

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:

AMENDED APPLICATION OF MARATHON OIL CASE NO. 16422
PERMIAN, LLC FOR A NONSTANDARD SPACING
AND PRORATION UNIT AND COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

September 20, 2018

Santa Fe, New Mexico

BEFORE: WILLIAM V. JONES, CHIEF EXAMINER
 DAVID K. BROOKS, LEGAL EXAMINER

This matter came on for hearing before the
New Mexico Oil Conservation Division, William V. Jones,
Chief Examiner, and David K. Brooks, Legal Examiner, on
Thursday, September 20, 2018, 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
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APPEARANCES

FOR APPLICANT MARATHON OIL PERMIAN, LLC:

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1 (2:26 p.m.)

2 EXAMINER JONES: Let's call Case Number
3 16422, amended application of Marathon Oil Permian, LLC
4 for a nonstandard spacing and proration unit and
5 compulsory pooling, Lea County, New Mexico.

6 Call for appearances.

7 MS. BENNETT: Deana Bennett on behalf of
8 Marathon Oil.

9 MR. McMILLAN: Seth McMillan on behalf of
10 Devon.

11 EXAMINER JONES: Any other appearances?
12 By affidavit?

13 MS. BENNETT: Yes. I'd like to present
14 this by affidavit.

15 This packet of materials is similar to what
16 I provided earlier. In the front, before Tab 1, is the
17 application and overview of the wells. Again, this
18 was -- Marathon filed an amended application to request
19 alternative relief in the event that the new rule is
20 stayed, and that's the reason for notifying the offsets
21 here.

22 EXAMINER JONES: Okay. We have -- go
23 ahead. I'm sorry.

24 MS. BENNETT: Again, this is Case 16422,
25 which is an order -- we seek an order pooling all the

1 mineral interests in the Wolfcamp -- in the Wolfcamp
2 spacing unit underlying the east half of the west half
3 of Section 26, Township 22 South, Range 33 East, and
4 this will be dedicated to the Elizabeth Reed Fed
5 22-33-26 WA 6H well. This is the WA 6H well. A plat
6 outlining the unit being pooled is attached as Exhibit
7 A, which shows the proposed well's location within the
8 unit. It also has the parties being pooled and the
9 nature and percent of their interests and their last
10 known addresses. Exhibit A also includes the addresses
11 for the overriding interest owners and the offsets.
12 There are no depth severances within the Wolfcamp
13 Formation.

14 This -- I apologize. This is the affidavit
15 of Mr. Ryan Gyllenband who has been qualified by the
16 Division as an expert petroleum landman. He testifies
17 in his exhibit that he has conducted a diligent search
18 of the public records in the county where the wells are
19 located and conducted phone directory and computer
20 searches to locate contact information for parties
21 entitled to notification and mailed all parties well
22 proposals, including an AFE. In his opinion, Marathon
23 has made a good-faith effort to obtain voluntary joinder
24 of the working interest owners.

25 Attached as Exhibit B is a proposed C-102

1 for the well, and this well will develop the Bell Lake,
2 North; Wolfcamp Pool, Pool Code 5170, which is an oil
3 pool. Mr. Gyllenband testifies that the producing
4 interval for the well will be orthodox and will comply
5 with the Division setback requirements.

6 Exhibits C and D is a sample proposal
7 letter and the AFE setting out the costs for the wells,
8 and Mr. Gyllenband's testimony is that the estimated
9 cost of the wells set forth therein is fair and
10 reasonable and is comparable to other wells of similar
11 depths and lengths drilled in this area of New Mexico.
12 Marathon requests overhead and administrative rates of
13 7,000 per month for drilling a well and 700 a month for
14 a producing well. And in Mr. Gyllenband's opinion,
15 these rates are fair and comparable to the rates charged
16 by other operators for wells of this type in
17 southeastern New Mexico. Marathon requests that these
18 rates be adjusted periodically as provided in the COPAS
19 accounting procedure. Marathon requests the maximum
20 cost plus 200 percent risk charge be assessed against
21 nonconsenting or working interest owners and that it be
22 designated operator of the wells.

