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

APPLICATION OF COG OPERATING LLC FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO. **Case No. 21219**

APPLICATION OF COG OPERATING LLC FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO. **Case No. 21220**

MEWBOURNE OIL COMPANY'S CLOSING ARGUMENT AND PROPOSED FINDINGS AND CONCLUSIONS

This closing argument is submitted by Mewbourne Oil Company ("Mewbourne") as requested by the Oil Conservation Division.

A. LAND FACTS.

1. In Case No. 21219 COG Operating LLC ("COG)") seeks an order pooling all mineral interests in the Wolfcamp formation underlying the East halves of Section 6, 7 and 18, Township 25 South, Range 28 East, NMPM, for three of its Scout State wells.

2. In Case No. 21220 COG seeks an order pooling all mineral interests in the Wolfcamp formation underlying the West halves of Section 6, 7 and 18, Township 25 South, Range 28 East, NMPM for another three of its Scout State wells.

3, One hundred percent (100%) of the working interest in the N/2 of Section 6, Township 25 South, Range 28 East, NMPM is subject to a Joint Operating Agreement dated February 15, 2005 (the "JOA"). Pursuant to the JOA, Mewbourne has proposed four Wolfcamp wells (the Devon wells) in the N/2 of Section 6. (There is also an existing Wolfcamp well in the N/2 of Section 6.)

4. Mewbourne owns 100% of the working interest in the S/2 of Section 6, Township 25 South, Range 28 East, NMPM, and has permitted four wells in the Wolfcamp formation in the S/2 of Section 6 (the Pothole wells).

B. SUMMARY OF MEWBOURNE'S POSITION.

Mewbourne requests that COG's pooling applications be denied for the following reasons:

1. All of Section 6 is subject to voluntary development agreements and can be independently developed.

2. Mewbourne's development plan is superior to COG's plan because (a) it provides for drilling both Wolfcamp Sand and Wolfcamp A Shale wells, and (b) it provides for drilling four wells in a half section, versus three in COG's plan. Mewbourne's plan will maximize production and prevent waste.

3. Mewbourne is a proven operator capable of economically drilling one mile laterals. COG's plan involves drilling unproven and risky three mile laterals. Mewbourne and other operators continue drilling economic one mile laterals in this area.

4. One mile laterals in the Wolfcamp are economic, Mewbourne is a low cost operator, and has vast experience in drilling economic wells in New Mexico since 1975.

5. COG has not negotiated in good faith.

C. ARGUMENT AND RESPONSE TO QUESTIONS POSED BY THE EXAMINERS.

By an e-mail sent on July 10, 2020, Examiner Orth set forth questions posed by the Examiners. These questions are answered below, and after the responses additional legal matters are discussed.

Examiner's Questions.

1. Identify in the record the evidentiary basis, or lack thereof, for each statutory requirement that COG must demonstrate to obtain a compulsory pooling order.

NMSA 1978 §70-2-17(C) states that, when compulsory pooling is sought, the "division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests…." Mewbourne's development plan of 8 wells per section ("8 WPS") in the Wolfcamp Sand and Wolfcamp A Shale in all of Section 6 is an economic and effective way of protecting correlative rights and preventing waste. COG's development plan of 6 wells per section ("6 WPS"), and only in the Wolfcamp Sand, will lead to waste, *i.e.*, oil and gas reserves being left in the ground. Therefore, COG's proposals don't satisfy the mandate for pooling.

When considering the risks arising from the drilling of an excessive number of wells, the Division should also consider the increased risk associated with drilling unproven three mile laterals in New Mexico. COG has drilled zero three mile laterals in New Mexico and zero three mile laterals in all of the Delaware Basin. **Transcript ("Tr.") 53**. In Order No. R-14518, the Division concluded that Black Mountain had presented a plan of development with 1.5 mile horizontal wells, but could not offer any evidence of prior experience completing a well of that length in New Mexico. (Mewbourne's competing proposals were for one mile laterals.) Furthermore, Mewbourne provided substantial evidence establishing a greater capacity to prudently operate the property based on

successful drilling operations for the targeted interval in this area. Similarly, in the present cases, Mewbourne has provided evidence that it is the more competent operator of its proposed development plan. Additionally, by allowing Mewbourne to develop its rights in Section 6, COG is enabled to drill two mile laterals in Sections 7 and 18, for which it has demonstrated competence in New Mexico. An order in COG's favor would incentivize operators to blindly pursue increasingly longer laterals as an avenue to grab interests rather than relying on prudent, proven operating practices.

