

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, CASE NO. 16413  
LLC FOR COMPULSORY POOLING, EDDY COUNTY,  
NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

September 20, 2018

Santa Fe, New Mexico

BEFORE: WILLIAM V. JONES, CHIEF EXAMINER  
DAVID K. BROOKS, LEGAL EXAMINER

This matter came on for hearing before the  
New Mexico Oil Conservation Division, William V. Jones,  
Chief Examiner, and David K. Brooks, Legal Examiner, on  
Thursday, September 20, 2018, 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: Mary C. Hankins, CCR, RPR  
New Mexico CCR #20  
Paul Baca Professional Court Reporters  
500 4th Street, Northwest, Suite 105  
Albuquerque, New Mexico 87102  
(505) 843-9241

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

# APPEARANCES

FOR APPLICANT MARATHON OIL PERMIAN, LLC:

JENNIFER L. BRADFUTE, ESQ.  
MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A.  
500 4th Street, Northwest, Suite 1000  
Albuquerque, New Mexico 87102  
(505) 848-1800  
jlb@modrall.com

FOR INTERESTED PARTY MEWBOURNE OIL COMPANY:

JAMES G. BRUCE, ESQ.  
Post Office Box 1056  
Santa Fe, New Mexico 87504  
(505) 982-2043  
jamesbruc@aol.com

# INDEX

PAGE

Case Number 16413 Called	3
Case Presented by Affidavit	3
Proceedings Conclude	18
Certificate of Court Reporter	19

# EXHIBITS OFFERED AND ADMITTED

Marathon Oil Permian, LLC Exhibit Numbers 1 through 3	16
--	----

1 (10:28 a.m.)

2 EXAMINER JONES: Case Number 16413,  
3 application of Marathon Oil Permian, LLC for compulsory  
4 pooling in Eddy County, New Mexico.

5 Call for appearances.

6 MS. BRADFUTE: Jennifer Bradfute, with the  
7 Modrall Sperling Law Firm, on behalf of the Applicant.

8 EXAMINER JONES: Any other appearances?

9 MR. BRUCE: Mr. Examiner, Jim Bruce  
10 representing Mewbourne Oil Company.

11 MS. BRADFUTE: And, Mr. Examiner, as a  
12 preliminary matter, Marathon proposed these -- this  
13 well -- it's a Bone Spring well -- back in June, June  
14 24th, and it notified pooled parties under the new  
15 horizontal well rules, and it also notified offsets. So  
16 the notification well-proposal letter went out June  
17 24th. It filed for pooling 30 days later. Under the  
18 new horizontal well rule regulations, Mewbourne is an  
19 offset owner not entitled to notice under the new  
20 horizontal well rules, and it's not a party that will be  
21 pooled today. They did not indicate any entry of  
22 appearance until 2:00 p.m. yesterday to Marathon, and  
23 then we were not aware of any competing well proposals  
24 or competing interest in the Bone Spring Formation until  
25 after the docket called this morning for the Bone Spring

1     Formation.

2                     I had, based on that basis, prepared to  
3     present these cases by affidavit today for Marathon.  
4     Mewbourne -- Jim and I stepped out in the hall this  
5     morning after the docket call, and he indicated that  
6     Mewbourne is going to have a competing Bone Spring  
7     proposal. But those letters have not been sent out, and  
8     we don't know when they're going to be sent out at this  
9     point in time.

10                    EXAMINER BROOKS: I was going to ask you --  
11     when you said Jim and you stepped out in the hall, I was  
12     going to ask who won.

13                    MS. BRADFUTE: Yes.

14                    (Laughter.)

15                    MR. BRUCE: Mr. Examiner, just for your  
16     information, Ms. Bradfute is correct. And I don't know  
17     how this slipped by Mewbourne. But nonetheless, the  
18     next case that was continued is for Wolfcamp wells, and  
19     Mewbourne did send out well proposals on the --  
20     competing well proposals on August 24th to Marathon on  
21     those Wolfcamp wells, and I will probably be filing an  
22     application early next week. But they are two-mile  
23     laterals rather than the one-mile lateral proposed by  
24     Marathon. And, in fact, Marathon sent out subsequent  
25     well proposals for two-mile laterals on September 7th.

