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1 (1:47 p.m.)

2 EXAMINER McMILLAN: Okay. Now we're going
3 to start hitting the compulsory poolings. We're going
4 to call Case Number 20520, application of Chisholm
5 Energy Operating.

6 MS. LUCK: This is the application of
7 Chisholm Energy Operating, LLC for compulsory pooling,
8 Lea County, New Mexico, and Kaitlyn Luck on behalf of
9 Chisholm Energy Operating, LLC.

10 EXAMINER McMILLAN: Any other appearances.

11 MS. BRADFUTE: Mr. Examiner, Jennifer
12 Bradfute, with Marathon Oil Permian, LLC, on behalf of
13 Marathon.

14 EXAMINER McMILLAN: Any other appearances?

15 MS. BRADFUTE: Mr. Examiner, I have one
16 witness with me.

17 And, Ms. Examiner, it is just a little bit
18 more than just a notice case, but I'll let Ms. Luck open
19 up.

20 EXAMINER McMILLAN: Okay.

21 MS. LUCK: Mr. Examiner, this case was
22 continued from an earlier docket to perfect notice upon
23 two additional overriding royalty interest owners, and
24 the affidavit you have before you marked as Exhibit E
25 indicates that notice of the hearing was provided to the

1 additional overriding royalty interest owners. And
2 because two of the mailings were not delivered at the
3 time of the hearing, we've also included proof of
4 publication that notice was also published.

5 And so with that, I move the admission of
6 Exhibit E into the record.

7 MS. BRADFUTE: No objection.

8 EXAMINER McMILLAN: Exhibit E may now be
9 accepted as part of the record.

10 (Chisholm Energy Operating, LLC Exhibit E
11 is offered and admitted into evidence.)

12 MS. BRADFUTE: Mr. Examiner, Marathon Oil
13 recently was informed, through the Commission of some
14 title work, that it owns working interests within a
15 descent portion of the proposed spacing units. In fact,
16 it would own an 18.3 percent in each of proposed spacing
17 units. Its interests are of record, so it's not a title
18 dispute. It has interests that are duly recorded
19 documents in the county records. It did not receive a
20 well-proposal letter or AFE from Chisholm about these
21 well proposals. Marathon did notify Chisholm of its
22 title, and Chisholm has refused to recognize Marathon's
23 title interests.

24 We did move for a continuance because our
25 counsel in this case was out of town. She had to go to

1 a hearing in Montana this week. The Division did decide
2 to deny that request for continuance, which is fine,
3 because I was able to come and be present here at the
4 hearing today.

5 But I do have a landman who is here who can
6 testify as to Marathon's title. We're not asking that
7 the Division adjudicate title in any way. What we're
8 asking for is Marathon wants to receive a well-proposal
9 letter, they want to receive an AFE, and we would like
10 the interest to be subject to a pooling order that's
11 issued by the Division.

12 MS. LUCK: Mr. Examiner, Chisholm would
13 object to any evidence that Marathon intends to present
14 of its working interest ownership because it's
15 established precedent that the Division does not have
16 jurisdiction over title issues, and we provided that
17 citation in our response to the opposed motion for
18 continuance that was filed. And because Marathon's only
19 interest here at this hearing is due to a title dispute,
20 we would just ask the Division not proceed with hearing
21 any evidence of that and the record stands as presented
22 at the June 13th hearing.

23 MS. BRADFUTE: And, Mr. Examiner, if I may,
24 there are some well-established cases about -- that have
25 been followed by the Division for as long as I've

1 practiced in front of the Division, maybe longer, which
2 both state that the Division requires a well-proposal
3 letter and an AFE to be submitted to working interest
4 owners. It's part of the good-faith negotiation
5 process, which isn't required by statute, but it is
6 required by Division precedent. And so I've got a copy
7 of both of these orders for the Division's use during
8 this hearing.

9 And I apologize. I don't have enough
10 copies for everybody. I wasn't expecting as many
11 examiners.

12 And Marathon's interest is not an
13 adjudication of title. Marathon's interests are of
14 record. And so here we have the recorded documents
15 verifying Marathon's title, and I have a witness who can
16 verify and discuss those title documents here today.

17 Under the Oil and Gas Act, it clearly
18 provides that any interest, whether it's an undivided
19 interest or an interest in a whole part of a tract, is
20 not committed or pooled voluntarily to the unit that the
21 Division shall pool that interest. And the word "shall"
22 is what is used in the statute. So the Division clearly
23 has jurisdiction to pool uncommitted interests to a
24 spacing unit, which is what Marathon's asking in relief
25 today.

