

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

6 APPLICATION OF NEARBURG EXPLORATION
7 COMPANY, L.L.C. FOR A NONSTANDARD OIL
8 SPACING AND PRORATION UNIT, UNORTHODOX
9 OIL WELL LOCATION, AND COMPULSORY
10 POOLING, LEA COUNTY, NEW MEXICO.

CASE NO. 14995

ORIGINAL

11 REPORTER'S TRANSCRIPT OF PROCEEDINGS

12 EXAMINER HEARING

13 BEFORE: DAVID K. BROOKS, CHIEF EXAMINER
14 RICHARD EZEANYIM, TECHNICAL EXAMINER

15 June 27, 2013

16 Santa Fe, New Mexico

17
18 This matter came on for hearing before the
19 New Mexico Oil Conservation Division, David K. Brooks,
20 Chief Examiner, and Richard Ezeanyim, Technical
21 Examiner, on Thursday, June 27, 2013, at the New Mexico
22 Energy, Minerals and Natural Resources Department, 1220
23 South St. Francis Drive, Porter Hall, Room 102, Santa
24 Fe, New Mexico.

25 REPORTED BY: Mary C. Hankins, CCR, RPR
New Mexico CCR #20
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APPEARANCES

FOR APPLICANT NEARBURG EXPLORATION COMPANY, L.L.C.:

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1 (11:00 a.m.)

2 EXAMINER BROOKS: At this time, we will
3 call Case Number 14995, the application of Nearburg
4 Exploration Company, LLC for compulsory pooling, Lea
5 County, New Mexico.

6 Call for appearances.

7 MR. BRUCE: Mr. Examiner, Jim Bruce of
8 Santa Fe representing the Applicant. I have two
9 witnesses.

10 EXAMINER BROOKS: And other appearances?

11 MS. CHAPPELLE: Germaine Chappelle,
12 Gallagher & Kennedy, for OXY. We have one witness.

13 EXAMINER BROOKS: Okay. Would the
14 witnesses identify themselves, please?

15 MR. DIXON: Kenneth Dixon.

16 MR. ELTON: Bill Elton.

17 MR. CANON: Christopher Canon.

18 EXAMINER BROOKS: Please swear the
19 witnesses.

20 (Mr. Dixon and Mr. Elton sworn; Mr. Canon
21 previously sworn.)

22 KENNETH DIXON,
23 after having been first duly sworn under oath, was
24 questioned and testified as follows:
25

DIRECT EXAMINATION

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BY MR. BRUCE:

Q. Please state your full name and city of residence for the record.

A. Kenneth G. Dixon, Midland, Texas.

Q. Have you previously testified before the Division?

A. No.

Q. Would you please summarize your educational and employment background for the Examiner?

A. I graduated from the University of Texas the fall of 1980 with a PLM degree. I have 32-plus years as a landman, of which the last 24 have been in the Permian Basin. The companies that I've worked for include Universal Resources Corp., Texas Oil & Gas Corp., Parker & Parsley Petroleum Company, Marathon Oil Company, Pogo Producing Company, Cimarex Energy Company. And I'm currently with Nearburg Producing Company.

Q. How long have you been at Nearburg?

A. A little over five years, approaching five years.

Q. And what is your job with Nearburg?

A. I'm currently the land manager.

Q. And are you familiar with the land matters involved in this case?

1 A. Yes.

2 Q. And does your area of responsibility at
3 Nearburg include this portion of southeast New Mexico?

4 A. Yes.

5 MR. BRUCE: Mr. Examiner, I tender
6 Mr. Dixon as an expert petroleum landman.

7 EXAMINER BROOKS: He is so qualified.

8 Q. (BY MR. BRUCE) Mr. Dixon, would you identify
9 Exhibit 1 and describe what Nearburg seeks in this case?

10 A. Exhibit 1 is a Midland Map Company plat.
11 Nearburg proposes to drill the West Lovington 20 Well #1
12 at an unorthodox surface location 387 feet from the
13 north line, 427 feet from the west line of Section 20,
14 Township 17 South, Range 37 East to a depth to test the
15 top 200 feet of the Mississippian Formation.