1                   Now, I don't -- I think Ms. Bradfute  
2   informed me that Marathon doesn't know whether it wants  
3   to pursue the one-mile or a two-mile laterals, but  
4   nonetheless, those are outstanding. So there will be  
5   competing applications in the Wolfcamp. And I was  
6   informed this morning by Mewbourne that they are also,  
7   within the next couple of days, sending out Bone Spring  
8   well proposals -- two-mile Bone Spring well proposals  
9   covering Sections 19 and 20.

10                  Now, by the time I got this, it was too  
11   late to ask for a continuance, and so Marathon's  
12   perfectly entitled to move forward with this case. But  
13   I just want you to know that there will be Bone Spring  
14   applications competing with what is being heard here  
15   today. So if I've muddied up the waters enough, I'll  
16   shut up.

17                  EXAMINER BROOKS: You have. You're doing a  
18   good job.

19                  (Laughter.)

20                  EXAMINER JONES: Did you still want to  
21   proceed?

22                  MS. BRADFUTE: If the case can be taken  
23   under advisement, Marathon would like to proceed. And  
24   so that is the open question for the Division.  
25   Mewbourne is not a party to this matter because it's not

1 a party entitled to notice of this matter, and they did  
2 not properly intervene. They did actually receive  
3 notice of this application on September the 5th, and  
4 they waited until this morning to raise this issue.

5 EXAMINER BROOKS: And this case was not  
6 filed until after June 26th?

7 MS. BRADFUTE: That is correct.

8 EXAMINER BROOKS: Okay. Well, I guess you  
9 may proceed if you wish to proceed.

10 MS. BRADFUTE: Okay. Is this a matter that  
11 could be taken under advisement today?

12 EXAMINER BROOKS: I don't see why not. We  
13 may have to deal with whatever kind of motions Mr. Bruce  
14 may find it appropriate to file subsequently, but --

15 MR. BRUCE: Well, I don't intend to file a  
16 motion. I would just file a competing application, and,  
17 of course, that will go to hearing. And if an order is  
18 issued before that hearing could be heard, we would  
19 apply for it to be heard de novo and to preserve  
20 Mewbourne's rights pending the outcome of the hearing on  
21 its two-mile laterals.

22 EXAMINER BROOKS: Okay. Well, we will deal  
23 with those issues when they arise, I suppose, if they  
24 arise, because there's no legal basis at this point for  
25 allowing -- for not allowing Marathon to proceed.

1 MR. BRUCE: I agree.

2 MS. BRADFUTE: Thank you.

3 So, Mr. Examiner, this is a case involving  
4 the Bone Spring Formation. It's Case Number 16413, to  
5 seek compulsory pooling for the development of the Duda  
6 Bides Federal 22-28-19 TBC 7H well. This is a matter  
7 that's going to be presented by affidavit, and I have  
8 three different affidavits that are marked as Exhibits  
9 1, 2 and 3 in the packet in front of you.

10 The first affidavit is from Marathon's  
11 landman, Chase Rice, and there are several attachments  
12 to this affidavit which contain his exhibits, which  
13 support his statements, his testimony and affidavit. So  
14 what I've done in the past is I've walked through the  
15 affidavit and then turned to the attachments and  
16 discussed those attachments.

17 EXAMINER JONES: I'm sorry. I failed to  
18 mention we did get -- an attorney representing himself  
19 did send in something on this. I'm not sure I properly  
20 copied everybody.

21 MS. BRADFUTE: I did not receive anything,  
22 Mr. Examiner.

23 EXAMINER JONES: You didn't?

24 EXAMINER BROOKS: Well, he just says, "We  
25 would appreciate a copy of any order entered in

1 connection with this."

2 EXAMINER JONES: It's almost like they --  
3 what date?

4 EXAMINER BROOKS: September 12. They  
5 didn't copy opposing counsel.

6 EXAMINER JONES: They didn't copy opposing  
7 counsel. We finally got it scanned in probably  
8 yesterday.

9 MS. BRADFUTE: Okay.

10 EXAMINER BROOKS: Do you want to look at  
11 it?

12 MS. BRADFUTE: Yes, please.

13 EXAMINER JONES: I have it scanned in, so  
14 you can have that.

15 EXAMINER BROOKS: It doesn't seem to me  
16 that they're asking that the application be in any  
17 respect denied. I just scanned it very quickly.

