

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: 21418

APPLICATION OF MEWBOURNE OIL COMPANY
FOR APPROVAL OF EXPANSION OF A UNIT AREA,
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 KATHLEEN MURPHY on
Thursday, January 21, 2021, through the Webex Platform.

Reported by: Irene Delgado, NMCCR 253
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19 I N D E X

20	CASE CALLED	
21	MOTION FOR CONTINUANCE	05
22	REPORTER CERTIFICATE	22

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1 HEARING OFFICER BRANCARD: Let's try Case Number
2 38, 21418. This was set for hearing, but I think we have a
3 motion, also, in this case, Mewbourne Oil. Mr. Bruce.

4 MR. BRUCE: Yes, I'm here on behalf of Mewbourne.

5 HEARING OFFICER BRANCARD: Okay. And other
6 appearances? We have Chisholm.

7 (No audible response.)

8 HEARING OFFICER BRANCARD: Okay. Let me try COG.

9 (No audible response.)

10 MS. BENNETT: Mr. Examiner, this is Deana
11 Bennett. Adam Rankin is on, he just might be muted.

12 HEARING OFFICER BRANCARD: Oh, Adam.

13 MR. RANKIN: Can you hear me now?

14 HEARING OFFICER BRANCARD: Barely. Just really
15 can't hear you. You have to start yelling, Adam.

16 MR. RANKIN: All right. See if I can. Can you
17 hear me now?

18 HEARING OFFICER BRANCARD: It's still really
19 soft.

20 MR. RANKIN: I will do my best. Adam Rankin --

21 REPORTER: Mr. Rankin, this is Irene, the
22 reporter. I can barely make out what you're saying. I'm
23 not sure if there is another mute button you are not
24 hitting, but please speak louder, in any event.

25 HEARING OFFICER BRANCARD: Use your big boy

1 voice, Mr. Rankin.

2 MR. FELDEWERT: Adam, if you want to come down to
3 my office, it might come through better.

4 MR. RANKIN: Mr. Examiner, I will enter an
5 appearance, and I will be moving to Mr. Feldewert's office.

6 HEARING OFFICER BRANCARD: Okay. But you have
7 entered an appearance for Chisholm and COG; is that correct?

8 MR. RANKIN: Chisholm, COG, ConocoPhillips, Devon
9 and Chevron are all (inaudible).

10 HEARING OFFICER BRANCARD: Okay. Marathon?

11 MS. BENNETT: Good morning, Mr. Examiner, this is
12 Deana Bennett on behalf of Marathon Oil Permian LLC.

13 HEARING OFFICER BRANCARD: Okay. And I think we
14 have Cimarex and Apache.

15 MR. HOUGH: That's correct. Lance Hough on
16 behalf of Cimarex and Apache on this case.

17 HEARING OFFICER BRANCARD: Okay, excellent.
18 Okay. Mr. Bruce, I think it was your motion; is that
19 correct?

20 MR. BRUCE: No, it was by the opponents.

21 HEARING OFFICER BRANCARD: I'm sorry, you are
22 opposing the motion, that's correct. So who was -- who had
23 filed the motion in this case?

24 MS. BENNETT: Mr. Examiner, this is Deana
25 Bennett, and it looks like Adam might be able to join

1 through Mr. Feldewert's connection now, but the two
2 parties -- or three parties that moved for the continuance
3 are COG and Devon represented by Holland & Hart, and
4 Marathon represented by myself.

5 It was the intent that (garbled audio.) It was
6 our intention --

7 HEARING OFFICER BRANCARD: Mr. Feldewert, you are
8 not muted, so we are hearing you. Sorry. Go ahead, Ms.
9 Bennett.

10 MS. BENNETT: It was our intention that Holland &
11 Hart would sort of kick off the motion for the continuance,
12 but given the technical difficulties, we can either wait for
13 them, or I'm happy to take the lead on the motion with Mr.
14 Rankin filling in his part when, when he is able to. It's
15 up to the Division's preference.

