

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:

SECOND AMENDED APPLICATION OF DEVON                      CASE NO. 20160  
ENERGY PRODUCTION COMPANY FOR A  
STANDARD HORIZONTAL SPACING AND  
PRORATION UNIT AND COMPULSORY POOLING,  
EDDY COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

April 18, 2019

Santa Fe, New Mexico

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

This matter came on for hearing before the New Mexico Oil Conservation Division, William V. Jones, Chief Examiner, Terry Warnell, Technical Examiner, and David K. Brooks, Legal Examiner, on Thursday, April 18, 2019, 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.

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APPEARANCES

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1 (8:59 a.m.)

2 EXAMINER JONES: Sharon, did you bring your  
3 suitcase? You're ready to go (laughter)?

4 MS. SHAHEEN: I don't want to forget  
5 anything that I might need. I've already been caught  
6 off guard once today.

7 EXAMINER JONES: Well, let's call Case  
8 20160, application of Devon Energy Production Company,  
9 L.P. for the second amended application for a standard  
10 horizontal spacing and proration unit and compulsory  
11 pooling in Eddy County, New Mexico.

12 Call for appearances.

13 MS. SHAHEEN: Sharon Shaheen on behalf of  
14 Devon Energy Corporation.

15 EXAMINER JONES: Other appearances?

16 MR. BRUCE: Mr. Examiner, Jim Bruce of  
17 Santa Fe representing Mewbourne Oil Company. I have no  
18 witnesses, and I do not object to the case being  
19 presented by affidavit.

20 EXAMINER JONES: Okay. Thank you, Jim.

21 Any other appearances?

22 Please proceed.

23 Apparently the case has been heard February  
24 21st already.

25 MS. SHAHEEN: That's correct. And do I

1 have a correction to the docket that I didn't make  
2 earlier. I know that this is Case Number 20160 and it  
3 refers to the second amended application, but actually  
4 the second amended application was filed in Case Number  
5 20161.

6 So what I'd like to do is just kind of  
7 recap my understanding of these cases because it was  
8 Seth McMillan who presented them and was present at  
9 hearing. And since then, I've looked at all of the  
10 correspondence. I've looked at the transcript, and i  
11 can kind of summarize what I understand the issues were  
12 and what Devon did to resolve them.

13 EXAMINER JONES: Okay.

14 MS. SHAHEEN: And if you want me to cut to  
15 the chase, just tell me.

16 EXAMINER JONES: No, no. Go ahead and  
17 summarize it, please.

18 MS. SHAHEEN: All right.

19 And I want to start by saying that there is  
20 a little bit of a sense of urgency here because Devon is  
21 planning to drill in June. And I believe they're going  
22 to start drilling the south half in June, is their plan.

23 And I apologize for the confusion here as  
24 result of us -- of our musical chairs.

25 The bottom line is I think Devon has

1 addressed the concerns that the hearing examiner had  
2 regarding 20160, and I will walk through those concerns.  
3 And I know that 20161 is not on the docket today, but  
4 because they're so interrelated, I may talk about 20161  
5 as well.

6                   With respect to 20161, I think there may  
7 have been some miscommunications about what was needed,  
8 and my understanding -- and you will correct me if I'm  
9 wrong -- is that we did not need to file the second  
10 amended application in 20161. And it was taken under  
11 advisement in February, and it may be that we should be  
12 withdrawing or dismissing that application and request  
13 to re-open 20161.

14                   EXAMINER JONES: Yeah. That's up to you if  
15 you want to do that. You know, if you want to wait  
16 until the May docket, it'll be on the May 2nd docket, I  
17 think. So at that point, you can ask for -- if you are  
18 satisfied with the way it's already been presented, you  
19 could ask that that be dismissed at that time and the  
20 original case be taken under advisement.

