

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. 20468
LLC FOR COMPULSORY POOLING, EDDY
COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

May 2, 2019

Santa Fe, New Mexico

BEFORE: SCOTT DAWSON, CHIEF EXAMINER
 DAVID K. BROOKS, LEGAL EXAMINER

This matter came on for hearing before the
New Mexico Oil Conservation Division, Scott Dawson,
Chief Examiner, and David K. Brooks, Legal Examiner, on
Thursday, May 2, 2019, at the New Mexico Energy,
Minerals and Natural Resources Department, Wendell Chino
Building, 1220 South St. Francis Drive, Porter Hall,
Room 102, Santa Fe, New Mexico.

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APPEARANCES

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1 (1:24 p.m.)

2 EXAMINER DAWSON: We'll go on to 20468,
3 which is another Marathon Oil Permian for compulsory
4 pooling in Eddy County, New Mexico.

5 Please call for appearances.

6 MS. BENNETT: Good afternoon,
7 Mr. Examiners. My name is Deana Bennett, and I'm here
8 on behalf of Marathon Oil Permian, LLC.

9 EXAMINER DAWSON: Do you have any
10 witnesses?

11 MS. BENNETT: Yes, I do. We have one
12 witness, and I'll be presenting the geology materials by
13 affidavit, unless they are contested.

14 EXAMINER DAWSON: Okay.

15 MS. SHAHEEN: Sharon Shaheen on behalf of
16 S.K. Warren Resources, LLC.

17 EXAMINER DAWSON: Okay. S.K. Warren
18 Resources, LLC.

19 MS. SHAHEEN: Would it be okay if my client
20 joined me at the table over here so he can take a look
21 at the exhibits with me?

22 EXAMINER DAWSON: Yes. That's fine.

23 EXAMINER BROOKS: That's acceptable.

24 MS. BENNETT: And I would also like to
25 point out that Mr. Bruce entered his appearance in this

1 case on behalf of MRC Permian and on behalf of Foran Oil
2 Company, but he did so only to monitor the case. I
3 confirmed that with him before proceeding today.

4 EXAMINER DAWSON: Okay.

5 EXAMINER BROOKS: Thank you.

6 MS. SHAHEEN: And also I wanted to say that
7 our concerns are similar to those that Mr. Feldewert was
8 raising earlier with respect to 20466. And if it would
9 be helpful for the examiners, I'd be happy to make a
10 brief opening statement about our concerns.

11 EXAMINER BROOKS: That would be
12 appreciated.

13 EXAMINER DAWSON: That's fine.

14 MS. SHAHEEN: And I don't know if you want
15 me to make that now or after Ms. Bennett gets started.

16 EXAMINER BROOKS: We'll let Ms. Bennett
17 have the opportunity to make first opening statement if
18 she wants to do so.

19 EXAMINER DAWSON: Do you have an opening,
20 Ms. Bennett?

21 MS. BENNETT: I don't. And I'm happy to
22 cede my opening time to Ms. Shaheen if she would like to
23 address her concerns, and then we can also just work
24 through those as we're talking with Mr. Broussard, if
25 that's acceptable to the examiners.

1 EXAMINER BROOKS: Sounds good.

2 EXAMINER DAWSON: It's acceptable.

3 So, Ms. Sheehan, go forward with your
4 questions.

5 OPENING STATEMENT

6 MS. SHAHEEN: I'll start by saying that
7 S.K. Warren would like to participate at least in part
8 with respect to Marathon's proposal. But there are
9 several concerns, and I think the most important one is
10 the concern about the cost of having to pay for so many
11 wells up front. It makes it difficult for small
12 nonoperators like S.K. Warren Resources to participate
13 when they're being asked to pay up front for eight
14 wells.

15 There is also a concern about the
16 completion time being a year out into the future from
17 the time that the wells are drilled so that there is a
18 lag between the time the wells are drilled, costs are
19 paid and revenue could be seen.

20 Also concerned about whether eight one-mile
21 horizontal wells in a 320-acre spacing unit are actually
22 necessary to develop that acreage. It seems excessive.
23 It may create waste. It may be unnecessary. And under
24 70-2-17B, the Division can, of course, consider economic
25 loss caused by drilling unnecessary wells, prevention of

1 waste and the avoidance of the augmentation of risk
2 arising from drilling an excessive number of wells.

3 Also a little bit concerned. We did have a
4 good meeting this morning with Mr. Broussard but not
5 really comfortable that there was a good-faith effort
6 here to respond to negotiate a voluntary agreement
7 before filing the application.

8 S.K. Warren would like to be able to
9 participate on a well-by-well basis, would like to be
10 billed for costs as incurred and would like an adequate
11 amount of time to negotiate further with Marathon about
12 the possibility of a farm-out for some or all of the
13 wells and, therefore, ask that the Division not force
14 pool S.K. Warren at this time. In the alternative, ask
15 the Division to include in its force pooling order a
16 provision that allows S.K. Warren an opportunity to
17 choose to participate on a well-by-well basis and to be
18 invoiced for cost as they are incurred. And S.K. Warren
19 thinks this is warranted in light of the number of wells
20 that are proposed to be drilled and in the manner that
21 they appear to be drilled -- appear to be planned to be
22 drilled and completed under the requested forced pooling
23 order.