Mewbourne and COG disagree on the geologic merit of each party's proposals. In Order No. R-10731-B, the Commission stated that geologic evidence as it relates to well location and recovery of oil and gas and associated risk is the most important consideration in awarding operations to competing interest owners. Mewbourne provided geologic evidence as to the productivity (**Mewbourne Ex. Nos. 2-D, 3-B & 3-C**) and consistency (**Mewbourne Ex. No. 2-C**) of both the Wolfcamp Sand and Wolfcamp A Shale in the immediate area. COG simply stated "we believe the Wolfcamp A Sand to be the primary objective and the primary target" (**Tr. 31**), and "our choice to develop the Wolfcamp A Sand is based on preferred geology." **Tr. 47**. However COG provided no explanation or evidence to substantiate its claim or disprove Mewbourne's claim. COG's geologist confirmed COG had targeted the Wolfcamp A Shale in the immediate area (**Tr. 31**), and Mewbourne's witnesses supplied evidence showing COG's Myox 21 Wolfcamp A shale wells are performing slightly better than their Myox 21 Wolfcamp Sand wells (**Mewbourne Ex. Nos. 2-D & 3-C**). Mewbourne has provided factual geologic and economic evidence confirming that it has a superior development plan to that of COG, and Mewbourne's plan will protect correlative rights and prevent waste. Based on Order R-13228-F, which cites NMSA 70-2-17.C that all pooling orders "shall be upon such terms and conditions as are just and reasonable and will afford to the owner or owners of each tract or interest in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil or gas, or both," Mewbourne would not be afforded its right to properly recover reserves from the Wolfcamp A Shale if pooled by COG.

Mewbourne provided evidence that its development plan of 8 WPS in Section 6 is more effective and efficient than COG's plan of 6 WPS. COG did not supply any data as to the production model or estimated ultimate recovery of the wells used in **COG Exhibit C-7**, nor what assumptions went into calculating the economics presented, other than the commodity pricing used, so there is no way to verify the validity of the data. Furthermore, COG presented three different AFE costs (**Tr. 41**), making it quite difficult to get an accurate cost estimate for their proposed wells. In contrast, Mewbourne presented a production model, capital costs, operating costs, and commodity pricing to show its development plan is economic. **Mewbourne Ex. 3-B, 3-C & 3-F**.

Mewbourne has proposed lay-down development across all of Section 6, while COG has proposed stand-up development across sections 6, 7 and 18. COG's geologist testified "wellbore orientation is not the primary driver of development." **Tr. 29**. Mewbourne agrees. Mewbourne also testified to the significant infrastructure it has in place in regard to existing surface facilities, gas takeaway, saltwater disposal takeaway, and their ability

to recycle produced water for fracing. **Tr. 102, 104-105**. COG's engineer testified his analysis of the surface usage was "more generic," and he was unaware of any existing COG facilities and pipelines in the area. **Tr. 38**.

COG testified at length to the economics of one mile laterals relative to three mile laterals. Economics are not significant factors in awarding operations (**Commission Order No. R-10731-B**), and no evidence was presented that COG would "economically recover more oil and gas." Pooling statutes don't constitute weighing present value ("PV10") for the operator. COG's engineer testified (**Tr. 138-142**) **that** wells drilled at 8 WPS (660' spacing) performed 10% worse than wells drilled at 6 WPS (880' spacing) after approximately 4 years. **COG Exhibit C-6**. However, over 90% of the wells spaced 880' apart that had one year of production do not have data at four years and, therefore, these estimates should not be treated as fact. Mewbourne's engineer testified that, based on more recent completions in the immediate area, utilizing the latest technologies wells drilled at 8 WPS were now performing similarly to wells drilled at 6 WPS. **Mewbourne Ex. 3-B**. Regardless of interpretation on degradation (Mewbourne vs. COG), at 6 WPS all owners stand to recover 15-25% less reserves than if the property is developed at 8 WPS.

2. What is the legal effect of Mewbourne's entry into a JOA for a portion of the acreage that is the subject of COG's compulsory pooling application?

The N/2 of Section 6 is subject to the JOA, which is a valid contract between the parties, including COG, covering operations of a standard unit, as defined in NMAC 19.15.16.15.B.1. Under the contract and within the covered unit, a proposal is to be submitted for development and the respective parties have 30 days to make an election whether or not to participatet. The contract sets out the terms on how the interest will be treated should a party wish not to participate. Mewbourne sent valid proposals to COG under the JOA, and COG has subsequently elected not to participate in Mewbourne's proposals. Per the JOA, Mewbourne has to commence operations in a set amount of time following the proposals, and Mewbourne is moving forward with its plan to develop the N/2 of Section 6.

