

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 MEWBOURNE OIL COMPANY CASE NO. 20092
FOR A NONSTANDARD HORIZONTAL SPACING
UNIT AND COMPULSORY POOLING, EDDY
COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

November 15, 2018

Santa Fe, New Mexico

BEFORE: MICHAEL McMILLAN, CHIEF EXAMINER
 DAVID K. BROOKS, LEGAL EXAMINER

This matter came on for hearing before the New Mexico Oil Conservation Division, Michael McMillan, Chief Examiner, and David K. Brooks, Legal Examiner, on Thursday, November 15, 2018, at the New Mexico Energy, Minerals and Natural Resources Department, Wendell Chino Building, 1220 South St. Francis Drive, Third Floor Meeting Room, Santa Fe, New Mexico.

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APPEARANCES

FOR APPLICANT MEWBOURNE OIL COMPANY:

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1 (2:36 p.m.)

2 EXAMINER McMILLAN: Let's call the hearing
3 back to order.

4 We are now calling Case 20092, application
5 of Mewbourne Oil Company for a nonstandard horizontal
6 spacing unit and compulsory pooling, Eddy County, New
7 Mexico.

8 Call for appearances.

9 MR. LARSON: Good afternoon, Mr. Examiner.
10 Gary Larson, with the Santa Fe office of Hinkle Shanor,
11 for the Applicant, Mewbourne Oil Company.

12 EXAMINER McMILLAN: Any other appearances?

13 MR. LARSON: I have one witness.

14 EXAMINER McMILLAN: Please proceed.

15 If the witness would please be sworn in at
16 this time.

17 DONALD P. HADEN,
18 after having been first duly sworn under oath, was
19 questioned and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. LARSON:

22 **Q. Good afternoon, Mr. Haden.**

23 A. Hello, Mr. Larson.

24 **Q. Would you state your full name for the record?**

25 A. My name is Donald Paul Haden.

1 Q. And where do you reside?

2 A. Midland, Texas.

3 Q. By whom are you employed and in what capacity?

4 A. Mewbourne Oil Company as a petroleum landman.

5 Q. And what is the focus of your responsibilities
6 as a landman at Mewbourne?

7 A. I put together acreage to drill wells such as
8 negotiating assignments, farm-outs, other contracts to
9 joint operating agreements, communitization agreements,
10 unit agreements, that sort of thing.

11 Q. And is the focus of your responsibility
12 southeast New Mexico?

13 A. Yes, it is.

14 Q. And are you familiar with the land matters that
15 pertain to Mewbourne's application in this case?

16 A. Yes, I am.

17 Q. And you've testified at many hearings over the
18 years; have you not?

19 A. Many, many, yes.

20 Q. And at each of those hearings, were you
21 qualified as an expert in petroleum land matters?

22 A. Yes, I was.

23 MR. LARSON: Mr. Examiner, I tender
24 Mr. Haden as an expert in petroleum land matters.

25 EXAMINER McMILLAN: So qualified.

1 **Q. (BY MR. LARSON) I'd direct your attention to**
2 **the document marked as Mewbourne Exhibit 1 and ask you**
3 **to identify the document for the record.**

4 A. Okay. This is a land plat in the area. It's
5 in Township 19 South, Range 29 East, Eddy County, New
6 Mexico. It focuses on Sections 11 and 12. Our
7 proration unit/project area is shaded in yellow, which
8 consists of the northeast quarter-southwest quarter, the
9 north half of the southeast quarter of Section 11 and
10 then the north half of the southwest quarter of Section
11 12.

12 **Q. Did you prepare this exhibit?**

13 A. Yes, I did.

14 **Q. Would you identify the document marked as**
15 **Exhibit 2?**

16 A. Exhibit Number 2 is a previous order that we
17 got for a well that was also proposed in the southern
18 part of that same acreage. That's in the southeast
19 quarter of the southwest quarter, south half-southwest
20 quarter of 11 and then the south half-southwest quarter
21 of 12.

22 **Q. And would it be fair to say that this Order**
23 **Number R-20046 approved a horizontal spacing unit that's**
24 **the mirror image of the 200-acre spacing unit for this**
25 **case?**

1 A. Yes. It would be a mirror image of the same
2 case.

3 Q. And does Order Number R-20046 state that the
4 200-acre horizontal spacing unit is standard?

5 A. Yes, it does.

6 Q. And given that, is Mewbourne withdrawing its
7 request in this case for approval of a nonstandard
8 horizontal spacing unit?

