

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

**APPLICATION OF COG OPERATING LLC
FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO.**

CASE NOS. 21292-21293

COG'S RESPONSE TO MEWBOURNE'S MOTION TO DISMISS

COG Operating LLC ("COG") (OGRID No. 229137), the applicant in the above-referenced cases, pursuant to the Division's prehearing order submits this response to Mewbourne Oil Company's Motion to Dismiss.

COG's STANDARD POOLING CASE

In these consolidated cases, COG seeks orders pooling all uncommitted interests in the Wolfcamp formation (Purple Sage; Wolfcamp (Gas) Pool [98220]) underlying two standard 960-acre horizontal spacing units comprised of the E/2 and the W/2 of Sections 5, 8, and 17, Township 25 South, Range 28 East, Eddy County, New Mexico. COG intends to dedicate these two standard spacing units to six proposed wells, three in each spacing unit.¹ COG has not been able to reach an agreement with Mewbourne on the formation of these spacing units and therefore requires pooling to allow for the drilling of these efficient 3-mile laterals.

**MEWBOURNE'S CONTRACTUAL CONTENTIONS DO NOT SUPPORT
DISMISSAL OF COG'S POOLING APPLICATIONS**

Mewbourne's sole basis to dismiss COG's standard pooling applications is the contention that a Joint Operating Agreement (JOA) covers two of the three sections (Sections 5 & 8) sought

¹ Under Case 21292, COG intends to initially dedicate the E/2 spacing unit to the **Long Jon State Com 601H, 602H and 603H** wells and the W/2 spacing unit to the **Long Jon State Com 604H, 605H and 606H** wells.

to be pooled for the proposed 3-mile wells and that therefore “COG agreed” Mewbourne should be the operator under Sections 5 and 8. However, this contractual argument does not support dismissal of COG’s pooling applications.

First, COG made it clear to Mewbourne in April of 2020 that it disputes whether the 2018 JOA remains in effect and that COG plans to develop Sections 5 & 8 with offsetting acreage for more efficient 3-mile wells. *See* Attachment A (April 3, 2020 letter). The facts are that the referenced JOA is disputed and there is no agreement on the operator of the acreage involved under COG’s pooling applications. The Commission has squarely held that the Division does not have jurisdiction to resolve contractual disputes between the parties. *See* Commission Order R-11700-B (TMBR/Sharp, 4/26/02) at ¶27 (“Exclusive jurisdiction of such matters resides in the courts of the State of New Mexico.”); Commission Order R-14187-E (Nearburg v. COG, 5/18/17) at ¶23 (“Whether COG had an actual right to drill the 43H or the 44H Wells is a contractual issue between COG and Nearburg that the Division does not have jurisdiction to determine”).

Second, the purported existence of a JOA covering only a portion of the acreage comprising a proposed spacing unit is not enough to avoid the necessity of pooling. *See* Order R-14140 (Matador, 3/30/16) at ¶17 (“In the absence of an agreement as to how production from the proposed horizontal well is to be divided between the lands within and without the defined contract area, the JOA does not constitute an agreement of the parties to pool their interests in such production, and accordingly does not preclude compulsory pooling under the terms of the first paragraph of NMSA 1978 Section 70-2-17(C).”); Order R-14876 (Chisholm Energy, 9/18/18) at ¶20 (Premier Oil & Gas motion to dismiss denied because JOA did not cover entire proposed horizontal well spacing unit). Mewbourne merely alleges the existence of a JOA

covering Sections 5 & 8. There is no contention that the parties have agreed to include Section 17 under a JOA or to combine all three sections of land for common development. Since the parties have not agreed to combine all the acreage in the proposed spacing unit for common development, pooling orders are necessary to form the spacing units required for COG's proposed 3-mile wells.

WHEREFORE, the Mewbourne's motion to dismiss must be denied.

Respectfully submitted,

HOLLAND & HART LLP



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ATTORNEY FOR COG OPERATING LLC

CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2020, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

James Bruce
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Santa Fe, New Mexico 87504
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Attorney for Mewbourne Oil Company



Michael H. Feldewert



April 3, 2020

Mewbourne Oil Company
500 West Texas, Suite 1020
Midland, TX 79701
Attn: Carson Cullen

RE: Pale Rider 8-5 W0OB St Com #1H
Pale Rider 8-5 W1PA St Com #1H
Pale Rider 8-5 W0PA St Com #1H
Pale Rider 8-5 W1OB St Com #1H
E2 of Sections 5 & 8, 25S, 28E, Eddy County, NM

Dear Carson:

COG Operating LLC ("COG") hereby elects to participate in the drilling of the subject wells ("Wells"). Enclosed are signed copies of the AFEs evidencing COG's election.

COG is making these elections because of the deadline under the Black Lake 5/8 Prospect Operating Agreement. COG questions the validity of this Operating Agreement due to the omission of the initial well date. COG plans to self-develop its lands in the spacing unit of the Wells with other, offsetting COG lands.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

DocuSigned by:

A handwritten signature in black ink that reads "Stuart Dirks".

87E9DB9FBF44DA
Stuart A. Dirks

Senior Staff Landman

ATTACHMENT A