

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

ORIGINAL

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

APPLICATION OF FARLEIGH OIL PROPERTIES
FOR A COMPLIANCE ORDER AGAINST SWEPI LP
AND SHELL EXPLORATION AND PRODUCTION
COMPANY, GUADALUPE COUNTY, NEW MEXICO

Case No. 14583

TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: TERRY WARNELL, Presiding Examiner
DAVID K. BROOKS, Legal Examiner

May 26, 2011

Santa Fe, New Mexico

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This matter came on for hearing before the
New Mexico Oil Conservation Division, TERRY WARNELL,
Presiding Examiner, and DAVID K. BROOKS, Legal Examiner,
on Thursday, May 26, 2011, at the New Mexico Energy,
Minerals and Natural Resources Department, 1220 South St.
Francis Drive, Room 102, Santa Fe, New Mexico.

REPORTED BY: Jacqueline R. Lujan, CCR #91
Paul Baca Professional Court Reporters
500 Fourth Street, N.W., Suite 105

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A P P E A R A N C E S

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REPORTER'S CERTIFICATE

20

1 EXAMINER WARNELL: A couple of the
2 attorneys has asked -- normally I just go in order of
3 what's left on the docket. A couple of attorneys have
4 asked that we hear the Farleigh case on page 7, the last
5 case, Case 14583, application of Farleigh Oil Properties
6 for a compliance order against SWEPI LP and Shell
7 Exploration Company, Guadalupe County, New Mexico. The
8 attorneys have asked that we hear that case first, and
9 that's what we'll do.

10 Call for appearances.

11 MR. BRUCE: Jim Bruce of Santa Fe,
12 representing Farleigh Oil Properties. I have no
13 witnesses.

14 MR. FELDEWERT: Mr. Examiner, Michael
15 Feldewert, from Holland & Hart, on behalf of SWEPI LP and
16 Shell Exploration and Production Company.

17 MR. KELLAHIN: Mr. Examiner, I'm Tom
18 Kellahin, of the Santa Fe law firm of Kellahin &
19 Kellahin, appearing this morning on behalf of Bayswater
20 Exploration and Production, LLC.

21 MR. BRUCE: Mr. Examiner, we're basically
22 here today on Mr. Feldewert's motion to dismiss. I'll
23 just give a little introduction. This case was filed
24 last fall by Farleigh Oil Properties, seeking to compel
25 Shell to correct or amend its filings with the OCD on

1 five wells drilled over in Guadalupe County.

2 At that point logs had not been filed, and the
3 C-105s and C-103s regarding completions of the wells
4 Farleigh alleged were improper. Since that date, in
5 early January of this year, all logs on the wells were
6 finally filed with the Division in a format that could be
7 used by third parties. And then in April, I think late
8 April it was, Shell filed amendments to its C-103s and
9 C-105s regarding the well data.

10 My client's position at this point is simply
11 that we don't think Shell has fully complied -- let's
12 take a step back. As you know, Mr. Brooks, there have
13 been a couple of pre-hearing conferences on this matter,
14 including an informal one among the attorneys excluding
15 the Hearing Examiners and Division counsel.

16 I think it's pretty clear to the Division the
17 position at Farleigh Oil, and I think my client has
18 reached a point of what they see as diminishing returns.
19 We've gotten most of the data we wanted out of Shell. We
20 don't think that Shell complied with Division
21 requirements set forth in the Form C-105s regarding all
22 of the completion data it filed.

23 But at this point, there doesn't see much
24 benefit in coming here and spending a full day testifying
25 on this matter because all that has been filed at this

1 point is something that is useful to the Division, to
2 third parties and to my client.

3 Unfortunately, it's my client's position that
4 it took Farleigh a year of meeting with the Division or
5 filing applications and going to multiple pre-hearing
6 conferences to get data that should have been filed two
7 and three years ago.