16 HEARING OFFICER BRANCARD: Let's try Holland &
17 Hart once again.

18 (No audible response.)

19 HEARING OFFICER BRANCARD: We may have completely
20 lost them.

21 MR. RANKIN: I'm logging out of (inaudible.)

22 HEARING OFFICER BRANCARD: We will give you a
23 minute, okay? Can you do that?

24 Is that the sound of logging out?

25 (Pause.)

1 MR. RANKIN: This is (inaudible), Mr. Examiner,
2 can you hear me now okay?

3 HEARING OFFICER BRANCARD: Mr. Rankin, you are
4 still pretty soft. I don't know if the court reporter can
5 hear you.

6 MR. RANKIN: I don't know why that is. I will
7 see if I can use my other (inaudible). I don't know why,
8 Mr. Examiner, this is not -- I have my input volume all the
9 way high. I've got my microphone correctly, so I'm not sure
10 what the problem is. If I might take a minute, a few
11 minutes' break, then I can try to move over to my
12 colleague's computer so that may work better.

13 HEARING OFFICER BRANCARD: I will ask the court
14 reporter. Can you hear Mr. Rankin at all.

15 REPORTER: Barely. Let's give him the
16 opportunity to move to another computer.

17 HEARING OFFICER BRANCARD: We will take a
18 ten-minute break until 10:55. Thank you.

19 (Recess taken.)

20 HEARING OFFICER BRANCARD: Ms. Murphy, are you
21 back with us?

22 TECHNICAL EXAMINER MURPHY: I am back with you.

23 HEARING OFFICER BRANCARD: Excellent. Okay. So
24 I think we left this with Mr. Rankin was going to explain
25 the motion in Case 21418. Mr. Rankin, all yours.

1 MR. RANKIN: Thank you, Mr. Examiner. May it
2 please the Division. A lot has changed in the last month,
3 in the last week even with respect to this case. As of
4 Friday ConocoPhillips, a party in this proceeding has
5 acquired COG's interest, and that transaction is closed as
6 of Friday.

7 COP or ConocoPhillips, which is (unclear)
8 expansion of this unit is now aligned with COG's interests
9 and joins in this motion as well.

10 COG has been opposed to the unit expansion from
11 the beginning. However, as of last week Mewbourne and COG
12 reached agreement on terms for a revised unit operating
13 agreement. And Mewbourne provided COG or Concho with a
14 revised unit operating agreement on Friday, which was
15 intended to include their agreed terms right before the
16 holiday break, however material aspects of that agreement
17 were not included in the revised unit operating agreement.

18 So COG turned around and revised the agreement
19 back to Mewbourne for review yesterday morning. Parties are
20 thus still in the process of trying to finalize their
21 agreement. Cumulative substantive changes include
22 elimination of several land tracts from the proposed
23 expansion and elimination of the Wolfcamp formation limiting
24 the unit expansion to just the Bone Spring formation within
25 the proposed unit area.

1 In fact, so much has changed in the last eight or
2 nine days, Mewbourne exhibits and affidavits submitted last
3 Thursday are no longer entirely correct or accurate. For
4 example, the geology affidavit in the exhibit's reference
5 the Wolfcamp formation as if -- as if it's still included in
6 the proposed unit expansion when it is not.

7 In light of these changes and the fact they are
8 not reflected and because ConocoPhillips and COG and
9 Mewbourne need additional time to finalize their agreement
10 which would be in all the parties' best interest. At this
11 point COG requested a continuance.

12 A one month continuance will provide enough time
13 for the parties and Mewbourne to finalize their agreement
14 and for Mewbourne to update its exhibits to be sure the
15 record presented to the Division correctly and accurately
16 reflects the update to the proposal.

