

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. 13,359

APPLICATION OF MEWBOURNE OIL COMPANY)
FOR COMPULSORY POOLING, LEA COUNTY,)
NEW MEXICO)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

December 2nd, 2004

Santa Fe, New Mexico

2004 DEC 16 PM 2 06

This matter came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Thursday, December 2nd, 2004, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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 Examiner Hearing
 CASE NO. 13,359

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A P P E A R A N C E S

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* * *

1 WHEREUPON, the following proceedings were had at
2 8:30 a.m.:

3 EXAMINER STOGNER: Let's go back on the record.
4 At this time I'll call Case Number 13,359. This is the
5 Application of Mewbourne Oil Company for compulsory
6 pooling, Lea County, New Mexico.

7 This case was initially heard on October 21st,
8 2004, by me. We continued it at that time.

9 And call for appearances.

10 MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe,
11 representing the Applicant. I have one witness.

12 MR. HALL: Mr. Examiner, Scott Hall, of Miller
13 Stratvert, PA, Santa Fe, on behalf of Finley Resources,
14 Inc., and I have one witness. I believe he's already been
15 sworn.

16 EXAMINER STOGNER: Any other witnesses?
17 Let's go ahead and re-swear them at this time.

18 MR. KELLAHIN: Mr. Stogner --

19 EXAMINER STOGNER: I'm sorry, Mr. Kellahin?

20 MR. KELLAHIN: -- I have no witnesses, but I'm
21 appearing this morning on behalf of Chesapeake Operating,
22 Inc.

23 EXAMINER STOGNER: Mr. Kellahin, were you here
24 for the October hearing?

25 MR. KELLAHIN: Yes, sir.

1 EXAMINER STOGNER: And you entered an appearance
2 at that time?

3 MR. KELLAHIN: Yes, and participated.

4 EXAMINER STOGNER: At this time I'll call for any
5 appearances, as I look up and scan the room this time.

6 There being none, let's go ahead and have the two
7 witnesses please stand and be sworn in in today's hearing.

8 (Thereupon, the witnesses were sworn.)

9 EXAMINER STOGNER: Is there any need for opening
10 statements at this time or to get us caught up on --

11 MR. BRUCE: Just very briefly, Mr. Examiner, the
12 hearing was continued to allow further negotiations. There
13 have been some. I'm presenting Mr. Smith just to update
14 you on what's happening, and Mewbourne's position has
15 changed somewhat with respect to what it is requesting for
16 the shallow zone, and I would rather have Mr. Smith
17 describe that than me.

18 EXAMINER STOGNER: Okay. Just for the record
19 today, could you give us a synopsis on what today's case is
20 about and what was discussed at that time? I'll start with
21 you, and then, Mr. Hall, you can add anything. This will
22 be for the record.

23 MR. BRUCE: Yes, sir. Mr. Examiner, Mewbourne is
24 seeking to force pool the north half of section -- well,
25 this involves the north half of Section 9, 21 South, 35

1 East. Mewbourne originally sought to force pool 320-acre
2 units, 160-acre units and 40-acre units. There are only
3 two deep rights owners, Mewbourne and Chesapeake.

4 Chesapeake has signed a JOA with Mewbourne, so we are not
5 seeking to force pool 320-acre units at this time.

6 Chesapeake owns the northwest quarter of the
7 section. As to the northeast quarter of the section,
8 Mewbourne is 100-percent owner below depths of 10,000 feet.
9 As to depths above 10,000 feet, the majority owner is James
10 D. Finley, and then Mewbourne owns an interest also. So at
11 this point we are seeking to force pool Mr. Finley into 40-
12 and 160-acre units as to that shallow zone.

13 In the original hearing, Mr. Smith presented the
14 original force pooling evidence regarding negotiations, et
15 cetera. At that point there was a discussion regarding how
16 to include Finley's interest in the future, after the deep
17 zone is tested or whatever.

18 At this hearing we are changing our proposal
19 somewhat so that we will focus only on an initial
20 completion in -- I should say the first completion in the
21 shallow zone, within 120 days -- Take a step back.

22 The normal pooling order, once the well is
23 commenced, generally allows the operator 120 days to
24 complete the well, and what we are asking is that any
25 completion attempted in the shallow zone within that 120-

1 day period be subject to the pooling order. If there's
2 some subsequent completion after that 120-day period, we
3 are asking that that be excluded from the terms of this
4 order.

5 EXAMINER STOGNER: Okay. Mr. Hall, is that a
6 fair synopsis to bring us up to date?

7 MR. HALL: Fairly complete, Mr. Examiner. I
8 would add that because of the diversity of ownership
9 between the deep unit and the shallow unit -- and they are
10 substantially diverse -- the issue precipitated by that is
11 the propriety of the allocation of well costs in the event
12 of a Morrow drill that is subsequently recompleted up in
13 the shallow zone.

14 There was also an issue about who should operate
15 the shallow zone in that event. You may recall from the
16 first hearing that the ownership is decisively in Finley
17 Resources. Finley, and now Chesapeake, speak for control
18 approximately 97 percent of the working interest ownership
19 in the shallow unit.

20 So under Mewbourne's proposal, if the deep test
21 is unsuccessful and they come uphole, we have disagreement
22 with them over who should operate the upper unit.

23 You are also presented with an allocation
24 formula. We had extensive testimony about that and
25 extensive cross-examination. All of that in the context of

1 the compulsory pooling statute, which requires you to
2 fashion an order that allocates well costs in a manner that
3 are just and reasonable. That's statutory language you
4 must follow.

5 At the last hearing, frankly it came out that we
6 were unable to determine, and I don't think the Hearing
7 Examiner was able to determine based on the testimony
8 rendered, whether or not the proposal would result in a
9 fair and reasonable allocation.

10 So that's the fight in a nutshell, Mr. Examiner.

11 EXAMINER STOGNER: Anything to add, Mr. Kellahin?

12 MR. KELLAHIN: Mr. Examiner, at the last hearing
13 we discussed the fact that, as best as I can find, there is
14 no other case like this before the Division ever, and at
15 this point I'm waiting for Mr. Smith to tell me once again
16 what he proposes to do.

17 EXAMINER STOGNER: Okay. Mr. Bruce, anything to
18 add before we get started?

19 MR. BRUCE: No, sir. I will say, I think Mr.
20 Smith will address the fairness and reasonableness of
21 Mewbourne's proposal, which has changed somewhat since last
22 time.

23 EXAMINER STOGNER: Okay. With that, let's get
24 started.

25 MR. BRUCE: Okay. And Mr. Examiner, if the

1 record could reflect that Mr. Smith, sworn in today, was
2 previously qualified as an expert petroleum landman.