16 We seek to pool all mineral interests in
17 the interval in the northwest-northwest of Section 20.

18 MR. BRUCE: And, Mr. Examiner, page 2 of
19 Exhibit 1 is the C-102 for the well.

20 Q. (BY MR. BRUCE) Has this well been permitted
21 yet, Mr. Dixon?

22 A. Yes.

23 Q. So there should be an API number of record with
24 the OCD?

25 A. Yes.

1 MR. BRUCE: We will get that for you,
2 Mr. Examiner.

3 EXAMINER BROOKS: Thank you.

4 Q. (BY MR. BRUCE) What is the primary target for
5 this well?

6 A. Primarily a Strawn test. It'll be a vertical
7 well.

8 Q. And what is the spacing -- can you describe for
9 me when you say the Strawn Formation in this area?

10 A. It's based on 40s, with wells no closer than
11 330 -- 330 feet to the quarter-quarter section line.
12 The nearest pool is the South Midway Strawn pool.

13 Q. And what is the working interest ownership of
14 the well unit? And I refer you to Exhibit 2.

15 A. Currently, on Exhibit 2, the working interest
16 is XTO Engineering, Inc., a little over four percent;
17 Isaac Family, LLP, a little over half percent. I can be
18 more precise if I need to be.

19 Q. No, that's okay.

20 A. Quail Creek Royalty, LLC, a little over half
21 percent; EG Energy, LLC, slightly under .3 percent. OXY
22 USA West Texas Property, LLP is slightly under 42
23 percent, and Nearburg with the remainder, being 52 -- a
24 little over 52 percent.

25 Q. You've grouped XTO, Isaac Family LLP and Quail

1 Creek Royalty together. Are those -- is the interest of
2 Isaac Family and Quail Creek handled by XTO Energy?

3 A. Yes, they are. XTO Energy has told me so.

4 Q. Could you identify Exhibit 3 for the Examiner?

5 Oh, on Exhibit 2, at this point, are you
6 seeking to force pool everyone on the list, of course
7 other than Nearburg?

8 A. Yes.

9 Q. Could you identify Exhibit 3 for me?

10 A. Exhibit 3 is a representation of my contacts
11 with the other parties.

12 Q. And when did the contacts begin?

13 A. Some as early as February of 2013. It kind of
14 depended when I was able to find them. Like EG Energy,
15 they weren't actually located until May of this year.

16 Q. And these are all unleased mineral interests,
17 correct?

18 A. Correct.

19 Q. And was the initial attempt by Nearburg to
20 obtain leases from the interest owners?

21 A. Yes, it was.

22 Q. And have you obtained leases from some of the
23 interest owners?

24 A. Other than these parties, yes, we have.

25 Q. Is your correspondence with the parties

1 included with Exhibit 3?

2 A. Yes, I believe it is.

3 Q. And besides the letters, either the leasing
4 letters or the well proposal letters, have you had
5 additional contacts with the interest owners?

6 A. Yes, multiple telephone calls and e-mails.

7 Q. And are you continuing to negotiate with the
8 parties?

9 A. Yes, we are.

10 Q. And will you continue to negotiate after this
11 hearing?

12 A. Yes, we will.

13 Q. You would like to obtain 100 percent voluntary
14 joinder?

15 A. We'd like to.

16 Q. But you are proceeding with this case. Are you
17 proceeding with the case because of a drilling
18 obligation for commencing this well? Would you like to
19 commence the well as soon as possible?

20 A. We would like to commence the well as soon as
21 possible, and we're just negotiating the points.

22 Q. Are there any unlocatable owners? You said it
23 took a while to find the EG Company, but other than
24 that, are there any unlocatable owners?

25 A. No.

1 Q. In your opinion, has Nearburg made a good-faith
2 effort to obtain the voluntary joinder of the interest
3 owners in the well?

4 A. Yes.

5 Q. Would you identify Exhibit 4 and discuss the
6 cost of the proposed well?

7 A. Exhibit 4 is our AFE, and it has a dry-hole
8 cost of \$2,874,814 and a completed cost of 3,892,229.

9 Q. And are these well costs in line with the costs
10 of the other wells drilled to this depth in this area of
11 Lea County?

12 A. Yes.

13 Q. And who should be appointed operator of the
14 well?

15 A. Nearburg Producing Company.

16 Q. Do you have a recommendation for the amounts
17 which Nearburg should be paid for supervision and
18 administrative expenses?

19 A. Yes. We request 7,000 a month for drilling and
20 700 a month for producing.

21 Q. And are those amounts equivalent to those
22 normally charged by operators in this area for wells of
23 this depth?

24 A. Yes.

25 Q. And do you request that rates be adjusted

1 periodically as provided by the COPAS accounting
2 procedure?