17 COG and ConocoPhillips believes it's critical
18 that this case not proceed to hearing until they have had a
19 chance to finalize their agreement with Mewbourne because
20 once Mewbourne proposed unit expansion is approved,
21 Mewbourne will be designated of the 12,000 plus acres
22 committed to the unit and will essentially be the de facto
23 operator of all the acreage and undivided interest within
24 the boundaries that is not voluntarily (unclear).

25 Any working interest owner who is not committed

1 and proposes a well that conflicts with Mewbourne's unit
2 plan of operations is likely never to obtain approval for
3 that well to drill within the unit area as long as Mewbourne
4 is the operator and objects.

5 Now, to look at Mewbourne's 2(unclear) in their
6 exhibit packet, you see they propose a full plan of
7 development across the entire acreage. So Mewbourne will
8 and can argue at any time that the proposed (unclear) will
9 impede Mewbourne's efficient and effective operation.

10 For that reason, they will effectively be deemed
11 operator of the entire area impeding other interest owners
12 to develop their own acreage. Mewbourne contends that this
13 hearing has been delayed for too long and that is (unclear)
14 everyone else that is holding up the hearing on this unit
15 expansion, and it's, to their point, is entire voluntary.

16 But Mewbourne must look to itself for much of the
17 delay it complains about. It took months for Mewbourne to
18 respond to the parties' concerns about including certain
19 operated acreage in their proposed unit expansion to
20 contract that acreage out and to address other concerns such
21 as the inclusion of the Wolfcamp formation. Those are
22 issues that could have been addressed and resolved by
23 Mewbourne months ago.

24 So Mewbourne's concerns about deadlines also
25 appear to be somewhat exaggerated as illustrated by the

1 updated preliminary approval letter, Exhibit 5, which
2 Mewbourne just submitted recently. Mewbourne does not have
3 any unit obligations to the State Land Office to drill any
4 wells until the end of 2021.

5 If there is separately (unclear) or other
6 contractual obligations that occur sooner, nothing would
7 prevent Mewbourne from proceeding to drill or to meet those
8 other contractual obligations in the meantime.

9 And now for all those reasons, Mr. Examiner, we
10 ask that this case be continued just for one month to allow
11 the parties and Mewbourne to finalize their agreement and to
12 update the proposal and (inaudible). For those reasons we
13 ask that the motion to continue be granted.

14 HEARING OFFICER BRANCARD: Do you have a specific
15 request for continuing this or to set a status conference,
16 or what would you like?

17 MR. RANKIN: Mr. Examiner, I think the preference
18 would be -- I don't think we need much time. I think we are
19 on the verge of finalizing this agreement. We have the
20 understanding. My understanding is we, the parties,
21 ConocoPhillips and COG, have an understanding on the terms.
22 Just need to finalize the language of the unit operating
23 agreement.

24 Hopefully that can be done next week, so I think,
25 at a minimum, I don't have the hearing dates in front of me

1 because I'm not in my office, but I believe, if there is an
2 availability for a hearing in February, I think a
3 presentation of -- I think -- unit, voluntary unit should
4 be fairly simple and straightforward and with the
5 (inaudible).

6 So I would like to, if possible, you know, to the
7 extent this matter can be continued, I would look towards
8 the earliest dates possible in February.

9 MS. BENNETT: Mr. Examiner, this is Deana
10 Bennett. May I say something --

11 HEARING OFFICER BRANCARD: Let me just clarify.
12 You are looking to continue the hearing, not asking for a
13 status conference; is that correct?

14 MR. RANKIN: Mr. Examiner, to our point, I don't
15 think we need another status conference. We simply need a
16 continuance of the hearing itself.

17 HEARING OFFICER BRANCARD: And you are hoping it
18 will go by affidavit. Is that what you are hoping?

19 MR. RANKIN: As far as our interests are
20 concerned, I think that if COG and ConocoPhillips are able
21 to reach an agreement, I cannot speak for Marathon, I think
22 it would be possible to put the case on by affidavit
23 assuming that the parties are able to reach agreement in the
24 near future.

