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. 21219 & 21220

COG OPERATING LLC'S CLOSING STATEMENT

COG Operating LLC ("COG") submits this closing statement in support of Case Nos. 21219 and 21220 heard on Friday, June 26, 2020:

A. INTRODUCTION

COG filed two compulsory pooling applications for its Scout well development with the Oil Conservation Division ("Division"). Although Mewbourne Oil Company ("Mewbourne") opposed COG's applications, it did not file a competing application. Under the Oil and Gas Act, COG has satisfied all pre-conditions required for the Division to compulsory pool the interests and lands within the application. Further, COG's development plan is more economic and efficient than Mewbourne's development plan, thereby preventing waste. Mewbourne's objections and reactionary development plan are not in the best interest of conservation. As such, the Division should grant Concho's applications in Case Nos. 21219 and 21220.

B. ARGUMENT

There are no competing pooling applications to consider or compare against Concho's compulsory pooling applications that are currently under the Division's advisement. As such, the New Mexico Oil and Gas Act is clear on what the Division's obligations are when evaluating non-competing, compulsory pooling applications. The Oil and Gas Act, NMSA 1978, §70-2-17(C),

requires that the Division pool all interests within a proposed spacing unit when an applicant has the right to drill on the subject lands; and the applicant has established that its development plan avoids the drilling of unnecessary wells, protects correlative rights, and prevents waste.

I. COG Has Met the Statutory Conditions for Compulsory Pooling.

COG has satisfied all statutory pre-conditions necessary to compulsory pool. COG has: (1) the right to drill its Scout wells in the proposed spacing units, COG Exhibit No. A-2, (2) proposed a development program to the other interest owners that will avoid the drilling of unnecessary wells, protect correlative rights and prevent waste in the Wolfcamp formation, COG Exhibit No. A; COG Exhibit No. A-3, and (3) made continuous good-faith efforts to obtain voluntary joinder from the working interest owners, COG Exhibit No. A.

II. COG's Proposed Development Plan is Economic and Efficient.

The evidence and testimony show that COG's development plan will avoid the drilling of unnecessary wells, prevent waste and protect correlative rights, and is the most efficient and economic development plan. *See* Testimony of David Hurd (COG Exhibit No. C). COG's 3-mile development plan is more efficient and economic since it reduces surface and facility use and increases completed lateral lengths per section due to eliminating internal setback requirements in between sections. Tr. 44-47; COG Exhibit Nos. C-1 and C-4. COG's development plan is also more capital efficient on a per-foot basis than Mewbourne's development plan since it distributes fixed costs across a 3-mile lateral instead of a 1-mile lateral. Tr. 45-46. Although, COG has not drilled 3-mile wells in New Mexico, Tr. 31 (16-18), its Scout development plan is analogous to multiple 3-mile well plans with similar geology in Texas that were all drilled and completed successfully. Tr. 65 (19-21); COG Exhibit No. E-5. Therefore, developing 3-mile laterals will

allow for less surface disturbance, increased completed laterals per section, and superior economics, thereby preventing waste. Tr. 45-47; COG Exhibit No. C-1 through C-5.

Mewbourne's claims that its Pothole wells are more economic are based on cherry-picked data and using a broad, interpretive brush from over an 11-mile area. Tr. 91-93, 116 (4-24), 137 (7-10). Mewbourne used insufficient production data from wells with different spacing patterns as a basis to compare development plans. Tr. 116 (4-24), 119-120. Mewbourne's Rebuttal Exhibit 1 only presented economic evaluations of 1-mile developments and failed to present a direct economic comparison of COG's 3-mile Scout development plan to its 1-mile Pothole plan. Tr. 123-124. Mewbourne's claims of a greater ultimate recovery from its 1-mile wells compared to COG's 3-mile wells is also misleading since Mewbourne presented evidence specific to Section 6 only and did not establish that the same data applies to Sections 7 and 18. Tr. 127 (1-16). Also, Mewbourne did not take into account that COG's plan would eliminate setback requirements between sections thereby recovering more reserves. Tr. 133 (24-25), Tr. 134 (1-5). Furthermore, Mewbourne's Exhibit 3-C shows COG's development plan as more cost-efficient than its Pothole plan. Tr. 117-119. Mewbourne also agreed that generally, longer laterals are more economically feasible to run for a longer duration before becoming uneconomic compared to shorter laterals. Tr. 126 (8-13). With only conclusory and incongruent interpretations, Mewbourne failed to substantiate its claims that Concho's applications would cause waste, harm correlative rights, or prevent the drilling of unnecessary wells.