23 Mr. Gyllenband testifies that the
24 attachments to his affidavit were prepared by him or
25 compiled from company records and that the information

1 in his affidavit is correct and complete to the best of
2 his knowledge. He also testifies that the granting of
3 this application is in the interest of conservation and
4 the prevention of waste.

5 With that, if we turn to the first exhibit,
6 Exhibit A, it shows Tract 1 and Tract 2, the east half
7 of the west half, 160 acres. The ownership is the same
8 here, Tract 1 and Tract 2, Marathon.

9 EXAMINER JONES: Tract 1 is all Marathon,
10 and Tract 2 is all Devon?

11 MS. BENNETT: That's correct.

12 EXAMINER JONES: Except for overrides?

13 MS. BENNETT: Yes.

14 The third page of Exhibit A shows the
15 owners' names, including the overrides and the offsets
16 and the BLM.

17 The next page is a summary of attempted
18 contacts.

19 EXAMINER JONES: The unleased offsetting
20 mineral tract, is that -- do you know where that's at?
21 I suppose you're running out there trying to lease that
22 right quick. I'm not sure.

23 MS. BRADFUTE: I think they've asked for it
24 to be nominated, but I don't know the exact location of
25 it, Mr. Examiner.

1 EXAMINER JONES: Okay. That's fine.

2 So these overrides, are they spread
3 throughout the two tracts, or are they --

4 MS. BENNETT: I don't know the answer to
5 that. We can find that out if that would be helpful for
6 you or happy to present it in our cases going forward.

7 EXAMINER BROOKS: I don't think it makes
8 any difference which tract they're in.

9 MS. BENNETT: And we did notify them all,
10 and they all received notice.

11 EXAMINER JONES: Now, if they get pooled or
12 if they don't get pooled -- if the tract that they're
13 associated with gets pooled, then they don't get any
14 money until after 300 percent; is that correct?

15 EXAMINER BROOKS: No. The overrides get
16 from first dollar.

17 EXAMINER JONES: Even if they're in a tract
18 that's not participating?

19 MS. BRADFUTE: That's right.

20 EXAMINER BROOKS: Regardless of what tract
21 they're in, unless they've agreed to some other way.
22 Because when the interest is pooled, then it applies to
23 the entire pooled unit. And an override is a royalty,
24 and it's payable from the first dollar.

25 MS. BRADFUTE: That is correct.

1 EXAMINER BROOKS: I'm glad you agree with
2 me.

3 EXAMINER JONES: Okay. Okay. So the
4 operator of a unit takes over all land issues.

5 EXAMINER BROOKS: Yeah. The only time it
6 makes a difference which tract the override is in is if
7 one tract has a pooling clause that's binding on the
8 override owner and another tract does not. Then the one
9 that has a binding pooling clause doesn't have to be
10 noticed, but the one who doesn't does. And that would
11 make a difference. But, otherwise, it doesn't make any
12 difference who the override is.

13 MS. BRADFUTE: I agree.

14 EXAMINER JONES: And that's what you can
15 put in Land 101 for all of us engineers sometime.

16 EXAMINER BROOKS: Yes. That's why I like
17 overrides, because you get paid from the first dollar.

18 MS. BRADFUTE: Uh-huh.

19 EXAMINER JONES: Okay. And so does the --
20 let's see. I guess Devon has a lease from the BLM in
21 the south half, so the BLM would get paid right off the
22 bat, too.

23 EXAMINER BROOKS: The BLM always gets paid
24 right off the bat.

25 (Laughter.)

1 MS. BRADFUTE: Yes, that's correct as well.

2 EXAMINER JONES: If Devon didn't
3 participate, the BLM would get paid.

4 EXAMINER BROOKS: Yes, absolutely.

5 EXAMINER JONES: Okay. Thanks.

6 MS. BENNETT: Fantastic.

7 So the next exhibit is Exhibit B, which is
8 the proposed C-102 for the 6H well, and it has the pool
9 name, Bell Lake; pool code, 5170; surface-hole location;
10 bottom-hole location.

