

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

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

Application of Titus Oil & Gas
Production, LLC, for Approval of
Production Allocation,
Lea County, New Mexico

Case No. 21872

REPORTER'S TRANSCRIPT OF PROCEEDINGS

STATUS REPORT

THURSDAY, AUGUST 19, 2021

This matter came on for hearing before the
New Mexico Oil Conservation Division, William
Brancard, Esq. Hearing Examiner, Kathleen Murphy,
Technical Examiner, on August 19, 2021, via Webex
Virtual Conferencing Platform hosted by New Mexico
Department of Energy, Minerals and Natural Resources

Reported by: Mary Therese Macfarlane
New Mexico CCR #122
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A P P E A R A N C E S

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C O N T E N T S

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1 (Time noted 9:02 a.m.)

2 EXAMINER BRANCARD: So we will now move to Case
3 21872, Item 42 on the agenda, Titus Oil Company with a
4 status report.

5 MS. SHAHEEN: Good morning, Mr. Examiner.
6 Sharon Shaheen, Montgomery Andrews on behalf of Titus Oil
7 & Gas Production.

8 EXAMINER BRANCARD: Thank you. EOG Resources.

9 MR. FELDEWERT: May it please the examiner,
10 Michael Feldewert with the Santa Fe office of Holland &
11 Hart.

12 EXAMINER BRANCARD: OCD?

13 MR. AMES: Good morning, Mr. Hearing Examiner.
14 Eric Ames for OCD.

15 EXAMINER BRANCARD: Any other interested persons
16 for Case 21872? Anybody here from Texas? (Note: Pause.)
17 Hearing none, Ms. Shaheen, I believe you submitted a
18 document. Do you want to summarize what you have
19 submitted?

20 MS. SHAHEEN: Yes. Thank you, Mr. Examiner.

21 I submitted a Status Report and also a
22 request for an Order of Approval or in the alternative
23 Referral to the Commission.

24 The Application was filed on April 6th, and
25 it was continued a couple of times, it was heard on June

1 17th, I believe, and since that time Titus has entered
2 into a Joint Operating Agreement with the only other
3 working interest owner. And as a result of the Texas
4 Hearing Examiner has recommended that the case be put on
5 the Railroad Commission Oil & Gas Consent Agenda, which
6 will be heard on August 24th, we anticipate that it will
7 be approved without any issues.

8 This morning I received a Draft Order of
9 what we'll likely get from the Railroad Commission. In
10 addition we drafted a Memorandum of Understanding that was
11 circulated to both the Texas Railroad Commission Counsel
12 and to Mr. Ames, and we're hoping to get some feedback on
13 that.

14 Since that time I've learned that when we
15 get this Texas Order, Titus will be ready to go and can
16 drill in Texas, even if there is no MOU. My understanding
17 is that MOU for Texas' purposes was intended to address
18 future wells that would cross the state line and that the
19 Order that we will be getting on August 24th gives them
20 full authority to drill this well in Texas.

21 So Titus has this well on their drilling
22 schedule in September, and in light of us getting the
23 Joint Operating Agreement, getting approval from Texas,
24 we've taken the liberty of submitting a Draft Order with
25 the Status Report. And obviously I will provide you with

1 the Draft Order from Texas, as well as the Final Order
2 which Mr. Ames may want to use in drafting an Order.

3 So with that request I will stand and see
4 what Mr. Ames has to say.

5 If the Division is not inclined to issue an
6 Order, we would ask that the matter be referred to the
7 Commission to be heard on the September 16th docket.

8 EXAMINER BRANCARD: Thank you. So I'm confused.
9 Are you now saying that you're going to drill in Texas?

10 MS. SHAHEEN: Well, the surface hole would be in
11 New Mexico, which is why we need the Order from New
12 Mexico.

13 Perhaps I should back up and just kind of
14 remind us of what the application in New Mexico pertained
15 to. And it pertains solely to allocation of production
16 between the two states. Titus proposes to allocate that
17 production based on surface acreage, which is consistent
18 with, I believe, New Mexico's practice.

19 So that was the sole request in the pending
20 application.

21 EXAMINER BRANCARD: Yeah. As I recall, though,
22 it sounded like you were drilling from New Mexico.

23 MS. SHAHEEN: That's right. We are drilling
24 from New Mexico across the state line into Texas.

25 EXAMINER BRANCARD: Okay.

1 MS. SHAHEEN: And I should also note that we did
2 apply for an NSL, and Mr. Lowe has requested we provide a
3 Revised C-102 that reflects only that portion of the
4 spacing unit in New Mexico, with the take point, the last
5 take point and the bottom hole location located on the
6 state line crossing.