18 MS. BRADFUTE: Yeah. It says that they're  
19 allowing the overriding royalty interests at issue to be  
20 pooled with other leases and lands in order to form a  
21 horizontal spacing unit authorized by the Division.

22 EXAMINER JONES: And they're willing to go  
23 one year on the completion.

24 MS. BRADFUTE: Yes. Yes, which is what  
25 we're requesting. Yes. So both of those fall within



1 the relief that we're asking for.

2 EXAMINER JONES: Okay.

3 EXAMINER BROOKS: Thank you.

4 MS. BRADFUTE: Thank you.

5 EXAMINER JONES: Sorry for the  
6 interruption.

7 MS. BRADFUTE: No, no. Thank you.

8 EXAMINER BROOKS: It was appropriate.

9 MS. BRADFUTE: Yes, it was.

10 So Mr. Chase, in Exhibit 1 in front of you,  
11 states that he is a landman who has previously testified  
12 before the Division and that his credentials were  
13 accepted and made a part of the record and that he's an  
14 expert witness in petroleum land matters. In support of  
15 this application, he states that the purpose of the  
16 application is to force pool working interest owners to  
17 form a Bone Spring horizontal spacing unit and that no  
18 opposition was expected because Marathon notified  
19 everybody and everybody actually received notice in this  
20 case. And there were some parties who had not  
21 voluntarily committed their interest to the well.

22 A plat which outlines the unit being pooled  
23 is attached as Exhibit A to this affidavit and the  
24 second page to Exhibit A lists the pool of working  
25 interest owners and the percentages of the interests

1 that are being pooled. And I'll go through that plat  
2 after I walk through the affidavit.

3 There is just one tract here. It's all one  
4 federal lease. And the acreage that's being pooled is a  
5 160-acre Bone Spring spacing unit, and it covers the  
6 east half-east half of Section 19, Township 22 South,  
7 Range 28 East, N.M.P.M., Eddy County, New Mexico. The  
8 unit's going to be dedicated to the Duda Bides Federal  
9 7H well, and that's going to be a horizontal well.

10 A preliminary C-102, which shows the  
11 surface location and the first and last take points of  
12 the well, is attached as Exhibit B to Mr. Rice's  
13 affidavit. Mr. Rice testifies that there are no depth  
14 severances within the Bone Spring Formation underlying  
15 the proposed unit.

16 The well is going to develop the Willow  
17 Lake: Bone Spring, West Pool, Pool Code 96415, which is  
18 designated as an oil pool, and the completed lateral is  
19 going to comply with the setback requirements.

20 The parties being pooled and their last  
21 known addresses and the nature of their interests,  
22 whether they're an override or a working interest, is  
23 outlined in Attachment C to Mr. Rice's affidavit.  
24 Mr. Rice states that he conducted a diligent search of  
25 public records in the county where the well is located.

1 He searched phone directories and conducted computer  
2 searches to locate contact information for the parties  
3 that were notified and that there were no unlocatable  
4 interests or returned mailings.

5 Exhibit D summarizes contact attempts that  
6 Mr. Rice made in general and the efforts that he  
7 undertook to locate parties, and Mr. Rice testifies that  
8 he made a good-faith effort to obtain voluntary joinder  
9 of the working interest owners in the proposed well.

10 There are some overriding royalty interest  
11 owners, and they received notice, and Mr. Rice asks that  
12 those overrides be pooled.

13 In Exhibit D, there are well-proposal  
14 letters, along with an authority of expenditure for the  
15 proposed well, and Mr. Rice testifies that the estimated  
16 cost for the well is fair and reasonable and comparable  
17 to the cost of other wells which are drilled to these  
18 lengths and these depths within this area of New Mexico.

19 Marathon has requested an overhead and  
20 administrative rate of 7,000 a month for a drilling well  
21 and \$700 a month for a producing well, and Mr. Rice has  
22 testified that these rates are fair and reasonable and  
23 comparable to rates charged by other operators for wells  
24 of this type within this area of southeastern New  
25 Mexico. Marathon does request that these rates be

1     adjusted periodically as provided for under the COPAS  
2     accounting procedure, and it asks that the maximum cost  
3     plus 200 percent risk charge be assessed against  
4     nonconsenting working interest owners. Marathon would  
5     like to be designated as the operator of this well.

