

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

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

APPLICATION OF MARATHON OIL
PERMIAN, LLC FOR APPROVAL OF A
NONSTANDARD SPACING AND PRORATION
UNIT, NONSTANDARD LOCATIONS,
AND COMPULSORY POOLING, LEA COUNTY,
NEW MEXICO.

CASE NOs. 16144,
16145, 16146
(Re-opened)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

September 6, 2019

Santa Fe, New Mexico

BEFORE: WILLIAM V. JONES, CHIEF EXAMINER
KATHLEEN MURPHY, TECHNICAL EXAMINER
DYLAN ROSE-COSS, TECHNICAL EXAMINER
DANA Z. DAVID, LEGAL EXAMINER

This matter came on for hearing before the New Mexico Oil Conservation Division, William V. Jones, Chief Examiner; Kathleen Murphy and Dylan Rose-Coss, Technical Examiners; and Dana Z. David, Legal Examiner, on Friday, September 6, 2019, at the New Mexico Energy, Minerals and Natural Resources Department, Wendell Chino Building, 1220 South St. Francis Drive, Porter Hall, Room 102, Santa Fe, New Mexico.

REPORTED BY: Mary C. Hankins, CCR, RPR
New Mexico CCR #20
Paul Baca Professional Court Reporters
500 4th Street, Northwest, Suite 105
Albuquerque, New Mexico 87102
(505) 843-9241

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

FOR APPLICANT MARATHON OIL PERMIAN, LLC:

DEANA M. BENNETT, ESQ.
MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A.
500 4th Street, Northwest, Suite 1000
Albuquerque, New Mexico 87102
(505) 848-1800
deanab@modrall.com

INDEX

	PAGE
Case Numbers 16144, 16145 and 16146 Called	3
Cases Presented by Affidavit	3
Proceedings Conclude	18
Certificate of Court Reporter	19

EXHIBITS OFFERED AND ADMITTED

Marathon Oil Permian, LLC Exhibit A through C	11
---	----

1 (2:19 p.m.)

2 EXAMINER JONES: Case Numbers 16144, 16145
3 and 16146, applications of Marathon Oil Permian, LLC for
4 a nonstandard spacing unit and compulsory pooling in
5 16144 and 16145. I think that these are nonstandard
6 spacing units, nonstandard locations and compulsory
7 pooling.

8 Call for appearances.

9 MS. BENNETT: Thank you. Deana Bennett on
10 behalf of Marathon Oil Permian, LLC.

11 EXAMINER JONES: Any other appearances?

12 Okay. Affidavit presentation?

13 MS. BENNETT: Yes. I intend to present
14 these three cases consolidated for hearing by affidavit.
15 And, again, these are Case Number 16144, 16145 and
16 16146.

17 These cases -- just to give you a brief
18 overview again, these cases went to hearing back in the
19 day, November 15th, 2018, and orders were issued for
20 these three cases and -- in January 2019. And at the
21 hearing, there was some discussion about whether
22 these -- about the pools. And Marathon had submitted
23 three applications, two Bone Spring applications and a
24 Wolfcamp application. At the hearing or right before
25 the hearing, it was determined that the pool at issue

1 was actually the Wolfbone. And so at the hearing, there
2 was a lot of discussion about these wells actually all
3 being in the Wolfbone, and a question was raised about
4 whether the interests were the same in the Wolfbone.
5 And we presented -- after the hearing was over, we
6 presented an affidavit to the Division confirming that
7 the interests were, in fact, the same throughout the --
8 what would have been the Bone Spring and the Wolfcamp
9 but now has been combined to be called the Wolfbone. So
10 the interests are the same.

11 So after we received the three orders,
12 Marathon requested that those three orders be
13 consolidated into a single Wolfbone order instead of
14 three separate orders. And I won't bore you with the
15 details, but there was much toing and froing, and the
16 decision was made that Marathon needed to re-open these
17 three orders and notify the parties to the original
18 cases that we were re-opening and seek to get a single
19 order for all three -- what was three orders
20 consolidated into a single order.

21 As we were reviewing the three orders, we
22 also noticed a typographical error in one of the orders,
23 and so we're also here today to ask that that
24 typographical order be amended or changed. And I've
25 called that out in the affidavit.

1 And then finally, because these cases are a
2 gift that keep on giving, we identified some previously
3 unidentified mineral interest owners.

4 (Laughter.)

5 EXAMINER DAVID: Why wouldn't you?

6 MS. BENNETT: Yes. So here we are today on
7 these three cases for purposes of combining the orders
8 into a single order correcting the typographical error
9 and pooling the previously unidentified mineral interest
10 owner. It's actually working -- unleased mineral
11 interest owner.