8 And at this point, I'll turn it over to
9 Mr. Feldewert to argue his motion to dismiss.

10 MR. FELDEWERT: Mr. Examiner, I agree that
11 they have certainly got most of the data they requested
12 from Shell. It seems to be the impetus for their filing
13 the issue before the Division prompted by their
14 application was whether they met the filing requirements
15 under the rule. As you may or may not know, this began
16 back in 2010, when Farleigh sent a letter to the
17 Division. If I may approach?

18 EXAMINER WARNELL: Um-hum.

19 MR. FELDEWERT: It began back in --
20 actually, in August they sent a letter to the Division
21 suggesting that Shell had failed to meet their filing
22 requirements under Rule 7.16, which requires an operator
23 using a C-105 to file a summary of their tests. Shell
24 had done that.

25 Farleigh suggested that they had not met the

1 filing requirements. The District Office examined the
2 filings, examined the rule, responded, stating that,
3 "NMOCD rules do not specify any format to be used when an
4 operator is submitting such data. Therefore, the NMOCD
5 is satisfied that SWEPI has complied with the letter of
6 the rule."

7 Nonetheless, they went out and filed their
8 application for compliance with Rule 7.16, alleging we
9 had not met the requirements of the rule. Since that
10 time there has been various conferences involving the
11 Examiner, involving the parties, involving the Division.

12 And at the last pre-hearing conference, which
13 I was not a party to, it was my understanding that
14 everyone had agreed that we could resolve this by Shell
15 simply providing the same data, but in a different
16 format, where they break it out by choke size.

17

18 That has been done. It was presented to the
19 Examiner by letter two months ago. They filed their
20 amended C-105s. We're providing the same data, but just
21 a different breakdown of the data by choke size. They've
22 also amended their C-103s, as requested by the Division,
23 to eliminate any confusion as to whether there had been a
24 single completion in a formation or whether there had
25 been multiple completions.

1 So as far as we're concerned, we initially met
2 the obligations of the rule, as found by the Division
3 back in October. We have since that time appeased the
4 concerns raised by Farleigh, the request for data. We
5 have eliminated any confusion as to the number of
6 completions in the record, and I don't see any reason why
7 this matter should not be dismissed.

8 EXAMINER WARNELL: Thank you.

9 MR. KELLAHIN: Mr. Examiner, I represent
10 Bayswater Exploration and Production. We're aligned with
11 Farleigh in this matter.

12 This case started a long, long time ago. It
13 has been made longer by the actions of Shell in the
14 untimely manner in which they've processed their filings
15 with the Division.

16 At this point in the process, we are aligned
17 with Gail MacQuesten as the compliance attorney for the
18 Division's Compliance Department. In a response to the
19 motion to dismiss, she outlined the conclusion that she
20 would make in granting a motion to dismiss at this time,
21 predicated on Shell doing some additional things. As of
22 this date, they haven't done the final thing required.

23 Under Ms. MacQuesten's concept, at this point,
24 Shell should have attached the schematics for the various
25 wells involved and have yet to do so. This case

1 originally involved five wells. It still involves five
2 wells.

3 Based upon Ms. MacQuesten's analysis, I have
4 prepared an order for you on a motion to dismiss that
5 would grant that motion, conditioned to some specific
6 findings. Those findings are to acknowledge the reality
7 of the undisputed facts, which are that Shell has been
8 dilatory in this entire process.

9 For an example of how you reach that
10 conclusion, I simply looked at one wellbore, the Latigo
11 Ranch 2-34. If you do nothing more than look at that
12 well file in association with the case file for this
13 proceeding, you'll follow a sequence of events. One of
14 the most glaring examples is that once you go through the
15 filings, you will see that for that wellbore, Shell
16 completed it and had it ready to produce September 17th
17 of '09.

18 It was not until some I guess 19 months later
19 did Shell file the necessary amended forms for that well
20 to get it closer to compliance. They filed logs and
21 forms that are not readable by the Division. They used a
22 format that's not acceptable. And it takes them weeks
23 and months to reformat them and submit them to the
24 District.

