

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:

APPLICATION OF MARATHON OIL  
PERMIAN, LLC FOR COMPULSORY POOLING,  
LEA COUNTY, NEW MEXICO.

CASE NOs. 20163,  
20164, 20169  
(Re-opened)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

September 6, 2019

Santa Fe, New Mexico

BEFORE: KATHLEEN MURPHY, CHIEF EXAMINER  
WILLIAM V. JONES, TECHNICAL EXAMINER  
DYLAN ROSE-COSS, TECHNICAL EXAMINER  
DANA Z. DAVID, LEGAL EXAMINER

This matter came on for hearing before the New Mexico Oil Conservation Division, Kathleen Murphy, Chief Examiner; William V. Jones and Dylan Rose-Coss, Technical Examiners; and Dana Z. David, Legal Examiner, on Friday, September 6, 2019, at the New Mexico Energy, Minerals and Natural Resources Department, Wendell Chino Building, 1220 South St. Francis Drive, Porter Hall, Room 102, Santa Fe, New Mexico.

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# APPEARANCES

FOR APPLICANT MARATHON OIL PERMIAN, LLC:

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1 (1:54 p.m.)

2 EXAMINER MURPHY: We will hear Cases 20163,  
3 20164 and 20169, application of Marathon Oil Permian,  
4 LLC for compulsory pooling in Lea County, New Mexico.

5 Please call for appearances.

6 MS. BENNETT: Good afternoon. My name is  
7 Deana Bennett. I'm here on behalf of Marathon Oil  
8 Permian, LLC, and I'm from Modrall Sperling in  
9 Albuquerque.

10 EXAMINER MURPHY: Are there any --

11 MS. BROGGI: Yes. Julia Broggi, with the  
12 Santa Fe office of Holland & Hart, on behalf of MRC  
13 Permian.

14 And we have no objection to the cases being  
15 presented by affidavit.

16 EXAMINER MURPHY: And there are no  
17 witnesses because it's being presented by affidavit?

18 MS. BENNETT: That's right. We don't have  
19 witnesses. My goal is to present them by affidavit.

20 EXAMINER MURPHY: Please proceed.

21 MS. BENNETT: Thanks.

22 So just a bit of background before we get  
23 started. These cases already went to hearing once.  
24 These are the Ned Pepper cases, Marathon Ned Pepper.  
25 And they went to hearing back on May 16th, 2019, and

1 they were -- these three cases were consolidated for  
2 hearing at that time and were presented by affidavit.  
3 We presented testimony from our -- affidavit testimony  
4 from our landman, Ryan Gyllenband, and geologic  
5 testimony. And I don't have the name of the geologist  
6 here with me who presented that geologic testimony.

7           After the hearing was over, however, there  
8 was additional title work that was done, and so Marathon  
9 found -- or discovered some interest owners that hadn't  
10 been given notice of the -- hadn't been sent proposal  
11 letters and hadn't been given notice of the hearing.  
12 And so when that came to light, Marathon sent proposal  
13 letters out, and then we waited the 30 days as required  
14 before we filed our applications. And then we filed  
15 applications to re-open these cases -- these three cases  
16 for the limited purpose of pooling the newly identified  
17 parties.

18           So all I have in this packet before you is  
19 an affidavit from the landman and some exhibits  
20 supporting his affidavit, including a copy of the  
21 proposal letter that was sent out, an exhibit showing  
22 the parties Marathon seeks to pool and my affidavit  
23 showing publication. And then for the examiners'  
24 convenience, I also included a copy of our application  
25 seeking to re-open these cases.

1                   So that's what brings me here today, is  
2 re-opening these three cases for the limited purpose of  
3 pooling additional parties about whom Marathon did not  
4 have notice at the time these cases went to hearing.

5                   EXAMINER DAVID: Counsel, if I understand  
6 correctly, the -- the affidavit of the -- of the land  
7 professional in this case was the same as the other  
8 cases that were heard in May?

9                   MS. BENNETT: It's the same land  
10 professional, but the affidavit is different because it  
11 addresses --

12                  EXAMINER DAVID: The testifying person is  
13 the same.

14                  MS. BENNETT: It is the same.

15                  EXAMINER DAVID: So I guess if it pleases  
16 the hearing examiner, you don't have to qualify him.  
17 He's already been qualified for the first of this case,  
18 so you can just pass by that one if you want.

19                  EXAMINER MURPHY: Okay.

20                  MS. BENNETT: Thank you.

21                  And I would also ask and he asks in his  
22 affidavit that this -- the testimony that was elicited  
23 at the last hearing, both the geology testimony and the  
24 land testimony, be incorporated -- or that this be  
25 incorporated into that testimony so that this -- this

1 affidavit is intended to stand on its own for the  
2 purposes of demonstrating the steps that were undertaken  
3 to negotiate with these new parties but is not intended  
4 to supersede or replace in any way the affidavit that  
5 Mr. Gyllenband presented or that I presented on his  
6 behalf at the last hearing.

