

STATE OF NEW MEXICO
ENERGY, MINERALS, AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION DIVISION FOR
THE PURPOSE OF CONSIDERING:

CASE NOS: 21507, 21508

APPLICATION OF ASCENT ENERGY LLC
FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS

EXAMINER HEARING

JANUARY 21, 2021

SANTA FE, NEW MEXICO

This matter came on for virtual hearing before
the New Mexico Oil Conservation Division, HEARING OFFICER
BILL BRANCARD and TECHNICAL EXAMINER KURT SIMMONS on
Thursday, January 21, 2021, through the Webex Platform.

Reported by: Irene Delgado, NMCCR 253
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A P P E A R A N C E S

For the Applicant:

JAMES BRUCE
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For Marathon Oil Permian and Phillip White:

DEANA BENNETT
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I N D E X

CASE CALLED

REPORTER CERTIFICATE 18

W I T N E S S E S

LEE ZINK
Direct by Mr. Bruce 09

WILLIAM METZ
Direct by Mr. Bruce 14

E X H I B I T I N D E X

Admitted

Exhibits 1 through 6 and all Attachments 17

1 HEARING OFFICER BRANCARD: And then now we have
2 two contested cases to move forward with. I don't know if
3 they are combined or not, Ascent Energy, 21507, compulsory
4 pooling, the Silver Fed Well. Mr. Bruce, is that combined
5 with Case 21508?

6 MR. BRUCE: That is correct.

7 HEARING OFFICER BRANCARD: Okay. Are you
8 prepared to go forward with these cases today?

9 MR. BRUCE: Yes, I am.

10 HEARING OFFICER BRANCARD: Okay. How -- well,
11 how many witnesses do you have and how long would it take?

12 MR. BRUCE: I have two witnesses. Again, it's
13 going to be mainly by affidavit and with a few follow-up
14 questions by me.

15 HEARING OFFICER BRANCARD: Okay. Before I ask
16 for appearances, I will note that for this examiner hearing
17 Kurt Simmons will be the technical examiner in this case,
18 and I may have some appearances.

19 We have Phillip White and Marathon listed as
20 parties. Do we have appearances?

21 MS. BENNETT: Yes. Thank you, Mr. Examiner.
22 This is Deana Bennett, and I'm appearing on behalf of
23 Marathon Oil Permian LLC, and Marathon Oil Permian LLC does
24 not object to these cases, but has entered its appearance to
25 preserve its rights. I'm also entering my appearance on

1 behalf of Mr. Phillip White.

2 Mr. White did object to these cases, and that is
3 the reason for the contested hearing today. And if it
4 pleases the examiner, I have a short statement I would like
5 to enter into the record on behalf of Mr. White that will
6 expedite this hearing quite a bit.

7 HEARING OFFICER BRANCARD: Okay. And I'm hearing
8 you don't have witnesses?

9 MS. BENNETT: The only witness I would have if I
10 weren't going to make my statement would be Mr. White, and
11 he is on the phone with us today. But as you will see from
12 my statement, there will be no need to cross-examine
13 Mr. White or enter any further testimony from Mr. White.

14 HEARING OFFICER BRANCARD: Are you proposing to
15 have the statement done right at the beginning as part of an
16 opening statement?

17 MS. BENNETT: Yes, if I may. I think it would
18 be -- it will expedite and streamline the hearing process,
19 and I'm not intending to take Mr. Bruce's opening statement
20 away from him or any time away from Mr. Bruce, just simply
21 this is a prefatory remark that will, as I mentioned,
22 streamline the whole process, which is why I would like to
23 make the statement before we begin with the hearing.

24 HEARING OFFICER BRANCARD: Okay. Are there any
25 other appearances, any other parties to these matters?

1 (No audible response.)

2 HEARING OFFICER BRANCARD: And we are speaking of
3 Cases 21507 and 21508, applications of Ascent Energy.

4 (No audible response.)

