

**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. 15404  
ORDER NO. R-14096**

**APPLICATION OF BURNETT OIL COMPANY, INC. FOR A NON-STANDARD  
OIL SPACING AND PRORATION UNIT AND COMPULSORY POOLING,  
EDDY COUNTY, NEW MEXICO.**

**ORDER OF THE DIVISION**

**BY THE DIVISION:**

This case came on for hearing at 8:15 a.m. on November 12, 2015 at Santa Fe, New Mexico, before Examiner William V. Jones, and December 3, 2015 before Examiner Michael McMillan.

NOW, on this 17<sup>th</sup> day of December, 2015, the Division Director, having considered the testimony, the record and the recommendations of Examiner McMillan,

**FINDS THAT:**

(1) Due public notice has been given, and the Division has jurisdiction of this case and of the subject matter.

(2) Cases No. 15404 and 15405 were consolidated at the hearing for the purpose of testimony; however, separate orders will be issued for each case.

(3) In Case No. 15404, Burnett Oil Company, Inc. ("Burnett" or "Applicant") seeks approval of a non-standard 120-acre oil spacing and proration unit ("Unit") for oil production in the Yeso formation, Fren; Glorieta-Yeso Pool (pool code 26770), comprised of the NW/4 NE/4 and N/2 NW/4 of Section 12, Township 17 South, Range 31 East, NMPM, Eddy County, New Mexico. Applicant further seeks an order pooling all uncommitted interests in the Unit.

(4) The Unit will be dedicated to the Applicant's Nosler 12 Federal DB Well No. 4H (the "proposed well"; API No. 30-015-43422), a horizontal well to be drilled from a surface location 600 feet from the North line and 200 feet from the East line (Unit

A) of Section 11, to a standard terminus 970 feet from the North line and 1670 feet from the East line (Unit B) of Section 12. The completed interval of the proposed well in the Yeso formation will be orthodox.

(5) The proposed well is within the Fren; Glorieta-Yeso Pool (pool code 26770). Spacing in this pool is governed by Division Rule 19.15.15.9(A) NMAC, which provides for standard 40-acre units, each comprising a governmental quarter-quarter section, with wells to be located no closer than 330 feet to the outer boundary of the spacing unit. The proposed Unit and project area consists of three adjacent quarter-quarter sections.

(6) Applicant appeared at the hearing through counsel and presented land and geologic evidence to the effect that:

- (a) The Yeso formation in this area is suitable for development by horizontal drilling;
- (b) the proposed orientation of the horizontal well East to West or West to East is appropriate for the proposed Unit;
- (c) all quarter-quarter sections to be included in the Unit are expected to be productive in the Yeso formation, so that formation of the Unit as requested will not impair correlative rights;
- (d) notice was provided for compulsory pooling within the Unit to all interest owners subject to pooling proceedings;
- (e) notice was provided to owners within the Yeso formation surrounding this non-standard spacing unit; and
- (f) Applicant has attempted good faith effort to reach voluntary joinder with Ard Energy Group, Ltd. and Ard Oil;

(7) Ard Energy Group, Ltd. and Ard Oil, Ltd. ("Ard") appeared at the hearing through counsel in opposition to the granting of this application. Ard presented land evidence to the effect that:

- (a) Ard was not provided sufficient time to negotiate with Applicant or a third party;
- (b) Ard presented a counter proposal to the Applicant subsequent to the November hearing;
- (c) Ard agrees that a well should be drilled in the Unit;

- (d) Granting of this application will limit Ard's ability to negotiate a deal.

(8) COG Operating, LLC appeared at the hearing through counsel, but did not oppose the granting of this application.

The Division concludes that:

(9) Examiner continued this case after the November 12, 2015 hearing in order to allow additional time for negotiations between Applicant and Ard.

(10) Approval of the proposed unit will enable Applicant to drill a horizontal well that will efficiently produce the reserves underlying the Unit, thereby preventing waste, and will not impair correlative rights.

(11) Two or more separately owned tracts are embraced within the Unit, and/or there are royalty interests and/or undivided interests in oil and gas minerals in one or more tracts included in the Unit that are separately owned.

(12) Applicant is owner of an oil and gas working interest within the Unit. Applicant has the right to drill and proposes to drill the proposed well to a common source of supply within the Unit.

(13) There are interest owners in the Unit that have not agreed to pool their interests.