7 So I submitted that to Mr. Lowe, and I
8 believe when an Order has been entered by the Division he
9 will approve that NSL.

10 EXAMINER BRANCARD: Is there agreement on
11 allocation?

12 MS. SHAHEEN: With Texas? Yes, my understanding
13 is that Texas has agreed to allocate on the basis of
14 surface acreage, that they do that with respect to som
15 other -- with respect to commingling. And so my
16 understanding is Texas does not have an objection to
17 allocation based on surface acreage

18 But we could take a look at this Draft
19 Order that I received this morning, and clearly I'll
20 provide the Final Order as soon as we receive it, which we
21 expect to get next week.

22 EXAMINER BRANCARD: And the surface acreage in
23 Texas is not the entire tract, is that correct? It's a
24 portion of the tract?

25 MS. SHAHEEN: If I recall correctly, without

1 looking at the exhibits, there's a tract that's quite
2 large, hundreds of acres, and so this is -- the tract in
3 Texas I believe consists of about 50 to 60 acres. I could
4 be wrong about that but that's my understanding within the
5 spacing unit that's been proposed. Because the portion of
6 the spacing unit in New Mexico is about 230, 240 acres, so
7 it's a standard-size unit I think is 280 acres, so the
8 balance of that is in Texas.

9 EXAMINER BRANCARD: Thank you. Let me just
10 start with Mr. Feldewert. Does EOG have any issues here?
11 (Note: Pause.)

12 MR. FELDEWERT: Sorry. I hit the wrong button.
13 We are (inaudible) over. We are interested
14 in the case. At this point we do not have a position.

15 EXAMINER BRANCARD: Okay. Thank you.

16 Mr. Ames, OCD's reaction to the Status
17 Report by Titus and whether we should be moving forward at
18 this point.

19 MR. AMES: Thank you, Mr. Brancard. Frankly,
20 OCD is disappointed to receive Titus' so-called Status
21 Report. From our perspective it's less a Status Report
22 and more a complaint that OCD hasn't been able to
23 negotiate any MOU in Texas since the last status
24 conference on July 15th.

25 OCD is also disappointed about how Titus is

1 going about this. Titus filed this document after the
2 close of business yesterday for a hearing that started at
3 8:15 this morning. Now, OCD was prepared to give an
4 actual Status Report this morning, and so that's what we
5 will do.

6 From the beginning the Division has been
7 transparent with Titus that the Director would require an
8 MOU in place with Texas before we would approve a
9 trans-boundary well.

10 Titus' application concerns a well to be
11 drilled in New Mexico that crosses the border into Texas,
12 but we are aware that Titus has plans for many more wells,
13 and it's also possible that we will be seeing wells coming
14 from the other direction.

15 This situation raises complicated issues
16 between two sovereign governments with very different
17 regulatory structures and priorities.

18 After June 17th when the hearing was held
19 on Titus' application, OCD reached out to Titus for more
20 information about its witnesses' testimony that other
21 states had entered into MOUs for trans-boundary horizontal
22 oil wells.

23 It appears now that that testimony was not
24 true. Titus could not provide contact information for
25 anyone who had a trans-boundary horizontal oil well

1 subject to an MOU; it couldn't identify an actual well
2 that OCD could talk to another agency about; it provided a
3 couple of maps without much data on them that the witness
4 had downloaded from a proprietary subscription data base
5 that OCD couldn't access; and perhaps most importantly,
6 they couldn't produce an MOU between any states for a
7 trans-boundary horizontal oil well.

8 Also since the hearing of June 17th, the
9 Texas Railroad Commission is now on its second lawyer for
10 this case, or for the Texas portion of the case.

11 On July 23rd, just a week before the
12 status -- just a week after the status conference, Titus
13 told OCD that the previous lawyer, who we had spoken with
14 already, had already left for private practice and that a
15 new lawyer would be reaching out to us. That new lawyer
16 did not reach out to us until Monday of this week. We
17 immediately responded and proposed a meeting and provided
18 dates and times, but we still haven't heard back.

19 Also since the hearing on June 17th, Titus
20 has sent a Draft MOU to OCD, and in the Status Report
21 Titus complains that OCD didn't give it any feedback.