25 HEARING OFFICER BRANCARD: Okay. We will go to

1 Ms. Bennett and then back to Mr. Bruce. Ms. Bennett.

2 MS. BENNETT: Thank you. This is Deana Bennett
3 again on behalf of Marathon Oil Permian. And I largely
4 agree with what Mr. Rankin said as the basis for requesting
5 the continuance.

6 I also noted in my review of the exhibits that
7 were submitted to the Division, that those exhibits do not
8 accurately reflect the current status of the unit agreement,
9 and consequently, if the hearing were to go forward today,
10 the Division would be approving a unit agreement that is
11 incorrect and inaccurate. So that, in my mind, militates in
12 favor of a continuance to at least get the appropriate
13 materials in front of the Division.

14 I would also note, however, that this week Mr.
15 Bruce submitted a preliminary approval letter from the State
16 Land Office. And that preliminary approval letter, while it
17 does acknowledge the contraction of the unit acreage, it
18 does not address the limitation to the Bone Spring only as
19 opposed to the Wolfcamp.

20 So clearly whether there is further coordination
21 needed with the State Land Office before proceeding any
22 further with this case because the State Land Office
23 certainly should have the opportunity to review and approve
24 any such change to this unitized formation, that's not clear
25 from the material in the record today.

1 It could very well have happened already, but we
2 don't have anything in the record that would suggest that
3 the State Land Office has reviewed and preliminarily
4 approved the limitation to the Bone Spring.

5 And finally, Marathon is not in the same
6 position -- Marathon is working the with Mewbourne and
7 wants to reach an agreement with Mewbourne. I don't know
8 that they are as close as COG and ConocoPhillips, so I
9 think -- so I think an early February date, that doesn't
10 give enough time. So I would be inclined to either go with
11 February 18, which may already be full, I'm trying find
12 Marlene's e-mail about that.

13 But, you know, March 4 may be a workable date
14 given that there are other parties that are still
15 outstanding that need to have further communication with
16 Mewbourne before the hearing actually occurs.

17 As Mr. Rankin explained, well, Marathon has --
18 Mewbourne credits Marathon with 640 acres in the unit
19 expansion, and Marathon is 100 percent owner of those acres
20 according to Mewbourne, and that's not an unsubstantial
21 amount of acreage. So Marathon would be prejudiced if
22 Mewbourne were granted operators of this, even if it is
23 voluntary, because if Marathon doesn't elect, Mewbourne can
24 come back in and pool Marathon and Marathon would have no
25 real recourse at that point.

1 So Marathon wants some more time to get the
2 negotiations ironed out, and then it will be a much faster
3 process, more streamlined and potentially could go by
4 affidavit if both Marathon and COG and ConocoPhillips are
5 able to reach an agreement with Mewbourne, it would be a
6 much smoother hearing for the Division. Thank you.

7 HEARING OFFICER BRANCARD: Thank you. And now I
8 will turn back to Mr. Bruce to respond to the motion.

9 MR. BRUCE: As I basically stated in my response
10 to the motion, I think the motion is without merit. This is
11 a voluntary exploratory unit joinder. It's totally
12 voluntary. And I disagree with the other attorneys that
13 just because there is uncommitted acreage within a larger
14 unit area, that that uncommitted acreage is automatically
15 going to be operated by Mewbourne.

16 If the Hearing Examiner would like, I can provide
17 him with a list of ten or 12 cases where I have had -- I
18 have pooled unit acreage with non-unit acreage,
19 non-committed acreage and it's gone on for 20, 25 years. So
20 their rights to operator-ship are going to be affected. I
21 think their bigger problem -- Marathon might be one thing,
22 but they could propose wells that included their own unit
23 one section acreage, or they could seek longer laterals,
24 just like any other compulsory pooling situation.