24 EXAMINER BROOKS: Okay. Did you want to
25 respond to opposing counsel's --

1 MS. BENNETT: (Indicating.)

2 EXAMINER BROOKS: Well, I will say this
3 much. The Division has so far taken the position
4 whenever the issue has arisen that the requirement to --
5 that a nonoperator under a forced pooling order has the
6 right to choose which wells it wishes to participate in
7 and which wells it does not wish to participate in.
8 But, of course, whether the wells are proposed and
9 proposed to be drilled simultaneously, that means that
10 you can limit your exposure, but you also limit your
11 benefit. Further than that, we have not -- well, I have
12 been inclined to think that that much, the option to
13 participate -- to participate or not participate in each
14 well separately is implicit in the Oil and Gas Act
15 references to "the well," although I admit those
16 references are ambiguous to a degree.

17 I don't think I have ever made a ruling
18 that was expressly premised on -- or ever written -- I
19 don't get to make rulings. I don't think I have ever
20 written an order that was expressly premised on that
21 logic, so I think it's still an open question under the
22 Oil and Gas Act whether that is required or not. But
23 that is an interpretation I have been inclined to favor
24 in case that argument arises before me. But the person
25 who takes the contrary position should be prepared to

1 open and close.

2 Let's see. Is there anything more I need
3 to say preliminarily?

4 I believe there is no rule or statute that
5 provides a time limit for implementing a proposal such
6 as is customary in operating agreements, although the
7 Supreme Court has weakened that decision to the extent
8 it's not worth much to a nonoperator. But be that as it
9 may, I don't believe there is any such provision. And
10 the only thing that would bear on that would be the
11 six-month time to -- I believe it's -- no, wait. It's a
12 two-year time to commence -- whatever the time is to
13 commence drilling. If you're proposing to drill them
14 all simultaneously, that same time limit would apply to
15 all the wells. That's as much as I can say
16 preliminarily. Let the parties proceed. Let the games
17 begin.

18 MS. BENNETT: And the reason I chose not to
19 make an opening statement or to respond to Ms. Shaheen's
20 comments, because I do agree with Mr. Brooks, that most
21 of the concerns that Ms. Shaheen has raised on behalf of
22 her client are either addressed by the Oil and Gas Act
23 itself, by the Division's rules or by the pooling order
24 and that those all provide the protections or the
25 safeguards that Mr. Warren is seeking without having to

1 address them specifically on a case-by-case basis.

2 And when Mr. Broussard and I are having our
3 witty repartee, I will certainly inquire about the
4 negotiations or the extent of negotiations with
5 Mr. Warren so that we can talk about that a little bit.
6 So I do feel that -- although we certainly appreciate
7 Mr. Warren's concerns, I do believe that those are
8 addressed in large part by the procedural safeguards of
9 the Oil and Gas Act and the pooling order, as well as
10 the fact that Marathon also allows specifically in its
11 election letter or in its proposal letters to allow
12 folks to join on a well-by-well basis.

13 EXAMINER BROOKS: Yes.

14 MS. BENNETT: With that, I'd like to begin
15 my questioning of Mr. Broussard.

16 JEFF BROUSSARD,
17 after having been previously sworn under oath, was
18 questioned and testified as follows:

19 DIRECT EXAMINATION

20 BY MS. BENNETT:

21 Q. Mr. Broussard, if you wouldn't mind stating
22 your name for the record, please.

23 A. My name is Jeff Broussard.

24 Q. And for whom do you work and in what capacity?

25 A. I'm a landman for Marathon Oil Company.

1 Q. And what are your responsibilities as a
2 landman?

3 A. My responsibilities are general land work
4 related to the negotiation of new leases, as well as
5 acquisition of acreage assignments across the basin, as
6 well as some well proposals and the communications and
7 negotiations that go in hand with that with other
8 working interest owners.

9 Q. And you have previously testified before the
10 Division twice today, right?

11 A. Yes.

12 Q. And both times your credentials were accepted
13 as a matter of record?

14 A. Yes.

15 Q. And you testified that your area of
16 responsibility at Marathon includes Eddy County?

17 A. Yes.

18 Q. Are you familiar with the application filed by
19 Marathon in this case?

20 A. Yes.

21 Q. Are you familiar with the status of the lands
22 of this application?

23 A. Yes.

24 MS. BENNETT: At this time I would like to
25 tender Mr. Broussard as an expert in land matters.

1 EXAMINER DAWSON: Any objection?

2 MS. SHAHEEN: No objection.

3 EXAMINER DAWSON: Okay. At this time
4 Mr. Broussard will be admitted to the record as an
5 expert in petroleum land matters.

6 MS. BENNETT: Thank you.

7 Q. (BY MS. BENNETT) Will you turn to Exhibit 1,
8 please? Exhibit 1 is the application we filed in the
9 Honey Mustard case; is that correct?

