

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

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION COMMISSION FOR
THE PURPOSE OF CONSIDERING:

CASE NOS: 22474

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

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS
COMMISSIONER HEARING
Agenda Item 5
May 12, 2022
Santa Fe, New Mexico

BEFORE: ADRIENNE SANDOVAL, CHAIRWOMAN
GREG BLOOM, COMMISSIONER
WILLIAM AMPOMAH, COMMISSIONER
CHRIS MOANDER, ESQ.

This matter came on for hearing before the New Mexico Oil Conservation Commission on Thursday, May 12, 2022, via Webex Virtual Platform, hosted by New Mexico Energy, Minerals, and Natural Resources Department.

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APPEARANCES

FOR THE DIVISION:

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1 CHAIRWOMAN SANDOVAL: Next item on the agenda is
2 de novo Case Number 22474, and it was OCD Case Number 22294.
3 It was application of COG Operating for compulsory pooling.

4 So we heard the testimony from witnesses at our
5 last regularly scheduled meeting on -- let's see -- April
6 14. Counsel was directed to submit written closing
7 arguments, which both counsel did.

8 Just a procedure question, Mr. Moander. I guess,
9 do we need to provide an opportunity to give any additional
10 verbal statements or not?

11 MR. MOANDER: That's at the discretion -- really
12 your discretion, but it's generally the discretion of the
13 Commission. Since you did instruct parties to submit
14 written closings, which they did, that would seem to wrap up
15 the case. But if the Commission would like to hear more
16 from the parties, the Commission is free to do so.

17 CHAIRWOMAN SANDOVAL: Okay.

18 MR. MOANDER: Or not.

19 CHAIRWOMAN SANDOVAL: All right. How about for
20 the counsel, Ms. Hardy and Mr. Tremaine, you can give a
21 brief verbal argument, I would say really no longer than
22 probably five minutes because the commissioners have
23 reviewed oral written testimony -- not testimony, but your
24 written closing statements.

25 Ms. Hardy, if you would like to begin?

1 MS. HARDY: Sure. Thank you, Madam Chair, and I
2 will be brief. I think that our written closing addresses
3 the issues raised by OCD. One of the primary issues is that
4 OCD is relying on the provision of the Oil & Gas Act
5 regarding proration units, and we discussed in our written
6 closing the fact that the New Mexico Supreme Court has held
7 that that provision does not apply to spacing units, they
8 are different concepts.

9 And that's in the Rudder case from 1975, and the
10 Division codified that decision of Rudder in its amendments
11 that were adopted to the horizontal well rule in 2018, and
12 we cited that provision in our brief. And it is the
13 definition of a spacing unit which specifically states that,
14 under the Oil & Gas Act, Paragraph 1 of Subsection B of
15 Section 70-2-12, and that's the provision that we are
16 relying on. The Division's regulation states the Commission
17 may make spacing units without first creating proration
18 units.

19 So I think it's clear that the OCD's argument,
20 based on that provision of the statute, is incorrect.

21 I think the second main issue that's addressed by
22 our closing is that when you interpret the Oil & Gas Act in
23 conjunction with the Division's regulations, and that is how
24 the regulations have to be construed, the Division and
25 Commission have to consider the Act, the definition of a

1 proximity tract spacing unit, which refers to the horizontal
2 oil well, has to be construed to prevent waste and protect
3 correlative rights.

4 And when that is done, COG's proposed spacing
5 unit and interpretation of the rule makes the most sense and
6 it's consistent with the requirements of the Act. And I
7 think that OCD's argument ignores that fact and really
8 focuses on sort of a narrow construction of the rule that's
9 inconsistent with the Act and the remainder of the rule.

10 COG's proposed interpretation is most consistent
11 here with the protection of correlative rights and
12 prevention of waste and our evidence, I think, supports that
13 as well as the law. So I think that's all that I have
14 unless there are questions. Thank you.

15 CHAIRWOMAN SANDOVAL: Thank you, Ms. Hardy.
16 Mr. Tremaine, do you have any closing statements?

17 MR. TREMAINE: I will be very brief Madam Chair.
18 The Oil Conservation Division would limit its comments today
19 again relying on the closing argument to respond to a couple
20 of specific points.