21                   MS. SHAHEEN: Could I do that before May  
22 2nd?

23                   EXAMINER JONES: Mr. Brooks?

24                   EXAMINER BROOKS: Well, I'm not sure I  
25 understand exactly the situation. You have a case

1 that's set today and a case that's not set today, right?

2 MS. SHAHEEN: That's right. And it may be  
3 helpful for me to go through the history of what I've  
4 learned in the last few days and then ask that question.

5 EXAMINER BROOKS: Okay.

6 MS. SHAHEEN: Okay. So looking at the  
7 transcript from the February 22nd hearing, Hearing  
8 Examiner McMillan was -- heard case, and he determined  
9 that -- let's see. I have the page numbers here. His  
10 question -- and this is in the transcript at pages 32  
11 and 33. His question was, "Should the spacing unit be a  
12 640-acre unit rather than a 320-acre unit?"

13 EXAMINER BROOKS: Yeah. I remember that  
14 case, but I've forgotten the details.

15 MS. SHAHEEN: So there were -- the 20160  
16 was proposed as a 320-acre unit. 20161 -- and I can  
17 tell you the well numbers if you need those -- was  
18 proposed as a 640-acre unit. At that time they were  
19 both in a gas pool as opposed to an oil pool.

20 EXAMINER BROOKS: Right.

21 MS. SHAHEEN: And my understanding is the  
22 hearing examiner's concern was that if the well in Case  
23 Number 20160 [sic] was 640 acres, why wasn't the spacing  
24 unit for 20160 also 640 because of the building  
25 blocks -- he wasn't happy with the building blocks in

1 the gas pool, and he was concerned that there some  
2 notice issues.

3                   Since that time -- and I have emails that  
4 were between counsel and the Division about the fact  
5 that Devon consulted with the district office and  
6 corrected the pool and created a new oil pool. And so  
7 that information was provided to the Division, and the  
8 hearing examiner replied that he wanted an amended  
9 affidavit from the geologist stating that the new pool  
10 was an oil pool. And my understanding is that that  
11 would correct the acreage problem that the hearing  
12 examiner had at that time.

13                   So we did that. And Exhibit Number --  
14 Exhibit Number 2 is the amended affidavit of the  
15 geologist, Susan Estes. And her previous affidavit was  
16 entered into the record in the last hearing in February.  
17 The only difference between this affidavit and the  
18 previous affidavit is in paragraph four, on page 2, 4C.  
19 You'll note that she references, "The wells will be  
20 located in the Alacran Hills; Upper Wolfcamp Oil Pool;  
21 Pool Code 98314."

22                   EXAMINER JONES: Okay. So that had to come  
23 from Ray Podany in Artesia, right, because it's Eddy  
24 County? So this is not -- this is not Purple Sage pool  
25 then. If it's within the confines of Purple Sage, it

1 should be Purple Sage Gas Pool. It sounds like you've  
2 cleared it up, but it's hard to believe for me that --  
3 if it's outside the boundary of Purple Sage, sure, it  
4 could be -- do that.

5 MS. SHAHEEN: In my review of the record, I  
6 did not see a mention of Purple Sage. It was originally  
7 Alacran Hills; Upper -- wait. Sorry. It was originally  
8 Alacran Hills; Wolfcamp Gas Pool.

9 EXAMINER JONES: Okay. But now it's an oil  
10 pool?

11 MS. SHAHEEN: Now it's an oil pool.

12 EXAMINER JONES: Both of them are oil  
13 pools?

14 MS. SHAHEEN: Both of them are oil pools  
15 but still Alacran Hills.

16 EXAMINER WARNELL: When was it heard?  
17 February 7th?

18 MS. SHAHEEN: February 22nd.

19 And I believe its amended affidavit is  
20 already on the docket website, as it was provided to the  
21 Division by email. And those -- the email -- the email  
22 exchanges are Exhibits 5, 6 and 7.

