

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

**APPLICATION OF COG OPERATING LLC  
FOR A NON-STANDARD SPACING AND  
PRORATION UNIT AND COMPULSORY POOLING,  
LEA COUNTY, NEW MEXICO.**

**RECEIVED OCT 11 2017  
SEP 14 P 1:10  
CASE NO. 15810**

**APPLICATION OF COG OPERATING LLC  
FOR A NON-STANDARD SPACING AND  
PRORATION UNIT AND COMPULSORY POOLING,  
LEA COUNTY, NEW MEXICO.**

**CASE NO. 15811**

**APPLICATION OF COG OPERATING LLC  
FOR A NON-STANDARD SPACING AND  
PRORATION UNIT AND COMPULSORY POOLING,  
LEA COUNTY, NEW MEXICO.**

**CASE NO. 15812**

**APPLICATION OF COG OPERATING LLC  
FOR A NON-STANDARD SPACING AND  
PRORATION UNIT AND COMPULSORY POOLING,  
LEA COUNTY, NEW MEXICO.**

**CASE NO. 15813**

**COG's POST-HEARING BRIEF**

COG Operating LLC ("COG"), pursuant to instruction from the Division Examiner at the hearing in these matters on August 31, 2017, submits this post-hearing brief for consideration.

**INTRODUCTION**

The Applications filed by COG in these matters seek the following relief:

- A. Formation of four 320-acre non-standard spacing and proration units, comprised of the following lands:
1. Bone Spring formation: E/2 W/2 of Section 16 and the E/2 W/2 of Section 21 (Case No. 15810);
  2. Bone Spring formation: W/2 W/2 of Section 16 and the W/2 W/2 of Section 21 (Case No. 15811);

3. Wolfcamp formation: E/2 W/2 of Section 16 and the E/2 W/2 of Section 21 (Case No. 15812); and

4. Wolfcamp formation: W/2 W/2 of Section 16 and the W/2 W/2 of Section 21 (Case No. 15811).

B. Compulsory pooling uncommitted interest owners in each spacing unit.

In addition to compulsory pooling uncommitted working interest owners, COG also sought to pool interest owners with title defects. COG requested that the Estate of Beulah M. Baird be compulsory pooled due to title defects associated with the interest. Mr. Weldon Baird, a co-trustee of this estate, objected to the pooling of his interest.

### **ARGUMENT**

The Oil Conservation Division ("Division") does not have jurisdiction to resolve title disputes or contract issues. *See* Order No. R-12175, ¶ 12 ("The Division has no jurisdiction to determine the validity of a title or claim of title. Exclusive jurisdiction of such matters resides in the courts of the State of New Mexico."); *see also* Order No. R-14187(E), ¶ 44 ("The Division does not have jurisdiction to construe contracts or determine their validity.").

COG's title opinion confirms that title for the Estate of Beulah M. Baird is unmarketable. Mr. Baird, a co-trustee of the Estate of Beulah M. Baird, signed a lease with COG covering certain acreage within the proposed spacing units. A title opinion covering the subject acreage enumerated requirements to clear title for the Baird lease. Baird Trust Exhibit 2. COG's title requirement letter was sent to Mr. Baird several months prior to the hearing. In particular, the title requirement stated that Mr. Baird must:

. . . [O]btain, record, and provide to this office for review, authenticated copies of the Letters Testamentary issued by the County Court of Dallas County, Texas appointing Norma Baird Loving as Personal Representative of the Estate of Beulah M. Baird, deceased or undertake full informal probate proceedings in a New Mexico court of competent jurisdiction.

Unopposed testimony during the hearing established that 1) Mr. Baird had not cleared title pursuant to the title requirement; and 2) Mr. Baird had taken no action to perform the title requirement.

When oil and gas interests in a spacing unit are unconsolidated, the Oil and Gas Act directs the Division to pool those interests to avoid the drilling of unnecessary wells or to protect correlative rights. *See* NMSA 1978, § 70-2-17(C). Here, the interest for the Estate of Beulah M. Baird are not and cannot be consolidated into the spacing unit because title is unmarketable and the trustee has failed to clear title. The interest cannot be voluntarily consolidated until title is cleared. Accordingly, the interest must be pooled.

WHEREFORE, COG respectfully requests that the Division grant COG's applications filed in the above-referenced cases.

Respectfully submitted,

HOLLAND & HART LLP



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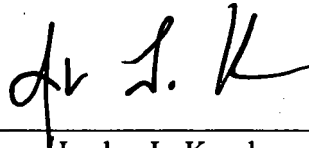
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**ATTORNEYS FOR COG OPERATING LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that on September 14, 2017, I served a copy of the foregoing document to the following counsel of record via electronic mail:

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A handwritten signature in black ink, appearing to read "Jr L. K", is written above a horizontal line.

Jordan L. Kessler