1 EXAMINER BRANCARD: These are unleased
2 interests?

3 MS. BRADFUTE: No. They're leased.
4 They're leased interests that were obtained through
5 recorded assignments in the county records, and they
6 vest Marathon with title to part of the spacing units.
7 Chisholm's position to Marathon informally, which we can
8 get into in testimony, is they believe that one of the
9 assignments issued and executed in 2001 was erroneous
10 somehow and included the wrong depth, but there was no
11 curative assignment ever recorded in the county
12 document. The recorded documents show that Marathon has
13 title.

14 MS. LUCK: Chisholm disputes that title
15 interest. And our exhibits from the hearing on June
16 13th reflect the ownership by tracts, and it's broken
17 down with the percentage of -- percentage of interest
18 that each add up to 100 percent. And so I think that
19 it's clear from reviewing our exhibits from the June
20 13th hearing, specifically Exhibit A3 and the unit recap
21 and the ownership by tract, that Chisholm does dispute
22 the claimed title interests that Marathon is claiming
23 and doesn't believe that this is appropriate for
24 decision by the Division. It's more appropriate for the
25 district court to make any kind of quiet title decision

1 in this case.

2 MS. BRADFUTE: And to the extent that
3 Chisholm is relying on affidavits that were presented at
4 hearing, under Rule 19.15.4.12, Subsection A(1)(e), the
5 Division, at an interested party's request, cannot rely
6 on affidavits. And Marathon is objecting to the
7 reliance on just affidavit testimony, which is hearsay,
8 and let's set the matter for hearing, and we
9 particularly ask that since I didn't get a chance to
10 cross-examine Chisholm's witnesses and Chisholm is
11 opposing any actual evidence being presented of the
12 recording working interest.

13 MS. LUCK: And if I may just respond
14 briefly, turning to A3 from the original hearing, it
15 lists Marathon as an override in this section -- I mean
16 in this spacing unit, and so Marathon was provided
17 notice of the original hearing.

18 And included with our Exhibit C from the
19 original hearing, it reflects that Marathon did receive
20 timely notice of the June 13th hearing but did not enter
21 an appearance of any kind at that time.

22 MS. BRADFUTE: I have a copy of the rules,
23 or you may have the rules.

24 So if you turn to page 8 of what I've
25 provided you or within your own rule book, it's going to

1 be Rule 19.15.4.13, Subsection B, the rule concerning
2 prehearing statements. This rule speaks as to when a
3 prehearing statement has to be filed in order to present
4 testimony at a hearing, and it talks about a prehearing
5 statement needs to be filed at least four business days
6 in advance of a scheduled hearing. That's exactly what
7 we have today. If you look at the hearing announcement
8 today, both of Chisholm's cases at issue are listed to
9 be heard today, and there is a disclaimer on top of that
10 hearing docket which states in order to present anything
11 at the hearing in the listed cases, you have to file a
12 prehearing statement at least four business days or no
13 later than a Thursday.

14 That's exactly what Marathon has done here.
15 We've complied with the rules. We filed a prehearing
16 statement last Thursday stating our objections, listing
17 our witness. Chisholm has had more than adequate
18 notice. This case was continued. And in the past, I
19 have not seen the Division deny testimony and evidence
20 when a party has timely filed a prehearing statement.

21 If any further rules are needed to support
22 Marathon's position, if you look at Rule 19.15.4.10,
23 Subsection C in the document that -- it's page 4 -- on
24 page 4 in the documents that I've provided you, the
25 hearing examiner is vested with discretion to take

1 testimony and hear testimony and take it under
2 consideration. So in the past, what has typically
3 happened is there's been an evaluation as to whether or
4 not the testimony would be helpful to the Division's
5 analysis as to whether or not the interests need to be
6 compulsory pooled, and the hearing examiner has been
7 given discretion as to whether or not to hear the
8 testimony and hear the evidence.

9 Here, we timely complied with all the
10 prehearing statement requirements. We gave notice to
11 Chisholm. We've reached out to Chisholm multiple times
12 telling them about our title. They're saying they think
13 there is an error in a recorded document. They're not
14 presenting any other title evidence to us. And it's
15 kind of outlandish for Chisholm to say, "No. You don't
16 get to present anything before your interests" --

17 EXAMINER BRANCARD: Well, the whole -- the
18 whole logic behind a compulsory pooling hearing is that
19 those people who have interests are given an opportunity
20 to participate. And it's -- it's correct that, you
21 know, we're not really a title-deciding agency, although
22 on the other hand, I mean, our rule, as was pointed out,
23 says that notice is given to any interest whose --
24 interest is evidenced by a written conveyance document
25 either of record or known to the Applicant at the time

1 of the application. And so I think it's difficult to go
2 on without notice to the proper parties in this case and
3 have an opportunity to be heard.

4 Would the appearance of Marathon in this
5 case satisfy Marathon's request or -- I mean -- I mean,
6 you're not objecting to the compulsory pooling? You
7 just want to have --

8 MS. BRADFUTE: That is correct.

9 EXAMINER BRANCARD: -- the Applicant give
10 you an opportunity to -- to respond to an offer after
11 the pooling order is issued; is that correct?