25 It's been a lengthy process. The only reason

1 we've gotten to a conclusion is because of the diligent
2 efforts of Farleigh and Bayswater to force Shell to
3 comply with what they should have done voluntarily months
4 ago.

5 As a suggested order, I prepared a draft for
6 you. Attached to the draft I have appended all the
7 documents that support the factual findings for the
8 conclusions in my proposed order of dismissal. The last
9 document I've attached is the one that Mr. Feldewert just
10 handed you, which is the letter from Daniel Sanchez,
11 which is approximately October of '10.

12 If you read that letter with care, you'll find
13 nothing in it which Mr. Sanchez makes any conclusion or
14 opinion about the timeliness of the filings. He does not
15 address that issue. I have gone back and looked at that
16 specifically, because that is the nagging issue that has
17 upset Farleigh and Bayswater all these months, is that we
18 have to work very hard to get an operator to comply with
19 rules and regulations that they should do so on their
20 own.

21 And with your permission, if I may approach, I
22 will give you those drafts.

23 MR. BROOKS: Very good. You've been
24 provided with a copy?

25 MR. FELDEWERT: I have not. This is the

1 first I've heard of any proposed order. I have not had
2 an opportunity to review this. My immediate response
3 would be that there is no reason why this matter should
4 not be simply be dismissed. There has been no evidence
5 presented of any tardiness on the part of Shell in their
6 filings.

7 We can go through the tortured history here.
8 But if we inspect the logs that they're suggesting
9 weren't timely filed, they were filed with the Division
10 in the format in which Shell received them. The fact
11 that there was a software problem that prevented the
12 Division from putting them online, the fact that we
13 provided them in a TIFF format at the request of the
14 Division and that the Division could not read the TIFF
15 format is not an issue for Shell. We filed those logs
16 when we had them in the format in which we received them.

17 There has been no evidence that we violated
18 any rule in this case or that we were untimely.
19 Ms. MacQuesten's last email after the conferences -- if I
20 may approach?

21 MR. BROOKS: You may.

22 MR. FELDEWERT: Again, we've had no
23 evidentiary presentation. These were pre-hearing
24 conferences in an effort to work out the issues that
25 Farleigh had raised, not in the context of whether they

1 were in violation of the rule, but in order to get this
2 thing dismissed so we wouldn't have to present witnesses.

3 Ms. MacQuesten summarized it by saying that
4 she understood that Shell and SWEPI was going to file
5 amended C-103s to clarify that we weren't talking about
6 multiple completions. We already presented the Examiner
7 during a pre-hearing conference with an affidavit saying
8 that there had not been multiple completions. There had
9 been a single completion with multiple perms.

10 The end result of all those conferences was
11 Ms. MacQuesten saying the last thing we need to do to
12 clarify the record is to amend the C-103s to confirm that
13 there had been no multiple completions, that there had
14 been a single completion. That was done this week. They
15 have been submitted to the Division for filing. I think
16 they may -- I don't know if they're online or not, but I
17 know they've been submitted for filing. That has been
18 completed.

19 There is no basis here to suggest that Shell
20 has been dilatory. They take those accusations
21 seriously. They have been working with the Division from
22 day one of this project. They spoke with the Division
23 about the filing of the forms, both the timing of when it
24 should be done and what should be done. They followed
25 what the Division instructed them to do. That's

1 reflected in the Division's letter that I handed to you.

2 The fact that they have now requested more
3 data in an additional format, we will appease those
4 efforts. And there's absolutely no basis here to suggest
5 that Shell has been dilatory or have any other findings
6 made. This should be a simple dismissal.

7 MR. KELLAHIN: Mr. Examiner, in response?

8 EXAMINER WARNELL: Okay.

9 MR. KELLAHIN: At this point, we'd like
10 you to take administrative notice of the case files and
11 well files in this case, and we ask that you do so.

12 In addition, Mr. Feldewert's use of this last
13 email, an email dated May 10th, is out of date. If
14 you'll look to see Ms. MacQuesten's last filing, her
15 filing which I am talking about is April 17th. So these
16 issues are not resolved.

