

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

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

CASE NOS. 14640 & 14641

**APPLICATIONS OF BURNETT OIL CO., INC.
FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO.**

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MOTION TO STAY ORDER NO. R-13450

COG Operating LLC ("Appellant" or "Concho") moves for an order staying Order No. R-13450 which was issued on August 26, 2011 in Case Nos. 14640 & 14641: *Applications of Burnett Oil Co., Inc. for Compulsory Pooling, Eddy County, New Mexico* and in support thereof states the following:

1. On August 26, 2011, the Division entered an order approving the applications of Burnett Oil Co., Inc. ("Burnett") for compulsory pooling of the uncommitted interest owners in the Glorieta-Yeso formation in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24, Township 17 South, Range 31 East, to drill its proposed Nosler Federal Well No. 1 and for compulsory pooling of the uncommitted interest owners in the Glorieta-Yeso formation in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, Township 17 South, Range 31 East to drill its proposed Partition Federal Well No. 1.
2. On September 8, 2011, Appellant timely filed an Application for De Novo Hearing before the New Mexico Oil Conservation Commission.
3. Both Burnett and Concho are competing for operations of two Federal leases covering Sections 12, 13, 24 and 25 in Township 17 South, Range 31 East in the Glorieta-Yeso

formation. These cases are the first of many that have and will come before the Division and likely the Commission.¹

4. To that end, Concho has met extensively with the Bureau of Land Management to discuss full development of the leases. These leases have severe surface restrictions due mainly to sand dune lizard habitat. Although Concho originally had proposed a vertical well program to develop the leases, it quickly learned that the only way to achieve full development in the Glorieta-Yeso formation would be by a horizontal well program.

5. At the Division hearing on May 26, 2011, Appellant also had two applications for compulsory pooling for proposed vertical wells at the same locations in Case Nos. 14649 & 14650. However, Appellant requested the Division not consider its applications because vertical wells are not the best way to develop these leases and because it was in the process of proposing horizontal wells to working interest owners in the two leases. Specifically, Concho requested that the Division deny all four vertical well compulsory pooling applications because it presented evidence that the applications were not in the best interest of conservation, prevention of waste or protection of correlative rights.

6. Moreover, Concho presented evidence that Burnett's proposed vertical wells, if allowed, would directly interfere with Concho's proposed horizontal well plan.

7. During the Division examiner hearing, one of Burnett's witnesses indicated that it had a rig in the area which could be directed to the subject lands immediately to begin drilling its proposed wells. See Tr. 68 (Jacoby).

¹ In fact, the Division just heard on August 29, 2011, 2 more Burnett pooling applications and 13 Concho pooling applications for the same lands.

8. Concho's horizontal well proposals are now being considered by the Division in Case Nos. 14706-14718. It is highly likely that if Burnett drills its proposed vertical wells, they will interfere with Concho's proposed horizontal wells.

9. If Burnett is allowed to drill its proposed vertical wells before this matter is final, the wells will cause waste and permanently violate Concho's correlative rights.

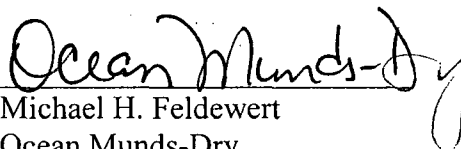
10. Additionally, the dispute is far from over. It is highly likely that the more recent cases (Case Nos. 14706-14718 and Case Nos. 14673 & 14674) heard by the Division will be appealed by the non-prevailing party. These cases involve the same issues and the same lands. It is accordingly more prudent as a matter of judicial efficiency and economy and to avoid piecemeal litigation to impose a stay of this order until all matters can be heard and resolved by the Commission at one time.

11. In order to prevent waste, protect correlative rights and to prevent gross negative consequences to Appellant, Appellant requests the Director grant this Motion to Stay Division Order R-13450 until such time as the Commission has reviewed, deliberated and issued its order on Burnett's and Concho's applications.

12. A proposed order is attached.

Respectfully submitted,

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ATTORNEYS FOR COG OPERATING LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Stay was delivered by U.S. Mail and E-Mail on this 8th day of September, 2011 to the following:

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**STATE OF NEW MEXICO
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CASE NOS. 14640 & 14641

**APPLICATIONS OF BURNETT OIL CO., INC.
FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO.**

PROPOSED ORDER GRANTING MOTION TO STAY ORDER NO. R- 13540

This matter having come before the Division Director pursuant to Rule 19.15.4.23(b) NMAC on the Motion for Stay of Order No. R-13450 submitted by COG Operating LLC, the Director finds:

1. Order No. R-13450 was entered on August 26, 2011, approving the applications of Burnett Oil Co., Inc. ("Burnett") for compulsory pooling of the uncommitted interest owners in the Glorieta-Yeso formation in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24, Township 17 South, Range 31 East, to drill its proposed Nosler Federal Well No. 1 and for compulsory pooling of the uncommitted interest owners in the Glorieta-Yeso formation in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 13, Township 17 South, Range 31 East to drill its proposed Partition Federal Well No. 1.
2. COG Operating LLC objected to the application because Concho asserts that the applications will cause waste.
3. Division Order R-12450 should be stayed while this matter is on appeal before the Commission.

IT IS THEREFORE ORDERED THAT:

Division Order No. R-13450 is STAYED pending final resolution on appeal.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

JAMI BAILEY
Director