5 HEARING OFFICER BRANCARD: Hearing none,
6 Mr. Bruce, I propose that you be given an opportunity to
7 give a brief opening statement and then we can hear from Ms.
8 Bennett. Would that be okay with you? And then you will be
9 able to put on your witnesses and testimony after that.

10 Mr. Bruce?

11 MR. BRUCE: Yes, I'm here. Just very briefly,
12 Mr. Examiner, these are two cases, they each seek to force
13 pool the W/2 W/2 of Section 4 and W/2 W/2 of Section -- or
14 excuse me -- the E/2 W/2 of Section 4 and the E/2 W/2 of
15 Section 9 of 20 South, 33 East.

16 One, the first case is for the Bone Spring, and
17 the second case is for the Wolfcamp. Ownership is the same
18 as to all depths.

19 We think it's a simple straightforward pooling
20 case. The parties have not reached agreement, and I would
21 leave any other remarks just toward the end for a verbal
22 close. Thank you.

23 HEARING OFFICER BRANCARD: Thank you. Ms.
24 Bennett, and I believe you are going to be speaking on
25 behalf of Phillip White; is that correct?

1 MS. BENNETT: That's correct. Mr. White
2 appreciates the Division's time and willingness to hear his
3 objection to Ascent's pooling cases in these two matters.
4 At this time, however, Mr. White has decided to withdraw his
5 objections to the Ascent pooling cases for the following
6 reasons:

7 In preparing for these cases, Mr. White learned
8 that Ascent intends to drill a well in the W/2 W/2 of
9 Sections 4 and 9 which will only be 66 feet from the quarter
10 section line, and only 66 feet from Mr. White's lease
11 acreage in the E/2 W/2 of the Section 4.

12 The well Ascent is proposing is the Silver Fed
13 502H well and will be dedicated to the W/2 W/2 unit in which
14 Mr. White has no interest, and therefore he will not be
15 participating and will not receive any benefits from the
16 well that's only 66 feet from his leased acreage.

17 The well is the subject of Case Number 21505, and
18 an order was recently issued for that in R-21546. Mr. White
19 has real concerns that a well drilled only 66 feet from his
20 acreage will result in drainage of his minerals from his
21 lease acreage which will negatively impact his correlatives
22 rights.

23 He is also concerned because the well backflow
24 does not comply with the Division's setback requirements.
25 Mr. White is concerned that Ascent's development plans will

1 result to him being subject to BLM and the ONRR for
2 compensatory royalty from his leased acreage.

3 Finally Mr. White believes that Ascent's
4 development plans for the Second Bone Spring, which is three
5 wells per half section or six wells per section is
6 unreasonable and unnecessary. In his opinion the state
7 thinks it should be four wells per section or two wells per
8 section.

9 Although Mr. White has these objections to
10 Ascent's development plans, he is withdrawing his objection
11 to these cases because he intends to relinquish his lease as
12 he has no other option at this point.

13 Given that Mr. White is no longer objecting to
14 these cases. Mr. White does not object to these cases going
15 forward today by affidavit. As I mentioned, he intends to
16 relinquish his lease. Thank you very much.

17 HEARING OFFICER BRANCARD: Thank you. And I --
18 am I correct that you earlier stated that Marathon has no
19 objection to these cases moving forward by affidavit?

20 MS. BENNETT: That's right.

21 HEARING OFFICER BRANCARD: Thank you. Mr. Bruce,
22 you can move ahead by affidavit, but I guess my only
23 question, I'm sure the examiner has the same question is,
24 have you applied for a non-standard location for the well?

25 MR. BRUCE: No. I've applied for some others and

1 this one slipped my mind. We will be filing for that
2 non-standard location.

3 HEARING OFFICER BRANCARD: Okay. So if the
4 Division approves this unit, you can't go forward until the
5 non-standard location is approved; is that correct?