12 MS. BRADFUTE: Well, we would like a
13 well-proposal letter and an AFE and the opportunity to
14 evaluate the proposal and the interest to be subject to
15 a pooling hearing. That could happen after the pooling
16 order is entered. We wouldn't have the same amount of
17 time afforded to the other interest owners, and Chisholm
18 has not tried to engage in any sort of voluntary pooling
19 of the interests. And those are protections that are
20 typically afforded to working interest owners in almost
21 every other case.

22 EXAMINER BRANCARD: But our pooling order
23 normally requires each interest pooled to be given an
24 opportunity to voluntarily sign off.

25 EXAMINER McMILLAN: Yes.

1 EXAMINER BRANCARD: Right.

2 MS. BRADFUTE: Yes.

3 EXAMINER BRANCARD: So you would get that
4 after a pooling order.

5 MS. BRADFUTE: Yes. You would get a
6 proposal under the pooling order, and instead of getting
7 the 30 days before something goes to hearing like
8 everybody else, that gets cut off. So we don't
9 necessarily need delay in this case. We just want a
10 reasonable time to evaluate the proposal so we can
11 decide whether or not we want to participate or not.
12 And whatever the Division deems reasonable, Marathon
13 will be okay with.

14 But in every other -- if you look at the
15 two orders in front of you, if you look at the order
16 issued in Order Numbers R-13165 and R-13166, there are
17 highlighted portions in both of these orders. In one
18 case, the Division dismissed the application because an
19 AFE and a well proposal were not sent before the hearing
20 to a working interest owner. In the other case, the
21 case was continued for a period of 30 days so that a
22 well proposal and AFE could be sent to the interested
23 party to evaluate. And that's the binding precedent
24 that's been followed by the Division historically. And
25 so it would require a 30-day period to evaluate.

1 Marathon doesn't intend to challenge operatorship here.

2 EXAMINER BRANCARD: So, Mr. Examiner, we
3 can either, I think, go forward with hearing the
4 testimony and sort of decide whether Marathon should be
5 included in the order, or I think you can simply
6 continue the case for a month to have the notice and the
7 issue be resolved during that time frame.

8 MS. LUCK: And if I may, the motion to
9 continue was denied prior to hearing, and so we would
10 ask that the case not be continued any further.

11 MS. BRADFUTE: In that case, I would object
12 to the submission by affidavit, and pursuant to the
13 Division's rules, we ask that this matter be set with a
14 hearing on -- including the Applicant's own witnesses so
15 that they may be subject to cross-examination, and
16 that's under the regulations.

17 EXAMINER BRANCARD: I mean, if you think
18 you've already decided the issue, you can go forward on
19 this.

20 EXAMINER McMILLAN: I haven't.

21 EXAMINER BRANCARD: I mean, this issue can
22 be appealed de novo to the Commission, so these issues
23 can be raised in that situation, too.

24 EXAMINER McMILLAN: I think we ought to
25 just let them -- Marathon present their expert witness.

1 EXAMINER BRANCARD: Okay.

2 EXAMINER McMILLAN: Okay. We're going to
3 allow Marathon's expert witness.

4 MS. BRADFUTE: Thank you.

5 So I have one witness with me here today.

6 EXAMINER McMILLAN: Okay. Get sworn in.

7 TRAVIS PREWETT,

8 after having been first duly sworn under oath, was
9 questioned and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. BRADFUTE:

12 Q. Good afternoon.

13 A. Hello.

14 Q. Could you please state your full name for the
15 record?

16 A. Yes. My name is Travis Prewett.

17 Q. And, Mr. Prewett, who do you work for?

18 A. I work for Marathon Oil Permian, LLC.

19 Q. And what is your position at Marathon?

20 A. I am a land professional.

21 Q. Okay. And what are your responsibilities as a
22 land professional at Marathon?

23 A. I'm a subsurface land professional, and I get
24 the well set up to be drilled, and I work with other
25 operators on different trades. And I come here before

1 this committee and present our force pooling.

2 Q. And do you review title?

3 A. Yes, I do.

4 Q. Okay. Have you previously testified before the
5 Division?

6 A. Yes, I have.

7 Q. And have you been qualified as an expert in
8 petroleum land matters?

9 A. Yes, I have.

10 Q. And were your credentials accepted and made
11 part of the record?

12 A. Yes, they were.

13 Q. Does your area of responsibility at Marathon
14 include the area of Lea County in southeastern New
15 Mexico?

16 A. Yes.

17 Q. And are you familiar with the applications that
18 have been filed by Chisholm in Case Numbers 20520 and
19 20521?

20 A. I am.

21 Q. And are you familiar with the status of
22 Marathon's interest within the lands that are the
23 subject matter of those applications?

