

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
PERMIAN, LLC FOR THE CREATION OF A
NONSTANDARD SPACING AND PRORATION UNIT
AND COMPULSORY POOLING, EDDY COUNTY,
NEW MEXICO. CASE NO. 16214

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

September 6, 2018

Santa Fe, New Mexico

BEFORE: MICHAEL McMILLAN, CHIEF EXAMINER
DAVID K. BROOKS, LEGAL EXAMINER

This matter came on for hearing before the
New Mexico Oil Conservation Division, Michael McMillan,
Chief Examiner, and David K. Brooks, Legal Examiner, on
Thursday, September 6, 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

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1 (10:39 a.m.)

2 EXAMINER McMILLAN: I'd like to call Case
3 Number 16214, amended application of Marathon Oil
4 Permian, LLC for the creation of a nonstandard spacing
5 and proration unit and compulsory pooling, Lea [sic]
6 County, New Mexico.

7 Call for appearances.

8 MS. BRADFUTE: Mr. Examiner, Jennifer
9 Bradfute, with the Modrall, Sperling Law Firm, on behalf
10 of the Applicant.

11 EXAMINER McMILLAN: Please proceed.

12 MR. BRUCE: Mr. Examiner, Jim Bruce
13 entering an appearance for Primero Operating, Inc. I
14 have no witnesses.

15 OPENING STATEMENT

16 MS. BRADFUTE: Mr. Examiner, this case went
17 to hearing in front of the Division on June 28th, 2018,
18 and that was two days after the new horizontal well
19 rules went into effect. At that time, Marathon, on the
20 record, asked to amend its application to take advantage
21 of the proximity tract rule. And so they sent out new
22 notices with the legal location for the new spacing
23 unit.

24 And Primero did raise an objection not to
25 the width of the spacing unit based on the proximity

1 tracts, but to the depths of the unit because there were
2 differences in who had ownership at different depths.
3 Primero owned only at certain depths and asked that
4 Marathon revise its application, so Marathon did that.
5 It didn't see any problems with Primero's request, and
6 it has, in its new amended application, revised the
7 depths of the spacing unit as to only cover certain
8 portions of the Bone Spring Formation. And it provided
9 notification to all of the mineral interest owners who
10 would be excluded from the proposed proration unit.

11 In addition, it also renotified everybody
12 who was entitled to notice of the original application,
13 which included all of the overriding royalty interest
14 owners.

15 Today we have one witness who came to help
16 explain these changes to the Division, since Primero
17 still has an entry of appearance in the case, and that
18 witness can be sworn in.

19 EDWIN J. NOONAN,
20 after having been first duly sworn under oath, was
21 questioned and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. BRADFUTE:

24 Q. Could you please state your name?

25 A. Edwin J. Noonan.

1 Q. Mr. Noonan, who do you work for?

2 A. I'm an independent landman.

3 Q. And, Mr. Noonan, have you been contracted by
4 Marathon Oil Permian in regards to the Southern Comfort
5 State 24 28 25 TB 6H well?

6 A. I have.

7 Q. And, Mr. Noonan, have you previously testified
8 before the Division as a petroleum landman?

9 A. I have.

10 Q. And were your credentials accepted and made
11 part of the record?

12 A. They were.

13 Q. And are you familiar with Marathon's
14 application in Case 16214?

15 A. Yes.

16 MS. BRADFUTE: I'd like to tender
17 Mr. Noonan as an expert in petroleum land matters.

18 EXAMINER McMILLAN: Objections?

19 MR. BRUCE: No objection.

20 EXAMINER McMILLAN: So qualified.

21 Q. (BY MS. BRADFUTE) Mr. Noonan, are you aware of
22 the amendments that I just described to the hearing
23 examiners of Marathon's application in Case Number
24 16214?

25 A. Yes.

1 Q. Could you please turn to the exhibit packet in
2 front of you to Tab 10? This will be Exhibit Number 10
3 in the case. Does Exhibit Number 10 contain a diagram
4 showing where the proposed spacing unit will be located?

