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. 21292**

APPLICATION OF COG OPERATING, LLC FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO **CASE NO. 21293**

ORDER

Following a status conference in these cases on June 11, 2020, Mewbourne Oil Company ("Mewbourne") filed a motion to dismiss the applications. Applicant COG Operating, LLC ("COG") filed a response on June 29, 2020, and Mewbourne filed a reply on July 7, 2020. Having considered the briefs and the recommendation of the hearing examiner, the Director of the New Mexico Oil Conservation Division ("OCD"), denies the motion.

1. In these consolidated cases, COG seeks orders pooling all uncommitted interests in the Wofcamp formation 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, NMPM. COG intends to dedicate the spacing units to six wells, three in each unit, each with a 3-mile lateral well-bore. COG has been unable to conclude an agreement with Mewbourne relative to these spacing units, and therefore seeks to compulsorily pool Mewbourne.

2. Mewbourne alleges that COG's target formation underlying Sections 5 and 8, Township 25 South, Range 28 East, NMPM, are subject to a Joint Operating Agreement ("JOA") of which Mewbourne is the designated operator. Mewbourne alleges that COG signed the JOA July 31, 2019, partly in consideration of an acreage trade which stipulated Mewbourne would operate Sections 5 and 8. Pursuant to the JOA, Mewbourne proposed eight (8) two-mile Wolfcamp wells, and COG signed AFEs in February and March 2020 to voluntarily participate in these wells.

Mewbourne complains that it relied on COG's actions to incur costs obtaining Applications for Permit to Drill ("APDs") and constructing wellsites, that COG is contractually bound to participate in Mewbourne's proposed wells, and that Sections 5 and 8 cannot be compulsorily pooled because they are already voluntarily pooled by the JOA. Finally, Mewbourne argues that COG must show evidence of good faith negotiations with Mewbourne to obtain compulsory pooling orders, and that COG's alleged breach of the JOA shows that COG did not do so.

3. COG contends that it informed Mewbourne as early as April 3, 2020 that it disputed the validity of the JOA, and informed Mewbourne of its intent to develop Sections 5 & 8 with offsetting acreage and more efficient 3-mile wellbores. COG argues, and Mewbourne concedes, that OCD does not have jurisdiction to resolve private contractual disputes. COG also argues that the JOA covered only a portion of the acreage comprising COG's proposed spacing unit, and therefore does not preclude compulsory pooling.

4. NMSA 1978, § 70-2-17, states that to prevent waste, avoid drilling unnecessary wells, or to protect correlative rights, OCD "shall pool" mineral interests in a spacing unit when one mineral interest owner has the right to drill to a common source of supply and the other mineral interest owners have not agreed to voluntarily pool.

5. OCD has consistently held that a JOA that covers only a portion of the acreage of a proposed spacing unit does not bar OCD from approving a compulsory pooling application. *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 (JOA that does not

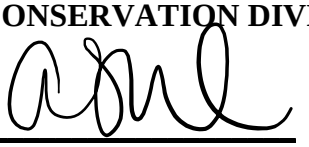
cover entire proposed horizontal well spacing unit does not preclude compulsory pooling). Mewbourne's remedy for breach of the JOA lies with the courts, not OCD.

6. The Oil and Gas Act does not impose an obligation on an applicant to engage in good faith negotiations prior to OCD issuing a compulsory pooling order. It is true that the OCD rules require an applicant to submit "written evidence of attempts the applicant made to gain voluntary agreement including but not limited to copies of relevant correspondence." 19.15.4.12(A)(1)(b) (vi) NMAC. However, the OCD rules neither require a showing of "good faith negotiations" nor specify a standard to review it.

7. Mewbourne cites OCD Order No. R-13165 for the proposition that COG had an obligation to engage in good faith negotiations before filing its compulsory pooling application. While it is true that Order R-13165 mentions good faith negotiations, it does not state that good faith negotiations are a statutory or regulatory requirement for the OCD to issue a compulsory pooling order. Order at ¶ 5. Moreover, Order R-13165 recommends that an argument regarding good faith negotiations is "better examined" at the hearing, not on a preliminary motion to dismiss. *Id.* at ¶ 5(d).

8. For the foregoing reasons, Mewbourne's Motion to Dismiss is DENIED, and as directed by the Pre-Hearing Order, the cases are set for hearing on the merits on August 20, 2020. All other provisions of the Pre-Hearing Order remain in effect.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION



Date: 7/29/2020

Adrienne Sandoval
Director, Oil Conservation Division