24 A. Yes, I am.

25 MS. BRADFUTE: I'd like to tender

1 Mr. Prewett as an expert witness in petroleum land
2 matters.

3 EXAMINER McMILLAN: Any objections?

4 MS. LUCK: No objection.

5 EXAMINER McMILLAN: So qualified.

6 MS. BRADFUTE: Thank you.

7 Q. (BY MS BRADFUTE) Could you please turn to the
8 exhibit packet in front of you?

9 A. (Witness complies.)

10 Q. And could you please explain what this diagram
11 shows to the hearing examiners?

12 A. Yes. This is a plat review showing the -- the
13 two wells that were proposed by Chisholm. This is going
14 to be the east half of Section 14 and the northeast
15 quarter of Section 23. Marathon's interest is in the
16 north half of Section 14, so it would be the northeast
17 quarter specifically.

18 Q. And so here shaded on this diagram, there is
19 shaded in a rectangle space on Section 14, correct?

20 A. Yes.

21 Q. And that is because we're focused on the
22 interests located within Section 14, right?

23 A. That's correct.

24 Q. Could you please explain what Marathon's
25 interests are within Section 14?

1 A. Yes. We have a 55 percent working interest
2 from the surface to 12,808 feet in the north half of
3 Section 14.

4 Q. Okay. Could you please turn to Exhibit 2 in
5 the packet in front of you?

6 A. (Witness complies.)

7 Q. Does Exhibit 2 contain an affidavit executed by
8 Beau Sullivan, who is a landman at Chisholm?

9 A. Yes.

10 Q. And could you please look at paragraph 13 in
11 Mr. Sullivan's affidavit, which is located --

12 MS. BRADFUTE: If everybody looks, there
13 are handwritten page numbers on the bottom of each page
14 in the exhibit packet, so it's handwritten page number 3
15 of the exhibit packet.

16 Q. (BY MS. BRADFUTE) Does this paragraph state
17 that Chisholm prepared an ownership exhibit in order to
18 show the interest owners and percentage of ownership
19 within the spacing unit?

20 A. Yes.

21 Q. Okay. And could you please turn a couple of
22 pages to page 7 and it's a document entitled "Ownership
23 By Tract." I believe this is a three-page document. If
24 you could skim through this document and let me know if
25 you see Marathon Oil Permian, LLC or Marathon Oil

1 Company anywhere listed on this document, I'd appreciate
2 it.

3 A. No.

4 Q. Okay. So Marathon's interests are not
5 located -- they're not listed within this exhibit; is
6 that right?

7 A. That is correct.

8 Q. Okay. I'd like to turn back to Mr. Sullivan's
9 affidavit and focus on page 4 of the exhibit packet and
10 look at paragraph 14. Does paragraph 14 of this
11 affidavit specifically state that Chisholm is only
12 seeking to force pool the interests listed on the
13 ownership exhibit that we just looked at?

14 A. That is correct.

15 Q. So based on these statements contained in
16 Mr. Sullivan's affidavit, is it your opinion that
17 Chisholm is not seeking to force pool Marathon's
18 interests in its application?

19 A. Yes.

20 Q. Could you please look at paragraphs 16 and 17
21 within the affidavit? Do these paragraphs state that
22 Chisholm sent well proposals and AFEs to the working
23 interest owners located in the proposed spacing units?

24 A. Yes.

25 Q. Did Marathon receive a well-proposal letter

1 from Chisholm for either of the proposed wells?

2 A. No, we did not.

3 (Examiner Brancard exits the room; Examiner
4 Sita enters the room, 2:08 p.m.)

5 Q. Did Marathon receive AFEs?

6 A. No, we have not.

7 Q. Has Marathon contacted Chisholm to inform it
8 about its working interests within the north half of
9 Section 14?

10 A. Yes, we have. We had a letter that was sent to
11 them on July 12th and also on August 7th.

12 Q. And what was Chisholm's response?

13 A. Chisholm did not recognize our interests.

14 Q. Does Marathon want to receive a well-proposal
15 letter and AFE for the proposed operation?

16 A. Yes.

17 Q. Why? Why is that?

18 A. We just would like the opportunity to evaluate
19 the well to see if we want to participate in it.

20 Q. Could you please turn to Exhibit 3, and could
21 you please explain what this document is to the hearing
22 examiner?

23 A. Yes. This is the timeline of communication
24 just going through the recent communications that we've
25 had with Mewbourne [sic] back and forth. Starting out

1 here, on July 12th, there is that letter that I
2 mentioned. It was from our outside counsel to Chisholm
3 explaining to them what our -- what our interest was in
4 these lands.

5 They came back with a letter on July 23rd
6 basically telling us that they didn't interpret that the
7 same way. They said that there was an incomplete depth
8 limitation in the documents we provided them.

