

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

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

CASE NO. 14640

**APPLICATION OF BURNETT OIL COMPANY, INC. FOR COMPULSORY
POOLING, EDDY COUNTY, NEW MEXICO**

CASE NO. 14641

**APPLICATION OF BURNETT OIL COMPANY, INC. FOR COMPULSORY
POOLING, EDDY COUNTY, NEW MEXICO**

CASE NO. 14649

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

CASE NO. 14650

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

ORDER NO. R-13450

ORDER OF THE DIVISION

BY THE DIVISION:

These cases came on for hearing at 8:15 a.m. on May 26, 2011, at Santa Fe, New Mexico, before Examiner Terry Warnell.

NOW, on this 26th day of August, 2011, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

1. Due notice has been given, and the Division has jurisdiction of these cases and of the subject matter.
2. Case Nos. 14640, 14641, 14649 and 14650 were consolidated at the time of the hearing for the purpose of testimony. However, one order will be issued.

3. By their applications in Case No. 14640 and Case No. 14641, Burnett Oil Company, Inc. (Burnett) seeks orders pooling all uncommitted mineral interests from the surface to the base of the Glorieta-Yeso formation underlying Sections 13 and 24 in Township 17 South, Range 31 East, NMPM, in Eddy County, New Mexico for all pools developed on 40-acre spacing within that vertical extent.

4. By their competing applications in Case No. 14649 and Case No. 14650, COG Operating (COG/Concho) seeks orders pooling all uncommitted mineral interests in the Glorieta-Yeso formation in Sections 13 and 24 in Township 17 South, Range 31 East, NMPM, in Eddy County, New Mexico for all pools developed on 40-acre spacing within that vertical extent.

5. Due to the factual relationship between these competing cases, it now appears that one joint order should be entered as to all four cases.

6. All parties appeared at the hearing and presented testimony and supporting evidence that included Sections 12, 13, 24 and 25 in Township 17 South, Range 31 East.

7. Burnett presented evidence in support of its applications in Case No. 14640 and Case No. 14641 and in opposition to COG's applications in Case No. 14649 and Case No. 14650.

8. COG presented evidence in support of denying all four vertical well compulsory pooling applications based on their viewpoint that a vertical well program for the Glorieta-Yeso formation in Sections 12, 13, 24 and 25 is not in the best interest of conservation, prevention of waste or the protection of correlative rights.

9. Both Burnett and COG want to develop and operate Sections 12, 13, 24 and 25 in Township 17 South, Range 31 East, NMPM, in Eddy County, New Mexico.

10. Targeted production is at depths below 4230 feet, basically the Glorieta-Yeso formation.

11. OCD records show Burnett has a total of six approved BLM permits to drill ("APDs") in the Glorieta-Yeso formation in Sections 12, 13, 24 and 25 in Township 17 South, Range 31 East.

12. COG has no approved permits to drill ("APDs") on these leases in Sections 12, 13, 24 and 25.

The Evidence:

13. In support of Burnett's applications in Case No. 14640 and Case No. 14641, and in opposition of the COG applications in Case No. 14649 and Case No. 14650, Burnett presented testimony from Randall Hudson, David Rhodes, John Haiduk and Mark Jacoby:

(a) Burnett's viewpoint is that two wells per 40-acre spacing unit will be sufficient to drain all the reserves in the Blinbry and the Paddock in the formations in this area and any vertical drilling denser than that is wasteful.

(b) Burnett controls two-thirds of the working interest in the Glorieta-Yeso formation underlying Sections 12, 13, 24 and 25.

(c) Burnett can drill the first two test wells, setting seven inch production casing, within 4-5 months.

14. In support of COG's applications in Case No. 14649 and Case No. 14650, and in opposition to Burnett's applications in Case No. 14640 and Case No. 14641, COG presented testimony from David Evans, Ramon Reyes and Ken Craig, in support of their request that all four vertical applications be denied:

(a) Based on five meetings with the BLM, COG now believes that a total vertical well program is not possible.

(b) COG testified it was here to withdraw its two pooling applications from consideration by the Division and requested that all four vertical applications be denied.

(c) COG testified that multiple laterals from one well will access and produce more reserves from the leases than a vertical well program.

(d) The day before this hearing COG proposed six tri-lateral horizontal wells.

(e) Counsel for COG/Concho said there was a time when Concho offered to allow Burnett to operate these vertical wells.

Conclusions Regarding Issues:

15. There are interest owner(s) in the Units that have not agreed to pool their interests. There are no un-locatable parties and no evidence of a title dispute; therefore, escrow deposits will not be required.

16. It is undisputed and has long been known that a horizontal well program will generally produce more reserves than a vertical well program.

17. Horizontal wells in this area may or may not be technically feasible and may or may not be economical. However, these issues were not addressed during testimony.