5 A. Yes, it does.

6 Q. And is that an accurate reflection of the
7 geographic location of the proposed spacing unit?

8 A. Yes, it is.

9 Q. Could you please turn to Tab 11? Does Tab 11
10 contain a list of the parties that will be pooled under
11 Marathon's amended application?

12 A. Yes.

13 Q. Okay. Could you please turn to Exhibit Number
14 12 in the packet in front of you? Is this a copy of
15 Marathon's amended application?

16 A. Yes.

17 Q. And does this amended application state that
18 Marathon's seeking to create a nonstandard 480-acre
19 spacing unit in the Bone Spring Formation that is
20 limited in depth from 7,300 feet to 9,560 feet?

21 A. Yes.

22 Q. And the legal description for that spacing and
23 proration unit is the east half of Section 36 in the
24 southeast quarter of Section 25, in Township 24 South,
25 Range 28 East, N.M.P.M., Eddy County, New Mexico; is

1 that correct?

2 A. Yes.

3 Q. So that is the area and the depths that
4 Marathon now seeks to pool uncommitted working interest
5 owners, correct?

6 A. Correct.

7 Q. And in the hearing on June 28th, 2018, Marathon
8 also requested to pool overriding royalty interest
9 owners, correct?

10 A. Yes.

11 Q. And Marathon does not change those requests
12 here today; is that right?

13 A. No.

14 Q. Is it your understanding that Marathon did
15 receive an objection to its amended application from
16 Primero Operating?

17 A. Yes.

18 Q. And what did Primero ask Marathon to do?

19 A. They asked Marathon to exclude from surface
20 down to the Bone Spring -- base of the Bone Spring Lime.
21 And that is the purpose of the amended application.

22 Q. Turn to Exhibit 13 and I want to look at the
23 last page of this exhibit, which is part of an
24 assignment that was provided by Primero's attorney in
25 their pre-hearing statement between Primero Operating,

1 **Inc., as assignor, and Crown Oil Partners, as assignees.**

2 **What does this Exhibit A indicate to you?**

3 A. Exhibit A indicates that they're conveying the
4 described lands "LESS AND EXCEPT the depths from the
5 surface to 7,300 feet subsurface, being the base of the
6 Bone Spring Lime," and they describe the geological
7 charts that define that depth.

8 EXAMINER BROOKS: What exhibit are you
9 reading from?

10 MS. BRADFUTE: Exhibit 13, the very last
11 page.

12 EXAMINER BROOKS: Exhibit 13. Okay. This
13 is the assignment. And where are you reading from?

14 THE WITNESS: Exhibit A, the last page.

15 MS. BRADFUTE: It should be highlighted in
16 yellow on the last page.

17 EXAMINER BROOKS: The last page. I haven't
18 found anything highlighted at all. Well, it says "Page
19 2 of 8." Do I have to go on through to page 8?

20 MS. BRADFUTE: Yeah. Go to page 8 of 8.

21 EXAMINER BROOKS: Okay. "These
22 acknowledgments" (reading).

23 Okay. Go ahead.

24 **Q. (BY MS. BRADFUTE) And is it your understanding**
25 **that Marathon acquired its interest from Crown Oil**

1 Partners?

2 A. Yes.

3 Q. So Primero retained interests from the depths
4 of the surface to 7,300 feet subsurface?

5 A. That's correct.

6 Q. Have you discussed those depths and that
7 acreage with a geologist at Marathon?

8 A. I have.

9 Q. Okay. And did Marathon's geologist confirm
10 that the base of the Bone Spring Lime Formation is the
11 equivalent of the top of the 1st Bone Spring Sand?

12 A. The geologist expressed some frustration at the
13 various descriptions of these horizons, and he would
14 prefer to stick to "the depths below the surface"
15 descriptions.

16 Q. Okay. So he prefers to stick to "the depths
17 below the surface to 7,300 feet"; is that correct?

18 A. Yes, ma'am.

19 Q. And if you turn to Exhibit 14, is this an email
20 from the Marathon's geologist confirming that those
21 depths are appropriate?