III. There are No Competing Pooling Applications Before the Division.

There are multiple cases where the Division granted an applicant's pooling application over the objection of a working-interest owner that proposed to develop the lands in a different manner but did not file competing pooling applications. For instance, recently, in Case Nos. 20923-20926,

EOG Resources Inc., ("EOG") opposed COG's applications to compulsory pool lands EOG intended to self-develop. EOG did not file competing pooling applications. Order No. R-21308, Finding 15. In granting COG's applications, the Division found that COG met all statutory pre-conditions to compulsory pool the interests and lands identified in its applications and did not engage in a competing application factor analysis established in Order No. R-20223. Finding 18-26. Similarly, in Case Nos. 16115 and 16116, Premier Oil and Gas, Inc. ("Premier") objected to Chisholm Energy Operating's ("Chisholm") applications for compulsory pooling. See Order No. R-14876-A, Finding 12. Premier did not file competing applications but wanted the Oil Conservation Commission to adopt a different plan of development. Finding 12, Conclusion 16. Chisholm provided evidence that showed its proposed development would efficiently produce the reserves underlying the proposed unit. Conclusion 25. The Oil Conservation Commission concurred and granted Chisholm's application without applying the competing application factors test. Conclusion 23-25, Order 1.

In its Pre-Hearing Statement, Mewbourne refers to Case No. 20410 and Case No. 20298 in support of the Division denying COG's applications. In Case No. 20410, OXY USA Inc.'s ("OXY") filed an application to rescind Murchison Oil & Gas Inc.'s ("Murchison") horizontal spacing units and API numbers assigned to four of its APDs in an area it planned to self-develop. Before the case was heard, OXY filed a motion to stay to prevent Murchison from commencing drilling. The Division denied the motion and OXY subsequently dismissed its application before a hearing or a decision on the merits was made. Unlike the applicant in Case No. 20410, COG filed compulsory pooling applications – not an application to rescind Mewbourne's spacing units and API numbers. Further, the case is not instructive since it was never decided on the merits. Case No. 20298 is also distinguishable from the subject cases. In that case, Mewbourne filed for

compulsory pooling. Catena Resources Operating, LLC ("Catena") subsequently filed a competing pooling application and a motion to suspend Mewbourne's drilling permits after Catena learned that a drilling rig was about to commence drilling on Mewbourne's acreage. The Division issued Order No. R-20467 denying Catena's motion to the extent it did not impact Catena's pending application but prohibited Mewbourne from drilling on contested lands until hearing. Mewbourne dismissed its pooling applications before a hearing. This is distinguished from the cases at hand since Mewbourne has not filed a competing pooling application and it has agreed to delay drilling until a decision has been rendered. Therefore, neither of the cases cited in Mewbourne's Pre-Hearing Statement are applicable to the cases at hand.

IV. The Existing JOA in the N/2 of Section 6 Has No Impact on This Case and MOC is Subject to Compulsory Pooling.

When COG and Mewbourne initiated trade discussions on the subject acreage in mid-2019, COG understood it was acquiring all of Mewbourne's interest in the N/2 of Section 6. Tr. 22 (8-16). COG also became operator of an existing JOA giving it the right to drill wells in the N/2 of Section 6. Tr. 23 (15-23). However, unbeknownst to COG, Mewbourne acquired an interest from Devon in the N/2 of Section 6. Tr. 22 (8-16).