NMSA 1978 §70-2-17.C states:

> When two or more separately owned tracts of land are embraced within a spacing or proration unit, or where there are owners of royalty interests or undivided interests in oil and gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit, the owner or owners thereof may validly pool their interests and develop their lands as a unit.

The existing JOA complies with this provision of the pooling statutes, and it should not be ignored to allow the drilling of risky three mile laterals. The one mile laterals are standard units in the Purple Sage-Wolfcamp (Gas) Pool. Furthermore, COG has already voluntarily pooled its interest by this agreement.

3. What is the legal effect of Mewbourne not filing a competing compulsory pooling application?

Mewbourne's APDs and well proposals pertain only to Section 6. No compulsory pooling applications are needed because a contract between all parties is already in place as to the N/2 of Section 6, and Mewbourne owns 100% of the working interest in the S/2 of Section 6. There is no other party to be pooled in Section 6, and thus pooling applications are completely unnecessary.

Thus, there is no legal effect related to Mewbourne not filing pooling applications.

4. What is the legal effect of Mewbourne's 100 percent ownership of the S/2 of Section 6?

Mewbourne cannot file pooling applications as to the S/2 of Section 6 because it owns this tract 100%. There is no other party to deal with. COG does not own an interest, nor does it have standing in this tract.

Any development Mewbourne chooses to do within said unit would fall within the standard well unit definition. Mewbourne's correlative rights will be impaired if it was stripped of its ability to self-develop its acreage and be forced into an unproven three mile lateral development. COG is not impaired from developing its acreage on two mile basis to the South, combining Sections 7 and 18. NMSA 1978, §70-2-17.A states that "the division ***shall…afford*** to the owner of each property… the opportunity to produce his just equitable share of oil and gas… so far as such can be practicably obtained without waste…." Mewbourne ***has the right*** to drill and produce its wells, can do so without waste, and no pooling is necessary.

Moreover, COG's Scout State APDs should be invalidated and rescinded because they violate NMAC 19.15.16.15.A.1(a), (b); they do not own an interest in every tract sought to be pooled.

5. What is the legal effect of Mewbourne' knowledge that it could be compulsorily pooled when it exchanged the N2 of Section 6 with COG?

Mewbourne and COG completed a transaction a year ago, after which Mewbourne owned 0% in Section 6, Devon owned ~70%, COG owned ~24%, and Oxy owned ~6%. In a separate, subsequent transaction which included a number of properties, Mewbourne acquired Devon's 70% ownership in Section 6, which included 40% ownership in the N/2 and 100% ownership in the S/2.

There was no contemplation that Mewbourne could or would be compulsory pooled by COG at the time it exchanged the N/2 of Section 6 with COG. Two things were true once Mewbourne acquired the interest in Section 6 from Devon: there was contemplation that Mewbourne may have to participate voluntarily under the JOA covering the N/2 with COG as operator; but, Mewbourne could also develop the S/2 independently. At the time,

it was impossible for Mewbourne to know COG would attempt to develop the acreage on a three mile latersl basis, because COG has to this day still not drilled a 3 mile well in New Mexico. Furthermore, Mewbourne entered into negotiations with COG to enable COG to increase its interest in Section 6; however MOC did that with the knowledge that if an agreement could not be made, Mewbourne still owned 100% of the working interest in the S/2 of Section 6 (a standard spacing unit) that it had the right to develop.

Good Faith.

NMSA 1978 §§70-2-17, 18 require good faith negotiations for an operator to pool a well unit. Mewbourne asserts that COG's actions fail to meet this requirement, for the following reasons:

(a) COG proposed its three mile laterals, but never provided Mewbourne with information on its ability to properly drill these untried wells.

(b) All COG has ever provided to Mewbourne was the well proposals.

(c) It has not provided data on surface facilities, salt water disposal capability, *etc.*

(d) As noted above, the AFEs sent to Mewbourne on the Scout State wells are severely out of date, and COG itself is not sure what the final AFEs will show, or when the wells will be drilled.

(e) During settlement negotiations, COG proposed a draft letter agreement under which it did not need to negotiate in good faith.

D. PROPOSED FINDINGS AND CONCLUSIONS.

Findings.

1. In Case No. 21219 COG seeks an order pooling all mineral interests in the Wolfcamp formation underlying the East halves of Section 6, 7 and 18, Township 25 South, Range 28 East, NMPM, for three of its Scout State wells.

2. In Case No. 21220 COG seeks an order pooling all mineral interests in the Wolfcamp formation underlying the West halves of Section 6, 7 and 18, Township 25 South, Range 28 East, NMPM for another three of its Scout State wells.