7 EXAMINER DAVID: Counsel, thank you for  
8 clarifying that for the record. Much appreciated.

9 MS. BENNETT: Thank you.

10 With that, I'll start with Mr. Gyllenband's  
11 affidavit, which is behind Tab A. Behind Tab A and in  
12 his affidavit, Mr. Gyllenband gives a brief recitation  
13 of the pooling -- the areas that Marathon seeks to pool.  
14 And I've actually prepared affidavits for him for the  
15 Bone Spring cases, which are 20163 and 20164, and then  
16 an affidavit for the Wolfcamp case, which is 20169.

17 I don't know that it makes a lot of sense  
18 for me to spend a lot of time going through the  
19 pooling -- pooled area because that's already on the  
20 record in the prior cases, but what I did want to  
21 mention is that the highlights are that these cases did  
22 go to hearing on May 16th, 2019. After the hearing,  
23 Marathon discovered additional mineral owners who were  
24 not provided notice of the May 16th, 2019 hearing. To  
25 provide notice to these additional mineral owners and to

1 bring their interests under the terms of the order that  
2 Marathon is seeking in these cases, Marathon requested  
3 that these cases be re-opened for the purposes of  
4 pooling the newly identified mineral interest owners.

5 As I mentioned, Marathon sent a proposal  
6 letter of the newly identified mineral interest owners.  
7 An example of the proposal letter is attached behind  
8 Exhibit 1, A1. You'll see that was sent on June 17th --  
9 well, it's dated June 17th, 2019. It actually was sent  
10 out on June 19th, 2019.

11 Mr. Gyllenband did receive communications  
12 from the newly identified mineral interest owners, and  
13 as a result of those communications, Marathon was able  
14 to lease some unleased mineral interests. And so the --  
15 while Marathon had previously identified more mineral  
16 interest owners, the number has subsequently decreased  
17 because Marathon has been negotiating with them and has  
18 reached agreements with some of the newly identified  
19 mineral interest owners.

20 Marathon is seeking to pool the parties  
21 identified on page 2 -- excuse me -- Exhibit A2, which  
22 is page 7. Marathon is seeking to pool COG Production,  
23 LLC, New Mexico Department of Transportation. And Novo  
24 Minerals is an override that Marathon is seeking to  
25 pool, and that's identified in A2, page 7.

1                   Mr. Gyllenband testifies that in his  
2     opinion he has made good-faith efforts to obtain the  
3     voluntary joinder of the working interest owners in the  
4     proposed wells.

5                   Exhibit 3 is the Affidavit of Notice that I  
6     prepared, and Exhibit 3 states that I provided the  
7     applications under a notice letter and proof of receipt  
8     of me doing so is attached. Page 9 is the list of folks  
9     to whom I sent notice of this hearing. Page 10 is the  
10    status of those mailings, and then page 11 is the Notice  
11    of Publication showing that notice of this hearing was  
12    published in the "Hobbs News-Sun" on August 21st, 2019.

13                  Behind Tab B are the very similar  
14    affidavits and exhibits prepared by Mr. Gyllenband for  
15    the Wolfcamp case, which is Case Number 20169, and the  
16    same facts apply. This case went to hearing in May.  
17    After the hearing was over, discovered new interest  
18    owners. Marathon sent those interest owners a proposal  
19    letter. Marathon has been in contact with the interest  
20    owners. As a result of those communications, Marathon  
21    has been able to reach agreement with certain of the  
22    mineral interest owners but not all. And so Marathon is  
23    seeking to pool the parties listed behind Tab 2. The  
24    ownership in the Wolfcamp is slightly different than the  
25    ownership in the Bone Spring. So here for the Wolfcamp



1 case, Mr. Gyllenband has provided the following as  
2 pooled parties: COG Production, LLC, Jet Stream Oil &  
3 Gas Partners, L.P., MRC Permian Company, New Mexico  
4 Department of Transportation. And the override, again,  
5 is Novo Minerals.

6 Behind Tab C is the -- behind Tab C is the  
7 application.

8 My Notice of Affidavit is a consolidated  
9 affidavit for all three cases, so I didn't reproduce  
10 that behind Tab B.

11 So at this time, I'd like to move the  
12 admission of Exhibit A and its attachments, Exhibit B  
13 and its attachments, and Exhibit C in Cases 20163, 20164  
14 and 20169.

15 MS. BROGGI: No objection.

16 EXAMINER COSS: So admitted.

17 (Marathon Oil Permian, LLC Exhibits A, B  
18 and C for each case are offered and  
19 admitted into evidence.)

20 MS. BENNETT: Thank you.

21 At this time I don't have any further  
22 affirmative statements, but if you-all have any  
23 questions, I'm happy to answer them.

