

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 NO. 13,286
APPLICATION OF DEVON ENERGY PRODUCTION)
COMPANY, L.P., FOR COMPULSORY POOLING,)
LEA COUNTY, NEW MEXICO)

ORIGINAL

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID R. CATANACH, Hearing Examiner

June 24th, 2004

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday, June 24th, 2004, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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June 24th, 2004
 Examiner Hearing
 CASE NO. 13,286

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<u>RICHARD C. WINCHESTER</u> (Landman)	
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A P P E A R A N C E S

FOR THE APPLICANT:

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By: W. THOMAS KELLAHIN

FOR VIERSEN OIL AND GAS COMPANY:

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Attorney at Law
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* * *

1 WHEREUPON, the following proceedings were had at
2 9:09 a.m.:

3 EXAMINER CATANACH: Call Case 13,286, the
4 Application of Devon Energy Production Company, L.P., for
5 compulsory pooling, Lea County, New Mexico.

6 Call for appearances.

7 MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin of
8 the Santa Fe law firm of Kellahin and Kellahin, appearing
9 on behalf of the Applicant, and I have one witness to be
10 sworn.

11 EXAMINER CATANACH: Additional appearances?

12 MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe,
13 representing Viersen Oil and Gas Company. That's
14 V-i-e-r-s-e-n. I have no witnesses.

15 EXAMINER CATANACH: Okay, will the witness please
16 stand to be sworn in?

17 (Thereupon, the witness was sworn.)

18 RICHARD C. WINCHESTER,
19 the witness herein, after having been first duly sworn upon
20 his oath, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. KELLAHIN:

23 Q. For the record, Mr. Winchester, would you please
24 state your name and occupation?

25 A. Richard Winchester, I'm the land advisor with

1 Devon Energy Corporation.

2 Q. Where do you reside, sir?

3 A. Norman, Oklahoma.

4 Q. On prior occasions have you testified before the
5 Oil Conservation Division and had your qualifications as a
6 petroleum landman accepted and made a matter of record?

7 A. Yes.

8 Q. Are you the principal landman for Devon that's
9 been assigned the responsibility for determining the
10 ownership in the spacing unit and then to contact those
11 working interest owners in an effort to propose this well,
12 this spacing unit, and the formation on a voluntary basis
13 of consolidating the interests?

14 A. Yes, I am.

15 Q. At this point have you reached the time where you
16 need the assistance of the Division in having a compulsory
17 pooling order?

18 A. That's correct.

19 MR. KELLAHIN: We tender Mr. Winchester as an
20 expert petroleum landman.

21 EXAMINER CATANACH: Mr. Winchester is so
22 qualified.

23 Q. (By Mr. Kellahin) Mr. Winchester, let's turn to
24 what we've marked as Exhibit Number 1. Let's use this as a
25 reference point. Devon's proposal would ask the Division

1 to pool interest from what formation down through what?

2 A. From the base of the Morrow to the base of the
3 Devonian formation.

4 Q. Do you have a recommendation to the Examiner for
5 a proposed spacing unit that's consistent with Division
6 Rules for wells at that depth?

7 A. Yes, it's a wildcat well, and we are -- we have
8 proposed the east half of Section 15 of Township 23 South,
9 Range 34 East as a spacing unit for the well.

10 Q. When we look at Exhibit 1 we can see the proposed
11 spacing unit outlined how?

12 A. It's in the red stipple.

13 Q. Have you indicated to the Examiner the surface
14 and proposed bottomhole location for the well to be
15 dedicated to the spacing unit?

16 A. Yes, we have. The surface location is 660 from
17 the south line, 660 feet from the east line. The
18 bottomhole is 990 from the south line and 1080 feet from
19 the east line.

20 Q. The surface location and the bottomhole location
21 would both be standard, would they not?

22 A. That's correct.

23 Q. What's the reason that's being done?

24 A. The surface hole -- or at the surface location,
25 there's a Conoco gas plant, and then you have the

1 intersection of two high-pressure gas lines, so we were
2 forced to move the surface location to the southeast.