3 EXAMINER STOGNER: Mr. Smith was accepted at that
4 time and is still qualified.

5 MR. BRUCE: Okay.

6 STEVEN J. SMITH,
7 the witness herein, after having been first duly sworn upon
8 his oath, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. BRUCE:

11 Q. Mr. Smith, since I've already gone into the basic
12 land holding a little bit, I think we can skip that.

13 A. All right.

14 Q. But since the prior hearing have there been some
15 discussions between Mewbourne and Mr. Finley?

16 A. There have been no verbal discussions. There's
17 been two pieces of written correspondence, the first being
18 a letter of October 26th, 2004, that is Exhibit A. That
19 was a proposal from Finley Resources, I suppose a
20 counterproposal to my original written proposal.

21 We deemed it unacceptable and countered with a
22 proposal of November 24th, that being Exhibit B before you.
23 Since those written correspondences were issued, there have
24 been no verbal discussions between us and Finley.

25 Q. Okay. And the two letters are marked Exhibits A

1 and B, are they not?

2 A. Correct.

3 Q. Now, in the first hearing you had proposed an
4 allocation formula. Exhibit B has an allocation formula
5 attached to it. What does Mewbourne propose at this time?

6 A. Well, with lack of a voluntary agreement, we are
7 seeking a pooling order that would only cover depths from
8 surface to 10,000 feet and cover, as my attorney mentioned,
9 formations pooled on 40 and 160 acres. We envision an
10 order that has a lifespan of 120 days, and if Mewbourne
11 were to want to complete above 10,000 feet, we would ask
12 that at that time Finley Resources be given an election to
13 be in or out.

14 Q. And again, the 120 days is the normal drilling
15 period in a pooling order?

16 A. Correct, that's the time, the --

17 Q. So if any completion was attempted outside that
18 time frame, it would not be subject to this order?

19 A. Correct, we would have to come back and revisit
20 this again.

21 Q. Now, in the first hearing Mewbourne proposed that
22 Finley be allocated costs from surface to 10,000 feet; is
23 that correct?

24 A. Correct.

25 Q. What is Mewbourne proposing at this point?

1 A. Well, we would -- actually -- I don't view this
2 now as a cost allocation. It would be -- if we were to
3 propose a completion above 10,000 feet, we would ask Finley
4 Resources to be asked to pay their share of the drilling
5 costs from surface to 100 feet below the deepest
6 perforation proposed and attempted in the wellbore. No
7 adjustment, they pay their full drilling cost only. If
8 there's pipe in the ground, they're not asked to pay for
9 it.

10 Q. Because presumably, that pipe would be in the
11 ground anyway --

12 A. Correct.

13 Q. -- for drilling down to the Morrow?

14 A. That's correct.

15 Q. Okay.

16 A. If it were the initial completion attempt above
17 10,000 feet, of course, then they would be asked to share
18 in the full completion cost, and that would include pipe,
19 whatever.

20 Q. And since they're only paying drilling costs,
21 that would reduce -- first of all, paying only drilling
22 costs would reduce the costs that Finley would be
23 responsible for?

24 A. Substantially.

25 Q. And secondly, they're not being -- if, for

1 instance, the completion -- the perforated interval, the
2 bottom interval, was 5000 feet, they'd only be asked to pay
3 drilling costs down to 5100 feet?

4 A. Right.

5 Q. Okay.

6 A. And I guess there would have to be an allocation
7 based upon a daily rate. If it took, you know, 110 days,
8 or whatever days it took to get to that depth, that would
9 be their proportion of the --

10 Q. Okay.

11 A. -- drilling cost to get there.

12 Q. Not -- you wouldn't take the -- based on the
13 daily drilling reports, how many days it took to get --

14 A. Right.

15 Q. -- down to that depth?

16 A. Correct.

17 Q. Okay. Do you think that's a fair allocation?

18 A. I think it is as reasonable as we can be, and
19 again what we're really seeking is the opportunity to enjoy
20 the benefits of our ownership up and down the wellbore
21 unimpeded by a party who chooses not to cooperate in the
22 drilling of the well.

23 Q. Okay. Now, if this occurs, if during that 120-
24 day period, Mewbourne or Mewbourne and Chesapeake have
25 drilled a deep well and a proposal is made to complete

1 uphole above 10,000 feet, what time frame do you ask be
2 included in the order to -- for Finley to make its
3 election?

4 A. Well, if there was a rig on location, we would
5 want to mirror what a JOA would require. If there's a rig
6 on location, they'd have a 48-hour election. If there's
7 not a rig on location, we would ask that they be given 30
8 days to make their mind up, just as our partner Chesapeake
9 would under the JOA we had in place.

10 Q. And what is the primary reason for asking that
11 short 48-hour election, if there's a rig on location?

12 A. Well, it's -- the concept in the JOA is to avoid
13 standby time. You know, if you've got a rig on location it
14 costs money to sit there and circulate and do nothing. And
15 it would -- could, if we had to sit for an extended period
16 of time, render a proposed recompletion attempt uneconomic
17 and as a result cause waste to occur.

18 Q. And if an election notice is given to Mr. Finley,
19 what costs would Mewbourne propose using?

20 A. Well, if we had good real-time costs, which I
21 hope we could, we would propose in our proposal that they
22 pay what we know the daily cost was to that depth. If we
23 don't have quality data we'd have to rely on -- well, the
24 AFE, I guess, and just allocate on a daily drilling cost
25 basis.

1 Q. And of course even if you had to rely on an AFE,
2 there's always a provision in the order for Finley to come
3 back and challenge those costs --

4 A. That's correct.

5 Q. And finally, once again, the operatorship,
6 Mewbourne would request that it be designated operator of
7 the shallow unit?

8 A. Of course.

9 Q. Do you think it makes sense to change operators
10 in midstream?

11 A. Not at all. We're there, we've done the science,
12 we've retained the contractors, we've taken the risk. I
13 don't know why we should be asked to give up operations.

14 Q. And finally, Mr Smith, even though it might not
15 be pertinent anymore, is Exhibit C a copy of the COPAS, the
16 Formerly Bulletin Number 2, that was discussed at the last
17 hearing?

18 A. It is.

19 Q. Were Exhibits A through C prepared by you or
20 under your supervision or compiled from company business
21 records?

22 A. They were.

23 Q. And in your opinion is the granting of
24 Mewbourne's Application in the interests of conservation
25 and the prevention of waste?

1 A. They are.

2 MR. BRUCE: Mr. Examiner, I would move the
3 admission of Mewbourne Exhibits A through C.

4 EXAMINER STOGNER: Any objections?

5 MR. HALL: No objection.

6 EXAMINER STOGNER: Exhibits A, B and C will be
7 admitted into evidence at this time.

8 Mr. Bruce, anything further?

9 MR. BRUCE: No, sir.

10 EXAMINER STOGNER: Mr. Hall?

11 CROSS-EXAMINATION

12 BY MR. HALL:

13 Q. Mr. Smith, when you testified at the October 21st
14 hearing, I believe it was, I understood then it was
15 Mewbourne's position that even if it did not have the
16 bailout zones in the shallow unit, it would proceed to
17 drill the Morrow well in any event. Does that remain the
18 case today?