(14) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford to the owner of each interest in the Unit the opportunity to recover or receive without unnecessary expense its just and fair share of hydrocarbons, this application should be approved by pooling all uncommitted interests, whatever they may be, in the oil and gas within the Unit.

(15) Applicant has provided sufficient notice for joinder of the well and Joint Operating Agreement to Ard, the only interest to be compulsory pooled.

(16) Burnett Oil Company, Inc. should be designated the operator of the proposed well and of the Unit.

(17) COG Operating LLC currently has oil and gas production in the E/2 E/2 project area of Section 12 in the Fren; Glorieta-Yeso Pool; therefore, no acreage will be stranded.

(18) Any pooled working interest owner who does not pay its share of estimated well costs should have withheld from production its share of reasonable well costs, plus an additional 200% thereof as a reasonable charge for the risk involved in drilling the proposed well.

(19) Reasonable rates for supervision (combined fixed rates) should be fixed at \$6500 per month while drilling and \$650 per month while producing, provided that these rates should be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "Accounting Procedure-Joint Operations."

**IT IS THEREFORE ORDERED THAT:**

(1) A non-standard 120-acre oil spacing and proration unit (the "Unit") is hereby established for the Yeso formation, the Fren; Glorieta-Yeso Pool (pool code 26770), consisting of the NW/4 NE/4 and N/2 NW/4 of Section 12, Township 17 South, Range 31 East, NMPM, Eddy County, New Mexico.

(2) Pursuant to the application of Burnett Oil Company, Inc., all uncommitted interests, whatever they may be, in the oil and gas in the Yeso formation underlying the Unit, are hereby pooled.

(3) The Unit shall be dedicated to the Applicant's Nosler 12 Federal DB Well No. 4H (the "proposed well"; API No. 30-015-43422), a horizontal well to be drilled from a surface location 600 feet from the North line and 200 feet from the East line (Unit A) of Section 11, to a standard terminus 970 feet from the North line and 1670 feet from the East line (Unit B) of Section 12. The completed interval of the proposed well in the Yeso formation will be orthodox.

(4) The operator of the Unit shall commence drilling the proposed well on or before December 31, 2016, and shall thereafter continue drilling the proposed well with due diligence to test the Yeso formation.

(5) In the event the operator does not commence drilling the proposed well on or before December 31, 2016, Ordering Paragraphs (1) and (2) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause demonstrated by satisfactory evidence.

(6) Should the proposed well not be drilled and completed within 120 days after commencement thereof, then Ordering Paragraphs (1) and (2) shall be of no further effect, and the unit and project area created by this order shall terminate, unless the operator appears before the Division Director and obtains an extension of the time for completion of the proposed well for good cause shown by satisfactory evidence. If the proposed well is not completed in all of the quarter-quarter sections included in the proposed Unit within 120 days after commencement of drilling, then the operator shall apply to the Division for an amendment to this Order to contract the Unit so that it includes only those quarter-quarter sections in which the well is completed.

(7) Upon final plugging and abandonment of the proposed well and any other well drilled on the Unit pursuant to Division Rule 19.15.13.9 NMAC, the pooled Unit created by this Order shall terminate, unless this Order has been amended to authorize further operations.

(8) Burnett Oil Company, Inc. (OGRID 03080) is hereby designated the operator of the well and the Unit.

(9) 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.) 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 proposed well ("well costs").

(10) 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."

(11) 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.

(12) 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.

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

- (a) the proportionate share of reasonable well costs attributable to each non-consenting working interest owner; and
- (b) as a charge for the risk involved in drilling the well, 200% of the above costs.

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

(15) Reasonable charges for supervision (combined fixed rates) for the well are hereby fixed at \$6,500 per month while drilling and \$650 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.

(16) Except as provided in Paragraphs (13) and (15) above, all proceeds from production from the proposed well that are not disbursed for any reason shall be held for the account of the person or persons entitled thereto pursuant to the Oil and Gas Proceeds Payment Act (NMSA 1978 Sections 70-10-1 through 70-10-6, as amended). If not disbursed, such proceeds shall be turned over to the appropriate authority as and when required by the Uniform Unclaimed Property Act (NMSA 1978 Sections 7-8A-1 through 7-8A-31, as amended).

(17) Any unleased mineral interests 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.

(18) 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.

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

(20) 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 cursive script, reading "David R. Catanach".

DAVID R. CATANACH  
Director