3 Q. Has Devon filed with the appropriate regulatory
4 agency a request for approval of an application for a
5 permit to drill?

6 A. Yes, we have.

7 Q. Let me refer you to the package of documents
8 contained as Exhibit Number 2 and have you identify that
9 package for me.

10 A. Exhibit 2 is the APD that we have filed, the
11 C-144 and then the application for permit to drill to the
12 BLM, and then the information that's also required, the
13 C-102 and that packet of information that's required to be
14 filed with the NMOCD.

15 Q. Is this the well plan and proposal that you have
16 proposed to the working interest owners in the spacing
17 unit?

18 A. Yes, it is.

19 Q. Let's go back to Exhibit Number 1. There's a
20 tabulation of parties and percentages on the right-hand
21 side of the display. What do those represent?

22 A. Those represent the working interest ownership
23 per each quarter section and then the corresponding
24 interest for each party in the proposed spacing unit.

25 Q. Have you had a title attorney with whom you have

1 confidence prepare for you the necessary title documents to
2 confirm for you your understanding that these particular
3 entities or individuals have control of the proposed
4 working interests as you've indicated by these percentages?

5 A. Yes, we have.

6 Q. When we turn to the southeast quarter of the
7 spacing unit, what is your understanding of the working
8 interest in that quarter section?

9 A. In the southeast quarter below 13,239, the title
10 opinion that was rendered credited Wynn-Crosby 1998, Ltd.,
11 with a half interest and Viersen Oil and Gas Company with a
12 half interest.

13 Q. Does the title opinion alert you to the title
14 dispute that exists between Wynn-Crosby and Viersen with
15 regards to who has what portion of those interests?

16 A. Yes, it does.

17 Q. When we look at the quarter section, what portion
18 of that interest is not in dispute?

19 A. A half interest in the southeast quarter is not
20 in dispute.

21 Q. And who holds that interest?

22 A. That's Wynn-Crosby 1998, Ltd.

23 Q. So Wynn-Crosby, if you proportionately reduce
24 that to the spacing unit, there's a 25-percent interest in
25 the well that's not disputed?

1 A. That's correct.

2 Q. Was the title attorney able to resolve the title
3 dispute documents that he examined?

4 A. No, he was not.

5 Q. Have you made Viersen Oil and Gas and Wynn-Crosby
6 aware of the title problems that exist as to their two
7 interests?

8 A. Yes, we have forwarded a portion of the title
9 opinion that includes the requirement that Mr. Turner made
10 with regards to the disputed interest.

11 Q. We'll come back to that in a minute as to how to
12 resolve that question. Let's turn now to the proposal
13 itself, and if you'll start with Exhibit 3, describe for us
14 what you had intended to do on April 7th with this letter.

15 A. On April 7th we made a well proposal to the
16 working interest owners, as shown on Exhibit 1, to drill a
17 14,800-foot Devonian test. It included an AFE with a
18 dryhole cost of \$3.126 million and a completed cost of
19 \$3.995 million.

20 In the proposal we requested that they
21 participate on a voluntary basis or propose terms --
22 farmout or term assignment terms that were reasonable,
23 should they elect not to participate.

24 Q. Is this the same well that we've talked about in
25 terms of the Application for permit to drill that was

1 discussed as Exhibit 2?

2 A. Yes.

3 Q. Attached to this letter, Mr. Winchester, did you
4 provide these parties with Devon's proposed costs of the
5 well?

6 A. Yes, we did.

7 Q. Turn to that portion of Exhibit Number 3 and
8 identify for us what Devon believes to be the total
9 completed cost for the well.

10 A. It's three-point-approximately-four million
11 dollars.

12 Q. When we turn to Exhibit 4, what are we looking at
13 here?

14 A. These are the certified mail receipts for the
15 proposal letter.

16 Q. When we look at Exhibit 5, what do we now see?

17 A. These are the parties that have made an election
18 pursuant to that proposal.

19 Q. So if you'll come back to Exhibit 1, let's
20 describe for Mr. Catanach what the status is of voluntary
21 commitment of the interest owners tabulated on the exhibit.
22 At this point do you have completed, signed joint operating
23 agreements by all these interest owners?