11 The next exhibit is the letter that was
12 sent to the working interest owners. And as you
13 mentioned earlier, Mr. Hearing Examiner, this letter
14 does include the TVDs, and the TVD for this well is the
15 second bullet point, approximately 12,299 feet.

16 EXAMINER JONES: Okay. The first take
17 point would be 100 feet; is that right? Yeah. It says
18 "100 feet." Okay. They're fine.

19 MS. BRADFUTE: Yeah.

20 MS. BENNETT: And then Exhibit D is the AFE
21 for the wells with the proposed well costs.

22 Any questions about the landman's affidavit
23 or his exhibits before I move to the geologist's
24 affidavit?

25 EXAMINER BROOKS: No.

1 EXAMINER JONES: The well costs in one of
2 the -- the well cost is almost the same as it was for
3 the Bone Spring. So does that mean there's not going to
4 be a bunch of logging to determine -- I'm sure there is
5 logging built in to this somehow.

6 MS. BRADFUTE: I believe they're going to
7 be taking logs. I don't know the order of when these
8 wells are going to be drilled, but I think they're
9 obtaining logs when they drill these wells because of
10 the area, and they also have seismic data for the area.

11 EXAMINER JONES: Oh. Oh, they have seismic
12 data for the area.

13 MS. BRADFUTE: I believe so.

14 EXAMINER JONES: Okay. So in one of the
15 other ones, it's got the surface equipment costs and
16 artificial lift costs. I guess those won't be subject
17 to the risk penalty anyway, will they? They'll just be
18 costs that will be --

19 MS. BRADFUTE: That's right.

20 EXAMINER JONES: -- charged, but they won't
21 be subject to any penalty.

22 MS. BRADFUTE: Your surface facilities
23 aren't subject to that risk penalty under the
24 Commission's order -- most recent order on that issue.

25 Is that right, Mr. Brooks, or --

1 EXAMINER BROOKS: I don't know that they've
2 said that. They said that in that case, but I don't
3 know if that order applies to anything other than that
4 case.

5 MS. BRADFUTE: Than that case. Okay. Then
6 I would agree. We're not going to contest that.

7 EXAMINER BROOKS: I think the conclusion of
8 law that that rule is probably contrary to statute is
9 quite likely true, but I'm having a bit of a problem
10 with that in that I don't know that a rule is invalid
11 because it violates the law unless and until somebody
12 declares that. And I suppose I should -- before I make
13 an opinion on that, I should read that order. But
14 generally an order only applies to the parties in the
15 case at hand.

16 MS. BRADFUTE: That is true. And then I
17 think the orders as written from the Division don't
18 specify one way or another. They just apply the 200
19 percent risk penalty.

20 EXAMINER BROOKS: Well, but the rule -- the
21 existing rule provides that it applies to surface
22 equipment. But the question is whether the existing
23 rule violates the Oil and Gas Act. Well, probably the
24 better interpretation is that it does, and I think
25 that's the conclusion that the Commission reached, but

1 I'm not sure that binds -- I'm not sure that's
2 appropriate to apply that in our orders going forward
3 when the rule says the opposite. So I think it's up to
4 you as operator, because you can forego a part of your
5 risk penalty if you don't want to have the potential of
6 fighting that.

7 MS. BRADFUTE: That's right. I think
8 operators have been cautious after that order came out.

9 EXAMINER BROOKS: Well, I think that's
10 wise. I think -- you know, the statute says you get 200
11 percent of drilling and completion costs. And the AAPL
12 has always treated drilling and completion costs as one
13 category and surface equipment as another category, but
14 they have different blanks for it, and it's not too
15 infrequently that you see the blanks filled in with the
16 same number. But then probably even more frequently,
17 you see surface equipment filled in with a lower number.

18 So I think the idea that industry has
19 historically treated drilling and completion costs as
20 one thing and surface equipment as another, and,
21 therefore, when the legislature said drilling and
22 completion costs, they probably didn't mean surface
23 equipment, is probably a very reasonable proposition.
24 But the contrary is enshrined in a rule that the
25 Commission adopted for us some years ago. And like I

1 say, an order supersedes a rule as to the case that the
2 order applies to, but I'm not convinced it supersedes
3 the rule generally.