9 A. Yes, we are.

10 Q. And why did Mewbourne's application in that
11 case, which is Number 16279, and its application in this
12 case request pooling of the 2nd Bone Spring Sand?

13 A. Okay. We originally had proposed a 3rd Bone
14 Spring Sand well which we were going to drill in this
15 same acreage covered under this order, but it would be
16 in the 3rd Bone Spring Sand. We gave notice to the
17 offset operators, one of whom is Cimarex Energy Company.
18 They own the spacing unit in the west half-west half of
19 Section 11. They were complaining to us that we were
20 stranding their acreage by leaving them out of the 3rd
21 Bone Spring. So to accommodate their concerns, we
22 decided to form two contract areas in the operating
23 agreement. We included Cimarex in one of those contract
24 areas, which covers the 3rd Bone Spring Sand interval,
25 and also we threw in the 1st Bone Spring Sand interval.

1 It would have had the same problem. I will go more in
2 detail regarding that contract later in the testimony.

3 Q. And I'm going to refer you to page 2 of Order
4 Number 20046, Paragraph (6)(b), and it states there that
5 there are no depth severances in that acreage. Is that
6 correct?

7 A. Right. There are no depth severances.

8 Q. Does that hold true in this case as well?

9 A. It does.

10 Q. There are no depth severances?

11 A. No depth severances.

12 Q. Are there any geologic barriers between the 2nd
13 Bone Spring Sand and the 3rd Bone Spring?

14 A. Not to my knowledge, but we do have some
15 geological testimony.

16 Q. And would it be fair to say that the reason
17 that you've asked for pooling in the 2nd Bone Spring is
18 on the -- based on the two contracts that you discussed?

19 A. Yes.

20 Q. Okay. Would you identify the document marked
21 as Exhibit 3?

22 A. Okay. Exhibit Number 3 is a copy of our
23 Exhibit A contained in our controlling joint operating
24 agreement dated April 1st, 2018 between Mewbourne Oil
25 Company, as operator, and Ridge Runner Resources

1 Operating, LLC, et al., as nonoperators. It covers --
2 describes two contract areas. Contract Area A, which
3 would be subject to this pooling hearing, covers the
4 east half of the west half of Section 11 and the east
5 half of Section 11 and also the west half of Section 12,
6 all in Township 19 South, Range 29 East.

7 Contract Area B, that would include
8 Cimarex's acreage in the west half-west half of 11. So
9 that contract area covers all of Section 11 and the west
10 half of Section 12. We did that to accommodate
11 Cimarex's concerns.

12 Q. And is Exhibit 3 a true and correct copy of
13 Exhibit A to the JOA for the horizontal spacing unit
14 that's the subject of this case?

15 A. Yes.

16 Q. Would you identify the document marked as
17 Exhibit 4?

18 A. Exhibit Number 4 is a copy of the C-102. It
19 describes the well path of the proposed well and the
20 spacing unit.

21 Q. Is Exhibit 4 a true and correct copy of the
22 C-102?

23 A. Yes, it is.

24 Q. And will the completed interval of the Sapphire
25 11/12 B2KK State Com #1H well be orthodox?

1 A. Yes.

2 **Q. And for Mary's purposes, can we call it the**
3 **Sapphire well from here on out?**

4 **(Laughter.)**

5 A. Yes, please do. Let's make it easier on
6 ourselves.

7 **Q. And do you know the pool name?**

8 A. Yes. It's the Turkey Track Oil Pool.

9 EXAMINER BROOKS: Bone Spring?

10 THE WITNESS: Bone Spring. Turkey Track;
11 Bone Spring Oil Pool.

12 EXAMINER McMILLAN: Pool code 66660.

13 THE WITNESS: Yes. It's also referenced in
14 that order.

15 EXAMINER McMILLAN: Okay. Well, that's
16 part of --

17 THE WITNESS: Yes. It's referenced.

18 **Q. (BY MR. LARSON) Would you identify the document**
19 **marked as Exhibit 5?**

20 A. Exhibit Number 5 is the tract ownership in the
21 proposed proration unit which covers the northeast
22 quarter and southwest quarter and north half-southeast
23 quarter of Section 11 and the north half-southwest
24 quarter of Section 12, all in Township 19 South, Range
25 29 East.

1 Q. And did you prepare this exhibit?

2 A. Yes, I did.

3 Q. And does Exhibit 5 show that all of the
4 interest owners, with the exception of Marathon Oil
5 Permian, have joined the well?