19 A. Most likely. I can't say that Mr. Mewbourne
20 wouldn't change his mind.

21 Q. Now, the proposal you've outlined to the Hearing
22 Examiner today with your 120-day provision and your
23 allocation for downhole costs to be borne by the uphole
24 owners, your 48-hour election period, the methodology by
25 which a pooled interest owner must tender well cost based

1 on an AFE, and also including a drilling day rate, did I --
2 is that correct?

3 A. Well, I'm not going to ask the shallow owners to
4 bear any cost to the deep, they're not asked to bear any
5 cost of any pipe-set. We're defining the cost cutoff point
6 for the shallow interest owner at 100 feet below the
7 deepest perforation proposed and attempted, rather than
8 surface to 10,000 feet.

9 Q. And I understood that it was for dryhole costs
10 only?

11 A. Correct.

12 Q. If the well is, in fact, completed in the Morrow
13 and subsequently recompleted uphole, then those shallow
14 zone owners would be asked to participate in all of those
15 costs proportionately?

16 A. No.

17 Q. Explain that to me. How does that work?

18 A. If I -- if -- well, there's -- I see two possible
19 scenarios here. One, we drill the well, evaluate the
20 Morrow, determine that it's not something we are going to
21 attempt a completion attempt in, we identify a zone above
22 10,000 feet, and in that case we propose a completion,
23 being the initial completion, to all parties in the shallow
24 unit. In that case, I would envision a 48-hour election,
25 because there will be a rig on location, and I would only

1 ask Finley Resources at that point to pay surface to 100
2 feet below the deepest perforation proposed as to the
3 drilling cost and all actual completion costs associated
4 with that completion.

5 Q. To that upper point?

6 A. Correct. Now, if it's -- if we were to again
7 drill the well to the Morrow, scenario 2 -- actually, there
8 may be three, but -- and we attempt a completion and it
9 doesn't last but 90 days -- that happens in the Morrow,
10 head it and it dies -- and then we do identify a zone above
11 hole, we will have then put all the pipe in the ground at
12 our own expense. At that point we would propose that
13 Finley only be asked to pay their share of drilling cost,
14 surface to 100 feet below the deepest perforation attempted
15 and proposed. That's all. That's all it costs them to
16 come to come in. We eat the pipe.

17 Q. If, for instance, say, there were potential in
18 the San Andres on the way down, down to the Morrow, in any
19 event, is it -- came back uphole and recompleted in the San
20 Andres 4000 or 5000 feet or so --

21 A. Correct.

22 Q. -- isn't it true by virtue of having had a drill
23 to the Morrow, the cost would have been incrementally
24 higher because you've had a larger casing program,
25 different cement program, larger drilling rig --

1 A. Perhaps.

2 Q. -- more rig time? How do you account for all of
3 that?

4 A. Cost of doing business.

5 Q. But you're asking the --

6 A. Sure.

7 Q. -- owners of the shallow unit to bear those
8 incremental costs?

9 A. Well, you know, pooling orders are not designed
10 to be perfect solutions. They're designed to allow the
11 party who's willing to take the risk and go drill the well
12 the right to move unimpeded by those who would stand in a
13 position to obstruct that effort.

14 Q. And you would agree with me that a voluntary
15 agreement would be preferable?

16 A. Always.

17 Q. Now, the terms you've outlined here to Mr.
18 Stogner, were they set forth in any sort of writing to
19 Finley Resources?

20 A. The shape of the proposed order we're asking for?

21 Q. Yes.

22 A. No.

23 Q. So Finley's not been given an opportunity to
24 review and even consider what you're proposing at the
25 hearing here today?

1 A. Correct.

2 Q. I think we're in agreement that 100 percent of
3 the interests in the deep unit are currently voluntarily
4 participating in the Morrow well pursuant to a JOA?

5 A. To the best of my knowledge.

6 Q. Okay. And so in the event the Morrow proves to
7 be a dryhole, the term and provisions of the JOA for
8 subsequent operations, subsequent recompletions, address
9 how that decision is made for those interest owners,
10 correct?

11 A. Yes.

12 Q. But those terms and provisions do not apply to
13 the interests above 10,000 feet; is that correct?

14 A. They apply to the wellbore. The JOA with Finley
15 -- or with Chesapeake -- is a wellbore interest from
16 surface to 10,000 feet between the parties of the JOA, and
17 at 10,000 feet the JOA covers all rights within 320 acres.

18 Q. Well, it's based on a vote --

19 A. Correct.

20 Q. -- and --

21 A. All the normal voting and procedural aspects of
22 the JOA are in place as to the wellbore, surface to 10,000
23 feet.

24 Q. But not as to the Finley interest; is that
25 correct?

1 A. Well, they've never signed the JOA, correct.

2 Q. Okay, so there's no opportunity for the owner of
3 the majority of the interests in the shallow unit to afford
4 himself of the protections of the provisions of the JOA to
5 make a decision on recompletion?

6 A. Well, we've certainly given Finley the
7 opportunity to sign the JOA. That's always been an option
8 available to them.

9 Q. Right, so the answer to my question is no, they
10 don't have those protections?

11 A. No.

12 Q. At the October 21st hearing, you proposed this
13 allocation formula that basically broke out costs with the
14 10,000-foot cutoff --

15 A. Uh-huh.

16 Q. -- and that generally gave us a 80-20 split on
17 the cost. It was definite to that extent. Do you recall
18 that?

19 A. I'm not sure I'm following you.

20 Q. Let's see if we have your old exhibit. Do you
21 have your old exhibit with you?

22 A. I probably do.

23 Q. You had your well-proposal letter July 21st,
24 2004?

25 A. Yes.

1 Q. And that was the transmittal letter for the
2 earlier cost allocation formula?

3 A. Yes.

4 Q. And it described at the very top, the shallow
5 unit, surface to the earth down to 10,000 feet, then deep
6 unit all depths below 10,000 feet?

7 A. Correct.

8 Q. Now, I think the only difference I see -- correct
9 me if I'm wrong -- with the new allocation on your new
10 Exhibit B, it describes the shallow unit as surface of the
11 earth down to 100 feet below the deepest perforation in the
12 first completion and for proposed and attempted above a
13 depth of 10,000 feet, and then the deep unit is defined as
14 all depths below that?