22 A. Yes.

23 Q. And it also confirms that the geologist at
24 Marathon agrees that Marathon is seeking to pool the
25 Bone Spring between 7,300 feet and 9,560 feet, which is

1 the equivalent in the Craft 25 Com #1 well?

2 A. That's correct.

3 Q. And, Mr. Noonan, on June 28th, Marathon
4 presented geologic testimony supporting its application,
5 correct?

6 A. Yes.

7 Q. Are you aware of the fact that Marathon is not
8 changing or amending its geologic testimony from that
9 earlier hearing?

10 A. Not to my knowledge.

11 Q. So the targeted formation for the well has not
12 changed, correct?

13 A. Correct.

14 MS. BRADFUTE: And we ask that that
15 geologic testimony just continue to be in the record for
16 this case and be taken under consideration.

17 EXAMINER McMILLAN: Okay.

18 Q. (BY MS. BRADFUTE) Would you please turn to Tab
19 15 in the packet in front of you? Does Tab 15 contain
20 an affidavit prepared by Marathon's counsel confirming
21 that notice was provided to affected parties of this
22 amended application?

23 A. It does.

24 Q. If you look at the first page attached to
25 that -- and I apologize for the small print -- is it a

1 list of all of the interest owners who would be excluded
2 from the depths -- excluded from the proration unit
3 because they own below 7,300 feet within the Bone Spring
4 Formation?

5 A. Yes.

6 Q. And all of these interest owners within the
7 mineral estate were provided notice of this amended
8 application?

9 A. They were.

10 Q. Is it your understanding that Marathon also
11 notified all of the parties who originally received
12 notice of its application to pool the whole Bone
13 Spring -- the whole Bone Spring Formation?

14 A. Yes.

15 EXAMINER BROOKS: Okay. Hold on a minute.
16 I believe you said -- the court reporter can correct me.
17 But I believe you said that they're excluded because
18 they own below 7,300.

19 MS. BRADFUTE: Oh. Above. I'm sorry.
20 Above.

21 EXAMINER BROOKS: That's what I thought.
22 That's what I assumed you meant.

23 MS. BRADFUTE: Yes. Thank you.

24 Q. (BY MS. BRADFUTE) And if you look further
25 within this exhibit, there is a chart that pulls out

1 with a blue header. And does this chart confirm that
2 many of the mailings were delivered, but there were
3 mailings that were returned?

4 A. It does, yes.

5 Q. And this chart is two pages long showing all
6 the parties who were notified of this application?

7 A. Yes.

8 Q. In addition, does this exhibit contain tracking
9 pages from the United States Postal Service showing the
10 status of those mailings that have not yet been
11 delivered?

12 A. Yes.

13 Q. And if you look at the last two pages of this
14 exhibit, does it contain an Affidavit of Publication
15 confirming that notice was also published in the
16 "Carlsbad Current Argus"?

17 A. Yes.

18 Q. Mr. Noonan, were Exhibits 10 through 15
19 prepared by you, compiled under your supervision or
20 compiled from company business records?

21 A. Company business records, yes.

22 MS. BRADFUTE: I'd like to tender Exhibits
23 10 through 15 into the record.

24 MR. BRUCE: No objection.

25 EXAMINER McMILLAN: Exhibits 10 through 15

1 may now be accepted as part of the record.

2 (Marathon Oil Permian, LLC Exhibit Numbers
3 10 through 15 are offered and admitted into
4 evidence.)

5 MS. BRADFUTE: And that concludes my
6 questions.

7 EXAMINER McMILLAN: Okay. Does Primero
8 accept the geologic testimony from the previous case?

9 MR. BRUCE: Yes.

10 EXAMINER McMILLAN: Okay. That stays as
11 part of the record then.

12 EXAMINER BROOKS: Well, we've got some
13 problems in this case, but I don't think I can do
14 much -- I don't think I need to examine this witness. I
15 will ask to clarify a little bit, though.