6 A. Yes.

7 Q. Would you next identify Exhibit 6?

8 A. Exhibit Number 6 is a summary of my
9 communications with Marathon Oil Permian, LLC. Marathon
10 Oil Permian, LLC is the noncommitted interest owner
11 that's being pooled. It references the dates in which I
12 sent out the well proposal and the subsequent
13 conversations, letters and emails between me and
14 Marathon Oil.

15 Q. And did you prepare this exhibit?

16 A. Yes, I did.

17 Q. And what was the outcome of the communications
18 with Marathon Oil Permian after you sent your
19 well-proposal letter on May 17th?

20 A. They basically told me that they didn't have
21 time to review our well proposal, and they also advised
22 us on October 24th that they were not going to review
23 our proposal until a pooling order was issued.

24 Q. In your opinion, has Mewbourne made a
25 good-faith effort to obtain Marathon Oil Permian's

1 joinder in the well?

2 A. Yes.

3 Q. Would you identify the document marked as
4 Exhibit 7?

5 A. Exhibit Number 7 is the application of our
6 pooling.

7 Q. Is it the hearing notice letter that enclosed
8 the application?

9 A. Yes, that was sent to Marathon Oil Permian.

10 Q. And was this letter sent under your direction
11 and supervision?

12 A. Yes, it was.

13 Q. And was the green card for that letter
14 returned?

15 A. Yes, it was. It's the next page.

16 Q. Would you identify the document marked as
17 Exhibit 8?

18 A. Exhibit 8 is the copy of the AFE for the
19 proposed well. This AFE is dated March 7th, 2018. It
20 lists the drilling and the completion costs. The total
21 completion -- estimated completion cost for this well is
22 \$7,288,600.

23 Q. And is Exhibit 8 a true and correct copy of the
24 AFE that you sent with your well-proposal letters?

25 A. Yes, it is.

1 **Q. And are the estimated costs indicated on the**
2 **AFE consistent with and similar to costs incurred by**
3 **Mewbourne for similar Bone Spring horizontal wells?**

4 A. Yes. We've drilled a number of horizontal Bone
5 Spring wells in this immediate area, and this cost is in
6 line with those.

7 **Q. And do you have a recommendation for the**
8 **amounts Mewbourne should be paid for supervision and**
9 **administrative expenses?**

10 A. \$8,000 per month for drilling and \$800 per
11 month for a producing well rate.

12 **Q. And are those rates similar to those charged by**
13 **Mewbourne and other operators in the vicinity?**

14 A. Yes, they are.

15 **Q. And are they the same as the rates indicated in**
16 **the JOA for the proposed well?**

17 A. Same rates that are agreed between us and the
18 nonoperators, signed operating agreement. The rates --
19 the rates have been established.

20 **Q. And do you further recommend that the rates be**
21 **adjusted periodically pursuant to the COPAS accounting**
22 **procedure?**

23 A. Yes, we do.

24 **Q. And is Marathon requesting a 200 percent charge**
25 **for the risk of drilling and completing the proposed**

1 well?

2 A. Mewbourne Oil Company is requesting that 200
3 percent risk.

4 Q. And in your opinion, will the granting of
5 Mewbourne's application avoid the drilling of
6 unnecessary wells, protect correlative rights and serve
7 the interest of conservation and the prevention of
8 waste?

9 A. Yes.

10 MR. LARSON: With that, Mr. Examiner, I
11 move the admission of Exhibits 1 through 8.

12 EXAMINER McMILLAN: Exhibits 1 through 8
13 may now be accepted as part of the record.

14 (Mewbourne Oil Company Exhibit Numbers 1
15 through 8 are offered and admitted into
16 evidence.)

17 MR. LARSON: And I will pass the witness.

18 CROSS-EXAMINATION

19 BY EXAMINER BROOKS:

20 Q. On the title -- well, first of all, Mr. Haden,
21 I didn't see it was you over there, but it's been a long
22 day.

23 A. Yeah. It's been a long day.

24 Q. And Mr. -- Gary over there can testify that
25 I've been through a long day. Although I didn't do much

1 of anything this morning, I had to sit and listen to --

2 (Laughter.)