24 EXAMINER JONES: So these -- are these the  
25 combination units that were combined after --

1 MS. BENNETT: No. That's the next set.

2 EXAMINER JONES: That's the Blue- --

3 MS. BENNETT: That's the Blueberry.

4 EXAMINER JONES: That's the Blueberry  
5 thing.

6 MS. BENNETT: Yes. That's the next thing  
7 we're going to talk about.

8 EXAMINER JONES: Leonard heard them and  
9 they were re-opened?

10 MS. BENNETT: Uh-huh. Yes. I was under  
11 the impression that that was the process I needed to go  
12 through to make sure --

13 EXAMINER JONES: Oh, yeah.

14 MS. BENNETT: Okay.

15 EXAMINER JONES: We were told yesterday now  
16 to just start a new case number, but it still -- it's  
17 nice if you somehow relate -- say in there you relate it  
18 to the old case number.

19 MS. BENNETT: Yes, we will do that.

20 EXAMINER JONES: For your records, you're  
21 probably going to do that anyway.

22 MS. BENNETT: Yes. I talked with  
23 Mr. Goetze a little bit in a sidebar, and what I have  
24 decided to do is in my applications, I will note the  
25 original case number, the date it was filed and perhaps

1 a brief summary of what brings us to the new case  
2 number. And then the goal would be that both sides of  
3 the equation would have the information needed to  
4 correlate the two case numbers. And my understanding  
5 from speaking with Mr. Goetze is that the old case  
6 number -- the old case won't be dismissed or won't go  
7 away, so we'll just keep adding new case numbers to the  
8 new case as we move along.

9 EXAMINER JONES: Oh, I thought we were  
10 going to dismiss the old case and start the new case.  
11 That's what I thought we would do. Issue an order and  
12 just -- in other words, if you basically are re-opening  
13 or even given a new case number, it would be on the new  
14 notice docket, and then we would issue a dismissal for  
15 the old one. But this is all still --

16 MS. BENNETT: Uh-huh. The reason why I  
17 think -- and I don't know that this needs to be on the  
18 record. I'm happy to talk about this after, unless you  
19 want to talk about it now.

20 But for my own purposes, for my own  
21 perspective, the reason Mr. Goetze's comment made sense  
22 to me was that if you dismiss the old case, then how do  
23 you get all the exhibits from the old case into the new  
24 case practically speaking? Would we have to come back  
25 with all the old exhibits and --

1                   EXAMINER JONES: Well, sometimes we  
2   incorporate record by reference, but the attorney has to  
3   ask for that. Dana would know more about that.

4                   EXAMINER DAVID: I'm not the OCD lawyer. I  
5   don't know. This is all the first time I've heard about  
6   this. So whatever is practically -- you know, maybe  
7   it's just a wrinkle that needs to be talked about  
8   internally.

9                   MS. BENNETT: I think that makes sense.

10                  EXAMINER DAVID: I mean, it's the same  
11   matter -- I mean same subject matter, but we need to  
12   open new cases, you know --

13                  Can we just go off the record? It's dumb  
14   to have her (indicating) write all this stuff down. It  
15   has nothing to do with the case at bar.

16                  You can go off the record.

17                  (Discussion off the record, 2:07 p.m. to  
18   2:16 p.m.)

19                  EXAMINER COSS: Let's go back on the  
20   record.

21                  EXAMINER JONES: I think these  
22   Blueberries -- let me call those because I was involved  
23   in those last time.

24                  MS. BENNETT: Yes. But before we do that,  
25   I'd like to request that Case Numbers 20163, 20164 and

1 20169 be taken under advisement.

2 EXAMINER COSS: Cases 20163, 20164 and  
3 20169 are taken under advisement.

4 MS. BENNETT: Thank you.

5 (Case Numbers 20163, 20164 and 20169  
6 conclude, 2:17 p.m.)

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1 STATE OF NEW MEXICO  
2 COUNTY OF BERNALILLO

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4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, Certified Court  
6 Reporter, New Mexico Certified Court Reporter No. 20,  
7 and Registered Professional Reporter, do hereby certify  
8 that I reported the foregoing proceedings in  
9 stenographic shorthand and that the foregoing pages are  
10 a true and correct transcript of those proceedings that  
11 were reduced to printed form by me to the best of my  
12 ability.

13 I FURTHER CERTIFY that the Reporter's  
14 Record of the proceedings truly and accurately reflects  
15 the exhibits, if any, offered by the respective parties.

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

20 DATED THIS 6th day of October 2019.

21

22

23 MARY C. HANKINS, CCR, RPR  
24 Certified Court Reporter  
25 New Mexico CCR No. 20  
Date of CCR Expiration: 12/31/2019  
Paul Baca Professional Court Reporters