24 A. No, we do not.

25 Q. You have some of these interest owners that have

1 agreed to participate by executing your participation
2 letter and consenting to the AFE?

3 A. That's correct.

4 Q. When we go down this list, what parties then
5 would you seek to have this order subject to?

6 A. Actually then we would seek to have the order
7 applied to every party.

8 Q. Give me an indication of which of these parties
9 has returned your letter approving the APD for the well.

10 A. ABC Oil and Gas Properties, Lorry Sharon Anderson
11 Chapman, Axis Energy Corporation, and Rex Tompkins have all
12 signed the AFE and returned the proposal letter. We have
13 forwarded operating agreements to each of those parties,
14 but we have not received the signed operating agreement.

15 Q. With regards to the disputed interest, have you
16 advised the representatives of Wynn-Crosby and Viersen Oil
17 and Gas that Devon is not in the position to cure their
18 title flaws?

19 A. That's correct.

20 Q. And they understand that you plan to proceed with
21 the drilling of this well and that they'll have to take
22 necessary action to settle, resolve or litigate their title
23 dispute?

24 A. That's correct.

25 Q. Let's turn to Exhibit Number 6. What have you

1 tabulated for Mr. Catanach here?

2 A. This is just an internal AFE tracking sheet that
3 we have at Devon. It gives the working interest ownership
4 on the left-hand side and basically tracks when the AFE was
5 sent, when it was received, and any information regarding a
6 party's election or correspondence made to those parties.

7 Q. Of these parties, are there any of these parties
8 that you ultimately were not able to contact?

9 A. Yes, Charles Albright, Trustee, we have not been
10 able to contact.

11 Q. To the best of your knowledge, do you have the
12 correct, accurate address for that individual?

13 A. Yes, we do.

14 Q. Have you attempted to call him on the telephone?

15 A. On a number of occasions.

16 Q. And what has happened?

17 A. Have not returned our phone calls.

18 Q. When we turn to Exhibit 7, what are we seeing
19 with Exhibit 7

20 A. Exhibit 7 is just a cover letter for the AFE that
21 we've -- actually the operating agreement that we sent to
22 the parties that elected to participate.

23 Q. And then Exhibit 8 is -- ?

24 A. Exhibit 8 is the operating agreement that was
25 forwarded.

1 Q. And Exhibit 8, then, is this document, the
2 signature pages of which you're waiting to be returned to
3 you by all these parties that have indicated that they've
4 approved your AFE?

5 A. That's correct.

6 Q. When we turn to Exhibit 9, are you satisfied that
7 -- to the best of your knowledge, that this notice
8 certificate and the parties listed on here are the correct
9 parties and the most current available addresses for those
10 parties?

11 A. Yes.

12 Q. To the best of your knowledge, has Devon
13 exhausted all reasonable efforts to notify all the
14 individuals concerning the hearing today?

15 A. Yes.

16 Q. Let's come back and look at the disputed title
17 interest between Viersen and Wynn-Crosby in the southeast
18 quarter of the section. It's my understanding that it's
19 very complicated and that there's a number of documents for
20 which there may be an ambiguity about who has what?

21 A. That's correct.

22 Q. When you look at those documents, the title
23 attorney is satisfied as to 50 percent of that quarter
24 section is not disputed?

25 A. That's correct.

1 Q. Do you have a recommendation to Mr. Catanach of
2 how he can handle in the pooling order a provision whereby
3 Devon can go ahead and drill this well and have these
4 disputed interests handled appropriately?

5 A. Yes, I do.

6 MR. KELLAHIN: Rather than the actual words, Mr.
7 Catanach, we will submit to you a draft suggesting the
8 actual language.