3 A. Yes.

4 Q. Does Nearburg request a maximum cost plus
5 200-percent risk charge in the event that an interest
6 owner chooses not to consent in the well?

7 A. Yes.

8 Q. And will the parties be notified -- being
9 pooled be notified of this hearing?

10 A. Yes.

11 Q. And is that reflected in Exhibit 5, the
12 Affidavit of Notice?

13 A. Yes.

14 Q. Were Exhibits 1 through 5 prepared by you or
15 under your supervision or compiled from company business
16 records?

17 A. Yes, they were.

18 Q. And will the granting of this application
19 prevent waste and protect correlative rights?

20 A. Yes.

21 MR. BRUCE: Mr. Examiner, I'd move the
22 admission of Exhibits 1 through 5.

23 EXAMINER BROOKS: 1 through 5 are admitted.

24 (Nearburg Exhibit Numbers 1 through 5 were
25 offered and admitted into evidence.)

1 MR. BRUCE: I do have one comment, which
2 is, through my negligence, I did forget to notify one
3 party, EG Energy. I sent out notice last week, so after
4 this hearing, I would request that this matter be
5 continued for two weeks.

6 EXAMINER BROOKS: Okay.

7 MR. BRUCE: With that, I pass the witness.

8 EXAMINER BROOKS: Thank you. Did you offer
9 the exhibits? Which ones?

10 MR. BRUCE: 1 through 5, Mr. Examiner.

11 EXAMINER BROOKS: Exhibits 1 through 5 are
12 admitted.

13 (Nearburg Exhibit Numbers 1 through 5 were
14 admitted into evidence.)

15 CROSS-EXAMINATION

16 BY EXAMINER BROOKS:

17 Q. What is the formation you're drilling to?

18 A. The Strawn.

19 Q. And do you have a pool name?

20 A. Yeah. It is the South Midway Strawn pool.

21 Q. And I believe you said that an API number has
22 been issued for this well?

23 A. I believe so.

24 Q. All these interests are unleased, you said,
25 right?

1 A. Yes, sir.

2 Q. There are no leased interests that are --

3 A. Correct.

4 Q. Okay. Does Nearburg own all the leased
5 interests in this?

6 A. Yes, we do.

7 Q. And this is, of course, privately owned --

8 A. Yes, it is.

9 Q. -- acreage?

10 I believe that's all my questions.

11 EXAMINER BROOKS: Ms. Chappelle?

12 MS. CHAPPELLE: I just have one question.

13 CROSS-EXAMINATION

14 BY MS. CHAPPELLE:

15 Q. Mr. Dixon, are you in receipt of correspondence
16 from OXY executing the AFE?

17 A. Yes.

18 Q. Do you have any objection to removing OXY from
19 being force pooled after -- upon receipt of the AFE?

20 A. Well, we prefer to have an operating agreement
21 in place.

22 MR. BRUCE: Mr. Examiner, it's our position
23 that an AFE is not a contract, and a JOA needs to be
24 executed before the parties are committed to a well.
25 Therefore, we do not want to dismiss them at this time.

1 EXAMINER BROOKS: Okay. Did you want to
2 say anything further at this time?

3 MS. CHAPPELLE: No. I just want it on the
4 record. I'm passing the witness. I just want it on the
5 record that we have a signed AFE.

6 EXAMINER BROOKS: Mr. Ezeanyim, do you have
7 any questions for the witness?

8 EXAMINER EZEANYIM: No, I don't.

9 EXAMINER BROOKS: Very good. The witness
10 may step down.

11 And you may call your other witness,
12 Mr. Bruce.

13 BILL ELTON,
14 after having been previously sworn under oath, was
15 questioned and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. BRUCE:

18 Q. Mr. Elton, where do you reside?

19 A. Midland.

20 Q. Where do you work?

21 A. I work for Nearburg Producing. I'm a senior
22 geologist.

23 Q. Have you previously testified before the
24 Divison as a geologist?

25 A. Yes. Yes, I have.

1 Q. And have your credentials been accepted as a
2 matter of record?

3 A. Yes, they were.

4 Q. And does your area of responsibility at
5 Nearburg include this portion of southeast New Mexico?

6 A. Yes, it does.

7 Q. And are you familiar with the geology involved
8 in this application?

9 A. Yes, I am.

10 MR. BRUCE: Mr. Examiner, I tender
11 Mr. Elton as an expert petroleum geologist.

12 EXAMINER BROOKS: He is so qualified.

13 Q. (BY MR. BRUCE) Mr. Elton, could you identify
14 Exhibit 6 for the Examiner?

15 A. Certainly. Exhibit 6 is a locator map. This
16 map covers portions of 17 South, 37 East, Lea County,
17 New Mexico. It shows a number of Strawn pools that are
18 relative to our proposed spacing and proration unit for
19 the West Lovington 20 #1 well, the red outline box there
20 in the northwest portion of Section 20.