4 MS. BRADFUTE: Yes. I think that that's
5 correct. I don't think an order can supersede the rule
6 generally, but it can apply just to the parties who are
7 before the Commission. Operators have been cautious in
8 following that order.

9 EXAMINER BROOKS: I can certainly
10 appreciate that. And there is no rule that says
11 operators can't ask for less than they're entitled to
12 under the rule. And I can see why they might be
13 concerned that that would be challenged because there's
14 a pretty good basis for it, so whatever you-all want to
15 do on that as far as we're concerned at this stage.

16 MS. BRADFUTE: I think we would prefer to
17 have the standard language, and then Marathon can apply
18 the risk penalty.

19 EXAMINER BROOKS: Okay. Well, I think
20 you're entitled to what the -- what the rule says unless
21 and until there is a court decision or -- well, I don't
22 know. If the Commission had said in the rule -- in the
23 order -- and I don't remember if they did, or I don't
24 know that I read the order. If the Commission said, We
25 think that rule is invalid --

1 MS. BRADFUTE: They did not invalidate the
2 rule.

3 EXAMINER BROOKS: Okay. If they just said,
4 We're going to not apply it to surface equipment --

5 MS. BRADFUTE: Yeah.

6 EXAMINER BROOKS: And that's what I thought
7 they said, We're not going to apply it to surface
8 equipment in this case. That rule establishes a
9 presumption that you're entitled to 200 percent on
10 surface equipment. There is no opposition and nobody in
11 this case coming and saying, No, you're not. So I think
12 you're entitled to it unless you want to say, No, we
13 won't charge it, or unless you want to forget to charge
14 it.

15 MS. BRADFUTE: I would like to leave that
16 up to the discretion of our client, since --

17 EXAMINER BROOKS: I can understand that. I
18 think that's an appropriate position for a lawyer to
19 take.

20 MS. BRADFUTE: Yes (laughter).

21 EXAMINER JONES: Yeah, because it's got
22 artificial lift and surface equipment. I take that to
23 mean it's all the way to the pipeline.

24 EXAMINER BROOKS: Well, artificial lift is
25 downhole equipment, so I don't think there is any

1 question about its applicability to be downhole
 2 equipment. Well, I guess it can depend where you put
 3 the artificial lift equipment. You can put -- as I
 4 understand it -- and I don't know much about pumps. As
 5 I understand it, some pumps are on the surface and some
 6 are down in the hole.

7 EXAMINER JONES: Well, a pumping unit is
 8 artificial lift.

9 EXAMINER BROOKS: Yeah. Don't they
 10 sometimes use equipment that's in the hole?

11 EXAMINER JONES: Well, yeah. It has to
 12 have a pump in the hole, but, I mean, the prime mover is
 13 on the surface.

14 EXAMINER BROOKS: Yeah. The phrase that
 15 Mr. Carr wanted to use was "wellhead connections," and I
 16 think that's standard industry language for where you
 17 make that distinction.

18 MR. CARR: Uh-huh. That's what we did.

19 EXAMINER BROOKS: Yeah. And in the rule,
 20 you didn't end up recommending it.

21 MR. CARR: Could never get a consensus,
 22 because there are some issues you can't resolve in a
 23 meeting.

24 (Laughter.)

25 EXAMINER BROOKS: Absolutely. Especially

1 when you have a tight timeline.

2 MR. CARR: That was part of it.

3 EXAMINER BROOKS: Well, I've talked too
4 much. Go ahead.

5 EXAMINER JONES: I just noticed that
6 sometimes on these cost estimates, they don't include
7 that and sometimes they do, and I just noticed it was
8 here. And I was on that committee so I brought it up.

9 EXAMINER BROOKS: So you know all about it.

10 EXAMINER JONES: No. Now I know a lot more
11 about it. I appreciate you bringing that up.

12 EXAMINER BROOKS: Well, I know more about
13 it than I did before this conversation, too. I know
14 more about what they mean when they say artificial lift
15 anyway.