10 A. It is.

11 Q. And what does Marathon seek under this
12 application?

13 A. Marathon seeks to pool all uncommitted
14 interests as it relates to the proposed spacing unit
15 underlying the west half of Section 22 of Township 24
16 South, Range 28 East in Eddy County.

17 Q. Thank you.

18 Are there any depth severances in this
19 proposed spacing unit?

20 A. No.

21 Q. Let's turn to Exhibit 2, please. Does Exhibit
22 2 contain the preliminary C-102s for the Honey Mustard
23 well?

24 A. Yes, it does.

25 Q. Now, looking at the title -- or the name of the

1 well, you can see where I've handwritten in a change.

2 Do you see that?

3 A. Yes. Yes.

4 Q. And I've written in "Fed Com."

5 A. That's correct.

6 Q. And what constituted or what required me to
7 make that change?

8 A. We had originally listed them as "Federal Com"
9 as opposed to "Fed Com," and to meet with BLM's
10 suggestions, we're changing them to "Fed Com."

11 Q. And so when you file your final C-102, you will
12 use "Fed Com" and not my handwritten Wite-Out changes?

13 A. Yes.

14 Q. But this is the way you want the well names to
15 appear on the order?

16 A. Yes.

17 Q. And there are C-102s for each well?

18 A. Yes.

19 Q. Has the Division identified a pool and pool
20 code for these wells?

21 A. Yes. The pool name is the Purple Sage;
22 Wolfcamp Gas, and the pool code is 98220.

23 Q. And earlier we talked about the Purple Sage
24 having a special order. Will these wells comply with
25 the setback requirements of that order?

1 A. Yes.

2 Q. Can you turn to Exhibit 3, please? Can you
3 explain to the examiners what Exhibit 3 is?

4 A. Page 1 of Exhibit 3 is a tract map and shows
5 that we have both state and fed leases within the
6 proposed spacing unit.

7 Q. And let's look at the second page of Exhibit 3.
8 Does Exhibit 3 show committed, uncommitted -- well, it
9 shows committed in two sections of uncommitted working
10 interest owners; is that correct?

11 A. That's correct.

12 Q. Would you explain to the examiners why some
13 uncommitted interest owners are shown in italics and
14 others are not?

15 A. The parties shown in italics but listed as
16 uncommitted are parties that signed as wanting to --
17 electing to participate in these wells and also signing
18 the AFEs that we provided in our initial well proposals
19 but have yet to sign our operating agreement.

20 Q. And could you run through the uncommitted
21 working interest holders really quickly just by name?

22 A. Yes. The uncommitted working interest owners
23 that have signed an election are CXA Oil & Gas Holdings,
24 Roy Edward Guinnup, Roy G. Barton, Jr. and his wife
25 Claudia.

1 And the uncommitted working interest owners
2 that have not elected are CM Resources, WPX Energy
3 Permian, Mizel Resources, Sisbro Oil & Gas, S.K. Warren
4 Resources, MRC Permian Company and Foran Oil Company.

5 **Q. And those uncommitted working interest owners**
6 **are the parties you seek to pool; is that correct?**

7 A. They are.

8 **Q. Are there also overriding royalty interest**
9 **owners in the unit -- in the proposed unit that Marathon**
10 **seeks to pool?**

11 A. Yes.

12 **Q. Can you summarize for the examiners the efforts**
13 **that you undertook or Marathon undertook to obtain**
14 **voluntary joinder?**

15 A. Yes. We hired a land service company to
16 determine -- run detailed title research to determine
17 ownership within the spacing unit from which we drafted
18 our proposal letters and sent to each individual working
19 interest owner. For owners that didn't contact us
20 directly, upon receipt, we tried to follow up with
21 either phone or email when possible.

22 **Q. Now, with respect to Mr. Warren, in particular,**
23 **did you -- have you had a number of communications with**
24 **Mr. Warren?**

25 A. I have.

1 Q. And have you traded -- has he offered -- made a
2 couple of different offers to Marathon that you've been
3 considering?

4 A. Yes. Mr. Warren initially proposed a farm-out
5 agreement but included terms that Marathon was unwilling
6 to accept. We briefly discussed alternatives but never
7 came to any kind of agreement.

8 EXAMINER BROOKS: Excuse me. Which one of
9 these uncommitted working interest owners -- is it S.K.
10 Warren Resources?

11 THE WITNESS: Yes, sir.

12 EXAMINER BROOKS: Thank you.

13 THE WITNESS: Yes, sir.

14 So we had talks about his proposed farm-out
15 agreement and potential alternatives but never got very
16 far along in the conversations as coming to an
17 agreement.

18 Q. (BY MS. BENNETT) And would you say that you've
19 had communications with Mr. Warren apart from today but
20 maybe -- did you have any communications with him last
21 week?

22 A. Yes.

23 Q. And we did, as Ms. Shaheen alluded to, have a
24 conversation with Mr. Warren this morning?

25 A. We did.

1 Q. And during that conversation, did you let
2 Mr. Warren know that you're happy to and, in fact, want
3 to continue to have negotiations with him after this
4 hearing?