9 And then we sent them another letter on
10 August 7th, and it was just confirming what our interest
11 was, and it was also just bringing up, you know, the
12 notion of wanting to discuss some sort of commercial
13 resolution to this. And then following that, there were
14 a couple of phone calls back and forth between
15 Marathon's land department and Chisholm's land
16 department where we were discussing different
17 opportunities in some sort of fashion that we could
18 resolve this.

19 **Q. Is it your opinion that Marathon has properly**
20 **informed Chisholm of its working interests within the**
21 **north half of Section 14?**

22 **A. Yes.**

23 **Q. Okay. Could you please turn to Exhibit 4 in**
24 **the packet in front of you? Is it Exhibit 4 -- does**
25 **Exhibit 4 contain the July 12th letter that you just**

1 discussed informing Chisholm about Marathon's interest?

2 A. Yes.

3 Q. Okay. And could you please turn to Exhibit 5
4 within the packet? Does Exhibit 5 contain the August
5 7th letter further explaining Marathon's interest to
6 Chisholm within the proposed spacing units?

7 A. Yes.

8 Q. Could you please turn to Exhibit 6? I now want
9 to talk briefly about the record -- record-title basis
10 for Marathon's working interest within this section.
11 Could you please briefly explain in broad strokes what
12 Exhibit 6 contains for the hearing examiners?

13 A. Okay. So this is an exhibit that just
14 identifies the few instruments that are the basis of our
15 title. Just to hit -- hit this real quick, there is a
16 state lease that Phillips Petroleum had acquired and --
17 or was a lessee of. And Phillips assigned to
18 Marathon -- excuse me -- to Marathon's predecessor,
19 Southwestern, 55 percent interest -- all right, title
20 and interest to surface down to 12,808 feet.

21 Subsequent to that, Southwestern then term
22 assigned what they had just acquired from Phillips,
23 which was at 55 percent with that depth limitation.
24 They term assigned that to another company called
25 Nearburg. And yeah, that's kind of where we are right

1 now, and this term assignment did expire.

2 Q. Okay. So I just want to break this down a
3 little bit. So the interest -- the working interests
4 within the north half of Section 14 are created under a
5 state lease, correct?

6 A. That's correct.

7 Q. And that state lease number is E1923; is that
8 right?

9 A. Yes. That is correct.

10 Q. And that state lease was issued to Phillips
11 Petroleum Company?

12 A. Yes.

13 Q. Is that state lease still in full force and
14 effect?

15 A. It is.

16 Q. Okay. So there have been no expirations of the
17 mineral interests under that lease, right?

18 A. That is correct.

19 Q. Okay. So now it looks like the next title
20 document in the chain of title is a partial assignment
21 of interests that was executed on June 4th, 2001; is
22 that right?

23 A. Yes.

24 Q. And Phillips, it looks like they assigned 55
25 percent of their right, title and interest from the

1 surface to 12,808 feet to Southwestern; is that right?

2 A. Yes.

3 Q. Okay. And that assignment -- was that
4 assignment recorded?

5 A. It was.

6 Q. Okay. So it's of record in Lea County?

7 A. That's correct.

8 Q. Okay. So the next event in title looks like a
9 term assignment that happened June 1st, 2004; is that
10 right?

11 A. That is correct.

12 Q. Could you briefly explain just really broadly
13 what a term assignment is to the hearing examiners?

14 A. Right. So Southwestern was giving Nearburg an
15 opportunity to drill some wells to earn some acreage and
16 some interests. And so Southwestern had termed assigned
17 what they had acquired so that Nearburg could drill
18 these wells for them, and they gave them a two-year -- a
19 two-year primary term. And Nearburg did drill a well in
20 there, but there is a continuous drilling, so you have
21 to continuously drill. And once you're done drilling,
22 then that term assignment is going to expire.

23 Q. Okay. And it looks like here, if I jump kind
24 of to the end of the outline, in 2016, all production
25 from -- from the area under the term assignment ceased

1 for all drilling within the term-assigned depth, surface
2 to 12,808, stopped and the term assignment expired,
3 right?

4 A. That is correct.

5 Q. And Marathon's predecessor in interest is
6 Southwest Energy Production Company, right?

7 A. Yes.

8 Q. Okay. And Southwest Energy Production Company
9 then, I assume, assigned its interest to other entities;
10 is that right?

11 A. Yes.

12 Q. Okay. Could you briefly explain how that
13 assignment history worked? Or how did the interest get
14 into Marathon?

15 A. Okay. So Marathon acquired our interest from
16 Black Mountain, and Black Mountain had acquired it
17 through Legacy, and there's another party between them
18 and Southwestern. But that's where the chain of title
19 went. So it went from Southwestern to another company
20 that escapes my mind and then to a company called Legacy
21 and then to Black Mountain to Marathon.