16 CROSS-EXAMINATION

17 BY EXAMINER BROOKS:

18 Q. Primero's interest is limited to the depth
19 between the equivalent of 7,300 and 9,600; is that
20 correct?

21 A. It's the surface down to 7,300.

22 Q. Okay. So Primero owns above 7,300.

23 MS. BRADFUTE: Yes.

24 EXAMINER BROOKS: Therefore, Primero will
25 be excluded from this --

1 MS. BRADFUTE: And that's what they asked
2 for. They wanted to be excluded.

3 EXAMINER BROOKS: They want to be excluded.
4 They don't want to be included.

5 MS. BRADFUTE: Yes.

6 MR. BRUCE: Mr. Examiner, if I could just
7 interject.

8 EXAMINER BROOKS: I would appreciate that.

9 MR. BRUCE: The well -- I think it's the
10 2nd or 3rd Bone Spring Sand. Primero owns no interest
11 in that and, therefore, didn't want to be pooled into a
12 prospect where it has no ownership rights and where it's
13 not entitled to join in a well.

14 EXAMINER BROOKS: That makes a lot of
15 sense, but that's not what we usually run into.

16 MS. BRADFUTE: Yeah.

17 EXAMINER BROOKS: I say we have problems
18 with this because we are having conceptual problems at
19 OCD about pooling a depth-limited portion of a
20 formation, and I'll go into that later. But I don't
21 really think I can clarify it much by this witness.

22 But I will ask one other question. This
23 depth severance that is covered in this interest -- the
24 depth severance that is covered in the exhibit that you
25 pointed out to me, the language that you pointed out --

1 and that was Exhibit 13, right?

2 MS. BRADFUTE: Yes, the last page.

3 EXAMINER BROOKS: Exhibit 13, page 8.

4 Q. (BY EXAMINER BROOKS) And that language
5 controls -- is that the only depth severance that exists
6 within the Bone Spring in this unit?

7 A. No.

8 Q. No, it's not.

9 Okay. So there are other depth severances
10 that would be defined by some different marker, correct?

11 A. Yes.

12 Q. Is that what you're telling me?

13 A. Yes.

14 Q. Okay. Thank you.

15 MS. BRADFUTE: And Marathon has provided
16 notice to all members of the mineral estate of this
17 application and the amended application, and so far no
18 objections have been received.

19 EXAMINER BROOKS: Thank you.

20 MS. BRADFUTE: With that, we'd ask that
21 this case be taken under advisement.

22 MR. BRUCE: No objection.

23 EXAMINER BROOKS: Oh, wait a minute. I
24 want to discuss some issues before we continue.

25 EXAMINER McMILLAN: Please do.

1 EXAMINER BROOKS: You've had a -- you're
2 aware of all the depth severances, I take it?

3 MS. BRADFUTE: Yes.

4 EXAMINER BROOKS: There are various ones.
5 You just so testified.

6 MS. BRADFUTE: Yeah.

7 EXAMINER BROOKS: So we've got a really
8 complicated situation here. I think that if you're
9 going -- I think we're going to have to keep this case
10 open. For one thing, we have to treat -- we've got a
11 lot of people asking for depth severance -- compulsory
12 poolings, and we have to treat everybody somewhat the
13 same way, although it's hard to do that when each one
14 has a unique situation.

15 I'm confused here. I don't know -- I don't
16 recall your geologist's testimony from the previous
17 appearance, but I'm confused by why he wants to specify
18 specific depths rather than a log equivalent, because
19 generally the geologists tell me exactly the opposite,
20 that the specific depths vary, and the log equivalent is
21 the geologically appropriate way to draw a depth
22 severance.

23 MS. BRADFUTE: If you look at Exhibit 14 --

24 EXAMINER BROOKS: Yes.

25 MS. BRADFUTE: -- the geologist does tie it

1 to a log equivalent for the Craft 25 Com #1 well. It's
2 the last sentence of his email.

3 EXAMINER BROOKS: Okay. Well, was that the
4 one that's used in Exhibit 13?

5 MS. BRADFUTE: I believe so. Let me --

6 THE WITNESS: The geologist's frustration
7 was with the different nomenclature assigned to the
8 various horizons. Some people describe it as a sand.
9 Some people describe it as a lime. And they had several
10 discussions trying to nail it down, and so he decided to
11 reference a specific well log.