12 So, again, these cases were put on on
13 November 15, 2018. And I did not look back to see if
14 Mr. Gyllenband appeared in person for those cases or if
15 they were put on by affidavit. My guess is they were in
16 person because it was before the affidavits were so
17 prevalent. But in any event, Mr. Gyllenband did testify
18 either live or by affidavit, and he has been previously
19 qualified before the Division. And so his affidavit
20 reflects his efforts that he undertook -- or his request
21 to have the order consolidated. So I'm not sure he
22 needs to be retendered, but I raise it for your
23 consideration

24 EXAMINER DAVID: So Mr. Gyllenband has --
25 has testified before the Commission before?

1 MS. BENNETT: He has.

2 EXAMINER DAVID: And he's familiar with all
3 the documents in here?

4 MS. BENNETT: He is.

5 EXAMINER DAVID: I would say, if you want
6 to recognize him as an expert, he is qualified.

7 EXAMINER JONES: Mr. Gyllenband is
8 qualified as an expert in petroleum land matters.

9 MS. BENNETT: Thank you.

10 So I'm just going to highlight a few things
11 in his affidavit.

12 In paragraph four, Mr. Gyllenband testifies
13 about why Marathon is seeking to re-open these orders,
14 which is to have the cases consolidated into a single
15 order. And because of the additional parties to be
16 pooled, the cases went to hearing on November 15, 2018.
17 Although the cases were consolidated for hearing, a
18 separate order was issued in each case. And at the
19 hearing, then it was determined that the applications
20 all targeted the Wolfbone, but the orders that were
21 issued were three orders in the Wolfbone. But Marathon
22 is requesting a single order covering -- creating a
23 single spacing unit for the Wolfbone. And that's
24 paragraph nine -- I'm sorry -- paragraph eleven, when
25 Mr. Gyllenband requests that the orders be combined into

1 a single order, and he identifies the language he would
2 like for the order -- how the order to read in terms of
3 the location. That corrects the typographical error.

4 Marathon, as I mentioned, learned of two
5 unleased mineral interest owners after Marathon went to
6 hearing, and Mr. Gyllenband sent proposal letters to
7 those unleased mineral interest owners on June 14th,
8 2019.

9 One of the unleased mineral interest owners
10 has executed a lease and so is no longer a pooled party
11 and is not identified.

12 The other unleased mineral interest owner
13 is an estate. And if you look at Tab 2, Tab 2 --
14 Exhibit 2 identifies the estate of Theodore Douglas
15 Jones and then his potential heirs. And the estate of
16 Mr. Jones has not yet been probated, and so we are not
17 sure who the heirs are. But Marathon hired a broker,
18 and this was the best information that the broker could
19 ascertain from publicly available records.

20 So the reason why Exhibit 2 is labeled
21 "Potential Heirs" is because it's unclear whether, at
22 the end of the day, after the probate matter is
23 concluded whether these will be actual heirs or not.

24 The proposal letter was sent to the estate
25 of Theodore Douglas Jones. The notice of this hearing

1 today was sent to the estate of Theodore Douglas Jones
2 and all of the potential heirs for whom we have
3 addresses. There are two unlocatable potential heirs,
4 and we did publish, which is attached to my affidavit.
5 And we'll go through that in a moment, but we did
6 publish for those two unlocatable or address-unknown
7 heirs. And I can tell you that the heirs or potential
8 heirs have been in touch with Marathon, some of them
9 have been. They've called me. They've called Marathon.
10 So they're working with Marathon to -- as the process
11 unfolds. But as I mentioned, the probate has not yet
12 been completed.

13 The reason this came to light -- or how
14 this unleased mineral interest came to light is that
15 this interest was part of a lease that expired. And
16 during the lease expiration, they were trying to
17 negotiate with Mr. Jones, and he passed away during --
18 while this negotiation was pending. So Marathon, out of
19 an abundance of caution, has notified or has sent the
20 proposal letter to his estate and has notified the
21 potential heirs, just to make sure that the record is
22 clear on what Marathon has done.

23 EXAMINER JONES: Would you call that
24 unmarketable title?

25 MS. BENNETT: Yes. Right now, it is. It's

1 inchoate. There's -- we don't know who has the interest
2 yet.

3 And in any event -- well, not in any event,
4 but it is a very small interest. Mr. Jones' interest
5 was 5 acres out of 320 so about 2 percent. So even
6 assuming every one of these folks were to get something,
7 it would be a very small percentage of the total.

8 EXAMINER JONES: And they were -- his
9 interests were 5 acres, but he actually had not leased
10 at the time he died?

11 MS. BENNETT: He was in the process of
12 re-upping, I guess is the best way to put it.

13 EXAMINER JONES: Oh.

14 MS. BENNETT: Yeah.

15 EXAMINER JONES: But he would be a -- he
16 would be a signed -- a leased mineral owner, basically,
17 if he did sign it.