6 MR. BRUCE: That is correct.

7 HEARING OFFICER BRANCARD: I'm looking at the
8 examiner and see if he concurs with this analysis.

9 MR. SIMMONS: They may have to relocate the well
10 if there is an objection, and there is the non-standard
11 location is not approved, they will have to move the well to
12 a standard location. If they are aware of that and willing
13 to go ahead with that, with that risk, then I don't think
14 there is an impediment to approving the spacing unit as they
15 propose.

16 HEARING OFFICER BRANCARD: Okay.

17 MR. BRUCE: Ascent is aware of that.

18 HEARING OFFICER BRANCARD: Thank you. And I
19 guess, if there are no other objections or concerns, you may
20 move ahead with this case by affidavit, Mr. Bruce.

21 MR. BRUCE: Okay. I have two witnesses, Mr.
22 Examiner, Lee Zink who is VP of land at Ascent and a
23 professional landman, and then the geologist is William
24 Metz, and he is also -- he is a geologist and an executive
25 with Ascent, and I would start off with Mr. Zink, and I

1 would just ask a few questions from him -- of him.

2 HEARING OFFICER BRANCARD: Okay. Do we need to
3 get the witnesses sworn in here?

4 (Witnesses duly sworn.)

5 HEARING OFFICER BRANCARD: Thank you. I think we
6 heard two ascents there from Ascent, and so, Mr. Bruce, you
7 may move forward.

8 LEE ZINK

9 (Sworn, testified as follows:)

10 DIRECT EXAMINATION

11 BY MR. BRUCE:

12 Q. First, Mr. Zink, would you state your full name
13 and city of residence for?

14 A. Lee Zink, Denver, Colorado.

15 Q. And who do you work for and in what capacity?

16 A. I work for Ascent Energy, and I'm the vice
17 president of land.

18 Q. Are you a landman by trade?

19 A. Yes.

20 Q. And have you previously testified before the
21 Division?

22 A. Yes.

23 Q. And were your credentials as an expert petroleum
24 landman accepted as a matter of record?

25 A. Yes.

1 MR. BRUCE: Mr. Examiner, I tender Mr. Zink as an
2 expert petroleum landman.

3 HEARING OFFICER BRANCARD: I would agree with
4 Mr. Zink. If you could, for the court reporter, could you
5 spell your name?

6 THE WITNESS: Yeah. First name is Lee, L-e-e,
7 last name Zink, Z-i-n-k.

8 HEARING OFFICER BRANCARD: Thank you. Mr. Zink
9 is accepted as an expert witness.

10 BY MR. BRUCE:

11 **Q. And for this case, Mr. Zink, did you prepare an**
12 **affidavit and attached land exhibits?**

13 A. I did.

14 MR. BRUCE: And that was, Mr. Examiner, is
15 submitted as Exhibit 2.

16 **Q. Is Mr. White the only party sought to be pooled**
17 **in this proceeding?**

18 A. No, he's not the only party.

19 **Q. Who are the other parties?**

20 A. Marathon Oil Permian, Phillip White, and I think
21 that's it.

22 **Q. Okay. And do you have land plats that show the**
23 **ownership interests of the parties in both the Bone Spring**
24 **and Wolfcamp formations?**

25 A. I do.

1 Q. And ownership is, is not only -- is common
2 throughout the well unit and common in those two formations;
3 is that correct?

4 A. That's correct.

5 Q. Is there any depth severance in either the Bone
6 Spring or the Wolfcamp?

7 A. There is no depth severance.

8 Q. And in your --

9 MR. BRUCE: Mr. Examiner, I won't go into depth
10 since there are affidavits. And if Ms. Bennett has any
11 questions, she can go after it, but I would like a couple
12 more cursory questions of Mr. Zink.

13 Q. Does your affidavit discuss the conversations or
14 at least e-mails you had with Mr. White?

15 A. Yes, they do.

16 Q. And what was your final offer to Mr. White?

17 A. Final offer to Mr. White to purchase his
18 interest, is that what you are asking?

19 Q. Yes.

20 A. We made a final offer approximately a couple of
21 weeks ago, and as early as -- or as late as over the
22 weekend, and our offer was -- I believe our offer was \$2800
23 an acre and includes an overriding royalty.