22 Q. And Black Mountain specifically assigned the
23 interest to Marathon within the north half of Section
24 14?

25 A. Yes. Yes. That's correct. It was 176 net

1 acres, which is 55 percent of 320 acres.

2 Q. And that assignment was recorded and made of
3 record in Lea County?

4 A. Yes.

5 Q. So I now want to look at the attachments to
6 this outline, if you could flip to Attachment A. Does
7 Attachment A contain a copy of the State Land Office
8 lease, Lease Number E1923, covering the north half of
9 Section 14?

10 A. Yes.

11 Q. And if you could please flip to Tab B, does Tab
12 B contain the partial assignment of the oil and gas
13 lease from Phillips to Southwestern, which assigned 55
14 percent of Phillips' interest from the surface down to
15 the depth of 12,808 feet?

16 A. Yeah. So you can see here on Exhibit A it
17 specifically lists the depth limitations, from surface
18 to 12,808 feet, and it's 55 percent.

19 Q. Okay. And Exhibit A, the second page of this
20 document, has a very expressed depth limitation, right?

21 A. Yes.

22 Q. So there is no question about that.

23 If you could please turn to Exhibit C, does
24 Exhibit C contain a copy of the term assignment from
25 Southwestern to Nearburg?

1 A. Yes, it does. In the term assignment, you'll
2 see it has that two-year term in there where Nearburg
3 had drilled the well down to -- it was -- it was -- I
4 think it was TD'd at somewhere like 13,450 feet, but its
5 producing interval was 13,050 feet, right? So it was
6 below our 12,808 feet. So this -- you know, this term
7 assignment would have been expired with or without that.
8 But that well was not drilled into this acreage that was
9 term assigned.

10 **Q. Yeah.**

11 **And did Southwestern own any rights in**
12 **those deeper depths below 12,808 feet?**

13 A. No. No. So Southwestern only owned that --
14 that -- that surface to 12,808 feet, so they couldn't
15 have assigned anything deeper than that.

16 **Q. Because under a term assignment, you can only**
17 **give rights to what you own, right?**

18 A. That's correct.

19 **Q. And so no well was drilled into those shallower**
20 **depths by Nearburg from the surface to 12,808 feet?**

21 A. That's correct.

22 **Q. If you could please turn to Exhibit D, does**
23 **Exhibit D contain -- is Exhibit D a printout from the**
24 **Oil Conservation Division's website listing the wells**
25 **that are producing from Section 14?**

1 A. Yes.

2 Q. And I want to focus on the Outland 14 State 1
3 well. Do you see that well?

4 A. Yes.

5 Q. It looks like that well was spud in December of
6 2004, correct?

7 A. That is correct.

8 Q. Okay. And is this the well that you were
9 talking about that was drilled below the depths of what
10 Southwestern owned?

11 A. Yes.

12 Q. Okay. So why couldn't this well have
13 perpetuated the term assignment? Was it drilled too
14 deep?

15 A. Right. Right. Yeah. So the acreage that
16 Southwestern owned -- the interest they owned, not the
17 acreage, is set aside. It's 55 percent of a shallower
18 depth. And so that's not going to be part of the 45
19 percent in the deeper depths. It's a different
20 ownership.

21 Q. Okay. And so if you look here, if you flip to
22 the next page of this attachment, this is the C-102 for
23 that deep Morrow well, correct?

24 A. Yes.

25 Q. And it shows that it was -- the pool that it's

1 developing is the Wilson Morrow Pool, right?

2 A. That is correct.

3 Q. If you flip to the next page, this is the Form
4 C-105 for the Outland 14 State well, correct?

5 A. That is correct.

6 Q. And this document in box 26 states that the
7 well was drilled below 13,000 feet, right?

8 A. Yes.

9 Q. Okay. And Marathon did, in fact, obtain an
10 statement from its predecessors in interest to the
11 working interest in the north half of Section 14, right?

12 A. That is correct.

13 Q. And that assignment is filed of record, right?

14 A. Yes.

15 Q. If you could flip to Exhibit 7, is this a copy
16 of that assignment?

17 A. That is correct.

18 Q. And if you could please turn to page 42 of the
19 exhibit packet, does page 42 contain the exhibit for
20 this assignment between Black Mountain and Marathon?

21 A. Yes.

22 Q. And it's the exhibit of leases included in the
23 assignment, right?

24 A. Yes.

25 Q. If you turn the page to page 43, there is a

1 highlighted row right there, correct?