23 So with respect to Exhibit 6, you'll see  
24 this is the email chain with Mr. Podany about the new  
25 oil pool.

1 EXAMINER JONES: Okay.

2 MS. SHAHEEN: And I'll just briefly talk  
3 about what the other exhibits are.

4 Exhibit 5 is the email from the hearing  
5 examiner that explains his concern about whether Devon  
6 should be requesting a nonstandard spacing unit in light  
7 of the fact that it was identified as a gas pool.

8 EXAMINER JONES: Is that why it was  
9 readvertised, the 20161?

10 MS. SHAHEEN: My understanding -- and this  
11 is a little bit of a mystery to me. If you look at  
12 Exhibit 6, on page 2, there is an email from Ms. Luck to  
13 Mr. Bruce, copying the hearing examiner. Apparently she  
14 met with the hearing examiner and discussed correcting  
15 the pool code for both 20160 and 20161 and the amended  
16 affidavit. And then with respect to 20161, I'm not sure  
17 why we continued it for notice purposes. As I stated  
18 earlier, my understanding is that there was no need to  
19 do that in 20161. The only reason we would have needed  
20 to renotice either case would have been if we needed to  
21 expand the acreage for 20160. But please correct me if  
22 I've got it wrong.

23 EXAMINER JONES: Sounds like it's been  
24 hashed out. So it's oil. Both of them are oil.

25 MS. SHAHEEN: Both of them are oil.

1 Neither of them required additional notice.  
2 Nonetheless, we do also have a supplemental affidavit of  
3 Cari Allen submitted as Exhibit 1 where she confirms, on  
4 page 2, at paragraph seven, that all ownership interests  
5 in both the south half and the north half have received  
6 notice of the application in 20160, even though now it's  
7 an oil pool, I don't think that's the south half of the  
8 north half was required to have notice.

9 EXAMINER JONES: Okay.

10 EXAMINER BROOKS: Well, the problem with it  
11 being an oil pool versus a gas pool is what a 40-acre  
12 tract will hold, and I understand that. You're saying  
13 it's now an oil pool, so that would mean a smaller  
14 horizontal spacing unit because in the gas pool, you  
15 could combine 160s and you could have a -- a gas pool a  
16 half a mile wide -- a gas unit a half a mile wide, but  
17 an oil pool ordinarily would not be able to do that. So  
18 I understand the problem, but I'm not sure where you are  
19 procedurally.

20 You've got a request from Examiner McMillan  
21 just for confirmation that there was an oil pool? Was  
22 that all he was concerned about?

23 MS. SHAHEEN: That's my understanding. And  
24 if you look at Exhibit 6, the top email there is from  
25 the hearing examiner saying -- we've explained to him in

1 the email chain about the oil pool, and he states that  
2 he wants an affidavit from the geologist stating that  
3 the target interval will be an oil well before he  
4 submits the hearing order for review.

5 EXAMINER BROOKS: Okay.

6 MS. SHAHEEN: So Exhibit 2 was that  
7 supplemental affidavit that did that.

8 And then Exhibit 7 is the email in which we  
9 provided the amended -- it's an amended geologist's  
10 affidavit, not supplemental.

11 EXAMINER BROOKS: So you could not -- you  
12 were thinking that it would be appropriate for the  
13 examiner to now make a ruling on the supplemental  
14 affidavit if that case were set for hearing today, which  
15 it's not; is that correct?

16 MS. SHAHEEN: The case, with respect to the  
17 supplemental affidavit, is 20160, which is the case that  
18 is set for hearing today.

19 EXAMINER BROOKS: Okay. And you've got  
20 your supplemental affidavit.

21 MS. SHAHEEN: We do.

22 EXAMINER BROOKS: So what's the problem?

23 MS. SHAHEEN: I don't think there is one  
24 anymore.

25 EXAMINER JONES: No, not with this case.

1 EXAMINER BROOKS: There is not as far as I  
2 can tell.

3 EXAMINER JONES: Not with this case.

4 MS. SHAHEEN: I would offer Exhibits 1  
5 through 7 into the record in Case 20160 is admitted.

6 (Devon Energy Production Company, L.P.  
7 Exhibit Numbers 1 through 7 are offered and  
8 admitted into evidence.)