24 Q. Is that a fair, fair price for a lease in this
25 area?

1 A. Yes, it is.

2 Q. That offer would have, besides paying cash to Mr.
3 White, would have left him with, what, about five percent
4 override?

5 A. That's correct.

6 Q. Is there a very recent lease sale, a federal
7 lease that would confirm that that's probably a going,
8 fairly decent price in this area at this time?

9 A. Yes. There was a federal lease sale last week,
10 and our offer is in line with what was offered at the lease
11 sale last week.

12 Q. And just for the record, are you requesting the
13 cost plus 200 percent risk charge against any non-consenting
14 working interest owner?

15 A. Yes.

16 Q. And are the well costs set forth in the AFEs fair
17 and reasonable?

18 A. They are.

19 Q. And in your opinion is the granting of these two
20 applications in interest of conservation and prevention of
21 waste?

22 A. Yes.

23 Q. And do you adopt your affidavit as your, also as
24 your testimony in this matter?

25 A. I do.

1 MR. BRUCE: Mr. Examiner, I move the admission of
2 Exhibit 2 and the affidavit of the landman does contain all
3 the normal stuff presented to the Division by a landman at
4 the OCD at an OCD hearing. So I would ask the admission of
5 Exhibit 2.

6 HEARING OFFICER BRANCARD: Thank you. Are there
7 any objections to the exhibits?

8 (No audible response.)

9 HEARING OFFICER BRANCARD: Hearing none, the
10 exhibit will be admitted. Mr. Simmons, do you have
11 questions?

12 (Exhibit 2 admitted.)

13 TECHNICAL EXAMINER SIMMONS: No. Everything
14 appears to be in order. Thank you.

15 HEARING OFFICER BRANCARD: Ms. Bennett, do you
16 have any questions? We may have lost you, but do you have
17 any questions?

18 (No audible response.)

19 HEARING OFFICER BRANCARD: I think we will pass
20 on -- Ms. Bennett, are you there?

21 HEARING OFFICER BRANCARD: I'm getting that
22 warning signal on her block there, I will reserve her right
23 to ask questions later. We can move on to the next witness,
24 and I thank you for not getting into depth about this Mr.
25 Bruce. Mr. Bruce, your next witness, please?

1 MR. BRUCE: Call William Metz. His last name is
2 M-e-t-z. You have to have a four-letter name to work at
3 Ascent.

4 MS. BENNETT: This is Deana. Can you hear me now
5 at all?

6 HEARING OFFICER BRANCARD: Yes, I can hear you
7 now. I asked if you had any questions of the last witness,
8 Mr. Zink.

9 MS. BENNETT: (Inaudible.)

10 HEARING OFFICER BRANCARD: Ms. Bennett, can you
11 here us?

12 MS. BENNETT: This is Deana. Can you hear me at
13 this point?

14 HEARING OFFICER BRANCARD: Yes.

15 MS. BENNETT: I'm sorry about that.

16 HEARING OFFICER BRANCARD: Did you have any
17 questions for Mr. Zink?

18 MS. BENNETT: No, not at this time. Thank you.

19 HEARING OFFICER BRANCARD: Thank you. Mr. Bruce,
20 please proceed with Mr. Metz.

21 WILLIAM METZ

22 (Sworn, testified as follows:)

23 DIRECT EXAMINATION

24 BY MR. BRUCE:

25 Q. Mr. Metz, did you prepare Exhibits 3A, which is

1 an affidavit and geologic exhibits of the Bone Spring
2 formation, and Exhibit 3B which is an affidavit and geologic
3 exhibits on the Wolfcamp formation?

4 A. Yes.

5 Q. Do you adopt those affidavits as your testimony
6 in this case?

7 A. Yes, I do.

8 Q. One thing in passing, the Bone Spring pooling
9 case seeks to force pool a Second Bone Spring well as well
10 as a Third Bone Spring well; is that correct?