3 A. Both of us have been through a very long day.

4 MR. LARSON: I'll attest to that.

5 Q. (BY EXAMINER BROOKS) But anyway, this title is
6 very complicated, it seems to me, mainly because we're
7 running into concepts that you don't normally run into
8 in OCD work. And I'm familiar with joint operating
9 agreements, and I'm also familiar with the subject --
10 the concept of contract area, which is the defining land
11 concept for joint operating agreements. But my concern
12 here is it seems to me that -- I don't really understand
13 why the two separate joint operating agreements don't
14 create a depth severance in the title.

15 A. Well, it's not a separate -- they aren't
16 separate operating agreements. It's one operating
17 agreement with two contract areas.

18 Q. Some of the parties to the operating agreement
19 are one contract area and others -- the ownership is
20 different between the two contract areas, right?

21 A. Slightly, because Cimarex Energy Company did
22 not own any interest in our initially proposed 200-acre
23 unit. They only own in the west half-west half of
24 Section 11.

25 Q. Yeah.

1 A. So we proposed -- initially proposed a 3rd Bone
2 Spring horizontal to cover only our acreage and not go
3 to theirs, so essentially their acreage would be
4 stranded, so we -- to accommodate them. That's why we
5 created these two contract areas.

6 **Q. Their acreage is where?**

7 A. In the west half of the west half of Section
8 11.

9 **Q. Okay. So that's the -- that's what disrupts**
10 **this from being a regular 320-acre unit?**

11 A. Right. They have an existing horizontal 2nd
12 Bone Spring well that is producing. They wanted us to
13 stay out of their 40 acres for the 2nd Bone Spring.

14 **Q. Well, I'm trying to wrap my mind around this.**
15 **The two contract areas have different horizontal limits,**
16 **right?**

17 A. Those areas are described geologically.
18 Contract Area A covers the 2nd Bone Spring Sand
19 interval. Contract Area B covers the 1st and 3rd Bone
20 Spring Sand intervals, and those specific depth
21 intervals are described.

22 **Q. Right.**

23 **Now, the operating agreement provides**
24 **that -- Cimarex, was it?**

25 A. Yeah, Cimarex.

1 **Q. Cimarex is a party to the -- to one of the**
2 **contract areas and not to the other?**

3 A. Right, because they own no interest in Contract
4 Area A.

5 **Q. Okay. What is the defined spacing unit for**
6 **this well?**

7 A. The defined spacing unit is the northeast of
8 the southwest quarter, the north half of the southeast
9 quarter of Section 11 and the north half-southwest
10 quarter of Section 12.

11 **Q. So it includes --**

12 A. That's Contract Area A. That would be within
13 Contract Area A.

14 **Q. Does it include all of Contract Area A?**

15 A. No. It includes a portion of the spacing unit
16 within Contract Area A.

17 **Q. Okay. Do you have an exhibit that shows the**
18 **spacing unit that you're designating? I thought you**
19 **did, but I don't know where it is.**

20 A. It's shaded on the plat and also the C-102.

21 **Q. Where is the C-102? Let me see --**

22 MR. LARSON: It's Number 4.

23 THE WITNESS: This acreage will be
24 communitized. It's all state acreage. It will be
25 communitized.

1 Q. (BY EXAMINER BROOKS) Well, the C-102 -- let's
2 see -- is Exhibit 4. Exhibit 4, yeah. It's only one
3 page.

4 A. Yeah.

5 Q. But the plat doesn't really show the boundaries
6 of the contract -- of the spacing unit, right,
7 because -- I'm trying to figure out -- the spacing unit
8 is in the north half of 11, the north half of 12; is
9 that right?

10 A. No. The spacing unit is in the northeast
11 quarter of the southwest quarter of 11 and the north
12 half-southeast quarter of 11 and the north
13 half-southwest quarter of Section 12. Generally, they
14 do hatch out what the spacing unit is, but in this case
15 they didn't.

16 Q. Yeah. Okay. So it's not -- you can tell from
17 Exhibit 4 what the spacing unit is if somebody explains
18 it to you, but it --

19 EXAMINER McMILLAN: This is what he's
20 saying.

21 EXAMINER BROOKS: Yeah, I understand. I
22 think I understand what he's saying about what a spacing
23 unit is, but I just had to figure it out because it's
24 not shown -- it's not delineated on the exhibit.