5 A. Yes.

6 Q. And even after the pooling order is entered,
7 when one is entered?

8 A. Yes.

9 Q. And so there is no -- there is nothing in your
10 mind that's keeping the two of you from further
11 negotiations?

12 A. Not at all.

13 Q. Do you feel like, in your opinion, Marathon has
14 made a good-faith effort to obtain the voluntary joinder
15 of the parties in these wells?

16 A. Yes.

17 Q. Let's turn to what's been marked as Exhibit 4,
18 please. Exhibit 4 is the proposal letter that was sent
19 out to the working interest owners; is that right?

20 A. It is.

21 Q. And when you look at the second and third pages
22 of Exhibit 4, that's where Marathon includes elections
23 on a well-by-well basis. Is that accurate?

24 A. Yes.

25 Q. And the proposal letter includes surface-hole

1 location, bottom-hole location, target TVD?

2 A. It does.

3 Q. And so then not only do -- in your proposal
4 letters, you include the opportunity to elect on a
5 well-by-well basis, but you also send AFEs for each
6 well. Is that accurate?

7 A. Yes.

8 Q. Are the AFEs behind Tab 5?

9 A. They are, yes.

10 MS. BENNETT: And for everyone's sake, I
11 think we won't go through each -- the cost of each well,
12 unless the examiners are really interested in hearing
13 it.

14 Q. (BY MS. BENNETT) But are the well costs
15 approximately \$7 million for the Upper Wolfcamp and
16 approximately \$7,400,000 for the Lower Wolfcamp?

17 A. Yes.

18 Q. Are those well costs, in your view, in line
19 with the cost of other horizontal wells drilled to this
20 length and depth in this area of New Mexico?

21 A. Yes.

22 Q. And those well costs represent the costs of
23 drilling, completing and equipping the well?

24 A. They do, yes.

25 Q. In your opinion, should Marathon Oil Permian,

1 LLC be appointed operator of the well?

2 A. Yes.

3 Q. Has Mr. Warren -- this reminded me of a
4 question. Has Mr. Warren suggested to you that he
5 wanted to be operator of this well?

6 A. No.

7 Q. Do you have any recommendation --

8 Or these wells, I should say.

9 Do you have any recommendation for the
10 amounts which Marathon should be paid for supervision
11 and administrative expenses?

12 A. Yes. We are recommending \$7,000 a month while
13 drilling the well and \$700 a month while producing.

14 Q. Are these amounts equivalent to those normally
15 charged by Marathon and other operators for wells of
16 this length and depth in New Mexico?

17 A. Yes.

18 Q. Do you request that these rates be adjusted
19 periodically as provided by the COPAS accounting
20 procedure?

21 A. Yes.

22 Q. Does Marathon request the maximum cost plus 200
23 percent risk charge if any working interest owner fails
24 to pay its share of costs for drilling, completing and
25 equipping the wells?

1 A. Yes.

2 Q. Were the parties you are seeking to pool
3 notified of this hearing?

4 A. Yes.

5 Q. Let's look at Exhibit 6. Is Exhibit 6 an
6 Affidavit of Notice prepared by me that shows the
7 parties who were notified, the status of whether they
8 received notice and an Affidavit of Publication from the
9 "Carlsbad Argus" newspaper?

10 A. Yes.

11 Q. And you gave me the names of overriding royalty
12 interest owners to notify as well, right?

13 A. Yes.

14 Q. Does Marathon request that it be allowed a
15 period of one year between when the wells are drilled
16 and when the wells are completed under the order?

17 A. Yes.

18 Q. Were Exhibits 1 through 6 prepared by you or
19 under your supervision or compiled from company business
20 records?

21 A. Yes.

22 Q. In your opinion, is the granting of these
23 applications in the interest of conservation and the
24 prevention of waste?

25 A. Yes.

1 **Q. With that, I'd like to move to have Exhibits 1**
2 **through 6 be admitted into the record?**

3 EXAMINER DAWSON: Any objections?

4 MS. SHAHEEN: No objection.

5 EXAMINER DAWSON: Okay. At this time
6 Exhibits 1 through 6 will be admitted to the record.

7 (Marathon Oil Permian, LLC Exhibit Numbers
8 1 through 6 are offered and admitted into
9 evidence.)

10 MS. BENNETT: Thank you. I have no further
11 questions.

12 EXAMINER DAWSON: Mr. Brooks, do you have
13 any questions?

14 CROSS-EXAMINATION

15 BY EXAMINER BROOKS:

16 **Q. Are these one-mile horizontals?**

17 A. Yes, sir.

18 **Q. Okay. So that explains why they're not as**
19 **expensive as I'm accustomed to seeing for two-mile**
20 **Wolfcamps but more expensive than I'm accustomed to**
21 **seeing for one-mile Wolfcamps.**

22 Okay. Well, the exhibit you pointed out,
23 which I guess is 3 -- no, apparently not. Where is your
24 list of committed and noncommitted?