11 A. Yes.

12 Q. Are the Upper Avalon zones or the Upper Bone
13 Spring zones, the Avalon and first Bone Spring Sand, are
14 those also prospective in these well units?

15 A. Yes.

16 Q. Okay. In your opinion, is the granting of these
17 applications in interest of conservation and the prevention
18 of waste?

19 A. Yes, it is.

20 Q. With that, Mr. Examiner -- I should have said
21 one thing. You have previously testified before the
22 Division live as a geologist; is that correct?

23 A. Yes, I have.

24 MR. BRUCE: With that, I would move the admission
25 of Exhibits 3A and 3B.

1 HEARING OFFICER BRANCARD: Thank you, Mr. Bruce.

2 Are you also offering Mr. Metz as an expert witness?

3 MR. BRUCE: Yes, I offer him, tender him as an
4 expert petroleum geologist.

5 HEARING OFFICER BRANCARD: Thank you, Mr. Metz
6 will be accepted -- are there any objections or questions
7 about Mr. Metz' qualifications?

8 (No audible response.)

9 HEARING OFFICER BRANCARD: Hearing none, Mr. Metz
10 will be accepted as an expert witness. And are there any
11 questions or objections to the exhibits?

12 (No audible response.)

13 HEARING OFFICER BRANCARD: Hearing none, the
14 exhibits will be accepted. Any questions from Ms. Bennett?

15 (Exhibits 3A and 3B admitted.)

16 MS. BENNETT: No questions. Thank you.

17 HEARING OFFICER BRANCARD: Thank you. Mr.
18 Simmons?

19 TECHNICAL EXAMINER SIMMONS: I have no questions,
20 thank you.

21 HEARING OFFICER BRANCARD: Mr. Bruce anything
22 further and would you like to wrap up.

23 MR. BRUCE: I would just like to wrap up. The
24 exhibit package is complete. It contains Exhibit 1, the
25 applications and proposed ads, Exhibits 2, 3A and 3B, which

1 are the affidavits we just ran through, Exhibit 4 is an
2 affidavit of my notice and publication affidavit from the
3 Hobbs newspaper. The publication was -- turned out to be
4 superfluous because everybody did receive actual certified
5 notice. And Exhibits 5 and 6 are the pooling checklist for
6 the two wells, and I would move the admission of Exhibits 1
7 through 6 and ask that the cases be taken under advisement.

8 HEARING OFFICER BRANCARD: Thank you. Are there
9 any further comments from anyone or Mr. Simmons?

10 (No audible response.)

11 HEARING OFFICER BRANCARD: Okay. I will take
12 that as a no from Mr. Simmons. Ms. Bennett, any further
13 comments on this case?

14 MS. BENNETT: No further comments, thank you.

15 HEARING OFFICER BRANCARD: Thank you. To the
16 extent that we haven't already, we will accept your exhibits
17 into the record and consolidate Cases 21507, 21508 are taken
18 under advisement. Thank you for your presentation, Mr.
19 Bruce.

20 (Exhibits 1 through 6 admitted.)

21 MR. BRUCE: Thank you.

22 (Concluded.)

23

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

3

4 REPORTER'S CERTIFICATE

5

6 I, IRENE DELGADO, New Mexico Certified Court
7 Reporter, CCR 253, do hereby certify that I reported the
8 foregoing virtual proceedings in stenographic shorthand and
9 that the foregoing pages are a true and correct transcript
10 of those proceedings to the best of my ability.

11 I FURTHER CERTIFY that I am neither employed by
12 nor related to any of the parties or attorneys in this case
13 and that I have no interest in the final disposition of this
14 case.

15 I FURTHER CERTIFY that the Virtual Proceeding was
16 of poor to good quality.

17 Dated this 21st day of January 2021.

18

/s/ Irene Delgado

19

Irene Delgado, NMCCR 253
License Expires: 12-31-21

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