25 Q. (BY EXAMINER BROOKS) Okay. Now, this

1 **corresponds to Contract Area A?**

2 A. Yes, sir.

3 **Q. And Cimarex has an interest as to certain**
4 **formations?**

5 A. Cimarex has no interest in this particular
6 well.

7 **Q. Oh, okay.**

8 **So doesn't that create a depth severance**
9 **within the spacing unit?**

10 A. No. They aren't -- they are not in our spacing
11 unit.

12 **Q. Well, then your -- then your spacing unit has**
13 **depth parameters different from the Turkey Track; Bone**
14 **Spring Pool, which includes the entire Bone Spring**
15 **Formation, correct?**

16 A. Well, there are no depth severances in the Bone
17 Spring Formation in this proposed spacing unit. There
18 are differences in the contractual ownership, but that's
19 derived from the two contract areas, Contract Area A and
20 Contract Area B. It's a little bit confusing.

21 **Q. Yes. And what I don't see is why we should**
22 **treat it any differently than we would a depth**
23 **severance, because when you do a Division order, you're**
24 **going to have to take account of those two contract**
25 **areas.**

1 A. The Division order would include only the
2 spacing unit. It would not include the contract areas.

3 Q. Well, the Division order is not going to show
4 any interest for Cimarex because they don't have any
5 interest in this well, right?

6 A. Right. They do not have any interest in this
7 well.

8 Q. But they do have an interest in the northeast
9 quarter of the southwest quarter of Section 11?

10 A. No, they do not.

11 Q. They do not.

12 A. They would if we drilled a 3rd Bone Spring Sand
13 interval well --

14 Q. Ah, now --

15 A. -- contractually. They would have contractual
16 ownership.

17 Q. Yeah.

18 And because of that contractual ownership,
19 they would be on the Division order and show they had an
20 interest --

21 A. For a 3rd Bone Spring or a 1st Bone Spring.

22 Q. So the title is actually -- as far as dividing
23 up the proceeds, is the same as if -- as if there was a
24 depth severance between the 2nd and 3rd Bone Spring as
25 to that interest?

1 A. Well, as that interest, it would be a
2 contractual interest in the 2nd Bone Spring Sand.

3 **Q. Of course, I realize normally when you do a**
4 **title opinion, you don't deal with an operating**
5 **agreement. You say, This is what the title is to the**
6 **underlying --**

7 A. Right.

8 **Q. Then you take it and apply the operating**
9 **agreement to that.**

10 A. Yeah.

11 But when you create contracts, it creates
12 ownership differences in the different contract areas.

13 **Q. Yeah.**

14 And then you go and file a notice of the
15 **operating agreement --**

16 A. Right.

17 **Q. -- which in New Mexico puts people on inquiry**
18 **to what their rights are and --**

19 A. It puts people on notice of what the operating
20 agreement covers, what lands, what depths. It doesn't
21 necessarily --

22 **Q. They don't have to go and ask what the rights**
23 **are.**

24 A. Right.

25 **Q. If you're in Colorado, it doesn't put them on**

1 notice, and I don't know how you apply title opinion.

2 A. Well, the reason for putting people on
3 notice -- one reason is to take into consideration what
4 happens if these people don't pay their bills.

5 Q. Well, exactly. I'm not disputing the reason.
6 I'm just saying in Colorado, they're not on notice, and
7 you're going to have to apply it differently. But I
8 don't know how they do it in Colorado. I just wrote
9 title opinions in Colorado. I never did try to apply
10 them.

11 A. Yeah. Well, they should have --

12 Q. Well, I think I understand what the situation
13 is. What I don't understand for sure is what the
14 implications of it are. But I think we're going to have
15 to put our heads together.

16 CROSS-EXAMINATION

17 BY EXAMINER McMILLAN:

18 Q. This is the same question. I'm essentially
19 looking at Exhibit 3. The ownership is not -- is
20 diverse between Contract Area A and Contract Area B
21 within the Bone Spring.

22 A. Right. And the Bone Spring --

23 Q. Because, for instance, you can look at Alpha
24 Permian Resources. Okay. The only one that has the
25 same identical ownership is Chisos.

1 A. Okay. Well, these same people that are in this
2 besides Mewbourne Oil Company are also in the west half
3 of the west half of 11.

4 **Q. But then I think it comes back to the question**
5 **of notification.**

6 EXAMINER McMILLAN: What do you think,
7 David? This is what I'm seeing out of here.

8 THE WITNESS: Well, we made proper
9 notification.

10 RE CROSS EXAMINATION

11 BY EXAMINER BROOKS:

12 **Q. Did you notify all the people in both contract**
13 **areas, all the owners in both contract areas under the**
14 **JOA?**

15 A. There is no reason to. They're covered under
16 our operating agreement. They were proposed the wells,
17 and they signed the AFEs, and they signed the operating
18 agreement.