25 A. It is the second page of Tab 3.

1 Q. Second page. Okay.

2 Are these all the owners within this unit?

3 A. Yes, sir.

4 Q. Now, are there any overrides?

5 A. Yes, sir, there are.

6 Q. And are you seeking to pool the overrides?

7 A. Yes.

8 Q. Okay. And you have given them notice --

9 A. Yes, sir.

10 Q. -- as required by the rules?

11 Okay. Are there any depth severances and
12 ownership within the Wolfcamp?

13 A. No, sir.

14 Q. Are all of these -- have all of these parties
15 been located for notice?

16 A. Yes, sir.

17 Q. That's really all I have at this point.

18 EXAMINER DAWSON: I have no questions.

19 MS. SHAHEEN: If I may.

20 EXAMINER DAWSON: Yes.

21 CROSS-EXAMINATION

22 BY MS. SHAHEEN:

23 Q. Mr. Broussard, you sent the well-proposal
24 letter that is your Exhibit 4, I believe, to Mr. Warren,
25 among others, in mid-January; is that correct?

1 A. Yes, sir -- I mean, yes, ma'am. Sorry.

2 Q. And did Mr. Warren contact you after he got the
3 well proposal?

4 A. He did.

5 Q. And do you remember when?

6 A. I couldn't remember the specific date.

7 Q. Would it -- if I represented to you that he
8 sent you the letter about the potential farm-out on
9 January 24th, does that sound about right to you?

10 A. Yes.

11 Q. And when did you first respond to Mr. Warren
12 about that farm-out letter?

13 A. I couldn't say offhand.

14 Q. If I represented to you that when Mr. Warren
15 emailed you last week, that that was the first time that
16 you responded to him about his January farm-out letter,
17 would that sound about right?

18 A. No. We had spoken over the phone prior to that
19 where I had relayed to him that the terms laid out in
20 his farm-out proposal were not acceptable to Marathon
21 and that we would be more inclined to offer him a term
22 assignment with specific terms. He had expressed
23 interest in wanting to participate on a well-by-well
24 basis. We discussed the protections that could be
25 afforded to him by signing up on the operating agreement

1 or what his well-by-well elections would look like
 2 potentially under an order -- a pooling order. We spoke
 3 about terms over the phone as it regarded to a term
 4 assignment. We didn't agree to anything at the time,
 5 and that's how I left it until we had spoken recently.

6 **Q. And when did you speak with him in that regard?**

7 A. I wouldn't be able to tell you offhand exactly
 8 when we had that phone call.

9 **Q. Would you say it was a month ago?**

10 A. I would -- I would put it closer to the
 11 February time frame.

12 **Q. Okay. So your testimony today is that you**
 13 **spoke with him within a month, say, of receiving his**
 14 **farm-out proposal?**

15 MS. BENNETT: I am going to object to that
 16 question just based on the fact that he's testifying to
 17 the best of his recollection, and I wouldn't want it to
 18 be represented any other way as a fact that that's what
 19 he remembered.

20 EXAMINER BROOKS: Well --

21 MS. BENNETT: We're happy to check.

22 EXAMINER BROOKS: -- we'll leave it with
 23 what he said. If you want to present any further
 24 evidence on the subject, that's fine.

25 MS. BENNETT: I'm happy with him testifying

1 that that's his recollection.

2 EXAMINER BROOKS: Okay.

3 Q. (BY MS. SHAHEEN) So my understanding is you
4 spoke with him on the telephone. You can't really
5 remember when, but you think it may have been February.
6 Is that your testimony?

7 A. It sounds about right. Yes, ma'am.

8 Q. Okay. And then the next time you spoke with
9 him was when?

10 A. Would probably have been within the last week
11 or two when we had spoken recently.

12 Q. Okay. You had an email exchange on April 23rd;
13 is that correct?

14 A. Sounds about right, yes.

15 Q. Okay. And then you spoke this morning?

16 A. Yes.

17 Q. And you mentioned that when you spoke with
18 Mr. Warren, you talked about what his protections would
19 be under the JOA. Can you explain a little bit to me
20 about those protections under the JOA?

21 A. Under a standard operating agreement, there are
22 outlines after the participation in an initial well as
23 to whether he can elect and go nonconsent on a
24 well-by-well basis. So he's not required to participate
25 in every well after the initial well.

1 I will say that the joint operating
2 agreement that we initially proposed with the
3 well-proposal letters did not specifically identify an
4 initial well because the plan would be to attempt to
5 drill all four of the Upper Wolfcamps simultaneously and
6 complete them simultaneously. But under an operating
7 agreement, it is, to my understanding, standard that
8 after participation in the initial well, that any party
9 to the operating agreement can participate on a
10 well-by-well basis at that point.

11 **Q. And did the well-proposal letter identify which**
12 **of the four wells you would drill first?**

13 A. It did not.

14 **Q. Did it have any information about the timing of**
15 **drilling any of the wells?**

16 A. The well proposal did not. No.

17 **Q. With respect to a JOA -- to the JOA, if another**
18 **party requests amendments to that JOA, would those same**
19 **amendments be proposed to the other parties?**

20 A. Yes.

21 **Q. So you mentioned that you plan to drill the**
22 **first four wells simultaneously. Which four wells do**
23 **you plan to drill first?**

24 A. The Upper Wolfcamp, to my knowledge, is what
25 the subsurface team plans to target first, and that's

1 the two X-Y wells and the two WA wells, so the 8H, 2H,
2 6H and 9H.