21 The green outline fields are producing
22 similar Strawn reservoirs both in terms of their depth
23 and reservoir extent.

24 Q. And what is Exhibit 7?

25 A. Exhibit 7 is a Strawn isopach map. So this is

1 from the top of the Strawn to the top of the Atoka,
2 which underlies the Strawn. The map covers, basically,
3 just the northwest portion of Section 20. So our yellow
4 acreage indicator, that's not a -- that's not a full
5 section. We're zoomed in just showing the, basically,
6 northwest quarter of Section 20.

7 The red outline, again, is our proposed
8 spacing and proration unit. This is a Strawn to Atoka
9 isopach. The contour interval is ten feet. We're
10 showing a thickness at the drill site at approximately
11 225 feet, and this map is based on seismic and well
12 control.

13 Q. Is it important when drilling these Strawn
14 tests to be at the thickest part of the reservoir?

15 A. Yeah, we believe so. And we've located our
16 well on the center of the buildup as we have it mapped.

17 Q. And finally, what is Exhibit 8?

18 A. Exhibit 8 is a type log. It's from the Ship
19 State #1 well, down in the southeast corner of Section
20 17. It basically shows the top of the Strawn, top of
21 the Atoka. The reservoir depth is approximately 11,000
22 feet. The Strawn in this well is about 200 feet in
23 total thickness. The porosity that's indicated there,
24 about 11,1, is 30 to 40 feet in thickness, about 8 to 12
25 percent porosity, which is typical for wells in this

1 area.

2 Q. From a geologic perspective, is a 200-percent
3 risk charge justified if a party nonconsents to the
4 well?

5 A. Yes, I believe it is. The Strawn wells here
6 can be very risky, and I believe that is appropriate.

7 Q. Were Exhibits 6 through 8 prepared by you?

8 A. Yes, they were.

9 Q. In your opinion, will the granting of this
10 application prevent waste and protect correlative
11 rights?

12 A. That's correct.

13 MR. BRUCE: Mr. Examiner, I'd move the
14 admission of Exhibits 6 through 8.

15 EXAMINER BROOKS: 6 through 8 are admitted.
16 (Nearburg Exhibit Numbers 6 through 8 were
17 offered and admitted into evidence.)

18 MR. BRUCE: No more questions of the
19 witness.

20 EXAMINER BROOKS: Ms. Chappelle?

21 MS. CHAPPELLE: No questions.

22 EXAMINER BROOKS: I have no questions.

23 EXAMINER EZEANYIM: I have no questions.

24 EXAMINER BROOKS: Very good. The witness
25 may step down.

1 MR. BRUCE: No other requests other than
2 continued for two weeks.

3 EXAMINER BROOKS: Ms. Chappelle?

4 MS. CHAPPELLE: I would like to call Chris
5 Canon to the stand, please.

6 CHRISTOPHER CANON,
7 after having been previously sworn under oath, was
8 questioned and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. CHAPPELLE:

11 Q. Mr. Canon, please state your name and
12 occupation for the record.

13 A. My name is Christopher Canon, senior land
14 negotiator with OXY Petroleum.

15 Q. Have you previously been sworn in as an expert
16 witness before this Division?

17 A. Yes, I have.

18 Q. Are you familiar with the details of this
19 application?

20 A. Yes, I am.

21 MS. CHAPPELLE: I'd like to submit the
22 witness for a few quick questions.

23 EXAMINER BROOKS: Go ahead.

24 MS. CHAPPELLE: Thank you.

25 What I'd also like to do is submit an

1 exhibit, Exhibit Number 1, and it's --

2 EXAMINER BROOKS: Now, this witness is only
3 a fact witness, correct? He's not being called as an
4 expert?

5 MS. CHAPPELLE: It's fact, yes.

6 EXAMINER BROOKS: Okay. Go ahead.

7 Q. (BY MS. CHAPPELLE) Mr. Canon, could you please
8 describe that exhibit?

9 A. Yes. This is a copy of the original well
10 proposal and attached AFE that was sent from Nearburg on
11 April 30th. That's on page 2. And this is our
12 response, with our signed AFE, electing to participate
13 in the drilling of the West Lovington Number 20 well.