2 A. Yes.

3 Q. And I apologize. The print is very small on
4 these exhibits.

5 That is the interest within the north half
6 of Section 14, correct --

7 A. Yes.

8 Q. -- specifically listed in the assignment?

9 A. That's correct.

10 Q. And when was this assignment recorded and made
11 of record?

12 A. It's June 8th of 2017.

13 Q. In your opinion, has Marathon established that
14 it has title to working interests located within Section
15 14?

16 A. Yes.

17 Q. And does Marathon request that those interests
18 be force pooled?

19 A. Yes.

20 Q. Before the interests are force pooled, does
21 Marathon request had Chisholm send it a well proposal
22 and AFE?

23 A. Yes.

24 Q. Does Marathon further request that Chisholm
25 present it with a proposed joint operating agreement?

1 A. Yes.

2 **Q. Were Exhibits 1 through 7 prepared by you or**
3 **compiled under your supervision and direction or from**
4 **company business records?**

5 A. Yes.

6 MS. BRADFUTE: I'd like to tender Exhibits
7 1 through 7 into the record.

8 MS. LUCK: We have no objection.

9 EXAMINER McMILLAN: Exhibits 1 through 7
10 may now be accepted as part of the record.

11 (Marathon Oil Permian, LLC Exhibit Numbers
12 1 through 7 are offered and admitted into
13 evidence.)

14 CROSS-EXAMINATION

15 BY MR. FELDEWERT:

16 **Q. Mr. Prewett, were you here when this matter was**
17 **called before the Division on June 13?**

18 A. No.

19 **Q. Why?**

20 A. Well, we were not notified of this as being a
21 working interest owner. We, in fact --

22 **Q. You were notified that you were an overriding**
23 **royalty interest owner?**

24 A. Well, no, I don't even think --

25 MS. BRADFUTE: Yes, you were.

1 THE WITNESS: We were. Okay.

2 So --

3 Q. (BY MR. FELDEWERT) You don't know?

4 A. No. That's correct.

5 Q. That's correct.

6 MR. FELDEWERT: Let the witness answer.

7 Okay?

8 THE WITNESS: I knew that we had -- it was
9 a notification.

10 Q. (BY MR. FELDEWERT) Okay. And you got notice of
11 the hearing.

12 A. Right. So --

13 Q. And you got notice of the hearing that you were
14 an overriding royalty interest owner, and you chose not
15 to appear, correct? You didn't appear?

16 A. That -- that is correct.

17 Q. And now you've also looked at Mr. Sullivan's
18 affidavit here today in which he demonstrates or states
19 to the Commission back in June that Marathon did not own
20 a working interest in the spacing unit, correct?

21 A. Could you repeat that?

22 Q. Mr. Sullivan's affidavit that you reviewed here
23 today was presented in June?

24 A. Yes.

25 Q. And in that affidavit, he indicates that

1 **Marathon does not own a working interest in the spacing**
2 **unit, correct?**

3 A. He says we do not own the working interest.

4 **Q. Okay. And now you are here today because you**
5 **dispute that?**

6 A. That's correct.

7 **Q. And you sent the information that you reviewed**
8 **here today to Chisholm?**

9 A. Yes.

10 **Q. Okay. And they've gotten back to you?**

11 A. They are -- the ball's in their court right
12 now.

13 **Q. It came back to you and said they disagree?**

14 A. Yes. That's correct.

15 **Q. Correct?**

16 A. Yes.

17 **Q. So we have a dispute over title?**

18 A. Yes.

19 **Q. Okay. Has the company chosen to file an action**
20 **in district court to clear this dispute over title or to**
21 **address this title dispute?**

22 A. No.

23 **Q. Why?**

24 A. Well, we just recently were able to get our
25 title back on this, and then we were never notified

1 as a -- we were never sent a well proposal or an AFE.

2 Q. Because Chisholm's records show that you don't
3 have an interest?

4 A. Right.

5 Q. And there is a disagreement there, I assume?
6 There is still a disagreement with that?

7 A. Yes.

8 Q. You think you do?

9 A. Yes. That's why we're here today.

10 Q. Are you asking this Division here today to
11 decide whether you have title to this acreage?

12 A. No. We're here because we want to be force
13 pooled in the proposed wells.

14 Q. But we have not -- we are not -- we have not --
15 we have not -- we're not filing an application to force
16 pool you because we don't show you as an interest in
17 this acreage, correct?

18 A. Correct.

19 Q. And you're aware then that we're not pooling
20 Marathon because our records indicate that you do not
21 own an interest in this acreage?