19 **Q. Well, we're going to have to consider this**
20 **issue.**

21 A. If we do need to notice them, that's fine.

22 **Q. Because we've never done an order where -- I**
23 **won't say we've never done an order where we had this**
24 **situation before, but we've never done an order where we**
25 **knew we had this situation before (laughter).**

1 A. Seems we always have unique situations.

2 Q. Yes, I'm sure you do.

3 Okay. I think I understand what the
4 differences are. If you go to the county records and
5 read the title --

6 A. Right.

7 Q. -- you're not going to see any differences
8 between the title in the 1st, 2nd and 3rd Bone Spring?

9 A. Correct.

10 Q. It's going to be the same throughout the Bone
11 Spring?

12 A. All depths.

13 Q. But once you apply the operating agreement, the
14 terms of the operating agreement, things can be
15 different depending on where the well is completed?

16 A. Depending on what spacing unit it involves.

17 Q. But using the term "spacing unit" is misleading
18 because we don't divide spacing units within a formation
19 at the OCD, and we consider the vertical limits of the
20 spacing unit to be equivalent to the vertical limits of
21 the pool.

22 A. Yeah.

23 Q. Okay.

24 A. Either way.

25 Q. I'm just going to say we're going to have to

1 deal with this once we've got this case under
2 advisement.

3 A. Well, there again, it's the same situation as
4 that previous order that's -- that's exempt.

5 Q. But you have not notified all of the owners --
6 working interest owners under the joint operating
7 agreement?

8 A. No. We didn't think that was necessary to do
9 or we would have done it.

10 Q. Okay. Very good. Well, this case may have to
11 be re-opened in order to notify all those people.

12 A. That's fine.

13 Q. However, if you want to notify them now, before
14 we get it under advisement, so we only have to consider
15 how we define the spacing unit and not have to consider
16 who needs to be noticed, we could take -- we can
17 continue it for purposes of notice and let you notify
18 all those people, and then we can take it under
19 advisement on that basis, unless somebody come and
20 complains.

21 A. Okay. Well, I don't see why they would come in
22 to complain because they are in the well. It's to their
23 benefit.

24 Q. Yeah. That probably means they won't -- people
25 who are getting a check rarely complain.

1 A. Yeah. Well, we can continue it for notice
2 purposes.

3 **Q. I think that would be the cleanest way to do**
4 **it.**

5 A. I think it would be, too.

6 MR. LARSON: I have a couple of follow-up
7 questions.

8 EXAMINER McMILLAN: Sure.

9 REDIRECT EXAMINATION

10 BY MR. LARSON:

11 **Q. Looking at Exhibit 5, it identifies all the**
12 **parties that you proposed the Sapphire well to?**

13 A. Right.

14 **Q. And are those the same individuals and entities**
15 **that are identified on Exhibit 3?**

16 A. Yes, they are. It sets forth their ownership
17 and each contract area.

18 **Q. So they were notified -- wrong term. They were**
19 **sent well proposals, and all of them joined the well,**
20 **signed a JOA with the exception of Marathon?**

21 A. Right. Which, essentially, that's
22 notification.

23 RE CROSS EXAMINATION

24 BY EXAMINER BROOKS:

25 **Q. Well, so let me get this straight again.**

1 Marathon is the only party to be pooled, right?

2 A. Yes. They're the only one.

3 Q. And they've been noticed?

4 A. They've been noticed.

5 Q. And there is no other party in the joint
6 operating agreement who would be entitled to a
7 participation in any well drilled within the horizontal
8 limits of this spacing unit who has not either committed
9 to this well or been notified?

10 A. Right.

11 Q. Well, then I don't think there is anybody else
12 to notice. If all those people are committed to this
13 well, then there is no question about what they're
14 entitled to because they're committed to it. If there
15 were anybody that owned within the horizontal limits --
16 even if they didn't own within the vertical limits of
17 this formation -- let's say there was another owner that
18 owned in the 3rd Bone Spring who was not
19 participating --

20 A. Right.

21 Q. -- and they were being pooled, then they would
22 need notice because they're being left out of the well.

23 A. Right.

24 Q. But if there is not such an owner, we just need
25 to establish that that's the fact, and then we don't

1 need to identify them.