15 A. Correct. That was a compromise position in an
16 effort to entice Finley to cooperate.

17 Q. Right. And then your other scenario exhibits,
18 your what-if scenario exhibits, Exhibits 5A and 5B from the
19 earlier hearing, have these examples broken out based on --

20 A. 10,000 feet.

21 Q. -- a fairly easily understood allocation of 80-
22 20, deep zone down to 10,000 and then below is the basic --

23 A. Correct.

24 Q. So now explain to me how the new allocation would
25 work, and how is it even --

1 A. Are you asking me to discuss the contents of a
2 voluntary agreement that Finley has decided not to accept?

3 Q. Oh, I totally misunderstood. I thought you were
4 proposing this to the Hearing Examiner --

5 A. No, this is --

6 Q. -- as a way to allocate costs.

7 A. Oh, no, no, no, this is not in any way -- this is
8 what we would do should Finley choose to join the volunteer
9 agreement. I'm not proposing a cost allocation formula in
10 association with this order any longer, other than a method
11 to arrive at the cost of -- the drilling cost, surface to
12 100 feet below the initial completion. That's it.

13 Q. So you're asking the Hearing Examiner to do
14 something entirely different than what's been proposed --

15 A. Correct.

16 Q. -- to the parties? Explain to us --

17 A. No, no.

18 Q. Go ahead.

19 A. I'm not -- well, proposed to the parties. What I
20 proposed to Finley is in writing here.

21 Q. I understand.

22 A. We're asking the Examiner to compose an order
23 that will allow us to move unimpeded through a wellbore we
24 have an interest in from surface to the center of the
25 earth.

1 Q. Tell us what you're asking him to write in that
2 order, because I don't understand it.

3 A. Well, it's a standard order; it has a 120-day
4 life. If at any time during that, Mewbourne should choose
5 to propose a -- or attempt a completion above 10,000 feet,
6 at any time, the owners in the shallow depths would be
7 asked to pay their share of drilling costs only from
8 surface to 100 feet below the deepest perforation proposed
9 and attempted in the well. They would be given either a
10 48- or a 30- -- 48-hour or a 30-day clock, mirroring the
11 JOA, to be in or out. If they're out, they go under an
12 order. If they're in, they've got to pony up their share,
13 based upon the information I provided them in the proposal.

14 Q. And they'll be expected to pay their share of
15 well costs based on the earlier AFE?

16 A. The drilling cost only. If we have actual hard
17 numbers, you know, we can use that actual cost, we would
18 include that in the proposal. If we don't, we will use the
19 AFE. And again, there's always a mechanism in place to
20 challenge the equitable or the fairness of the numbers.
21 Very simple.

22 Q. Is it Mewbourne's position that at that point, at
23 that election point when the pooled parties are obliged to
24 tender their share of well costs, that those costs are fair
25 and equitable at that point?

1 A. We would -- Yes.

2 Q. And to a certain degree, those costs to drill to
3 the shallow unit are necessarily going to include embedded
4 costs involved in drilling all the way to the Morrow?

5 A. That's because the original well was going to --
6 yeah.

7 Q. Okay. Now, how is fair?

8 A. Well, it's just the -- it is what it is. I mean,
9 we -- It's not that large of an incremental cost. They're
10 not going to be asked to pay for any pipe if it's in the
11 ground. They're going to get a break on that. We're not
12 asking them to pay for logs, and the evaluation, that's on
13 us.

14 Q. To simplify it, though, they would be asked to
15 pay for, say, one third --

16 A. Depends on --

17 Q. -- of the cost of a --

18 A. -- where you --

19 Q. -- deep drill well, when in fact they could have
20 drilled a shallower well at a much lesser cost --

21 A. Perhaps.

22 Q. -- fair to say?

23 A. Perhaps.

24 Q. What information are you giving the Hearing
25 Examiner here today so he came make the determination that

1 that proposed allocation is fair and reasonable?

2 A. None.

3 MR. HALL: Okay, nothing more.

4 EXAMINER STOGNER: Mr. Kellahin?

5 MR. KELLAHIN: Thank you, Mr. Examiner.

6 CROSS-EXAMINATION

7 BY MR. KELLAHIN:

8 Q. Mr. Smith.

9 A. Mr. Kellahin.

10 Q. There is an operating agreement that Chesapeake
11 and Mewbourne have executed?

12 A. That's correct.

13 Q. And that is to cover the deep rights within the
14 north half of the section?

15 A. That covers surface to 10,000 feet as to the
16 wellbore, and at 10,000 feet the JOA expands to cover the
17 full 320 at all depths and from there down.

18 Q. So as to the 320 you have voluntary agreement as
19 to all those zones below the 10,000 foot?

20 A. That's correct.

21 Q. The wellbore is in the northeast quarter?

22 A. That's correct.

23 Q. As to that wellbore, are you intending by this
24 pooling application to affect Chesapeake's shallow rights
25 in the northwest quarter?

1 A. No.

2 Q. By the operating agreement, is the drilling of
3 this initial well such that it will affect Chesapeake's
4 shallow rights in the northwest quarter?

5 A. Only by the JOA. The JOA, we have agreed to
6 split our relative interests in that 320 from surface to
7 10,000 feet.

8 Q. Explain to me how that's going to be split.

9 A. Well, the have 100 percent of the northwest
10 quarter --

11 Q. Uh-huh.

12 A. -- so we share from surface to 10,000 feet their
13 100 percent, as to the wellbore only.

14 Q. As to the initial well in the northeast quarter?

15 A. As to the northwest quarter.

16 Q. Oh. So in the northeast quarter, the initial
17 well you're drilling --

18 A. Right.

19 Q. -- they do not share in that --

20 A. Yes, they do.

21 Q. -- shallow --

22 A. They share whatever I brought to the table.

23 Q. So you brought what, 3 percent to the table?

24 A. Correct.

25 Q. So they would share 3 percent, they would have --

1 A. -- 1.5625.

2 Q. And then if there's a second well drilled in the
3 northwest quarter, then, if I understand you correctly, you
4 and Chesapeake have 50 percent of that for the shallow
5 zone?

6 A. Right, and they retain everything outside of that
7 for themselves.

8 Q. When we get to apportioning the cost of the first
9 well in the northwest quarter to Mr. Finley's interest --

10 A. Correct.

11 Q. -- am I correct in understanding that the
12 drilling costs from the surface down to the shallow zone
13 completed, that 100 percent of those costs will be borne by
14 Finley?

15 A. No, they would share 90 -- their proportionate
16 share that they own in the shallow rights. Not 100
17 percent. The shallow owners would share --

18 Q. So --

19 A. -- on an allocation basis, there would
20 necessarily be some shifting of dollars if that happened.

21 Q. What happens with the cost from the surface to
22 the shallow zone completed as to the deep owners? The deep
23 owners pay for none of that shallow drilling, right?

24 A. They pay for it all up front.

25 Q. So how much of that do they recoup from the

1 shallow owner?

2 A. If the shallow owner chose to participate under
3 the order and ponied up the moneys, there would be an
4 adjustment between the participants in the deep rights as
5 to the moneys that were given.

