Q.     Is Exhibit 5 an affidavit prepared by my office  
22    with attached letters providing notice of this hearing to  
23    the parties that you seek to pool?

24            A.     Yes, it is.

25            Q.     And were all of parties that you seek to pool

1     **locatable?**

2             A.     Yes, they were.

3             **Q.     Out of an abundance of caution did my law firm**  
4     **publish notice, and is that included as Exhibit 6?**

5             A.     Yes.

6             **Q.     Were Exhibits 1 through 4 prepared by you and**  
7     **compiled under your direction or supervision?**

8             A.     Yes, they were.

9                     MS. KESSLER:   Mr. Examiner I would for admission  
10    of Exhibits 1 through 6, which include my two notice  
11    affidavits.

12                    MR. JONES:   Exhibits 1 through 6 are admitted.

13                                    CROSS-EXAMINATION

14    BY MR. JONES:

15             **Q.     So four tracts involved?**

16             A.     Yes, sir.

17             **Q.     You're pooling the overrides because of the --**

18             A.     They don't have pooling interests in the  
19    document that created them.   The same with the production  
20    payment.

21             **Q.     Production payment on there, I'm not familiar**  
22     **with that.**

23             A.     We treat it similar to an NPRI and an override.  
24    It's non-costbearing interest.   So in this case it's 5  
25    percent of 8/8 paid until they reach \$2.4 million, and

1     then once you hit that amount on all the wells drilled  
2     that affects the production payment, then it goes away.

3           **Q.     Okay.     And they didn't sign in in this.**

4           A.     No, I have yet to receive the...

5           **Q.     Complicated if they didn't sign in how you**  
6     **handle it.**

7           A.     Right. We have sent them ratifications.

8           MR. BROOKS: I think I wouldn't be upset if it  
9     went away after it reached \$2.4 million.

10          **Q.     And it's all federal lands?**

11          A.     Yes, sir. Four federal leases.

12          **Q.     Four federal.     Separate and a com agreement.**  
13     **Okay.**

14          MR. BROOKS: Of course the way people think  
15     about government officials, I shouldn't have said that on  
16     the record. Somebody might think I was soliciting.

17          MR. JONES: Any questions?

18          MR. BROOKS: No questions.

19          MR. JONES: Thanks.

20          MS. KESSLER: We will call our next witness.

21          MR. JONES: Thank you for coming up here.

22          MS. ROUSH: Thank you.

23                         MATTHEW FISHER,

24     having been previously sworn, testified as follows:

25                         DIRECT EXAMINATION

1 BY MS. KESSLER:

2 Q. Please state your name for the record.

3 A. Matt Fisher.

4 Q. By whom are you employed?

5 A. By COG Operating. I'm a geologist.

6 Q. Have you previously testified before the  
7 Division?

8 A. Yes, I have.

9 Q. Were your credentials as an expert in petroleum  
10 geology accepted and made a matter of record?

11 A. Yes.

12 Q. Are you familiar with the application filed in  
13 this case?

14 A. Yes.

15 Q. Have you conducted geologic studies of the lands  
16 that are the subject of this application?

17 A. Yes.

18 MS. KESSLER: Mr. Examiner, I would tender Mr.  
19 Fisher as an expert in petroleum geology.

20 MR. JONES: So qualified.

21 Q. Mr. Fisher, please turn to Exhibit 7 and  
22 identify this exhibit.

23 A. Okay. This is a locator map just showing the  
24 approximate location of the Big Papi 12H, shown by the  
25 dashed line.

1                   Other Second Sand horizontals are shown by  
2   the solid orange lines, and then COG's acreage is shown in  
3   yellow.

4           **Q.    Is Exhibit 8 a Bone Spring structure map of the**  
5   **area?**

6           A.    Yes, it is.

7           **Q.    Can you please walk us through this exhibit.**

8           A.    Okay. This is the same map as before but  
9   overlaying on that are subsea contour maps or contour  
10   intervals of the base of the Second Bone Spring Sand.  
11   Each contour interval is 50 feet and this shows that the  
12   Big Papi 12H will be drilling approximately along strike.

13          **Q.    Have you identified, based on structure in these**  
14   **two sections, any geologic hazards or impediments to**  
15   **drilling a horizontal well?**

16          A.    No.

17          **Q.    Exhibit 9, is this an exhibit showing a line of**  
18   **the section corresponding with your cross section exhibit?**

19          A.    Yes. This is the cross section line which is  
20   shown on the next exhibit going from A to A prime, which  
21   is shown by the red line.

22          **Q.    Why did you select these wells for cross**  
23   **section?**

24          A.    These were the three nearest wells to the Big  
25   Papi 12H that had logs that cover this interval.

1           **Q.    Do you believe these three wells represent the**  
2 **Bone Spring area?**

3           A.    Yes, I do.

4           **Q.    Let's turn to Exhibit 10.  Is this your cross**  
5 **section exhibit?**

6           A.    Yes, it is.

7           **Q.    Please walk us through this.**

8           A.    This is the same cross section referenced in the  
9 previous exhibit going from A to A prime from left to  
10 right.