17 They've been addressed from day one, with the
18 original application filed by Farleigh not asking for
19 compliance, but asking for penalties and impositions of
20 curtailed production or some kind of penalty to get
21 Shell's attention.

22 MR. BRUCE: Mr. Examiner, if I may say a
23 couple of final things? Contrary to what Mr. Feldewert
24 says, there is evidence in the record that Shell was
25 dilatory. Shell's own affidavit of Brent Williams, an

1 employee of Shell, talking about the log, shows that all
2 of the logs were done two to two and a half years ago.
3 They were not submitted to the Division, I believe, until
4 summer of 2010. That is clearly outside the bounds of
5 the rules.

6 Secondly, as Mr. Kellahin says, I think you
7 can take administrative notice not only of what's in this
8 case file, but of the filings made by Shell. And if I
9 may make couple of final comments, Mr. Feldewert, in an
10 email to all of us, said a few days ago that Shell
11 intends to file amended C-103s and one amended C-105. He
12 said its been done.

13 We haven't said it, but certainly there should
14 be -- if they haven't done it, there should be some
15 timeline for them getting that done. And it all comes
16 down to -- if I may approach, Mr. Examiner?

17 The one final thing that got this whole case
18 started is, when Shell did its filings, instead of
19 setting forth the data that it had in a clear and concise
20 manner -- which I've handed you some definitions from
21 American Heritage Dictionary -- the regulations of the
22 Division and the forms require a summary of data, which
23 is a concise statement of data.

24 Shell never did that. What Shell filed
25 instead was average data, which was useless to the

1 Division and to anyone else.

2 And I point out on the first page, average,
3 when you look at synonyms, you see, "mediocre or so-so."
4 And that is the problem that resulted in this case and
5 all the rigmarole around this.

6 Now, have we finally, after a couple of years,
7 gotten the data we should have or most of it, yes. But
8 there should be some timeline proposed, and Farleigh
9 fully supports the proposed order submitted by Bayswater.
10 Thank you.

11 MR. BROOKS: Very good.

12 EXAMINER WARNELL: Mr. Feldewert, there
13 was a question earlier, a comment made about the well
14 sketches on five wells, the schematics. I assume that's
15 a well sketch.

16 MR. FELDEWERT: Yes.

17 EXAMINER WARNELL: Are those in the OCD's
18 Web page? Have those been submitted?

19 MR. FELDEWERT: It's my understanding
20 there is a well schematic in there.

21 Am I incorrect there?

22 MR. KELLAHIN: I haven't seen it.

23 MR. FELDEWERT: It's my understanding
24 there's one in the record.

25 EXAMINER WARNELL: There's a well sketch

1 on each of the five wells?

2 MR. FELDEWERT: My understanding is with
3 the C-105, if you have multiple completions, you are to
4 file the well schematics. But in a circumstance like
5 this, where we do not have multiple completions, you do
6 not file a well schematic.

7 This is the first time they have suggested
8 that there was a failure to file a schematic.
9 Ms. MacQuesten didn't raise that in her final filing or
10 in her email. As she pointed out, the last issue to be
11 addressed was to eliminate the confusion about whether
12 there was a single completion or multiple completions.
13 That has been done.

14 I'm surprised, Jim, that you have not received
15 the filings, because I thought they were hand delivered
16 to you.

17 Tom, did you get them?

18 MR. KELLAHIN: No, sir.

19 MR. FELDEWERT: I have them. They were
20 filed with the Division this week.

21 MR. BRUCE: We have not received them.

22 MR. FELDEWERT: My understanding is you
23 received copies.

24 MR. KELLAHIN: Ms. MacQuesten's response
25 to the motion to dismiss dated May 19th, in paragraph 4,

1 says that Shell did not provide a wellbore diagram for
2 each completion report, and it goes on to ask that that
3 be done to finish the compliance. That is what she's
4 done, and this is what we're acting on. We have yet to
5 see that.