22 In fact we did. I told Ms. Shaheen that
23 New Mexico would negotiate directly with Texas without
24 Titus. What we didn't say, because it would be
25 gratuitous, is that the document we were given is

1 self-serving and plainly inadequate for the purpose. We
2 are not going to give a private party feedback on a
3 document we aren't going to use in a process it's not
4 going to participate in.

5 For the past two months Titus has been
6 repeatedly trying to stampede OCD into negotiating an MOU
7 with Texas, and it repeatedly tried to insert itself into
8 the process. For some reason Titus perceives itself as
9 some kind of broker between the states.

10 The Director will negotiate a MOU when and
11 in the manner she believes is in the best interests of the
12 State of New Mexico. There's no place in this process for
13 a private actor like Titus whose sole interest is
14 monetary.

15 This matter has already been taken under
16 advisement. Titus' Request for Referral to the Commission
17 also should be taken under advisement, and the matter
18 should be calendared for a status conference in, say, 90
19 days.

20 The Division has a statutory duty to
21 protect or to proceed in the interests of the State of New
22 Mexico, and it will take the time and devote the resources
23 necessary to do that.

24 EXAMINER BRANCARD: (Note: Pause.) Sorry. I
25 lost my buttons.

1 Ms. Shaheen, a response.

2 MS. SHAHEEN: Thank you.

3 Titus is happy to provide any additional
4 information that the Division would like to have to
5 expeditiously process the application.

6 We did provide some information from
7 drilling info about interstate wells in West Virginia and
8 Pennsylvania. We do believe that information is accurate.
9 There was some issue about correlating the API numbers to
10 the well numbers that are used in the other state, but we
11 are happy to do more research and see what we can do to
12 correlate those numbers so that the Division can reach out
13 directly to its sister agency in one of those states.

14 I'm happy to hear an update that the
15 Division has spoken with Texas counsel. That's good to
16 know.

17 And to the extent we can be of further
18 help, Titus stands ready to provide that.

19 EXAMINER BRANCARD: Thank you.

20 Okay. Any other thoughts, Mr. Feldewert,
21 or you're fine with all this?

22 MR. FELDEWERT: Oh, I'm staying muted on this
23 one.

24 EXAMINER BRANCARD: Thank you. Ms. Murphy, any
25 questions of either side?

1 MS. MURPHY: I'll stay muted on this one, also.

2 EXAMINER BRANCARD: All right. With that, I
3 guess that leaves it up to me to say something.

4 So thank you for the report, while I will
5 admit, as Mr. Ames pointed out, it was a little belated.
6 Hard to react to it in time here.

7 I do think the request to have this case be
8 moved to the Commission level is a serious one, and I will
9 discuss this with the Director, who would be the one who
10 would make that call.

11 And so we will look to have -- and it also
12 looks like Texas is going to make a decision on whatever
13 they are going to make a decision on soon, and so I think
14 we need to follow up fairly quickly. I don't think three
15 months is necessarily a good time frame here.

16 But I will visit with the Director, see
17 what she wants to do, whether she wants to take this up
18 right now with the Commission. I think this may end up in
19 front of the Commission anyway. The Commission would
20 likely be the ones to bless an agreement with Texas, also,
21 and would probably want to know about this.

22 So that's where I'm going to go with this.
23 And hopefully I will send out a Status Order/Scheduling
24 Order to the parties, or there will be an Order certifying
25 this case to the Commission which you-all will see.

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So thank you for the information.
MS. SHAHEEN: Thank you.
(Time noted 9:15 a.m.)

1 STATE OF NEW MEXICO)
2) SS
3 COUNTY OF TAOS)
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5 REPORTER'S CERTIFICATE

6 I, MARY THERESE MACFARLANE, New Mexico Reporter
7 CCR No. 122, DO HEREBY CERTIFY that on Thursday, August
8 19, 2021, the proceedings in the above-captioned matter
9 were taken before me; that I did report in stenographic
10 shorthand the proceedings set forth herein, and the
11 foregoing pages are a true and correct transcription to
12 the best of my ability and control.

13 I FURTHER CERTIFY that I am neither employed by
14 nor related to nor contracted with (unless excepted by the
15 rules) any of the parties or attorneys in this case, and
16 that I have no interest whatsoever in the final
17 disposition of this case in any court.

18 /s/ Mary Macfarlane
19 _____

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