

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 NOS: 20962, 20963

APPLICATION OF DEVON ENERGY PRODUCTION
COMPANY LP FOR A HORIZONTAL SPACING
AND PRORATION UNIT AND COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
EXAMINER HEARING
December 12, 2019
SANTA FE, NEW MEXICO

This matter came on for hearing before the New Mexico Oil Conservation Division, EXAMINERS LEONARD LOWE, DEAN McCCLURE, DYLAN COSS and LEGAL EXAMINER ERIC AMES, on Thursday, December 12, 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.

Reported by: Irene Delgado, NMCCR 253
PAUL BACA PROFESSIONAL COURT REPORTERS
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Albuquerque, NM 87102
505-843-9241

A P P E A R A N C E S

For the Applicant:

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I N D E X

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| 13 | CASE NO. 20962, 20963 CALLED | |
| 14 | ANDY BENNETT (By Affidavit) | 04 |
| 15 | JOHN GREEN (By Affidavit) | 04 |
| 16 | THOMAS PERYAM (By Affidavit) | 05 |
| 17 | TAKEN UNDER ADVISEMENT: | 09 |
| 18 | REPORTER CERTIFICATE | 10 |

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E X H I B I T I N D E X

| | | |
|----|---------------------------------------|----|
| 21 | Admitted | |
| 22 | 1 through 6 (Any and all attachments) | 09 |

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1 HEARING EXAMINER COSS: At this point the Division will call
2 Case Number 20962, Devon Energy for compulsory pooling,
3 non-standard spacing and proration unit.

4 MR. SAVAGE: Darin Savage of Abadie and Schill
5 for Devon Energy Company.

6 HEARING EXAMINER COSS: Any other entries of
7 appearance?

8 MS. BENNETT: Good morning, Mr. Examiners. Deana
9 Bennett from Modrall Sperling on behalf of Cimarex in case
10 20962, and if the cases are going to be consolidated --

11 HEARING EXAMINER COSS: We are going to
12 consolidate.

13 MR. SAVAGE: Consolidate.

14 MS. BENNETT: Then Deana Bennett from Modrall
15 Sperling on behalf of Cimarex also in Case Number 20963, and
16 Cimarex does not object to the cases being put on by
17 affidavit.

18 MR. SAVAGE: We request that they be put on by
19 affidavit, if possible.

20 HEARING EXAMINER COSS: You may proceed.

21 MR. SAVAGE: Mr. Examiners, Darin Savage of
22 Abadie and Schill appearing for Devon Energy Production
23 Company.

24 As you can see on the cover page, this is a
25 consolidated -- this is consolidation of Case Numbers 20962

1 and 20963. Those cases propose a 640, more or less,
2 standard horizontal spacing unit in the W/2 of Section 20
3 and 29, 23 South, Range 33 East, Lea County, New Mexico.

4 Case 20962 proposes three wells for the Bone
5 Spring Formation with the 2H well being the defining well
6 for the spacing unit.

7 Case 20963 proposes four wells for the Wolfcamp
8 Formation with the 6H well being the defining well for the
9 spacing unit. All expert witnesses herein have testified
10 previously and their qualifications have been accepted.

11 For Case 20962, Exhibit 1, which is the Tab 1,
12 the supervising landman testifying to the need for these
13 wells and supporting documents showing plat map, well
14 locations, ownership, C-102s, proposal letters and AFEs.

15 Exhibit 2, Tab 2, Page 41 is the affidavit of the
16 geologist John Green, and it's showing the geologic
17 justification for drilling the three wells into the Bone
18 Spring with the three standard geological exhibits.

19 Exhibit 3, Page 48, shows the proper notice
20 letters that were sent and also shows the publication of
21 the -- in the Hobbs News Sun. And there is a bit of an
22 issue with that, and I would like to continue and then I
23 will return to that and address that.

24 For Case 20963, I direct your attention to
25 Exhibit 4, Page 61, again supervising landman's affidavit

1 with supporting documents for the four well into the
2 Wolfcamp showing the plat map, location, ownership, C-102s
3 and well proposal letters with AFEs.

4 Exhibit 5, Page 95 is the affidavit of the
5 geologist Thomas Peryam, again showing the geological
6 justification for drilling the four wells into the Wolfcamp,
7 along with the three standard geological exhibits as
8 supporting documents.

9 And finally Exhibit 6 provides a notice of
10 mailings.

11 And there is one twist on this. In the Bone
12 Spring formation, we have the Bone Spring Sands, the two
13 sections we actually have two pool codes for those sections
14 14865 for Section 20 and 59900 for Section 29, and we
15 followed the Hobbs Field Office guidance for handling this
16 matter, and we included all the C-102s that are required for
17 that.

18 The issue I would like to come back to is the
19 notice of publication. So we submitted the request for
20 publication to the Hobbs News Sun on November 25. They have
21 a policy requiring submission two days in advance of, of the
22 day it needs to be published, and we requested that date --
23 we actually submitted it three days in advance expecting
24 them to follow their policy, which they failed to do, and
25 they ended up publishing it on December 1, which turns out

1 to be nine business days prior to the hearing.