18 MS. BENNETT: He would have been but for --
19 I don't know. He is not -- the lease is not with
20 Marathon. It's with another operating company.

21 EXAMINER JONES: I was going to ask you.
22 Well, what -- who is -- so nobody obtained his -- his
23 signature on a lease, although other parties were trying
24 to get his signature?

25 MS. BENNETT: Yes, they were.

1 EXAMINER JONES: Okay. So there are no
2 other parties contesting that --

3 MS. BENNETT: No.

4 EXAMINER JONES: -- they did obtain his
5 signature?

6 MS. BENNETT: Yeah. The only contest will
7 be between his heirs. And I don't know anything about
8 the status of the probate or any kind of details about
9 how it's going. I mean, I have learned a lot about the
10 family from the potential heirs calling me and talking
11 to me.

12 EXAMINER JONES: We get those calls all the
13 time.

14 MS. BENNETT: Yeah. Anyway --

15 EXAMINER JONES: "Where's my check?"

16 MS. BENNETT: Yeah. So they are aware of
17 it -- the heirs are aware of it -- potential heirs. And
18 anytime I have a potential heir or anyone who calls me,
19 I always refer them to the landman. And so the folks I
20 have been speaking with have also been contacting the
21 landman.

22 So looking at Exhibit B, Exhibit B is my
23 Affidavit of Notice, and I have included, as usual, the
24 list of folks I sent notice to. That's pages 10 -- oh,
25 I should clarify for the record that we did send notice

1 to everyone who was party to the original case, not just
2 the newly pooled parties, because we were seeking to
3 combine the orders into a single order. So the notice
4 list here includes the parties to the original case --
5 cases, as well as the newly identified party and their
6 heirs -- potential heirs. So that's why this notice was
7 relatively long.

8 Page 15 shows the status of the mailing,
9 and page 16 is the Affidavit of Publication showing that
10 notice of these three hearings was published on August
11 22nd, 2019 in the "Hobbs News-Sun."

12 Tab B has, for your convenience, the three
13 applications that I filed.

14 And Tab C, for your convenience, has the
15 three orders that were issued that we're seeking to be
16 consolidated into a single order, for your convenience.

17 At this time I'd like to move to have Tab A
18 and its exhibits, Tab B and its exhibit and Exhibit C
19 admitted into the record in Case Numbers 16144, 16145
20 and 16146.

21 EXAMINER JONES: All the exhibits you
22 mentioned are admitted in 16144, 16145 and 16146.

23 (Marathon Oil Permian, LLC Exhibits A, B
24 and C are offered and admitted into
25 evidence.)

1 EXAMINER JONES: So you said there was
2 some -- some typographical errors or --

3 MS. BENNETT: Yes. There is an error in
4 the description of Order Number 20370, which is in Case
5 Number 16145, so that's on page 36. The order states
6 that the pool -- or the spacing unit is the east half of
7 Section 19 and the east half of Section 18, Township 24
8 South, Range 35 East. The spacing unit should have been
9 the northeast quarter of Section 19 rather than the east
10 half of Section 19. So the spacing unit should be the
11 northeast quarter of Section 19 and the east half of
12 Section 18.

13 EXAMINER JONES: Okay. Thanks for saying
14 that.

15 So are you asking these orders to be --
16 what's the word -- vacated?

17 MS. BENNETT: Yeah. Uh-huh.

18 EXAMINER JONES: Okay. And totally
19 replaced by a new order?

20 MS. BENNETT: That's right.

21 And then the new order would correct the
22 typographical error and would cover all parties to whom
23 notice of pooling has been provided.

24 EXAMINER MURPHY: By one order?

25 MS. BENNETT: By a single order.

1 And, again, the interest ownership is the
2 same. The pool is the same. It was just a matter of
3 unfortunate timing in terms of when we discovered that
4 it was at Wolfbone pool. Had we known that it was the
5 Wolfbone pool before applying for these, we would have
6 applied for them in a single unit -- a single
7 application.

8 EXAMINER JONES: Does he say in here that
9 the interests are the same all through the Wolfbone?

10 MS. BENNETT: No, he does not, but you have
11 an affidavit to that effect already in your files. We
12 submitted that affidavit shortly after the hearing as
13 basically a bench request from you-all. So we did
14 prepare that affidavit and did submit it to you.

15 EXAMINER MURPHY: So when the three
16 applications for the case files, they were put into
17 three different pools?

18 MS. BENNETT: There were two in the Bone
19 Spring pool and one in the Wolfcamp.

20 EXAMINER MURPHY: And later they determined
21 it was all one pool --

22 MS. BENNETT: The Wolfbone.

23 EXAMINER MURPHY: -- the Wolfbone?

24 MS. BENNETT: Uh-huh.

25 EXAMINER MURPHY: So you want these

1 cases -- because they're one pool, you would have had
2 them heard as one case?