11                       There are three wells.  In each of the  
12 three wells there's three tracks.  On the left side in  
13 black is the gamma ray; in the middle in green is the deep  
14 resistivity; on the right in red is your density porosity;  
15 and then in blue is your neutron porosity.

16                       Then the lateral intervals are shown by the  
17 green box on the left side, and that shows our approximate  
18 targeted interval, and then this is hung on the base of  
19 the Second Sand.

20           **Q.    What do you see with respect to the continuity**  
21 **of the target interval throughout these?**

22           A.    It appears that the target interval is  
23 continuous across the course of the lateral.

24           **Q.    As you mentioned earlier have you identified any**  
25 **geologic hazards based on your geologic study of this**

1     **area?**

2             A.    No, I haven't.

3             Q.    In your opinion can the area be efficiently and  
4     economically developed by horizontal wells?

5             A.    Yes.

6             Q.    Do you believe that the track of the proposed  
7     spacing unit will contribute equally to production from  
8     the well?

9             A.    Yes.

10            Q.    Finally, in your opinion will the granting of  
11    COG's application be in the best interest of conservation,  
12    prevention of waste, and protection of correlative rights?

13            A.    Yes.

14            Q.    Were Exhibits 7 through 10 prepared by you or  
15    under your direction and supervision?

16            A.    Yes, they were.

17                   MS. KESSLER:  Mr. Examiner, we request the  
18    admission of Exhibits 7 through 10.

19                   MR. JONES:  Exhibits 7 through 10 are admitted.

20                                   CROSS-EXAMINATION

21    BY MR. JONES:

22            Q.    So what pool are we involved in here and what is  
23    the spacing on the pool?

24                               This is the Bone Spring pool, right?

25                   MS. KESSLER:  Mr. Examiner, it's identified on



1 Exhibit 1 as the Corral Canyon, Bone Spring.

2 MR. JONES: You covered it earlier, then. Okay.

3 MS. KESSLER: This is 40-acre spacing.

4 Q. So this 40-acre spacing, it's an oil pool so you  
5 want the building blocks to be either the pool spacing or  
6 the standard 40 acres with -- or quarter section --  
7 quarter/quarter equivalent will be your building blocks  
8 either way. So do you have a preference, for the record?

9 A. Uhm, no. That's more of a question I think that  
10 my landman could answer.

11 MR. JONES: Okay. Okay. Well, it's the same  
12 either way in this case because it looks like we've got  
13 all 40s in this well anyway.

14 MR. BROOKS: I have no Exhibit 1 in my folder,  
15 but it appears that was -- oh, what is behind Tab 2 in my  
16 folder is marked Exhibit 1.

17 MR. JONES: Yeah. His is different than mine.

18 MS. KESSLER: I'm looking at the C-102.

19 MR. JONES: Conveniently left the landman stuff  
20 out of Mr. Brooks' copy.

21 MS. KESSLER: We have extra copies.

22 MR. BROOKS: Well, actually there's nothing  
23 missing there. I think they were just assembled  
24 incorrectly.

25 Thank you.

1 MR. JONES: Okay.

2 Q. And the well is a north/south well with a zero  
3 azimuth on the well?

4 A. Yes, sir.

5 Q. The spacing unit is almost zero azimuth, also,  
6 so north/south rectangle?

7 A. Yes.

8 MR. JONES: So the location within the spacing  
9 unit is standard. It's standard even under the new  
10 ruling.

11 MS. KESSLER: That's correct.

12 Q. Okay. And this -- I'm sorry, say again which  
13 portion of the Bone Spring you're going for here?

14 A. This is the Second Bone Spring.

15 Q. Second Bone Spring.

16 A. The structure mass is hung on the base of the  
17 Second Bone Spring Sand.

18 MR. JONES: Okay. Okay. Thanks very much.

19 THE WITNESS: Thank you.

20 MS. KESSLER: Mr. Examiner, we would request the  
21 case be taken under advisement?

22 MR. JONES: Case 16325 is taken under  
23 advisement.

24 (Time noted: 9:15 a.m.)

25 STATE OF NEW MEXICO )

1 ) SS

2 COUNTY OF TAOS )

3

4 REPORTER'S CERTIFICATE

5 I, MARY THERESE MACFARLANE, New Mexico Reporter  
6 CCR No. 122, DO HEREBY CERTIFY that on Thursday, July 26,  
7 2018, the proceedings in the above-captioned matter were  
8 taken before me; that I did report in stenographic  
9 shorthand the proceedings set forth herein, and the  
10 foregoing pages are a true and correct transcription to  
11 the best of my ability and control.

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

17

18

19 \_\_\_\_\_  
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