6 Q. As to Finley in the shallow zone in the northeast
7 quarter --

8 A. Correct.

9 Q. -- what portion of the cost from the drilling
10 from the surface to the shallow zone will they bear?

11 A. 3.125 is what the -- if -- the parties to the
12 JOA.

13 Q. As to Finley with the 97-percent interest --

14 A. Right.

15 Q. -- he will bear 97 percent of the interest of
16 drilling from the surface to the shallow zone completed?

17 A. Correct.

18 Q. So the deep owners get the advantage of testing
19 the deep zone and paying for only 3 percent of the cost
20 from drilling to the surface to the shallow zone completed,
21 they pay for all that?

22 A. (Nods)

23 Q. That's the plan?

24 A. Yeah.

25 MR. KELLAHIN: No further questions.

1 EXAMINER STOGNER: Mr. Bruce, redirect?

2 MR. BRUCE: Just a couple.

3 REDIRECT EXAMINATION

4 BY MR. BRUCE:

5 Q. Mr. Hall asked you about the possibility of
6 Finley drilling a cheaper well to a shallow zone. Has
7 Finley ever proposed a shallow well?

8 A. No.

9 Q. And they've been free to do so for some time?

10 A. Sure.

11 Q. And in looking at Exhibit A, one of -- there's a
12 couple of proposals in there, but basically Finley wants to
13 take over surface to 10,000 feet and pay \$50,000 for --

14 A. Total, right --

15 Q. -- for deep rights?

16 A. -- and have sole control over what happens, which
17 in essence prevents us, where we want to proceed --

18 Q. Okay, how --

19 A. -- not having the ability to --

20 Q. I know you're not a drilling engineer, Mr. Smith,
21 but how deep do you think you could get for \$50,000 in
22 drilling a new well?

23 A. Not very. You might build a location.

24 MR. BRUCE: Thank you.

25 EXAMINER STOGNER: Any other questions?

1 MR. HALL: Briefly, Mr. Examiner.

2 RECROSS-EXAMINATION

3 BY MR. HALL:

4 Q. In view of some of your responses to Mr.
5 Kellahin's questions, let me make sure the record is clear
6 on one point. Earlier I asked you whether Mewbourne
7 proposed to operate the shallow unit --

8 A. Absolutely --

9 Q. -- with its 3-percent interest, give or take.

10 A. Uh-huh.

11 Q. Now, as I understand, because of your wellbore
12 split with Chesapeake in the shallow unit, in fact,
13 Mewbourne's interest is cut in half, so approximately
14 1.0625 -- the owner of a 1.0625 --

15 A. No, no, do your math again.

16 Q. I'm sorry.

17 A. Do your math again.

18 Q. I'm really bad at math. 1.5625 percent --

19 A. Thank you, correct.

20 Q. -- the owner of a 1.5625-percent proposes to
21 operate the shallow well?

22 A. We proposed the well, and we're proposing to
23 drill it to total depth.

24 Q. So the answer to my question is yes?

25 A. That's correct.

1 MR. HALL: Okay, nothing more.

2 EXAMINER STOGNER: Any other questions?

3 MR. BRUCE: No, sir.

4 EXAMINER STOGNER: Any questions of Mr. Smith?

5 You may be excused.

6 Mr. Hall?

7 MR. HALL: Mr. Examiner, we call Mr. Scott Ramsey
8 to the stand at this time.

9 EXAMINER STOGNER: If it would be easier, why
10 don't you just stay where you're at, if that'll be all
11 right? Will that be all right, Steve?

12 COURT REPORTER: Yes, sir.

13 EXAMINER STOGNER: Okay.

14 SCOTT RAMSEY,
15 the witness herein, after having been first duly sworn upon
16 his oath, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. HALL:

19 Q. Mr. Ramsey, for the record, state your name.

20 A. My name is Scott Ramsey.

21 Q. Where do you live and by whom are you employed?

22 A. I live in Cedar Hill, Texas. I'm employed by
23 James T. Finley of Finley Resources, Inc., and they're in
24 Fort Worth, Texas.

25 Q. And what do you do for Finley?

1 A. I'm a landman.

2 Q. Okay. Tell us a little bit about Finley and
3 Finley Resources. Are they operators?

4 A. Yes, we operate in Texas, New Mexico, Oklahoma,
5 Mississippi and Alabama.

6 Q. Do you know approximately how many wells you all
7 operate?

8 A. In New Mexico it's approximately 57 wells, 104 in
9 Texas, approximately 30 in Oklahoma, 10 in Mississippi and
10 25 in Alabama.

11 Q. And I assume you participate in even more wells?

12 A. Oh, yes.

13 Q. Are you familiar with the lands that are the
14 subject of this pooling proceeding?

15 A. Yes, I am.

16 Q. And you're familiar with the Application of
17 Mewbourne in this case?

18 A. Yes.

19 Q. Not testified before this Examiner or the
20 Division. Would you please give us a brief summary of your
21 educational background and work experience?

22 A. I have a petroleum land management degree from
23 Texas Tech University. Following my graduation from Tech I
24 went to work for a few months as a lease broker for Terry
25 Ryan and Company in Denver, Colorado. After that I went to

1 work for TXO Production Corp. for two years in Fort Smith,
2 Arkansas, as a landman. Following that, I worked five
3 years for Santa Fe Minerals in Dallas, Texas. I worked
4 approximately four years as a landman and one year as a gas
5 marketer. And then I went on to Cox Resources Corporation
6 in Dallas where I worked as a land and marketing manager
7 for five years.

8 And I'm currently with Finley Resources -- I've
9 been with Finley -- it will be five years in March -- where
10 I'm charge of land and the marketing.

11 MR. HALL: At this point, Mr. Examiner, we'd
12 offer Mr. Ramsey as a qualified expert petroleum landman.

13 EXAMINER STOGNER: Any objections?

14 Mr. Ramsey is so qualified.

15 Q. (By Mr. Hall) How, Mr. Ramsey, isn't it the case
16 that you first saw Mewbourne's proposed allocation formula
17 with its July 21, 2004, well proposal letter?

18 A. Yes.

19 Q. And at the time could you understand it?

20 A. No.

21 Q. Were you able to assess it for fairness and
22 reasonableness?

23 A. Not entirely, no.

24 Q. Did you understand how it was to operate?

25 A. Not exactly, no.

1 Q. Okay. Then you sat through Mr. Smith's October
2 21st testimony when he tried to explain the operation of
3 the allocation formula. From that testimony were you able
4 to understand what it was Mewbourne was proposing?

5 A. No.

6 Q. And again, were you able to assess its fairness
7 and reasonableness?

8 A. Not entirely, no.

9 Q. Consequently, could you say whether or not
10 Mewbourne's proposal was fair or reasonable?

11 A. I didn't think it was fair or reasonable.

12 Q. Now, you sat through Mr. Smith's testimony today
13 for the first time. We've been offered a new version of an
14 allocation. Are you able to understand what it is that
15 Mewbourne is proposing now?