16 EXAMINER JONES: I'm wondering about Devon
17 and their intentions, but Devon's got representation
18 here.

19 EXAMINER BROOKS: Yes.

20 MR. McMILLAN: Sure. Sure. And for the
21 record, I have no opposition to the standard language
22 and Marathon using its discretion to proceed
23 appropriately.

24 EXAMINER JONES: Okay. Sounds good.

25 MS. BENNETT: Thank you.

1 With that, unless there are other questions
2 about the landman's affidavit, I'll turn to the
3 geologist's affidavit, and this is Tab 2. And this is
4 an affidavit prepared by Ethan Perry who has been
5 qualified by the Division as an expert petroleum
6 geologist.

7 As with his prior exhibits that we've
8 talked about today, Exhibit A is a structure map of the
9 top of the Wolfcamp Formation. And here again the
10 proposed project area is identified by a black-dashed
11 box. And the well -- this is well number four, WA 6H,
12 that we're talking about in this map. And Exhibit A
13 identifies wells in the general vicinity of the proposed
14 well with a line of cross section running from A to A
15 prime, and Exhibit A shows that the structure dips to
16 the southwest -- down to the southwest.

17 Exhibit B is a Wolfcamp cross section.
18 It's a stratigraphic cross section hung on the top of
19 the Wolfcamp, and the well logs on the cross section
20 give a representative sample of the Wolfcamp Formation
21 in the area. The target zone, as identified by the
22 shaded area and the producing zone, is the Wolfcamp Y
23 Sand and the Wolfcamp A, and those -- those zones are
24 continuous across the unit.

25 Exhibit C is a gross interval isochore of

1 the Wolfcamp Wolfcamp B, and Mr. Perry testifies that
2 the Wolfcamp Wolfcamp B is uniform across the proposed
3 well unit. He uses an interval there -- a contour
4 interval of 20 feet. From these maps, he has concluded
5 that the horizontal spacing unit is justified from a
6 geologic standpoint, that there are no structural
7 impediments or faulting that would interfere with
8 horizontal development and that each quarter-quarter
9 section in the unit will contribute more or less equally
10 to production and that the preferred well orientation in
11 this area is north to south, and this is because the
12 maximum horizontal stress orientation is roughly
13 east-west.

14 Any questions about his exhibits?

15 MR. McMILLAN: No questions.

16 EXAMINER JONES: No questions.

17 MS. BENNETT: Exhibit 3 is my affidavit
18 with the notice. And these are the same owners that --
19 interest owners that we talked about previously, so the
20 same information, that the only person or entity to whom
21 was not mailed or was not received was the BLM, but we
22 did provide notice in the "Hobbs News-Sun," as per my
23 affidavit.

24 And then Exhibit 4 is the same affidavit
25 that we talked about earlier from Marathon's engineer,

1 Jacob Rotolo, who testifies as to the reason why
2 additional time is needed for the drilling of the well
3 to completing the well but also testifies in his
4 affidavit that Marathon is reducing its requested time
5 from 365 days to 240 days.

6 EXAMINER JONES: Okay.

7 MS. BENNETT: With that, I'd like to move
8 the admission of Exhibits 1 through 4.

9 EXAMINER JONES: Exhibits 1 through 4 with
10 their attachments are admitted, if there is no
11 objection.

12 MR. McMILLAN: I object -- no objection.

13 EXAMINER JONES: Okay. Thank you.

14 (Marathon Oil Permian, LLC Exhibit Number 1
15 through 4 are offered and admitted into
16 evidence.)

17 MS. BENNETT: With that, I would ask that
18 Case 16422 be taken under advisement.

19 EXAMINER JONES: 16422 is taken under
20 advisement.

21 (Case Number 16422 concludes, 2:47 p.m.)

22 (Recess, 2:47 p.m. to 3:13 p.m.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

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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 7th day of October 2018.

21

22

23 MARY C. HANKINS, CCR, RPR
24 Certified Court Reporter
25 New Mexico CCR No. 20
Date of CCR Expiration: 12/31/2018
Paul Baca Professional Court Reporters