2 So I didn't find this out -- we do have the
3 publication within our exhibits, the publication that was
4 published. I didn't find this out until I received the
5 e-mail of the publication last night.

6 So in light of that, I reviewed more closely the
7 regulations, and I reviewed the statutes that govern notice
8 to the interest owners, and in this case all the working
9 interest owners have been notified by letter; there is no
10 question about that.

11 And just about all of the overriding royalty
12 interest owners that we were able to identify, now there is
13 nine, of a handful of overriding royalty interest owners,
14 there is nine of them, and we suspect they may or may not
15 own overrides. They -- they are basically what we suspect
16 to be heirs of estates of deceased persons where the address
17 was unknown, and we tracked down possible heirs through
18 ancestry.com as part of our due diligence efforts.

19 But so in closely examining the nature of these
20 interests, we looked at our ownership, and these are all
21 federal leases. There is three federal leases, all federal
22 leasehold, all federal interests, and the overrides
23 therefore are federal interests as well. And as a result,
24 they are subject to the unitization provision outside of the
25 scope, what we believe to be the scope of the state

1 regulations.

2 So they are governed by another layer that takes
3 precedence over the state, that of a unitization agreement
4 that's governed by federal statute. So we really believe
5 after looking at this and considering it, we believe there
6 is really no requirement for these federal interests, the
7 overrides, because they are not working interests, they are
8 not necessary -- they are not even necessary parties to a
9 unitization agreement, and they would not even have the
10 right to join in on a unitization agreement at the federal
11 level.

12 So we really believe there is no requirement,
13 given the specific facts of this ownership, and we also feel
14 like it conforms to Regulatory Rule 9-15-4-12A, and that
15 regulatory rule specifies that the interest owners are to be
16 notified except royalty interests that are subject to other
17 unitization provisions, and it very clearly says that.

18 That's why we don't give notice, for example, to
19 royalty interests owners because they satisfy that
20 particular regulatory measure. I looked through the
21 Division orders that OCD had issued, and I don't see any
22 clarification on the status of federal based overriding
23 royalty interest owners. We would like to have
24 clarification on that as possible as part of the requests on
25 the Division order that's provided.

1 So the only thing that we were able to find that
2 was analogous was Division Order 13124, and that deals with
3 a very truncated version of the wellbore interests in which
4 the Division, with that, the nature of the wellbore
5 interests, and decided that it was very, very narrowly
6 defined in terms of basically an interest in production that
7 was void of correlative rights.

8 And we believe that the federal overrides are
9 also something analogous in that they are very narrowly
10 defined, and are void of all executory rights and all rights
11 to drill.

12 Therefore, whatever decision an overriding
13 royalty interest owner makes of claims to make would not
14 affect in any way issues of conservation, issues of waste or
15 issues of correlative rights. And, therefore, we believe
16 that the Division has the discretion to go ahead and make a
17 decision based on those issues of the conservation and
18 correlative rights and prevention of waste without the need
19 for notice to the federal based overriding royalty interest
20 owners.

21 And consequently, I ask that the Examiners accept
22 into the record Exhibits 1 through 6 and all supporting
23 documents and sub-exhibits for Cases 20962 and 20963, and I
24 ask that these cases be taken into consideration.

25 EXAMINER COSS: Are there any objections?

1 MS. BENNETT: No.

2 HEARING EXAMINER COSS: Well, with that, thank
3 for your explanation. That was very helpful.

4 MR. SAVAGE: If I may say one more thing, we
5 would like to present a short brief, if we could, to clarify
6 the legal analysis of that. We can provide it early next
7 week that you would have as additional information that you
8 might want to consider in your evaluation of the issue.

9 HEARING EXAMINER COSS: That is fine. We would
10 appreciate that. And with that, please keep it brief,
11 though.

12 MR. SAVAGE: Of course.

13 HEARING EXAMINER COSS: Keep the brief brief.
14 And with that, we will take the exhibits submitted for Case
15 Numbers 20962 and 20963, we will enter them into the record
16 and take the cases under advisement subject to the caveat of
17 you submitting a brief affidavit.

18 (Exhibits 1 through 6 admitted.)

19 MR. SAVAGE: All right. Thank you.

20 (Cases 20962 and 20963 taken under advisement
21 subject to stated caveat. Adjourned.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

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4 REPORTER'S CERTIFICATE

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6 I, IRENE DELGADO, New Mexico Certified Court
7 Reporter, CCR 253, do hereby certify that I reported the
8 foregoing proceedings in stenographic shorthand and that the
9 foregoing pages are a true and correct transcript of those
10 proceedings that were reduced to printed form by me to the
11 best of my ability.

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

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

19 Dated this 12th day of December 2019.

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Irene Delgado, NMCCR 253
License Expires: 12-31-19

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