3, One hundred percent (100%) of the working interest in the N/2 of Section 6, Township 25 South, Range 28 East, NMPM is subject to a voluntary Joint Operating Agreement dated February 15, 2005 (the "JOA"). Pursuant to the JOA, Mewbourne has proposed four Wolfcamp wells (the Devon wells) in the N/2 of Section 6. (There is also an existing Wolfcamp well in the N/2 of Section 6 operated by Mewbourne.)

4. Mewbourne owns 100% of the working interest in the S/2 of Section 6, Township 25 South, Range 28 East, NMPM, and has permitted four wells in the Wolfcamp formation in the S/2 of Section 6 (the Pothole wells).

5. One mile Wolfcamp laterals can be economically developed in this area.

6. Three mile laterals are untried by COG in New Mexico, and have greater risks associated with them than one mile laterals.

7. Development of Wolfcamp Sand wells with Upper Wolfcamp Shale wells provides the best chance to maximize recovery of Wolfcamp reserves.

8. Drilling 8 WPS rather than 6 WPS will maximize recovery.

9. Mewbourne has significant infrastructure in place in regard to existing surface facilities, gas takeaway, saltwater disposal takeaway, and their ability to recycle produced water for fracing. COG's plans on this matter are indefinite.

10. Mewbourne's AFE costs are current and accurate, and it is capable of promptly drilling ots proposed wells.

11. COG's AFEs are out of date and it is uncertain of what the drilling costs will be. In addition, the commencement date for COG drilling its proposed wells is unknown.

12. COG's contacts with Mewbourne regarding its proposed wells have been insufficient.

13. One mile lateral spacing units, as proposed by Mewbourne, comply with Division rules and spacing requirements.

14. COG owns no interest in the S/2 of Section 6, and thus its APDs should not have been filed with the Division.

15. Mewbourne had no knowledge when it acquired its current interests in Section 6 that COG would propose three mile laterals.

Conclusions.

1. Section 6 is subject to voluntary agreements covering the drilling of Wolfcamp wells.

2. One mile laterals are an accepted and economic method or drilling Wiolfcamp wells in this area of Eddy County.

3. Three mile laterals are untried in New Mexico, and are riskier than proven one mile laterals.

4. Mewbourne's development plan will result in better recovery of reserves from the Wolfcamp formation, will prevent waste, and will protect correlative rights.

5. Mewbourne has infrastructure in place to drill its wells, resulting in cost reductions and less surface use.

6. Mewbourne is prepared to promptly drill wells in Section 6. Mewbourne's plans comply with statutes and regulations.

7. COG's estimated well costs and drilling plans are indefinite.

8. COG has had insufficient communications with Mewbourne regarding the drilling of its proposed wells.

9. COG's applications should be denied.

10. COG's APDs should not have been filed or approved.

E. SUMMARY.

In conclusion, COG has proposed drilling unproven three mile horizontal wells into a section where Mewbourne owns a majority of the interest. At the time of the hearing, COG owned 47.8% of the combined mineral interest encompassing the proposed spacing units. None of the five other owners who collectively own 52.2% of the interest had agreed to voluntarily pool their interests with COG. COG made no efforts to discuss any technical merits or its experience in favor of its proposed spacing unit and, therefore, left Mewbourne to reason that these proposals were merely an attempt to grab acreage. COG has also proposed a development plan that would drill 6 wells per section, targeting only the Wolfcamp Sand. Mewbourne has proposed an alternate development plan across Section 6 that would drill 8 wells per section and target both the Wolfcamp Sand and Wolfcamp A Shale. Mewbourne has provided geologic and economic evidence in support of its development plan showing that it has a better plan than COG. COG's development plan would leave oil and gas reserves in the ground, resulting in waste and harming Mewbourne's correlative rights in Section 6. Mewbourne has proposed wells across all of Section 6 and plans on developing the N/2 soon in accordance with the JOA. There is nothing preventing COG from developing Sections 7 and 18 with two mile laterals.

In a similar situation (Case No. 20410), the Division ruled in favor of Murchison Oil & Gas Inc., which (i) planned to drill one mile laterals, (ii) had approved APDs, and (iii) had 100% working interest approval, and against OXY USA Inc. who (i) proposed two mile laterals, and (ii) had to pool additional parties. That precedent should be followed here.

WHEREFORE, Mewbourne respectfully requests the Division to deny COG's applications. In addition, the APDs for the Scout State wells must be rescinded.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 24th day of July, 2020 by e-mail:

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