6                     And Mr. Rice states that the attachments to  
7     his affidavit were prepared by him or compiled from  
8     company business records and that the information  
9     provided herein is complete and to the best of his  
10    knowledge and that the granting of this application is  
11    in the interest of conservation and the prevention of  
12    waste.

13                    When you look at Attachment A to Mr. Rice's  
14    affidavit, it shows that there is one tract involved  
15    here. It's one federal lease, and it provides the  
16    federal lease number.

17                    There are just two uncommitted working  
18    interest owners, Occidental Permian and then Thru  
19    Line LP, and those are the parties they're seeking to  
20    pool -- the working interests they're seeking to pool in  
21    this application.

22                    Exhibit B -- or Attachment B to Mr. Rice's  
23    affidavit is the preliminary C-102 which outlines the  
24    footages.

25                    Attachment C then lists the addresses for

1 the pooled parties, and it lists the overriding royalty  
2 interest owners, which includes Hilltop National Bank,  
3 as successor to two different trusts. One of the trusts  
4 is the Dorothy R. Brown Trust, and the second trust is  
5 the William H. Brown Trust, which is the party who sent  
6 the letter that we reviewed earlier on the record.

7           Attachment D contains a summary of  
8 attempted contacts of parties before they filed for  
9 pooling and after they filed for pooling. And then the  
10 subsequent pages contain a sample well-proposal letter  
11 that was sent out for this well dated June 26, 2018, and  
12 it provides an election to opt into this well. And then  
13 the AFE for the well is included, which outlines the  
14 total drilling costs, total completion costs. And then  
15 if you turn to the last page, you're going to get the  
16 two items that reflect equipment costs, to give a total  
17 cost to drill the well of \$6,342,366.

18           Attached as Exhibit 2 is an affidavit by a  
19 geologist who has testified for Marathon in the past,  
20 Tucker Keren. Mr. Keren testifies that he has conducted  
21 a geologic study in connection with the application at  
22 issue and that he's familiar with the geologic matters  
23 in the case.

24           Attached to his affidavit are three  
25 different exhibits, an Exhibit A, Exhibit B and Exhibit

1 C. And it may be helpful to look at these exhibits as I  
2 go through Mr. Keren's affidavit.

3 Exhibit A is a structure map that's hung on  
4 the base of the 2nd Bone Spring Sand Formation. It  
5 shows that the structure dips gently to the east, and it  
6 shows producing Bone Spring wells within the vicinity of  
7 the proposed 7H well and then a line of cross section on  
8 the structure map. Mr. Keren testifies that Exhibit A  
9 shows that the Bone Spring Formation is uniform across  
10 the proposed well unit.

11 In Exhibit B to Mr. Keren's affidavit,  
12 there is a stratigraphic cross section showing the  
13 targeted zones within the Bone Spring Formation. The  
14 well logs in the cross section give a fair and  
15 representative sample of the Bone Spring Formation in  
16 the area, and Mr. Keren testifies that the targeted zone  
17 for the wells is the 3rd Bone Spring Carbonate. And in  
18 addition, Marathon would like to drill future wells in  
19 the 2nd Bone Spring Sand part of the formation. And  
20 those formation -- those targeted zones are highlighted  
21 on the cross section so you can see that. Mr. Keren  
22 testifies that these zones are continuous across the  
23 well unit, and he states that the logs in the middle and  
24 to the right within his cross section are considered the  
25 most representative logs of the well unit at issue.

1                   Exhibit C to Mr. Keren's affidavit is a net  
2   sand isochore map which shows the 2nd Bone Spring Sand  
3   to the 3rd Bone Spring Sand zone, and it uses a 50-foot  
4   contour interval. The map shows the thickness of the  
5   sands in the zone is consistently around 250 feet thick  
6   in total across the well unit.