9 Q. (By Mr. Kellahin) But take a moment, Mr.
10 Winchester, and describe for Mr. Catanach what the concept
11 is.

12 A. Well, the concept would be -- we have tentative
13 agreements with those parties, but what we're looking at
14 is, as to the disputed interest, if either party pays a
15 proportionate share of that, that they can recoup those
16 costs out of proceeds and, if a settlement or judgment
17 hasn't been made at payout, that those proceeds be placed
18 in escrow until a settlement or judgment is made, and, if
19 Devon pays a proportionate share of those costs, that we
20 are able to recoup our proceeds, our cost until payout,
21 plus the 200-percent risk penalty.

22 Q. Do you have a recommendation to Mr. Catanach for
23 overhead rates while drilling and while producing?

24 A. Yes, \$6000 for drilling and \$600 for producing.

25 Q. Are those the same rates proposed by Devon in the

1 joint operating agreement?

2 A. Yes, they are.

3 Q. In the operating agreement are there COPAS
4 escalation provisions that apply to that document?

5 A. Yes, there are.

6 Q. Are you asking the Division to use their
7 escalators that they put in their pooling orders to allow
8 you to escalate the overhead rates over time?

9 A. That's correct.

10 Q. Who is the intended operator for the well?

11 A. Devon Energy Production Company.

12 Q. To the best of your knowledge, Mr. Winchester,
13 have you exhausted all reasonable efforts to obtain
14 voluntary agreement?

15 A. Yes, I have.

16 MR. KELLAHIN: Mr. Catanach, we move the
17 introduction of Mr. Winchester's Exhibits 1 through 9.

18 EXAMINER CATANACH: Exhibits 1 through 9 will be
19 admitted.

20 MR. KELLAHIN: That concludes our examination.

21 EXAMINATION

22 BY EXAMINER CATANACH:

23 Q. Mr. Winchester, the primary target of this well
24 is Devonian?

25 A. Yes, sir.

1 Q. You're confident that you've got the right
2 address for Charles Albright. Is that your --

3 A. Yes, yes, we are.

4 Q. He just won't respond?

5 A. He just won't respond. And I've called him and
6 his voice mail, and he states his name, but he just won't
7 return the phone calls.

8 Q. Okay. And the four parties that have agreed,
9 they just haven't signed the JOA?

10 A. That's correct.

11 Q. Now, your proposal with regards to Viersen is
12 that they would either pay their share of the well costs or
13 you would pay their share of the well costs --

14 A. That's correct.

15 Q. -- if they go nonconsent, and then at payout, if
16 the dispute was still ongoing, that money would be placed
17 in escrow?

18 A. That's correct.

19 Q. Has that been discussed with the parties?

20 A. We have discussed -- In fact, we have a tentative
21 agreement with -- well, we have tentative agreements with
22 both parties. Wynn-Crosby we flanged up in the next week
23 or so, whenever we're able to agree upon a formal written
24 agreement. And then with Viersen, it's just a matter of
25 getting a written agreement in place as well.

1 Q. Is that part of the JOA, or is that separate?

2 A. It would be separate. And we would attach the
3 operating agreement to any agreement that we agreed to,
4 though.

5 EXAMINER CATANACH: And you will submit that
6 language, Mr. Kellahin?

7 MR. KELLAHIN: Yes, Mr. Examiner. I'm going to
8 follow the concept that I've persuaded Mr. Brooks to adopt
9 for Richardson Production Company in a case back in August
10 of '02, and we'll submit you copies of that order, showing
11 you how Mr. Brooks solved it and our language that we think
12 provides an appropriate solution in this case.

13 EXAMINER CATANACH: Okay. Mr. Bruce, did you
14 have anything, any questions?

15 MR. BRUCE: No, Mr. Examiner.

16 EXAMINER CATANACH: All right, there being
17 nothing further, Case 13,286 will be taken under
18 advisement.

19 Let's take a 10-minute break.

20 (Thereupon, these proceedings were concluded at
21 9:30 a.m.)

22 * I do hereby certify that the foregoing is
23 a complete record of the proceedings in
24 the Examiner hearing of Case No. 13286,
25 heard by me on June 26, 2004.
David R. Catnach, Examiner
Oil Conservation Division

CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL June 29th, 2004.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006