21 OCD's interpretation of the Oil & Gas Act, I
22 understand the case referenced by Ms. Hardy, that case does
23 predate the current version of the statute, and OCD does not
24 dispute that proration units and spacing units are
25 distinguishable.

1 However, for the purposes of identifying the
2 limits to spacing units, OCD refers to these reference
3 sections of statutes because there is not otherwise guidance
4 within the statute. I think that that argument holds and
5 that there is a clear, legislative limit on the extent of,
6 quote-unquote, standard horizontal spacing units.

7 However, the interpretation of the statute is
8 half of the discussion. The rule itself is unambiguous and
9 it speaks to the definition of standard horizontal spacing
10 units as those for both oil and gas wells as those areas,
11 tracts that are penetrated and defined by a single well.

12 Arguing that there are other sections of both the
13 statute or rules that could lend themselves to a different
14 interpretation, I think, is -- I think is inappropriate
15 because those -- those sections do not have to be read as
16 COG argues in conflict with the plain language of the rule.

17 That definition is, again, unambiguous and that
18 rule was promulgated by this Commission after public
19 hearing, and regardless of any differences of opinion
20 regarding the statutory interpretation, that rule is an
21 independent reason for the Commission to rule in the
22 Division's favor.

23 There is nothing in the record that I can
24 identify that says that the rule itself is in any way in
25 conflict or violating the statute -- the statutory limits.

1 The rule was promulgated appropriately and within the
2 appropriate purview of procedure and in terms of the purview
3 of this Commission.

4 The argument would be different if COG were
5 arguing there was some facial flaw or procedural flaw in the
6 promulgation of that rule, and then we would have to go back
7 and look at that, that statute.

8 But the last point, Madam Chair, the -- one
9 moment. (Pause.) Oh, excuse me, COG relies upon sections
10 in the statute about correlative rights and prevention of
11 waste. I think it was clear from the hearing and testimony
12 at the hearing and COG's argument that COG may choose to
13 respond to a ruling in the Division's favor by modifying
14 their development plan.

15 But that, a change in that development plan would
16 not be required if the Commission rules in the Division's
17 favor. So this argument that ruling consistent with the
18 Division's interpretation would impact correlative rights or
19 result in waste is a straw man, and I don't think that the
20 Commission should be, should be moved by that.

21 There, there was -- there are certainly
22 implications for COG that they need to consider in terms of
23 business risks, but there is nothing about the Commission
24 making a decision that standard spacing units are limited to
25 being defined by single wells that would, that would require

1 COG to proceed in a different manner than they have
2 proposed, it just means that COG has to proceed with their
3 applications and notice requirements in conformity with the
4 rule.

5 And with that I would rest. Thank you, Madam
6 Chair.

7 CHAIRWOMAN SANDOVAL: Thank you, Mr. Tremaine.
8 All right. I think the -- Mr. Moander, at this point do we
9 close the record?

10 MR. MOANDER: Actually, Madam Chair, you probably
11 closed the evidentiary record after the evidence. Are you
12 asking to just close the record in total at this point?

13 CHAIRWOMAN SANDOVAL: Yes.

14 MR. MOANDER: Yes, you absolutely may.

15 CHAIRWOMAN SANDOVAL: All right. So the record
16 of this hearing is now closed. The Commission may
17 immediately deliberate to reach a final decision on this. I
18 would move that the meeting be closed pursuant to the
19 Administrative Adjudicatory Deliberations Exception to the
20 Open Meetings Act, Section 10-15-1-H3 to deliberate in this
21 case. Is there a second?

22 COMMISSIONER BLOOM: Madam Chair, I so second.

23 CHAIRWOMAN SANDOVAL: Mr. Moander, would you
24 please do a roll call vote?

25 MR. MOANDER: Yes, Madam Chair. Dr. Ampomah?

1 COMMISSIONER AMPOMAH: Approved.

2 MR. MOANDER: Commissioner Bloom?

3 COMMISSIONER BLOOM: Approved.

4 MR. MOANDER: Madam Chair?

5 CHAIRWOMAN SANDOVAL: Approved.

6 MR. MOANDER: Madam Chair, the motion carries.

7 (Motion to move to closed session unanimously
8 approved.)