3 Q. And when do you plan to drill the second set of
4 the four wells?

5 A. I couldn't speak to a specific date but
6 sometime within 12 months of the Uppers.

7 Q. Would Marathon consider coming back to pool the
8 second set of four wells at a later date?

9 MS. BENNETT: Objection. Calls for
10 speculation, and he's not really in a position to answer
11 that question.

12 EXAMINER BROOKS: Overruled. He can
13 speculate. I'm going to let him speculate if he wants
14 to. You can always call him on it.

15 THE WITNESS: So the question was: Would
16 we be open to the idea of proposing the four Lower
17 Wolfcamp wells at a later date?

18 Q. (BY MS. SHAHEEN) And come back for another
19 pooling hearing on those four wells.

20 A. Yeah. It would be our preference to pool the
21 entire formation at one time, as the ownership is
22 uniform and --

23 Q. Okay. So assuming -- under the JOA, what would
24 the timing be with respect to requesting payment of
25 costs for those wells -- for each of those wells?

1 A. Under an operating agreement, the operator has
2 various forms of collecting costs from nonoperators, one
3 of them being a cash call, which Marathon does not
4 typically resort to for nonoperators that have signed up
5 under an operating agreement. And the rest are billed
6 on a joint interest billing statement on a cost-incurred
7 basis.

8 Q. Okay. So the cash call would be under the
9 advance provision; is that right?

10 A. Yes.

11 Q. Okay. And do you ordinarily do that? Does
12 Marathon ordinarily --

13 A. To members of an operating agreement, it's --
14 to my understanding, it's not a practice that Marathon
15 typically --

16 Q. So you would JIB the costs as they were
17 incurred for the first set of four wells? Is that how
18 it would work?

19 A. Yes.

20 Q. Okay. Under the forced pooling order, how
21 would you invoice or bill for those costs of the first
22 set, the first four -- first four wells?

23 A. Well, participation under a pooling order
24 typically calls for a cash call to parties that
25 participate under the pooling order as opposed to

1 electing to sign up under the operating agreement.

2 Q. So under the pooling order, would you be making
3 a cash call for all eight wells?

4 A. It is something that could potentially be done.
5 Yes.

6 Q. Do you know whether Marathon intends to do
7 that?

8 A. I couldn't say for these specific wells if they
9 intend to cash call any parties electing under a pooling
10 order.

11 Q. Would you say that they would be doing a cash
12 call for the first set of four wells first?

13 A. Well, it's on a well-by-well basis, but since
14 we would most likely be drilling all four
15 simultaneously, I guess you could look at it that way.
16 Yes.

17 Q. Okay. So it seems to me you're agreeing with
18 Mr. Brooks' assessment, that under a forced pooling
19 order, you could elect to participate on a well-by-well
20 basis; is that correct?

21 A. Yes. For example, Mr. Warren, if we were
22 drilling all four Upper Wolfcamp wells and for -- say,
23 he wanted to only participate in the four WXY wells but
24 didn't want to participate in the -- sorry -- the two
25 WXY wells but didn't want to participate in the two WA

1 wells, we would only bill on those two wells. It's on a
2 well-by-well basis. So whatever he elects to
3 participate in, that specific estimated well cost is
4 what would be billed.

5 Q. Okay. And that's under both the JOA and the
6 forced pooling order?

7 A. Yes.

8 Q. Okay. And what are Marathon's plans with
9 respect to the time for completion of the first four
10 wells?

11 A. The terms of completion? Again, as it relates
12 to pooling orders and obtaining an order, it makes it
13 difficult to identify a specific spud date, but we would
14 like to drill these wells by mid-2020, at least the
15 Upper Wolfcamp. And then in terms of completion,
16 that -- that is better determined by subsurface, as it
17 relates to getting frac crews on-site, rig releases, the
18 timing for those type of things.

19 Q. So I understand under your application that
20 you're seeking up to a year for completion of the first
21 well; is that correct?

22 A. Yes.

23 Q. So you have a gap of a year before you would
24 see any revenue from the wells that you're drilling
25 initially?

1 A. Yes.

2 Q. Do you know what the basis for Devon's
3 determination -- do you know the basis for Devon's
4 determination that drilling eight one-mile horizontal
5 wells in the Wolfcamp is necessary to develop these 320
6 acres?

7 MS. BENNETT: Do you mean Marathon's?

8 MS. SHAHEEN: I'm sorry. Marathon's.

9 THE WITNESS: I'm sorry. I'm not sure I
10 follow.

11 Q. (BY MS. SHAHEEN) Do you know what the basis is
12 for Marathon's determination that drilling eight
13 one-mile horizontal wells in the Wolfcamp is necessary
14 to develop this 320 acres?