3 MS. BENNETT: We would have. Yes.

4 EXAMINER COSS: Three wells.

5 MS. BENNETT: No. There are multiple
6 wells. I don't think I have the number of wells in
7 front of me. Just looking quickly at the orders, there
8 are four.

9 EXAMINER JONES: They're all Blueberry
10 Hill?

11 MS. BENNETT: Yes. They're all Blueberry
12 Hill. There are seven wells altogether.

13 EXAMINER COSS: And they're going to be set
14 at different depths, but all the different depths happen
15 to be in the Bone Spring-Wolfcamp?

16 EXAMINER JONES: He's defining it as the
17 top of the 3rd Bone Spring Carbonate, which comes above
18 the sand down to -- I think 500 feet into the Wolfcamp.
19 But it's still a wildcat pool that needs to be brought
20 to hearing to really define it like a real pool.
21 Someday (laughter).

22 EXAMINER MURPHY: Is this the district
23 geologist?

24 EXAMINER JONES: Paul. This is Lea County.
25 So if you get applications in the 3rd Bone Spring and

1 the Upper Wolfcamp in Lea County, you have to be careful
2 and make sure that it's not Wolfbone. Kind of carved
3 out the lower part of the Bone Spring and the upper part
4 of the Wolfcamp. Well, the reason is people are
5 drilling right at the boundary. So I'm not sure these
6 wells -- I think these wells are right at the boundary.
7 Three of them are. So anyway --

8 And Mr. Brooks and Deana talked and decided
9 to redo the whole thing. And is it because wells had
10 already been -- the orders had already been issued or
11 because wells had already been drilled?

12 MS. BENNETT: It was because the orders had
13 already been issued. Yeah. Mr. Brooks originally
14 thought that we could do this administratively, and that
15 was the path we were heading down. But at a certain
16 point, Mr. Brooks determined that we should re-open the
17 cases and renotify the parties. And so that's what we
18 did.

19 EXAMINER JONES: Yeah. And she's being
20 nice (laughter).

21 MS. BENNETT: I would say, just going to
22 your question, Madam Hearing Examiner, that we do have
23 to file different applications when they're in different
24 formations --

25 EXAMINER MURPHY: Pools?

1 MS. BENNETT: -- different pools, yeah.
2 Excuse me. Different pools.
3 -- even if they're the same well family,
4 which is why part of our -- part of the issue with
5 moving for continuances for multitude cases when they're
6 all part of the same well family or having so many case
7 numbers for the same well family is because we have to
8 file separate applications for wells that are being
9 proposed in different pools. But they could all be --
10 not -- they couldn't all be in the same spacing unit,
11 but they are the same well family.

12 So that's just kind of a procedural
13 issue -- or a regulatory issue that is also kind of
14 bumping up against, I'd say, the I.T. issue, just in
15 terms of efficiency sake, having multitude case numbers
16 due to the need to have different case numbers for
17 different -- for pools and then how that impacts us --
18 and by us, I mean all of us -- seven months down the
19 road.

20 So for-what-it's-worth category, on days
21 like today, it seems like I have 16 cases between
22 yesterday and today really and I did. But really I only
23 had five presentations with 16 cases. So put that in
24 the for-what-it's-worth category.

25 EXAMINER JONES: We try to group those on

1 the docket.

2 MS. BENNETT: Yes, you do. Thank you.

3 EXAMINER JONES: But that's -- with the
4 advent of the fees and the advent of the new I.T.
5 system --

6 EXAMINER COSS: Do we need to go off the
7 record?

8 EXAMINER JONES: We're almost done here.

9 MS. BENNETT: Yes. At this point then, are
10 there any further questions about these three cases or
11 what Marathon is seeking?

12 EXAMINER MURPHY: No, no further questions.

13 EXAMINER DAVID: I have no questions.

14 MS. BENNETT: Thank you.

15 In that case, I'd ask that Case Numbers
16 16144, 16145 and 16146 be re-opened but only for the
17 limited purpose of issuing a single order -- a single
18 consolidated order that also corrects the typographical
19 error that we discussed and brings in the identified
20 parties but for no other purpose.

21 EXAMINER JONES: Okay. And so everyone
22 will get a new election period?

23 MS. BENNETT: If they -- yeah, I guess so.
24 Okay.

25 EXAMINER MURPHY: Can you write the order?

1 MS. BENNETT: Yeah, for sure. Yes,
2 definitely, and I'm happy to do that.

3 EXAMINER MURPHY: Thank you.

4 EXAMINER JONES: That's it for the docket.

5 EXAMINER MURPHY: That's it. We're done
6 with the docket.

7 (Case Numbers 16144, 16145 and 16146
8 conclude, 2:39 p.m.)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 6th day of October 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
Paul Baca Professional Court Reporters

25