9 CHAIRWOMAN SANDOVAL: Thank you. The Commission
10 will now close the session and the record, and for process
11 purposes, so, Commissioners, I set up another link, so if
12 you want to join that and switch over, I will keep this
13 running.

14 For everybody else, let's plan on -- I don't know
15 how long this will take -- but why don't we plan on checking
16 back at 10 o'clock, and I will give everybody an update as
17 to whether the Commissioners need additional time or if we
18 will be coming back at 10 o'clock. So everybody can hang
19 tight on here until 10, and I will give an update at 10.

20 CHAIRWOMAN SANDOVAL: Thank you.

21 (Closed session held.)

22 (Proceeding continued as follows:)

23 CHAIRWOMAN SANDOVAL: All right, great. All
24 right. Welcome back. It's 10 o'clock, and we will get
25 started again. Is there a motion that the meeting be opened

1 and that -- I'm sorry, words -- is there a motion that the
2 meeting be opened after being closed pursuant to the
3 Administrative Adjudicatory Deliberation Exception to the
4 Open Meetings Act, Section 10-15-1-H3, and that the only
5 items that were discussed during this time were in relation
6 to Case Number 22474.

7 COMMISSIONER BLOOM: Madam Chair, I so move.

8 COMMISSIONER AMPOMAH: Madam Chair, I second.

9 CHAIRWOMAN SANDOVAL: Thank you. Mr. Moander,
10 would you do a roll call vote, please.

11 MR. MOANDER: Yes, Madam Chair. Dr. Ampomah?

12 COMMISSIONER AMPOMAH: Approved.

13 CHAIRWOMAN SANDOVAL: Commissioner Bloom?

14 COMMISSIONER BLOOM: Approved.

15 MR. MOANDER: Madam Chair?

16 CHAIRWOMAN SANDOVAL: Approved.

17 MR. MOANDER: The motion carries.

18 (Motion to reopen meeting unanimously approved.)

19 CHAIRWOMAN SANDOVAL: Thank you. The meeting is
20 now opened again.

21 All right. In Case Number 22474, I make a
22 motion -- or, I'm sorry -- I make a motion that the
23 Commission find that the Order Number R-21930 in Division
24 Case Number 22294 is valid and the Commission upholds and it
25 readopt the order.

1 The regulations are straight forward, and they
2 communicate what is required by the operator. The
3 Commission does not find any conflicts between the
4 regulations and the Oil & Gas Act, and the Commission
5 recognizes and applies waste and correlative rights, and the
6 Commission does not find that the Division order violated
7 those principals. Is there a second?

8 COMMISSIONER BLOOM: Madam Chair, I second.

9 CHAIRWOMAN SANDOVAL: Is there any discussion
10 before we do a roll call vote?

11 COMMISSIONER BLOOM: No, Madam Chair.

12 COMMISSIONER AMPOMAH: No, Madam Chair.

13 CHAIRWOMAN SANDOVAL: Okay. Mr. Moander, would
14 you please do a roll call vote?

15 MR. MOANDER: Yes, Madam Chair, Dr. Ampomah?

16 COMMISSIONER AMPOMAH: Approved.

17 MR. MOANDER: Commissioner Bloom?

18 COMMISSIONER BLOOM: Approved.

19 MR. MOANDER: Madam Chair?

20 CHAIRWOMAN SANDOVAL: Approved.

21 MR. MOANDER: The motion carries. I will, I
22 should be able to, consistent with prior practice, get an
23 order drafted and submitted for the next meeting.

24 CHAIRWOMAN SANDOVAL: Okay. And we can finalize
25 that at the next regularly scheduled meeting on June 9.

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(Concluded.)

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REPORTER'S CERTIFICATE

I do hereby certify that I reported the foregoing virtual proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings to the best of my ability.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case and that I have no interest in the final disposition of this case.

I FURTHER CERTIFY that the Virtual Proceeding was of poor to good quality.

Dated this 12th day of May 2022.

/s/ Irene Delgado

Court Reporter
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