15 A. You know, as we discussed earlier today, I
16 think that's a question that would be better suited for
17 a geologist, but it's my understanding that the
18 subsurface team believes that's the most efficient
19 development plan for the area.

20 Q. But you don't know why they believe that's the
21 best way to develop it?

22 A. I'm not a geologist, so I couldn't really say
23 why. No.

24 Q. Did you consider the possibility of drilling
25 two-mile laterals?

1 A. Yes. But we do not own acreage in the
2 surrounding section, and this is also in line with our
3 development plan that we have already had pooled and
4 participation in on the east half of this same section.
5 So this falls in line with our development plan for the
6 entire section and the facilities associated.

7 **Q. And have you filed an application for your**
8 **development plan on the east half?**

9 A. Yes. That has been done and an order obtained
10 prior to this.

11 **Q. And is there any other acreage that you've**
12 **developed in a similar manner?**

13 A. Yes.

14 **Q. Where is that?**

15 A. In the township to the north, there are several
16 sections that we have drilled very similar to this.

17 **Q. And you've already drilled and completed those**
18 **wells?**

19 A. Yes.

20 **Q. And how are they producing?**

21 A. They're doing quite well.

22 **Q. What do you believe is the next step in**
23 **reaching an agreement with Mr. Warren?**

24 A. To continue negotiations, and it's still a work
25 in progress as to what Mr. Warren would like to do in

1 terms of his farm-out terms and/or assignment terms and
2 how we approach a well-by-well election and how we
3 handle his concerns as to cash calls. But those are all
4 things that can be negotiated after this hearing and
5 even after the order is obtained.

6 Q. Would it be fair to say that it's in Marathon's
7 court to respond to Mr. Warren's farm-out agreement with
8 specific terms as to what it would be amenable to in the
9 way of a farm-out?

10 A. We can provide a very specific offer. Yes.

11 Q. You testified in Case Number 20466 that
12 Marathon would have to repropose each well after the
13 forced pooling order is issued. And you would be doing
14 the same thing here, right?

15 A. Yes.

16 Q. Would you be willing to include in the pooling
17 order a timing requirement as to well proposals and
18 payment of the cost to participate?

19 MS. BENNETT: I'm going to object to that
20 on the basis that Mr. Broussard doesn't have the
21 authority to agree to that or answer it.

22 EXAMINER BROOKS: Yes. I think that's
23 accurate. I don't think, you know, what he may have
24 heard said in meetings is really going to be any help to
25 anybody here. So I would sustain that objection.

1 MS. SHAHEEN: That's it. Pass the witness.

2 EXAMINER DAWSON: Okay. Do you have any
3 questions, Mr. Brooks?

4 EXAMINER BROOKS: I don't believe so.

5 EXAMINER DAWSON: I don't have any
6 questions.

7 MS. BENNETT: Okay. In that case, I'll let
8 you sit down, Mr. Broussard, and I'll continue with the
9 geology.

10 EXAMINER DAWSON: Thank you, Mr. Broussard.

11 THE WITNESS: Thank you.

12 MS. BENNETT: This will be presented by
13 affidavit, if that's acceptable.

14 MS. SHAHEEN: We're not going to object to
15 that.

16 MS. BENNETT: Okay. So I'd like to now
17 turn to what's behind Tab B. Tab B is the affidavit of
18 our geologist, Mr. Baker, Matt Baker, who has been
19 previously qualified as an expert geologist -- petroleum
20 geologist and his credentials have been accepted as a
21 matter of record.

22 He has prepared -- his first exhibit is a
23 structure map, and the structure map shows the project
24 area outlined by a black-dashed box, and it shows the
25 proposed lateral wells in blue and orange here. And he

1 determines that the structure dips to the east in this
2 area. As with our prior applications for today, he's
3 prepared two sets of exhibits for the Upper Wolfcamp
4 wells, one set for Upper Wolfcamp one, set for Lower
5 Wolfcamp. And so slide eight is the reference map for
6 his cross section, and it shows that he used four wells
7 to develop his cross section. And those wells are
8 marked on the map running from A to A prime. And you
9 can see again there our proposed project area.

10 Turning to Exhibit 9, Exhibit 9 shows the
11 stratigraphic cross section, with the inset map again
12 showing the reference wells. And Mr. Baker testifies
13 that in his opinion these wells or these samples are
14 representative of the Wolfcamp in this area. And you
15 can see here that Marathon is targeting -- you can see
16 the producing zone. This is when the green does show up
17 a little bit better for the producing zone, and you can
18 see the red arrows that are the target zone. And
19 Mr. Baker testifies that the Wolfcamp Y Sand thickness
20 is consistent across the unit and that there is some
21 thickness variability in the Wolfcamp A from north to
22 south. But as we'll discuss later in his testimony, he
23 doesn't see that as any impediment to development.

24 Exhibit 10 is a gross interval isochore of
25 the Wolfcamp to Wolfcamp B, and, again, that has the

1 black-dashed box and the four Upper Wolfcamp wells. And
2 he testifies that the formation is relatively uniform
3 across the proposed unit based on this gross interval
4 isochore.