16 A. Not entirely.

17 Q. And can you assess its reasonableness and
18 fairness?

19 A. No, I can't.

20 Q. If you would for the Examiner, please review
21 Finley's ownership situation now in the deep and shallow
22 units.

23 A. We now have made a trade with Chesapeake, and
24 Finley now owns 10 percent of Chesapeake's interest, so
25 what that basically does is, in the northwest quarter, in

1 the -- Let's start with the northeast quarter where the
2 well is going to be drilled.

3 In the initial well, as I understand by trying to
4 decipher through their JOA, I believe that I own from the
5 surface to 10,000 feet, 56.875 percent in the initial well
6 from surface to 10,000 feet. Below 10,000 feet, I, being
7 Finley, will own 10 percent, and we will be subject to the
8 JOA on that 10 percent. The 56.875 percent in the initial
9 well above 10,000 feet will not be subject to the JOA.

10 And in the northwest quarter, if I understand
11 this right, but only in the first well, from the surface to
12 10,000 feet I should own 10 percent, and that will be
13 subject to the JOA. And below 10,000 feet I should also
14 own 10 percent, subject to the JOA.

15 In a second well in the northwest quarter, from
16 surface to 10,000 feet I own 10 percent not subject to the
17 JOA, and below 10,000 feet I should own 10 percent which
18 will be subject to the JOA.

19 Q. Now, this is by virtue of an interest swap with
20 Chesapeake; is that right?

21 A. That's right.

22 Q. Tell the Hearing Examiner what interest
23 Chesapeake picked up in the exchange.

24 A. Chesapeake picked up 40 percent of the shallow
25 rights in the northeast quarter from surface to 10,000

1 feet.

2 Q. And so, to be clear, neither the Chesapeake nor
3 the Finley interest, now aggregating approximately 97
4 percent of the shallow unit, are subject to the terms of
5 the JOA; is that right?

6 A. It's closer to 98 1/2 percent --

7 Q. Okay.

8 A. -- in the initial well.

9 Q. So the owners of 98 percent of the working
10 interest in the shallow unit have absolutely no say-so on
11 the decision to recomplete the well uphole?

12 A. Well, again, Chesapeake has 1 1/2 percent that's
13 subject to the JOA, and then the additional 40 percent that
14 they picked up from me is not. So 96-point -- whatever I
15 originally had, 96.75, is not under a JOA, would not have
16 any say-so.

17 Q. In your opinion is that fair and reasonable?

18 A. No.

19 Q. In your opinion, would it be fair and reasonable
20 to allow the owner less than 1 1/2 percent of the working
21 interest to operate the shallow unit?

22 A. No.

23 Q. Under its agreement with Chesapeake, would Finley
24 support Chesapeake as operator of the Osudo 9 Number 1
25 State Com well in the shallow unit?

1 A. Yes, that's part of the trade.

2 Q. Now, Mewbourne's November 4th response to your
3 settlement proposal letter included the revised cost
4 allocation formula, and other than redefining deep unit and
5 shallow unit, is it really any different than the earlier
6 allocation formula that was proposed?

7 A. To the best of my knowledge, it's not.

8 Q. Did the redefinition of the shallow and deep
9 units add any clarification to the situation?

10 A. No, not entirely, no.

11 Q. Does it, in fact, add even more uncertainty?

12 A. As far as -- yes, because I'm still not sure that
13 I'm going to have to pay to be in or out of this well,
14 other than now I know I'm going to pay 10 percent from top
15 to bottom.

16 Q. Under the terms of the JOA --

17 A. And I'm sharing the same risks as they are now.
18 There's no difference in risk anymore. I'm still paying my
19 proportionate share of the well to the Morrow.

20 Q. For your 10-percent interest under the terms of
21 the joint operating agreement?

22 A. Right.

23 Q. Which again does not apply in the shallow unit at
24 all, except as to --

25 A. Except --

1 Q. -- the Mewbourne interest?

2 A. Yes, it applies -- I think it applies in the
3 initial well only, in the northeast quarter, if I'm
4 interpreting this right.

5 Q. Correct, but not as to the Finley interest?

6 A. Not as to the Finley interest, because we have
7 not signed this JOA, we just acquired Chesapeake's rights,
8 whatever Chesapeake signed with Mewbourne, we would step
9 into 10 percent of their interest.

10 Q. Correct, in the deep unit?

11 A. In the deep.

12 MR. HALL: Nothing further, Mr. Examiner.

13 EXAMINER STOGNER: Thank you, sir.

14 Mr. Bruce, your witness.

15 CROSS-EXAMINATION

16 BY MR. BRUCE:

17 Q. Mr. Ramsey, you said Finley, or Finley Resources,
18 has 57 wells in New Mexico. How many of those were drilled
19 by Finley?

20 A. Zero.

21 Q. Now, regarding -- Now, you're contesting the
22 operatorship as to the shallow rights, but hasn't
23 Chesapeake already signed a JOA with Mewbourne, agreeing to
24 Mewbourne as operator?

25 A. As to one -- as to the initial well.

1 Q. Okay. Chesapeake has agreed to Mewbourne as
2 operator, have they not?

3 A. Not as to their 40 percent they've offered me.

4 Q. Okay, but as to their other percentage?

5 A. As to 1.56 -- yes --

6 Q. Okay.

7 A. -- 1.56 -- get the numbers right -- 1.5625.

8 Q. Okay. Now, you said you didn't understand the
9 original cost allocation formula. Did you ever call Mr.
10 Smith or anyone at Mewbourne to discuss the cost allocation
11 formula?

12 A. No.

13 Q. And I didn't quite get your answer to this
14 question, but I heard you say something about you were
15 trying to decipher Mewbourne's JOA, like you didn't fully
16 understand it?

17 A. I don't understand -- I think I do, but --

18 Q. Okay, well --

19 A. -- it's --

20 Q. -- my question is, why did Finley buy part of
21 Chesapeake's interest, which is subject to the JOA, if it
22 doesn't understand the JOA?

23 A. Because we made the deal with Mewbourne before we
24 got all the JOA -- I mean Chesapeake, excuse me.

25 Q. And --

1 A. Based on -- based on conversations I had with the
2 Chesapeake landman.

3 Q. Okay. Then you made a statement, I believe, in
4 response to one of Mr. Hall's questions, that neither
5 Chesapeake nor Finley would have any say-so in a completion
6 in the shallow zone. What do you mean by that?

7 A. Well, if they're -- if I'm not subject to an
8 operating agreement, and they want to make any kind of
9 completion in the shallow zones, they can do -- they can do
10 whatever they want. I don't have a say-so in it.