6 EXAMINER WARNELL: Yesterday was
7 Ms. MacQuesten's last day with the OCD. It appears as if
8 the OCD doesn't have a dog in this hunt anymore. We
9 talked about -- there's been mention here about forcing
10 the compliance. I don't know a way that OCD can force or
11 enforce anything.

12 MR. KELLAHIN: I think you're beyond that
13 issue, and we're now down to a dismissal. What we're
14 contending is that when you examine the record, despite
15 Shell's disagreement, the facts speak for themselves.
16 You can choose to ignore them. But you can't deny that
17 they're there, that they have not been prompt with their
18 filings. That's all we're seeking.

19 EXAMINER WARNELL: I know that when I'm
20 doing administrative orders and I go in the well files
21 and look for logs, this is not the first instance where
22 logs have not been submitted to the OCD. It won't be the
23 last, unfortunately. Any comments?

24 MR. BROOKS: It's difficult for us to
25 determine what exactly has happened, since no evidence

1 has been presented in this case, and we're just looking
2 at some documents that may be a selection of all the
3 documents that exist. Of course we can go through our
4 files and see what has and hasn't been filed, but I'm not
5 sure what purpose that serves.

6 Unless you are contending -- until we got to
7 the wellbore diagrams, I thought you were not at this
8 point contending that anything that should have been
9 filed has not now been filed. But for the wellbore
10 diagrams, I don't know.

11 MR. BRUCE: That was raised in one of the
12 pre-hearing conferences. Unfortunately, Mr. Feldewert
13 wasn't at that one. Mr. Carr was. Nonetheless, as I
14 said, my client has gotten to the point that it's gotten
15 the bulk of the data it wanted. It doesn't want to spend
16 any more time and money.

17 MR. FELDEWERT: If I may comment on the
18 wellbore diagrams. Reading Ms. MacQuesten's response
19 here, what she points out is that if there are multiple
20 completions, are you to file a wellbore diagram. She
21 points out that we did not file those wellbore diagrams
22 and notes that, upon further discussions, the parties
23 concluded that although SWEPI's filings stated that the
24 wells had multiple completions, what we meant was that
25 each well had one completion with multiple perforations

1 in that completion. Hence, that's why well schematics
2 were not filed.

3 She then goes on to explain, as stated here,
4 "Therefore, the last issue is let's correct the record
5 and let's correct the forms to show that there were not
6 multiple completions, that there was a single
7 completion." That has been done this week.

8 MR. BROOKS: We received modified forms
9 yesterday. And I haven't looked at them, but I assume
10 that's what you're referring to.

11 MR. FELDEWERT: I can represent that they
12 eliminate any confusion.

13 MR. KELLAHIN: I would formally move that
14 you take administrative notice of the well files involved
15 in these five wells. I've appended in a fair and
16 reasonable way those documents that I think are
17 appropriate. You may want to give Mr. Feldewert 10 days
18 to examine them, if I'm wrong, and then proceed to enter
19 the order as I suggested. I think you need to send a
20 message to Shell and the other operators to not fool
21 around.

22 MR. BROOKS: I'm not hearing any objection
23 to taking administrative notice to what's in the well
24 file.

25 MR. FELDEWERT: I have no objection to

1 that. I do object to the order presented. I haven't
2 read it yet, but I'm sure I'm going to object. There's
3 no reason why this should not be just a simple dismissal.

4 EXAMINER WARNELL: With that, Case Number
5 14583 will be taken under advisement.

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I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. _____
heard by me on _____

_____, Examiner
Oil Conservation Division

REPORTER'S CERTIFICATE

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I, JACQUELINE R. LUJAN, New Mexico CCR #91, DO
HEREBY CERTIFY that on May 26, 2011, proceedings in the
above captioned case were taken before me and that I did
report in stenographic shorthand the proceedings set
forth herein, and the foregoing pages are a true and
correct transcription to the best of my ability.

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

WITNESS MY HAND this 8th day of June, 2011.

Jacqueline R. Lujan
Jacqueline R. Lujan, CCR #91
Expires: 12/31/2011