5 Exhibit 11 is the reference map for the
6 Lower Wolfcamp wells. And so we have the same
7 black-dashed box, but this time, we're talking about the
8 WD wells. Again, the line of cross section running from
9 A to A prime, four wells being used for his cross
10 section data.

11 Exhibit 12 is the cross section, and,
12 again, it has the inset showing the wells going from A
13 to A prime. And he testifies that the Wolfcamp C2
14 interval thickness -- or thickens here from north to
15 south, but the D2 is relatively consistent across the
16 unit. And so you can see in the green shading, that's
17 the producing zone, and then the two red arrows identify
18 the target zone.

19 Exhibit 13 is the gross interval isochore
20 this time of the Wolfcamp C2 to the D3 because these are
21 the Lower Wolfcamp wells. And he says that -- Mr. Baker
22 testifies that the formation thickness increases from
23 north to south. And based on his studies, he concludes
24 that the horizontal spacing unit is justified from a
25 geologic standpoint, that there are no structural

1 impediments or faulting that will interfere with
2 horizontal development. And it's his testimony that
3 each section in the unit -- or each quarter section in
4 the unit will contribute more or less equally to
5 production. He notes, as we've discussed in our earlier
6 cases, that the preferred well orientation in this area
7 is either north-south or east-west. And you can see
8 that on some of his maps that he provided that there are
9 both north-south and east-west laterals in this area.

10 He states that Exhibits 7 through 13 were
11 prepared by him or under his supervision or compiled
12 from company business records. And it's his opinion
13 that the granting of this application is in the interest
14 of conservation and the prevention of waste.

15 At this time I'd like to request that
16 Exhibits B7 through 13 be admitted into the record.

17 EXAMINER DAWSON: Any objections?

18 MS. SHAHEEN: No objection.

19 EXAMINER DAWSON: At this time Exhibits B7
20 through 13 will be admitted to the record.

21 (Marathon Oil Permian, LLC Exhibits B and 7
22 through 13 are offered and admitted into
23 evidence.)

24 MS. BENNETT: Thank you.

25 EXAMINER DAWSON: Thank you.

1 Do you have any questions, Ms. Shaheen?

2 MS. SHAHEEN: I do not.

3 I would just ask that the Division not
4 force pool S.K. Warren at this time to allow the parties
5 further opportunity to negotiate. And in the
6 alternative, ask the Division to include in its order a
7 provision that allows S.K. Warren the opportunity to
8 choose to participate on a well-by-well basis, as
9 Mr. Brooks believes the Oil and Gas Act provides, and to
10 be invoiced for those costs as they are incurred.

11 Thank you.

12 EXAMINER DAWSON: Thank you.

13 EXAMINER BROOKS: We need to distinguish
14 between two things in your last request. Well,
15 hopefully it's not your last request.

16 (Laughter.)

17 MS. SHAHEEN: I hope so, too.

18 EXAMINER BROOKS: Your most recent request.
19 The question of payment in advance or payment as billed
20 is different and distinct from the question of
21 participation -- of what wells you can participate in in
22 this sense. If you are under an operating agreement,
23 you can do whatever it provides. So when we talk about
24 a standard form operating agreement, we are talking
25 about a printed form that is published by the AAPL and

1 is not binding on anybody, and you can sign an agreement
2 with any changes you want to. Now, I am not actually
3 familiar with, although I should be, the advance payment
4 provisions of the current standard -- the current AAPL
5 horizontal -- recommended horizontal well form. But
6 whatever it says, it can be modified, anything the
7 parties both agree on.

8 That's a little bit different under a
9 compulsory pooling order because by statute, under a
10 compulsory pooling order, you have to elect to pay in
11 order to get a right to participate. It doesn't say
12 "however." It says "the well," which indicates to me
13 that that's on a well-by-well basis. But it may just
14 reflect the fact that the people who wrote the Oil and
15 Gas Act, the compulsory pooling provisions in 1961,
16 thought there would only be one well on a spacing unit.
17 I don't know.

18 But anyway, I believe that we can and
19 should provide, in a compulsory pooling order, that each
20 well is a separate election. But I do not believe that
21 we even have the authority -- and I stand -- I don't
22 have the Oil and Gas Act here in front of me, so I stand
23 to be corrected on this. I don't believe we even have
24 the authority to allow a person to elect in without -- a
25 pooled party who does not have an agreement with the

1 operator to elect in without paying their -- without
2 advancing their share of the costs. Now, like I say, I
3 have a tendency to confuse where I read something. If
4 that's not in the statute, I stand corrected.

5 Thank you.

6 MS. BENNETT: With that, I would that ask
7 that Case Number 20468 be taken under advisement.

8 EXAMINER DAWSON: Okay. At this time Case
9 Number 20468 will be taken under advisement.

10 Thank you.

11 MS. SHAHEEN: Thank you.

12 (Case Number 20468 concludes, 2:08 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 21st day of May 2019.

21

22

23 MARY C. HANKINS, CCR, RPR
24 Certified Court Reporter
25 New Mexico CCR No. 20
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