9 EXAMINER JONES: And Case 20160 is taken  
10 under advisement.

11 MS. SHAHEEN: Thank you.

12 And then may I ask the question that I  
13 started earlier?

14 EXAMINER BROOKS: Which was what?

15 MS. SHAHEEN: Which was now that I think  
16 we've cleared up what the issue was, would it be okay  
17 for us to dismiss the second amended application in  
18 20161?

19 EXAMINER JONES: Was it taken under  
20 advisement on the transcript?

21 MS. SHAHEEN: It was taken under advisement  
22 in the transcript.

23 EXAMINER JONES: If it was submitted  
24 correctly, I don't see why not.

25 EXAMINER BROOKS: Yeah. You can always

1 dismiss your case. But, of course, if there is any --  
2 if you need to compulsory pool something and you haven't  
3 gotten an order, you know, dismissing it doesn't have  
4 that effect.

5 EXAMINER JONES: I think they're just  
6 asking to dismiss the new amended portion.

7 MS. SHAHEEN: That's correct.

8 EXAMINER BROOKS: Okay. So you're saying  
9 you dismiss your second amended application and you go  
10 to hearing on your -- you go to rehearing on your first  
11 amended application?

12 EXAMINER JONES: It's already taken under  
13 advisement.

14 EXAMINER BROOKS: Oh. It's taken under  
15 advisement, the first amended application.

16 Okay. That sounds like a practical  
17 solution. If it doesn't -- with judicial procedure, I  
18 think we can leave it. So you just dismiss 20161 and  
19 get all the relief you need in 20160.

20 EXAMINER JONES: No, no. Give us an email  
21 asking us to dismiss the new amended portion of the 61  
22 case.

23 EXAMINER BROOKS: Say you're withdrawing  
24 it.

25 EXAMINER JONES: Withdrawing it.

1 EXAMINER BROOKS: You're withdrawing your  
2 amended application, leaving the previous application.

3 MS. SHAHEEN: And the other thing I just  
4 want to make clear is that the new oil pool also applies  
5 to the 20161, and the affidavit that was submitted --  
6 the amended affidavit of Ms. Estes was submitted in both  
7 Case Number 20160 and Case Number 20161.

8 EXAMINER BROOKS: Yeah. We frequently  
9 submit amended -- or documents -- supplemental documents  
10 requested by the examiner at times in hearings, so I  
11 don't think that's a problem.

12 EXAMINER JONES: As long as we get it in  
13 the case file.

14 EXAMINER BROOKS: Yeah, as long as it's in  
15 the file and there is something formal and official in  
16 the file to show that it has been --

17 EXAMINER JONES: It's right here. Yeah.  
18 They've got it.

19 MS. SHAHEEN: I meant to check the docket  
20 website. I'll check the docket website on 20161 and  
21 makes sure it's in the record there, and if it's not,  
22 I'll submit it again with the request that it be --

23 EXAMINER BROOKS: Okay. Sounds like  
24 that'll work.

25 MS. SHAHEEN: Any other questions?

1 EXAMINER BROOKS: Not really.

2 MS. SHAHEEN: Thank you so much.

3 EXAMINER JONES: Thank you.

4 You want to take a quick break? And when  
5 we come back, we'll start with Marathon, Case Number --  
6 number 33 on the docket.

7 (Case Number 20160 concludes, 9:16 a.m.)

8 (Recess, 9:16 a.m. to 9:34 a.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 28th day of April 2019.

21

22

23 MARY C. HANKINS, CCR, RPR  
24 Certified Court Reporter  
New Mexico CCR No. 20  
Date of CCR Expiration: 12/31/2019  
Paul Baca Professional Court Reporters

25