25 The stuff that Mewbourne is going to

1 automatically be the lock-on operator, sure, it will be an
2 operator, but part of the thing is, it has most of the acre
3 -- one of the reasons it will probably be operator of most
4 of the acreage at least is because it has the largest single
5 interest in the unit, and all of the people who voluntarily
6 ratified the unit agreement, that acreage will be credited
7 toward Mewbourne's interest if it came to forced pooling.
8 So I do not agree one bit with that line about their rights
9 will be affected.

10 Secondly, I would like to point out that
11 Mewbourne has been in touch with these parties. As I said
12 in my response, one of them, Devon Energy just refused to
13 talk to Mewbourne. How are you supposed to reach agreement
14 with a party who won't talk to you.

15 The others, Mewbourne has communicated with them.
16 And as for massive changes in the unit agreement, Mewbourne
17 withdrew the Wolfcamp at the request of several parties, and
18 they excused or excised a certain's parties acreage from the
19 unit at their request. Now they are saying that's
20 complicating things? I don't understand.

21 The fact of the matter is, insofar as the Land
22 Office knowing this is only the Bone Spring, yes, they know
23 because they preliminarily preapproved the unit agreement,
24 the revised unit agreement, which only specifically covers
25 the Bone Spring.

1 This is a simple and straightforward case. My
2 clients are ready to move forward, and even if it was
3 contested at least on our side of the testimony, I can
4 probably put on our side of the testimony in 15 or 20
5 minutes because it's all there insofar as the geologic
6 exhibits containing the Wolfcamp data.

7 Yes, I could have replaced them, but all you have
8 to do, I'm not going to seek their admission, all you have
9 to do is excise them from your exhibit packet. That is no
10 reason for a continuance, and then they talked about, well,
11 there is still time to do stuff.

12 Well, there are expiring leases in the proposed
13 unit, and in this case I am also entering an appearance on
14 behalf Ascent Energy which has ratified the unit and it has
15 an upcoming expiring lease. It needs to have Mewbourne get
16 moving on doing this drilling or it will lose the lease.

17 So there are a number of factors besides the ones
18 I put in my response. Simply stated, this is not a
19 difficult case. The parties had three months to submit any
20 exhibits that they wanted, and they did not do so. I think
21 we should just go ahead and present the case. And I would
22 request that the motion be denied.

23 HEARING OFFICER BRANCARD: So, Mr. Bruce, you are
24 prepared to move ahead with your case today?

25 MR. BRUCE: Yes.

1 HEARING OFFICER BRANCARD: Okay. Mr. Hough, I
2 think I passed over you. Did you have any comment on this
3 motion?

4 MR. HOUGH: Mr. Examiner, bottom line is my
5 clients aren't opposed to this -- they are not necessarily
6 involved in the motion per se.

7 HEARING OFFICER BRANCARD: Okay. Mr. Rankin, I
8 will give you one more chance to respond, and then let me
9 know if you're ready to go today.

10 MR. RANKIN: Mr. Examiner, I don't have any
11 further comments to make or arguments with this response to
12 Mr. Bruce's statements. I think the facts are what they
13 are, and so nothing further on our end and wait the Hearing
14 Officer's ruling on the motion.

15 MS. BENNETT: Mr. Brancard, this is Deana
16 Bennett. May I point to one final thing in the record?

17 HEARING OFFICER BRANCARD: Sure.

18 MS. BENNETT: Thank you. And this is on
19 Marathon's behalf. Mr. Bruce stated that the unit agreement
20 that's been submitted to the Division is the revised unit
21 agreement and specifically only applies to the Bone Spring.
22 But I have reviewed the unit agreement and I am looking at
23 the exhibits which are 1-A, and I'm reading from the unit
24 agreement now, and to says, "Unitized substances, all oil
25 and gas, et cetera, in any and all formation of the unitized

1 land."

2 That language that is all formations of the
3 unitized land is repeated on about six or seven pages of the
4 exhibit. There is nothing in the unit agreement that
5 specifically limits it to the Bone Spring except for the
6 test wells, and the test wells themselves are only the
7 initial drilling obligation.