11 Q. Doesn't a JOA give the parties a say-so in
12 whether or not they want to participate in a completion?

13 A. Yes.

14 Q. And because of taking part of Chesapeake's
15 interest, aren't you basically under that JOA and you'll
16 have an election?

17 A. Only as to --

18 Q. You've acquired part of Chesapeake's interest,
19 and they also have an interest, albeit 1.5625 percent, and
20 you're getting part of that, and you'll have an election
21 under that JOA as to that percentage, right?

22 A. Yeah, that's right.

23 Q. And also, wouldn't you not have an election under
24 the force pooling order? I don't know if you've ever
25 looked at the order, but you would -- since you are

1 participating in the drilling of the deep well, you're
2 going to get logs and everything else, and you're going to
3 have those logs to look at before you make a decision,
4 whether it's 48 hours or 30 days, in a shallow completion,
5 won't you?

6 A. So why is it necessary to pool the shallow?

7 Q. Because you've just said, your interests are not
8 subject to a voluntary agreement, the 97-plus-percent
9 interest.

10 A. Yeah, we would be -- I guess we would have 5 of
11 our 10 percent, small portion of --

12 Q. Uh-huh.

13 A. -- Chesapeake's 1.5625.

14 Q. So -- Okay, and I guess my final question is, why
15 not just sign the JOA and let's be done?

16 A. I'm already subject to the JOA.

17 Q. As to a fraction of a percent in the shallow
18 rights, correct?

19 A. And 10 percent of the deep.

20 MR. BRUCE: That's all I have, Mr. Examiner.

21 EXAMINER STOGNER: Mr. Kellahin?

22 MR. KELLAHIN: Thank you, Mr. Examiner.

23 CROSS-EXAMINATION

24 BY MR. KELLAHIN:

25 Q. Mr. Ramsey, if you sign a JOA and Mewbourne

1 applies the cost allocation that they've discussed, then
2 you as a shallow owner are going to pay for your
3 proportionate share of the shallow drilling cost, from the
4 surface to the shallow zone completed, right?

5 A. Say that again?

6 Q. Under their allocation formula --

7 A. Uh-huh.

8 Q. -- even if you sign the JOA and become a
9 consenting party as to that interest, you're going to be
10 subject to a cost allocation that requires you to pay 100
11 percent of the cost of the drilling from the surface to the
12 shallow zone, and the deep owners pay nothing?

13 A. If I sign it.

14 Q. Right.

15 A. But I'm already a party to it.

16 Q. As to your uncommitted interest -- Let's go back.

17 A. All right.

18 Q. The force pooling, if it's entered, will affect
19 what portion of your interest in the shallow zone in the
20 northeast quarter?

21 A. Say it again.

22 Q. In the northeast quarter --

23 A. Right.

24 Q. -- right now you have 97 percent --

25 A. Right.

1 Q. -- of the shallow zone?

2 A. Well, I have --

3 Q. Then you have shared part of that with

4 Chesapeake?

5 A. Right.

6 Q. The sharing with Chesapeake gave them what
7 portion of the shallow zone interest in the northeast
8 quarter?

9 A. Forty percent.

10 Q. So -- 40 percent. So you take the 97 percent,
11 subtract 40, right?

12 A. Uh-huh, yeah.

13 Q. So the shallow zone, what do you have left?

14 A. I have 56.875.

15 Q. That is the percentage that would be subject to a
16 pooling order if it was there?

17 A. Right.

18 Q. That is the percentage that Mr. Smith says you're
19 going to be subject to reimbursing Mewbourne for drilling
20 costs, right?

21 A. Right.

22 Q. From the surface down to the shallowest zone
23 produced?

24 A. Right.

25 Q. Below that zone, the deep owners -- the deep

1 owners don't pay for any of the wellbore drilling costs
2 from the surface down to the shallow zone, they get that
3 free? Under Mr. Smith's plan --

4 A. Under Mr. Smith's plan --

5 Q. -- who pays for drilling the well from the
6 surface to the shallowest zone?

7 A. The shallow owners.

8 Q. Do the deep owners pay for any of that?

9 A. No.

10 Q. So from -- the deep owners get a free ride of the
11 drilling costs from the surface down to the deepest zone?

12 A. Right. That's not fair or reasonable.

13 Q. You desire to participate in the deep well?

14 A. Yes.

15 Q. Is it necessary for the shallow owners to
16 participate in this deep well?

17 A. Is it necessary?

18 Q. Yeah, do you want the shallow well? Do you want
19 the deep well used as a shallow well?

20 A. No.

21 Q. Is there any shallow production in this area?

22 A. We've looked at the offset log that we got from
23 Chesapeake as part of our trade. We don't think the
24 shallow has much potential, really any potential. There's
25 possibly some Bone Springs that may be around 9000 to

1 10,000 feet.

2 Q. If Mr. Stogner denies this Application, in your
3 opinion will this well still get drilled?

4 A. Absolutely.

5 MR. KELLAHIN: No further questions.

6 EXAMINER STOGNER: Any redirect?

7 MR. HALL: Mr. Examiner.

8 REDIRECT EXAMINATION

9 BY MR. HALL:

10 Q. In his questions to you, Mr. Bruce suggested
11 that, in fact, Finley would have the protections of the
12 recompletion provisions, Article VI.B, et cetera, of the
13 joint operating agreement. But isn't it true that's only
14 to Finley's interest in the deep unit? You acquired --
15 Finley acquired its interest in the deep unit subject to
16 the joint operating agreement from Chesapeake; is that
17 correct?

18 A. Yeah, that's correct, but we've also acquired a
19 portion of Chesapeake's shallow interest.

20 Q. And the way you exercise your rights under the
21 joint operating agreement are proportionate to your vote,
22 your proportionate voting share, do you agree?

23 A. Based on interest --

24 Q. Correct.

25 A. -- is that what you're saying? Yes.

1 Q. In the shallow unit, as you and Chesapeake own
2 approximately 96, 97 percent that are not subject to that
3 operating agreement, in the shallow unit those interests
4 have no voting rights, they are not protected by the JOA;
5 is that right?

6 A. That's correct.

7 MR. HALL: Nothing further, Mr. Examiner.

8 EXAMINER STOGNER: Any other questions?

9 MR. BRUCE: Mr. Examiner, just one.

10 RECROSS-EXAMINATION

11 BY MR. BRUCE:

12 Q. Mr. Ramsey, you said there's no -- you don't
13 think there's any shallow-zone possibilities, correct?

14 A. Well, not -- based on the log, the two logs that
15 we have offsetting this acreage -- I'm not a geologist,
16 but --

17 Q. But your geologist looked at it?

18 A. Yeah, they've looked at it, and they say that
19 there's nothing significant, so...

20 Q. And so if Finley goes nonconsent on a shallow-
21 zone completion proposal, you don't pay a dime?

22 A. I don't know that that's right, because I only
23 have nonconsent under that 1.5 percent, I don't pay that,
24 yeah.