2 A. I agree totally with you.

3 EXAMINER McMILLAN: So what are you saying?

4 Can we take it under advisement?

5 Q. (BY EXAMINER BROOKS) Well, based on what you're
6 saying -- let me go over this again.

7 And this would be to all interests,
8 overrides, as well as working interests?

9 A. Right.

10 Q. Is there anyone -- any party here who is not --
11 well, first of all, is there any working interest owner
12 who owns title within the 3rd Bone Spring? Well, no.
13 Let me try again.

14 Is there any working interest owner within
15 the horizontal limits of the spacing unit?

16 A. Of this spacing unit?

17 Q. Of the spacing unit as defined by OCD anywhere
18 in the Bone Spring Formation who has neither elected to
19 participate in this well on the basis of contractual
20 terms or declined to participate?

21 A. As a nonconsent under the operating
22 agreement -- actually, everybody elected to participate.

23 Q. Yeah.

24 Well, if they've elected under the
25 operating agreement, it really doesn't matter whether

1 they've elected to consent or elected not to consent
2 because they're under the operating agreement.

3 A. Right. There are no nonconsenting interests.

4 Q. There are no nonconsenting interests. And
5 there is nobody except Marathon --

6 A. Have not signed the operating agreement.

7 Q. -- that are not bound by the operating
8 agreement?

9 A. Right, which is the reason why we're here
10 today.

11 Q. Okay. I don't think there is anybody more that
12 needs to be noticed. Now, exactly how we're going to
13 write this order, I still don't know, but I don't see
14 who we will be noticing.

15 Now, all the overrides are under leases
16 owned by the parties that are participating?

17 A. What was that? I'm sorry.

18 Q. The overrides that you --

19 A. Yes.

20 Q. Are all those under the leases that are
21 participating?

22 A. Yes.

23 Q. So you would be paying them on the basis of the
24 operating agreement?

25 A. We would be paying them on an acreage basis

1 depending on where their overriding royalty interest
2 ownership is.

3 Q. Yeah. But does the depth severance apply to
4 the overrides, or are the overrides --

5 A. No. There are no depth severances for --

6 Q. Identical throughout the --

7 A. Identical --

8 Q. -- throughout the entire Bone Spring Formation?

9 A. Actually from about an approximate depth of
10 5,000 feet to 11,400 feet.

11 Q. And that includes the entire Bone Spring?

12 A. Yes.

13 Q. I thought it did, but I don't want to rely on
14 my geological interpretation.

15 EXAMINER McMILLAN: You've done it before.

16 (Laughter.)

17 THE WITNESS: That would include even
18 deeper depths, as in the Morrow Formation.

19 EXAMINER BROOKS: Yeah. We had a case that
20 I wrote recently where the depth severance was at 8,000
21 feet, defined from footage depth severance, right in the
22 middle of the Bone Spring. It gave some people some
23 heartburn.

24 THE WITNESS: Yes.

25 EXAMINER BROOKS: Okay. I think I

1 understand the facts pretty well, and I don't believe --
2 unless I'm missing something, I don't believe there is
3 anybody left that hasn't been duly notified.

4 RE CROSS EXAMINATION

5 BY EXAMINER McMILLAN:

6 Q. So basically all you're saying is that
7 throughout the Bone Spring, within the horizontal
8 spacing unit, the ownership --

9 A. Is the same.

10 Q. -- is the same people but different
11 percentages, and those parties have signed?

12 A. Yes.

13 EXAMINER BROOKS: Yeah. I think that's --

14 EXAMINER McMILLAN: Is that a crude
15 estimation?

16 MR. LARSON: It's accurate.

17 EXAMINER McMILLAN: Okay.

18 EXAMINER BROOKS: All interests are
19 committed to the well. We don't deal with interests
20 that are committed.

21 THE WITNESS: Right.

22 EXAMINER McMILLAN: Okay.

23 EXAMINER BROOKS: We only deal with
24 uncommitted interests as to working interests.
25 Royalties are a little bit different because they don't

1 have to sign anything.