7                   Mr. Keren concludes from his study of the  
8   area that a horizontal spacing and proration unit is  
9   justified, that there are no structural impediments or  
10   faulting that would interfere with contribution of the  
11   well and that each quarter-quarter section in the unit  
12   will contribute more or less equally to production from  
13   the well.

14                  Mr. Keren further testifies that the  
15   preferred well orientation in this area could be  
16   east-west or north-south within the Bone Spring  
17   Formation. There are several Bone Spring laterals that  
18   are oriented north-south in Township Ranges 22 South, 28  
19   East, Sections 23, 26 and 36, and so that is what  
20   Mr. Keren followed in looking at the orientation for  
21   this area.

22                  Mr. Keren states that the producing  
23   interval for this well is going to be orthodox, and it  
24   will comply with the setback requirements. And he also  
25   requests that Marathon be afforded 365 days after the

1 first well is drilled to complete the wells in this  
2 application. Marathon currently has one completion crew  
3 that's operating in the state. The well might be  
4 completed sooner than that after it's drilled, but  
5 Marathon wanted the flexibility to have that time so it  
6 doesn't have to come back and ask for an additional  
7 extension time.

8 Attached as Exhibit 3 in the packet in  
9 front of you is my affidavit confirming that notice was  
10 properly given to all parties recorded notice in this  
11 case. We also did notify offsets just in case the  
12 horizontal well rules are stayed at any point in time,  
13 in an abundance of caution. Notice in this case was  
14 actually delivered to all of the parties who were  
15 notified. We did also publish notice in the "Carlsbad  
16 Current-Argus" in case one of the notices was not  
17 delivered.

18 With that, I tender Exhibits 1 through 3,  
19 along with their attachments into the record.

20 EXAMINER JONES: Exhibits 1, 2 and 3 are  
21 admitted with all their attachments.

22 (Marathon Oil Permian, LLC Exhibit Numbers  
23 1 through 3 are offered and admitted into  
24 evidence.)

25 EXAMINER BROOKS: You're not asking for any



1 depth limitations on the spacing unit?

2 MS. BRADFUTE: We are not. There are no  
3 depth severances.

4 EXAMINER BROOKS: Good.

5 EXAMINER JONES: And Mewbourne is not  
6 participating in this well --

7 MS. BRADFUTE: That's right. They have --

8 EXAMINER JONES: -- or they're not being  
9 pooled, either one?

10 MS. BRADFUTE: They have no interest within  
11 Section 19 within the Bone Spring Formation.

12 EXAMINER JONES: Within the Bone Spring.

13 MS. BRADFUTE: Yeah.

14 EXAMINER JONES: But the other application  
15 was going to do the north half or the Wolfcamp?

16 MS. BRADFUTE: Yes. The other application,  
17 we're able to locate competing proposals that have been  
18 sent, so Marathon was willing to continue those cases  
19 because they had received that.

20 EXAMINER JONES: Okay. So sounds like  
21 we'll be talking to you both again --

22 MS. BRADFUTE: We ask that --

23 EXAMINER JONES: -- on the Wolfcamp issue  
24 and maybe the Bone Spring issue. But this is  
25 north-south wells also --

1 MS. BRADFUTE: Yeah.

2 EXAMINER JONES: -- and the carbonate,  
3 which is a bit different.

4 MS. BRADFUTE: It is a little bit  
5 different. It's also the 2nd Bone Spring Sand, so there  
6 are multiple Bone Spring zones that they would like to  
7 develop.

8 EXAMINER JONES: Okay. Okay.

9 MS. BRADFUTE: With that, I would like to  
10 ask that this case be taken under advisement.

11 EXAMINER JONES: And Mr. Brancard will be  
12 happy with the well name, Duda Bides.

13 MS. BRADFUTE: Yes (laughter).

14 EXAMINER JONES: He has that on his door.

15 Case 16413 is taken under advisement.

16 (Case Number 16413 concludes, 10:48 a.m.)

17

18

19

20

21

22

23

24

25

1 STATE OF NEW MEXICO  
2 COUNTY OF BERNALILLO

3

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 2018.

21

22

23 MARY C. HANKINS, CCR, RPR  
24 Certified Court Reporter  
New Mexico CCR No. 20  
Date of CCR Expiration: 12/31/2018  
Paul Baca Professional Court Reporters

25