12 EXAMINER BROOKS: Well, that's what your --
13 was done in the convention [sic] that you cited.

14 MS. BRADFUTE: Yeah, it is. And it's the
15 well that is same cited within --

16 EXAMINER BROOKS: That clarifies some
17 things. However, if there are other depth severances
18 that are differently defined, then we've got other
19 problems, and we don't know what they are because we
20 don't have the instruments in front of us.

21 I think we're going to need more
22 explanation of how exactly to write an order in this.
23 First of all, we're going to need more testimony from --
24 from the geologist because I can't cross-examine a --
25 and neither can Mike -- cross-examine an email,

1 especially a one-line email.

2 In the second place, if we don't know what
3 all controlling depth severances are, we don't have a
4 basis on which we can draw an order that will be -- that
5 title attorneys can look at and say, That will be
6 binding on everybody involved.

7 MS. BRADFUTE: So if you have no objection
8 from parties who have interests below 7,300 and they
9 want, presumably, to be included within the unit --

10 EXAMINER BROOKS: Yes, I can understand
11 that. And I can also understand that it's frustrating,
12 when there is no actual controversy, to have an agency
13 come in and say, Well, we need a whole bunch more
14 evidence to figure out what's going on. But at the same
15 time, like I say, we're obligated to treat everybody
16 equally. I just now -- it's just a coincidence that
17 yesterday I wrote a letter to a person who was a
18 proponent of a depth-limited compulsory pooling order,
19 and I told him we needed additional evidence in that
20 case. And I asked for some specifics there, but I
21 understood that one was a little easier. And frankly --
22 and it didn't involve a huge number of parties, as this
23 one did.

24 So I think we're going to need to have
25 another hearing and ask you to bring the geologist back

1 and also have the landman prepared to testify on how the
2 instrument has been -- how the depth severance has been
3 defined in controlling instruments, only in controlling
4 instruments. We don't care if somebody's -- it's not
5 going to make any difference -- if you sever a certain
6 depth and then they can go out and convey that interest
7 to 500 people. That doesn't make any difference because
8 they don't -- they can't get any more out of it than
9 what was originally severed.

10 MS. BRADFUTE: Okay.

11 EXAMINER BROOKS: So I'm giving some
12 guidance to the landman. And this has probably been a
13 long and frustrating journey, and I'm making it more so,
14 but it's something we have to do. Thank you.

15 MS. BRADFUTE: Okay. Thank you.

16 We ask this case then be continued to the
17 September 20th docket.

18 EXAMINER BROOKS: To what?

19 MS. BRADFUTE: September 20th, the next
20 docket.

21 EXAMINER BROOKS: That's fine with me if
22 that's what you would like to do. I haven't looked at
23 the September 20th docket. Mike might have opinions
24 about it.

25 EXAMINER McMILLAN: I'm not doing that.

1 (Laughter.)

2 EXAMINER BROOKS: I don't know whether I
3 will be or not because my surgery got moved from
4 September -- from last Friday to September 17th. So I
5 don't know what will be the situation on September 20th.
6 Perhaps with that in mind, we ought to move it to
7 October.

8 MS. BRADFUTE: Do you want October 4th?

9 EXAMINER McMILLAN: I like that idea,
10 October 4th.

11 MS. BRADFUTE: That's fine. That's fine.

12 EXAMINER BROOKS: Because, you know, this
13 problem is one I'm very focused on, and another lawyer
14 would have to go back to square one to figure out what's
15 going on.

16 MS. BRADFUTE: Okay.

17 EXAMINER McMILLAN: Okay. So Case Number
18 16214 shall be continued until October the 4th.

19 MS. BRADFUTE: Thank you.

20 EXAMINER McMILLAN: Thanks.

21 (Case Number 16214 concludes, 11:02 a.m.)

22

23

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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 28th day of September 2018.

21

22

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

25