25 Q. And if you went nonconsent under the force

1 pooling order, you wouldn't pay that 56.875 percent?

2 A. Right, but I'd still have this penalty, right?

3 Q. If you don't think it's worthwhile, that's what a
4 pooling order provides. Isn't that what a JOA provides?

5 A. Uh-huh.

6 MR. BRUCE: Thank you, that's all I have, Mr.
7 Ramsey.

8 EXAMINER STOGNER: Any other questions of Mr.
9 Ramsey?

10 EXAMINATION

11 BY EXAMINER STOGNER:

12 Q. Mr. Ramsey, I believe the October 26th letter is
13 yours, and then the November 4th letter that Mewbourne sent
14 was to you. Did you call or write any subsequent
15 correspondence after that November 4th, the letter, was
16 received, to Mewbourne, to try to get any kind of
17 agreement?

18 A. No, at that time we were primarily dealing with
19 Chesapeake.

20 Q. Okay, but not Mewbourne?

21 A. Not Mewbourne.

22 EXAMINER STOGNER: Any other questions of Mr.
23 Ramsey at this time?

24 You may be excused.

25 Anything else for -- any closing remarks,

1 statements at this time?

2 Mr. Kellahin?

3 MR. KELLAHIN: Yes.

4 I'm not sure how much Chesapeake cares, but I
5 care. I can't find a case like this, and it bothers me
6 greatly that Mr. Carr is sitting over here listening to
7 this, and he'll find a way for his deep owners to use this
8 as a device to let the shallow owners pay for his wellbore.
9 And under this plan the shallow owners are going to have to
10 pay for 100 percent of the drilling costs from the surface
11 down to the zone and to penetrate the shallow zone.

12 The consequence of that is, the deep owners get
13 reimbursed for a substantial portion of the cost of a well
14 that they're only drilling to the deep zone. I think you
15 could deny this Application, and the well still gets
16 drilled.

17 EXAMINER STOGNER: Mr. Hall?

18 MR. HALL: Mr. Examiner, I think the authority
19 that gives the Division the discretion to pool all or less
20 than all or none of the formations sought in an application
21 was set forth in the Viking Petroleum case, which is 100 NM
22 451. I think you have that situation here.

23 I think everybody agrees with the pooling with
24 respect to any 320-acre unit or any unit below 10,000 feet
25 may be dismissed at this time.

1 I think the remainder of the case must be
2 dismissed for the reason that you've been presented with.
3 I think this is an incoherent Application. I can't imagine
4 how you're going to sit down with the record in this case,
5 the testimony and the exhibits, and fashion an order that
6 is fair and reasonable.

7 Not only must it be fair and reasonable in terms
8 of allocation of costs, it must also be fair and reasonable
9 in terms of the equity of the situation, for among other
10 reasons, you have an Applicant who's proposing to operate
11 the well when it owns 1 1/2 percent of the shallow rights.

12 There have been other cases that have come before
13 the Division where applicants have fought over
14 operatorship, and they've been in the range where one party
15 will have 45 percent, the other will have 51 percent,
16 something like that. Never in my experience have I seen a
17 case where an operator seeks control in operatorship where
18 it has less than 2 percent of the interest in the unit.

19 The cases that establish that the Division may
20 award operations based on working interest ownership
21 control are set forth in R-10,731, the Yates-KCS Medallion
22 case; R-10,922, the Mewbourne-Devon case; and R-11,962, the
23 EGL-Devon case.

24 Presuming there's some way to fashion a pooling
25 order out of what I think has been an incoherent

1 presentation to you, at the very least we would advocate,
2 we would urge, that you award Chesapeake operations of the
3 shallow unit pursuant to their agreement with Finley
4 Resources. Together, those interest owners speak for 97-
5 percent-plus of the shallow unit, and that's where the
6 control ought to go. And I think that that will resolve a
7 lot of the questions with respect to allocating costs in
8 the event of an uphole completion.

9 Thank you, Mr. Examiner.

10 EXAMINER STOGNER: Mr. Bruce?

11 MR. BRUCE: Mr. Examiner, Mewbourne is a
12 qualified operator of 300-plus wells that it has drilled in
13 New Mexico and is qualified to be operator of this
14 interest. Yes, it has a small interest. That is no bar,
15 especially whereas here Finley has never applied, other
16 than testimony in this hearing, to be named operator or to
17 have Chesapeake named as operator.

18 Furthermore, Chesapeake has already agreed to let
19 Mewbourne drill the well. We see no need to change
20 operators.

21 Secondly, if a pooling order is not entered then
22 a shallow completion may never be attempted. Who knows
23 what's there? Finley doesn't think there's much, but they
24 seem to make a big fuss over these shallow rights. But
25 serendipity in New Mexico is a well-known fact of life.

1 And if we can't tie up 100 percent of the working interest,
2 then the shallow zone, if there is one, may never be
3 attempted.

4 Furthermore, the life of this order is limited to
5 120 days. If there is no shallow completion attempt within
6 that period, Finley won't be bound by the order. Mewbourne
7 has requested this simply so that there is a simplified
8 order with limited effect, and it also has proposed a cost
9 allocation that is fair and minimizes the cost for which
10 Finley is liable.

11 I would be glad to submit to you a proposed
12 order. I think Mr. Smith was very clear. It's very simple
13 what we are requesting, and we think this is the only way
14 to tie up the interests so that this well is properly
15 drilled and completed.

16 Thank you.

17 EXAMINER STOGNER: At this time I'm going to take
18 this case under advisement. However, I'm going to hold the
19 record open for two weeks from today for a proposed rough
20 draft order from Mr. Bruce. And should Chesapeake so
21 elect, I would accept one from you, Mr. Kellahin. And of
22 course Mr. Hall, I would accept one from you. Just two
23 weeks for those proposed draft orders.

24 And with that, I am going to take this case,
25 which is Number 13,359, under advisement at this time.

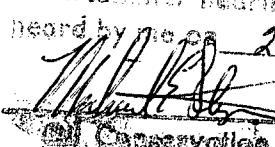
1 However, should there be an agreement, I would appreciate
2 the mutual contacting of the Division to dismiss this
3 matter between now and that time, or even subsequent to an
4 order being issued.

5 With that, we're going to take a 10-minute recess
6 so we can prepare for the potash case, and anybody who is
7 in here or who is not in here is, of course, invited to
8 these public hearings and they can listen to and learn or
9 choose to use whatever they hear in any future application.

10 Thank you.

11 (Thereupon, these proceedings were concluded at
12 9:34 a.m.)

13 * * *

14
15
16 I do hereby certify that the foregoing is
17 a complete record of the proceedings in
18 the examiner hearing of Case No. 13359.
19 heard by me on 2 December 2004.
20  Examiner
21 Conservation Division
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL December 3rd, 2004.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006