14 Q. Please describe where we are with respect to --
15 where OXY is with respect to negotiating a JOA?

16 A. We have submitted a form of JOA, which we have
17 received some comments back from Nearburg, and we're
18 awaiting further comments per their request in order to
19 finalize.

20 Q. And do you anticipate that the JOA will be
21 negotiated?

22 A. Yes.

23 Q. Do you anticipate OXY requesting to be
24 dismissed from this forced pool in the near future?

25 A. Yes.

1 MS. CHAPPELLE: Thank you. I have nothing
2 further.

3 EXAMINER BROOKS: I understand you have no
4 questions, Mr. Bruce?

5 MR. BRUCE: I have no questions of the
6 witness.

7 CROSS-EXAMINATION

8 BY EXAMINER BROOKS:

9 Q. Does OXY own an undivided interest in the
10 entire 40-acre tract?

11 A. Yes, sir.

12 Q. I believe that's my only question.

13 EXAMINER BROOKS: Mr. Ezeanyim?

14 CROSS-EXAMINATION

15 BY EXAMINER EZEANYIM:

16 Q. I have no questions, but I wonder why OXY is
17 appearing. Are you appearing to be excluded from forced
18 pooling, right? Is that what you're doing?

19 A. Yes, sir. That's all that we want. We have
20 elected to participate in the well.

21 EXAMINER BROOKS: Oh, I have one other.

22 THE WITNESS: Yes, sir.

23 RECROSS-EXAMINATION

24 BY EXAMINER BROOKS:

25 Q. Do you have any objection to the 7,000 and 700

1 overhead charges proposed?

2 A. None that I know of at this time.

3 Q. None that you know of, but you're not in a
4 position to say that you have no objection?

5 A. Yes, sir. We've signed the AFE.

6 Q. But the AFE doesn't include -- does the AFE
7 include a charge?

8 A. It does not, no. We're still trying to
9 finalize the JOA.

10 RE CROSS EXAMINATION

11 BY EXAMINER EZEANYIM:

12 Q. But in any case, you are going to join in the
13 drilling of the well?

14 A. Yes, sir, we are in the well.

15 EXAMINER BROOKS: Thank you.

16 I have no further questions.

17 Does anybody else have anything?

18 MR. BRUCE: No, sir.

19 EXAMINER BROOKS: Closing statements, since
20 It's a contested legal issue, apparently?

21 MR. BRUCE: Well, I've stated my position.

22 EXAMINER BROOKS: Do you have anything to
23 add, Ms. Chappelle?

24 MS. CHAPPELLE: I don't. The only thing
25 I'd clarify is that signing the AFE came after

1 application for the forced pool, just to answer your
2 question further. That's why we found it necessary to
3 join and to sign the AFE after that.

4 EXAMINER BROOKS: But you're taking the
5 position that the AFE constitutes an agreement to
6 participate in the well. Therefore, it would be
7 improper for the Division to force pool this party?

8 MS. CHAPPELLE: At this time, particularly
9 because we are so close to negotiating the JOA, yes,
10 sir.

11 EXAMINER BROOKS: Okay. Thank you.

12 Case Number 14995 will be continued to July
13 the 11th.

14 (Case Number 14995 concludes, 11:21 a.m.)
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21 I do hereby certify that the foregoing is
22 a complete record of the proceedings in
the Examiner hearing of Case No. 14995,
heard by me on June 27 2013

23 David K. Brooks, Examiner
24 Oil Conservation Division
25

1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

3

4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, New Mexico Certified
6 Court Reporter No. 20, and Registered Professional
7 Reporter, do hereby certify that I reported the
8 foregoing proceedings in stenographic shorthand and that
9 the foregoing pages are a true and correct transcript of
10 those proceedings that were reduced to printed form by
11 me to the best of my ability.

12 I FURTHER CERTIFY that the Reporter's
13 Record of the proceedings truly and accurately reflects
14 the exhibits, if any, offered by the respective parties.

15 I FURTHER CERTIFY that I am neither
16 employed by nor related to any of the parties or
17 attorneys in this case and that I have no interest in
18 the final disposition of this case.

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Mary C. Hankins
MARY C. HANKINS, CCR, RPR
Paul Baca Court Reporters, Inc.
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