2 THE WITNESS: They do not have to sign
3 anything.

4 EXAMINER BROOKS: I'm okay with the notice.

5 MR. LARSON: I just have one more follow-up
6 question.

7 REDIRECT EXAMINATION

8 BY MR. LARSON:

9 Q. Within the 200-acre standard horizontal spacing
10 unit, is working interest ownership common throughout?

11 A. Yes, it is.

12 RECROSS EXAMINATION

13 BY EXAMINER BROOKS:

14 Q. By working interest ownership, you mean title
15 of record --

16 A. Title --

17 Q. -- as appearing from an examination of the
18 county records?

19 A. Right.

20 Q. But not after you take into consideration the
21 terms of the operating agreement? That makes a
22 difference.

23 A. Well, that would be -- you're talking about two
24 different contract areas.

25 Q. I think I'm clear on this.

1 A. Yeah.

2 Q. The title of record -- I hate to use the words
3 "record title" because it means one thing to BLM --

4 A. Right.

5 Q. -- and it's something else to SLO and another
6 thing to the title attorney.

7 A. The ownership of record.

8 Q. Yes. The ownership that you would derive from
9 an examination of the county records is identical
10 throughout the Bone Spring Formation.

11 A. Identical throughout.

12 Q. Okay. I'm happy.

13 EXAMINER McMILLAN: Okay. Then we've got
14 to do --

15 EXAMINER BROOKS: I still don't know how
16 we're going to write the order, but I'm happy with
17 the --

18 EXAMINER McMILLAN: And then you'll proceed
19 with the --

20 MR. LARSON: The affidavit, yes.

21 Are you finished with --

22 EXAMINER McMILLAN: I'm finished.

23 EXAMINER BROOKS: Me, too.

24 MR. LARSON: You're done.

25 THE WITNESS: Good.

1 Thank you, Mr. Examiners.

2 EXAMINER McMILLAN: Glad you came and it
3 made sense to him.

4 THE WITNESS: Yes. I'm glad it made sense
5 to somebody. Thank y'all.

6 MR. LARSON: Mr. Examiner, I would direct
7 your attention to Mewbourne Exhibit 9, which is the
8 self-affirmed statement of Charles Crosby. Mr. Crosby
9 is a geologist at Mewbourne and is familiar with the
10 geological matters that pertain to Mewbourne's
11 application.

12 And attached to Exhibit A of the
13 self-affirming statement is a structure map on the base
14 of the Bone Spring Sand. It shows that the structure
15 and the formation dips gently to the east. It also
16 shows 2nd and 3rd Bone Spring wells in the vicinity of
17 the proposed Sapphire well and a line of cross section.

18 Exhibit B to the self-affirmed statement is
19 a Lower 2nd Bone Spring gross isopach map, which
20 demonstrates that the 2nd Bone Spring Sand is uniform
21 across the 200-acre horizontal spacing unit.

22 Attachment C to the affidavit is an
23 east-to-west cross section, and the well logs included
24 in the cross section provide a representative sample of
25 the 2nd Bone Spring Sand Formation in the area. It also

1 shows that the target interval for the proposed Sapphire
2 well is continuous across the horizontal spacing unit.

3 And as Mr. Crosby states in his
4 self-affirmed statement, based on the information in
5 Exhibits A, B and C, he's able to conclude that the
6 horizontal spacing unit is justified from a geologic
7 standpoint. There is no faulting or other geologic
8 impediment and that each quarter section in the
9 horizontal spacing unit will contribute more or less
10 equally to production.

11 There are two other exhibits to
12 Mr. Crosby's self-affirmed statement, and that's Exhibit
13 D. It's a table showing information from other wells in
14 the vicinity. And Exhibit E is Mewbourne's well plan
15 for the proposed well.

16 And summarizing his self-affirmed
17 statement, he states, in his opinion, the granting of
18 Mewbourne's application will serve the interest of
19 conservation and the prevention of waste.

20 And with that, I request the admission of
21 Exhibit 9.

22 EXAMINER BROOKS: I have no questions.

23 EXAMINER McMILLAN: Exhibit 9 may now be
24 accepted as part of the record.

25 (Mewbourne Oil Company Exhibit Number 9 is

1 offered and admitted into evidence.)

2 EXAMINER McMILLAN: The only question I
3 have: Is there an API number assigned.

4 THE WITNESS: I'm sure, but I don't have
5 that.

6 MR. LARSON: Can I email that to you?

7 EXAMINER McMILLAN: Yeah.

8 MR. LARSON: Okay. I will email that to
9 you.

10 EXAMINER McMILLAN: Great.

11 So you want the case to be taken under
12 advisement?

13 MR. LARSON: Yes. I have nothing further
14 and request the case be taken under advisement.

15 EXAMINER McMILLAN: Case Number 20092 shall
16 be taken under advisement.

17 Thank you.

18 (Case Number 20092 concludes, 3:18 p.m.)

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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 18th day of December 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