22 A. Apparently.

23 Q. Are you going to go to district court and make
24 your presentation like you did today, to have a district
25 court judge determine whether you have an interest in

1 **this acreage?**

2 A. That's not my decision today. I'm not trying
3 to do that right now. That's not --

4 **Q. You're not asking the Division to decide your**
5 **interest today?**

6 A. No.

7 **Q. Okay. That's all the questions I've got.**

8 MS. BRADFUTE: If I may redirect?

9 EXAMINER McMILLAN: Sure.

10 REDIRECT EXAMINATION

11 BY MS. BRADFUTE:

12 **Q. Mr. Prewett, has Chisholm provided Marathon**
13 **with any recorded title documents that dispute**
14 **Marathon's ownership in Section 14?**

15 A. No. They -- well, they sent us a term
16 assignment a long time ago and --

17 **Q. And is that the same term assignment we looked**
18 **at today?**

19 A. It is.

20 **Q. Is that the only --**

21 A. That's the only thing that we've received from
22 them. And we have since completed our title research on
23 this, and we've -- and we've revealed the term
24 assignment that they had not provided us, and the term
25 assignment clearly has a depth --

1 Q. Do you mean the partial assignment with the --

2 A. Yes -- excuse me -- the partial assignment,
3 also the joint operating agreement with the -- with that
4 same exact depth limitation.

5 Q. So let's back up. Are you saying that there is
6 a joint operating agreement with the exact same depth
7 limitation as the partial term assignment?

8 A. That is correct. It's dated May 11th, and it's
9 called the "Cornerstone" -- or the "Corner Pocket Joint
10 Operating Agreement."

11 Q. Okay. And Chisholm has not presented Marathon
12 with any documents -- any title documents, any recorded
13 documents that show that somebody else has title to the
14 18 percent working interest?

15 MR. FELDEWERT: You mean other than
16 Mr. Sullivan's affidavit which was presented in June?

17 MR. BRADFUTE: Well, let's let your
18 witnesses answer the questions, Mike.

19 MR. FELDEWERT: I'm just asking.
20 Mr. Sullivan presented an affidavit in June that
21 included --

22 MS. BRADFUTE: Evidence which is pure
23 hearsay, and he's not here to be questioned. But that's
24 not the point.

25 Q. (BY MS. BRADFUTE) Have we received any

1 documents that state that title is different?

2 A. No.

3 Q. And so all of the record documents that have
4 been presented in this case show that Marathon owns an
5 interest within Section 14, correct?

6 A. Yes.

7 Q. And Marathon is simply asking that this working
8 interest be subject to the forced pooling order, right?

9 A. That's correct.

10 Q. And it's asking that it be sent a well-proposal
11 letter and an AFE pursuant to Order R-13165 and Order
12 R-131 -- I lost the order number -- pursuant to the two
13 orders that were distributed earlier in the hearing; is
14 that correct?

15 A. Yes. That is correct.

16 Q. And in your opinion, is there a difference
17 between an overriding royalty interest and an 18 percent
18 working interest?

19 A. Yes.

20 Q. Okay. That concludes my questions.

21 EXAMINER McMILLAN: Okay. So basically it
22 sounds to me like Marathon is asking the Division to
23 essentially cure a title.

24 MS. BRADFUTE: No, we are not.

25 EXAMINER McMILLAN: That's how I'm seeing

1 it.

2 MS. BRADFUTE: We are -- there is no
3 cure -- there is no need to cure the title. There is no
4 evidence of other title.

5 MR. FELDEWERT: Object. There is evidence
6 of other title in Mr. Sullivan's affidavit. He says in
7 his affidavit that their records show that they don't
8 have a title. And you're right. This Division is not
9 here to determine this title dispute.

10 MS. BRADFUTE: And we're not asking any
11 determination of title.

12 EXAMINER McMILLAN: So if we go and we
13 issue an order, whatever it be, you could still have --
14 if you disagree with it, you can still -- you can still
15 take it to the Commission. And if you don't like what
16 the Commission says, you can go to district court,
17 right?

18 MS. BRADFUTE: Yes, either way. We can
19 go -- but Marathon has an uncommitted interest in
20 Section 14. There is no evidence other than a hearsay
21 statement from a landman that's backed up by no
22 documentation, and we're asking that all uncommitted
23 interests, whatever they may be, be subject to the
24 forced pooling order, which is typically what an order
25 states.

1 EXAMINER McMILLAN: Okay.

2 (Consultation with counsel off the record.)

3 EXAMINER McMILLAN: Okay. So we're done
4 with -- we're going to take --

5 MR. BRUCE: Mr. Examiner, just briefly, I
6 entered an appearance for ConocoPhillips Company in the
7 last go-around. I wanted to enter an appearance again.
8 That's all. I have nothing to add.

9 EXAMINER McMILLAN: Okay. The Oil
10 Conservation Commission is going to take Case Numbers
11 20520 and 20521 under advisement.

12 MR. FELDEWERT: Thank you.

13 MS. LUCK: Thank you.

14 (Case Numbers 20520 and 20521 conclude,
15 2:29 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 13th day of September 2019.

21

22

23 MARY C. HANKINS, CCR, RPR
24 Certified Court Reporter
New Mexico CCR No. 20
Date of CCR Expiration: 12/31/2019
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