In its Pre-Hearing Statement, Mewbourne argues that its interests in Section 6 should not be pooled because the N/2 of Section 6 is obligated to an Operating Agreement designating COG as the operator ("OA"). However, an operating agreement does not preclude compulsory pooling if the contract area does not cover the entire proposed horizontal well spacing unit. *See* Order R-14140 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 at ¶20 (Premier Oil & Gas motion to dismiss denied because the operating agreement did not cover entire proposed horizontal well spacing unit). Here, since the OA in the N/2 of Section 6 does not cover the entire proposed horizontal well spacing unit within COG's applications, a pooling order is necessary to form the spacing units required for COG's proposed 3-mile Scout wells. Tr. 25 (2-25). Further, as a long-time operator in New Mexico, Mewbourne knows (or should know) it is subject to force pooling when there is not a voluntary agreement covering a proposed development area. Tr. 99-101.

V. Mewbourne's ownership in the S/2 of Section 6 is not exempt from pooling.

Mewbourne proposes to self-develop its Pothole wells in the S/2 of Section 6 where it owns 100% of the working interest. Tr. 100-101. The Oil and Gas Act does not exempt lands where 100% of the working-interest is owned from being combined with other acreage in order to form a spacing unit. Rather, the Oil and Gas Act requires the Division pool those lands into a larger spacing unit if a proposed development plan satisfies the statutory requirements for compulsory pooling. NMSA 70-2-17 (1978). Therefore, Mewbourne's acreage is still subject to being force pooled and the Division should grant COG's compulsory pooling applications since it satisfied all statutory pre-conditions to compulsory pool the lands within its applications.

VI. Mewbourne's proposed plans attempt to frustrate COG's development plans and are not in the best interest of conservation or the prevention of waste.

Further, after roughly a year of negotiations between the parties failed, Mewbourne now wants the Division to reject Concho's applications and proposes that Mewbourne and COG operate within its own acreage boundaries. Tr. 13 (1-3). More precisely, that Mewbourne drill its proposed Pothole wells in the S/2 of Section 6 and has additionally proposed wells in the N/2 of Section 6 under an operating agreement where Concho is the operator. COG would then develop Sections 7 and 18. First, Mewbourne's proposal ignores the fact that COG is the designated operator under

the OA in the N/2 of Section 6. Tr. 23 (18-23). Second, Mewbourne could have proposed a competing development plan to Concho's and applied for force pooling but chose to be driven by its land interest. Tr. 95-96. Third, Mewbourne's intent to self-develop is undermined by its own testimony at hearing and with its own pre-hearing actions. Mewbourne admitted that it proposed its Pothole wells as a response to COG's Scout proposals, Tr. 97 (3-11), and planned to use that land as leverage for a trade. Tr. 98 (9-25), Tr. 99 (1-6). Mewbourne also admitted that it would prefer its 1-mile Pothole wells be developed using longer laterals if ownership circumstances were different, Tr. 96 (12-17), and that it could have compulsory pooled lands to achieve longer laterals, but it still only proposed its Pothole wells as 1-mile developments and did not pursue compulsory pooling. *Id*. (5-21). Instead, Mewbourne merely filed APDs for its 1-mile Pothole wells that fit within its own ownership borders only after receiving election letters from COG regarding its 3-mile Scout proposal. Tr. 77 (4-17).

C. CONCLUSION

Concho has the right to drill the subject acreage, proposed the wells to all interest owners, and made good-faith efforts for months to reach an agreement with all working-interest owners including Mewbourne. Concho also demonstrated that its well development plan will avoid the drilling of unnecessary wells, prevent waste, and protect correlative rights. Further, Concho is ready to move forward with its development plan in the first half of 2021 if an order is granted by the Division. In light of Concho meeting its statutory preconditions for compulsory pooling and its current position to timely develop the subject area, Concho respectfully requests the Division grant its applications to compulsory pool the uncommitted interest owners in Case Nos. 21219 and 21220.

Respectfully submitted,

COG OPERATING LLC

/s/ Michael Rodriquez

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