8 Those are not a limitation on the formation that
9 will be drilled. And the JOA that was included with the
10 exhibits also includes both the Wolfcamp and the Bone
11 Spring. The initial application that was submitted also
12 includes the Wolfcamp and Bone Spring. The notice letters
13 include the Wolfcamp and the Bone Spring.

14 And the geology exhibits cannot be simply excised
15 as Mr. Bruce suggested because the geology affidavit is to
16 have within it, woven into it testimony about the Wolfcamp.
17 And so it's not a simple of matter of not admitting certain
18 exhibits because his affidavit, unless the Division is
19 inclined to interlineate his affidavit and strike certain
20 paragraphs of his affidavit, it cannot be excised as a
21 whole.

22 And so for that reason, I don't think that the
23 material before the Division as it currently exists is
24 limited to the Bone Spring. Of course, if the examiners are
25 inclined to allow the case to go forward, then I would have

1 and I would reserve the right to ask some cross-examination
2 questions about where in the record it explicitly says in
3 the unit agreement as opposed to landman's affidavit that
4 the unit agreement is specifically limited to the Bone
5 Spring. Thank you.

6 HEARING OFFICER BRANCARD: Well, I think you have
7 answered question I also asked to Mr. Rankin, but I'm not
8 sure I got a good answer from him, which is, if the hearing
9 goes forward today, you would content it and want to have
10 witnesses to question. Is that correct?

11 MS. BENNETT: Your Honor -- I'm sorry -- Mr.
12 Examiner, I don't have any witnesses myself, but I would and
13 I have reserved the right to cross-examine Mewbourne's
14 witnesses.

15 We don't, Marathon doesn't have any affirmative
16 testimony or affirmative exhibits to advance, but I am
17 prepared to cross-examine Mewbourne's witnesses because we
18 understood that there was the chance that this case would go
19 forward today.

20 HEARING OFFICER BRANCARD: And Mr. Rankin, I have
21 the same question of you. What are you prepared to do
22 today?

23 MR. RANKIN: Mr. Examiner, I don't have any
24 witnesses to present or testimony or evidence in opposition
25 to the presentation of the case. However, I may have a few

1 questions of Mr. Bruce's witnesses just for clarification
2 purposes and to understand the status of their -- to
3 confirm the proposal that they are presenting today.

4 But other than that, I don't have any other
5 witnesses or testimony and would simply ask to reserve the
6 right to can ask a few questions although they may be
7 answered by Ms. Bennett's questions.

8 HEARING OFFICER BRANCARD: Thank you. Mr. Bruce,
9 how many witnesses do you have?

10 MR. BRUCE: I've got two witnesses, a landman and
11 a geologist.

12 HEARING OFFICER BRANCARD: Okay. And they are
13 prepared to present direct testimony today?

14 MR. BRUCE: Yes. They have affidavits and they
15 are going to submit those and respond to a couple of my
16 extra questions, and then they had be cross-examined.

17 HEARING OFFICER BRANCARD: Okay. So we normally
18 allow continuances, but I'm also seeing we are kind of
19 stacked up on our dockets here, and I don't know that we can
20 hear this case any time soon.

21 When are the next hearing dates, Ms. Salvidrez,
22 that are available for contested cases?

23 MS. SALVIDREZ: So we have March 18 and forward
24 open, except for the 22. So March 18 is open.

25 HEARING OFFICER BRANCARD: So we have nothing in

1 February; is that correct?

2 MS. SALVIDREZ: No.

3 HEARING OFFICER BRANCARD: Okay. It sounds to me
4 from the motion that there are -- there is a lot of fluid
5 issues here among the parties, no pun intended, and I will
6 grant the motion to continue this case. The hearing will be
7 set for March 18. Thank you.

8 (Status conference concluded.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

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REPORTER'S CERTIFICATE

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

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

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

Dated this 21st day of January 2021.

/s/ Irene Delgado

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