18. COG's compulsory pooling application has been withdrawn and Burnett should be designated operator of the subject vertical wells and Units.

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to the applications of Burnett Oil Company (hereinafter called "applicant") in Case No. 14640, all uncommitted mineral interests in the Glorieta-Yeso formation underlying the SW/4 SW/4 of Section 24, Township 17 South, Range 31 East, NMPM, Eddy County, New Mexico, are hereby pooled for all formations and/or pools spaced on 40-acre oil spacing and proration unit and project area.

The above-described unit ("the Unit") shall be dedicated to the Applicant's proposed Nosler Federal Well No. 2 (API No. 30-015-38634), at a surface location 940 feet from the South line and 990 feet from the West line (Unit M) of Section 24, Township 17 South, Range 31 East, NMPM, Eddy County, New Mexico.

(2) Pursuant to the application of Burnett Oil Company in Case No. 14641, all uncommitted mineral interests in the Glorieta-Yeso formation underlying the SW/4 SW/4 of Section 13, Township 17 South, Range 31 East, NMPM, Eddy County, New Mexico, are hereby pooled for all formations and/or pools spaced on 40-acre oil spacing and proration unit and project area.

The above-described unit ("the Unit") shall be dedicated to the Applicant's proposed Partition Federal Well No. 1 (API No. 30-015-39061), at a surface location 430 feet from the South line and 430 feet from the West line (Unit M) of Section 13, Township 17 South, Range 31 East, NMPM, Eddy County, New Mexico.

(3) The applications of COG Operating, LLC in Case No. 14649 and Case No. 14650 are hereby denied without prejudice.

(4) Burnett Oil Company (OGRD 3080) is hereby designated the operator of the wells and of the Units.

(5) Upon final plugging and abandonment of the proposed wells and any other well drilled on the Units pursuant to Division Rule 19.15.13, Sections 9 through 11 NMAC, the pooled Units created by this Order shall terminate, unless this order has been amended to authorize further operations.

(6) After pooling, uncommitted working interest owners are referred to as pooled working interest owners. ("Pooled working interest owners" are owners of working interests in the Unit, including unleased mineral interests, who are not parties to an operating agreement governing the Unit as established by this order.)

(7) After the effective date of this order, the operator shall furnish the Division and each known pooled working interest owner in the Unit an itemized schedule of estimated costs of drilling, completing and equipping the wells ("well costs").

(8) Within 30 days from the date the schedule of estimated well costs is furnished, any pooled working interest owner shall have the right to pay its share of

estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production as hereinafter provided, and any such owner who pays its share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges. Pooled working interest owners who elect not to pay their share of estimated well costs as provided in this paragraph shall thereafter be referred to as "non-consenting working interest owners."

(9) The operator shall furnish the Division and each known pooled working interest owner (including non-consenting working interest owners) an itemized schedule of actual well costs within 90 days following completion of the proposed well. If no objection to the actual well costs is received by the Division, and the Division has not objected within 45 days following receipt of the schedule, the actual well costs shall be deemed to be the reasonable well costs. If there is an objection to actual well costs within the 45-day period, the Division will determine reasonable well costs after public notice and hearing.

(10) Within 60 days following determination of reasonable well costs, any pooled working interest owner who has paid its share of estimated costs in advance as provided above shall pay to the operator its share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator the amount, if any, that the estimated well costs it has paid exceed its share of reasonable well costs.

(11) The operator is hereby authorized to withhold the following costs and charges from production:

- (a) the proportionate share of reasonable well costs attributable to each non-consenting working interest owner; who has not paid its share of estimated well costs within 30 days from the date the schedule of estimated well costs is furnished and
- (b) as a charge for the risk involved in drilling the well, 200% of the above costs.

(12) The operator shall distribute the costs and charges withheld from production, proportionately, to the parties who advanced the well costs.

(13) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$5,750 per month while drilling and \$575 per month while producing, provided that these rates shall be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations*." The operator is authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to pooled working interest owners.

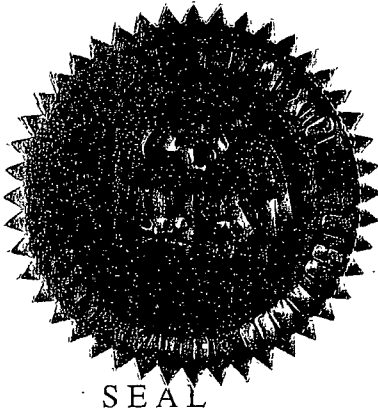
(14) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under this order. Any well costs or charges that are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(15) Should all the parties to this compulsory pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(16) The operator of the well and Unit shall notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(17) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

A handwritten signature in dark ink, appearing to read "Jami Bailey". The signature is fluid and cursive, written over a horizontal line.

JAMI BAILEY
Director