

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:

APPLICATION OF CHISHOLM ENERGY                      CASE NOS. 20520,  
OPERATING, LLC FOR COMPULSORY                      20521  
POOLING, LEA COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

August 22, 2019

Santa Fe, New Mexico

BEFORE:   MICHAEL McMILLAN, CHIEF EXAMINER  
          KATHLEEN MURPHY, TECHNICAL EXAMINER  
          DYLAN ROSE-COSS, TECHNICAL EXAMINER  
          BILL BRANCARD, LEGAL EXAMINER  
          SUSAN SITA, LEGAL EXAMINER

This matter came on for hearing before the New Mexico Oil Conservation Division, Michael McMillan, Chief Examiner; Kathleen Murphy and Dylan Rose-Coss, Technical Examiners; and Bill Brancard, Legal Examiner, on Thursday, August 22, 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.

REPORTED BY:   Mary C. Hankins, CCR, RPR  
                  New Mexico CCR #20  
                  Paul Baca Professional Court Reporters  
                  500 4th Street, Northwest, Suite 105  
                  Albuquerque, New Mexico 87102  
                  (505) 843-9241

APPEARANCES

FOR APPLICANT CHISHOLM ENERGY OPERATING, LLC:

KAITLYN A. LUCK, ESQ.  
MICHAEL H. FELDEWERT, ESQ.  
HOLLAND & HART, LLP  
110 North Guadalupe, Suite 1  
Santa Fe, New Mexico 87501  
(505) 988-4421  
kluck@hollandhart.com  
mfeldewert@hollandhart.com

FOR PROTESTANT MARATHON OIL PERMIAN, LLC:

JENNIFER L. BRADFUTE, ESQ.  
MARATHON OIL PERMIAN, LLC  
Office of General Counsel  
5555 San Felipe Street  
Houston, Texas 77056-2723  
(713) 629-6600

FOR INTERESTED PARTY CONOCOPHILLIPS COMPANY:

JAMES G. BRUCE, ESQ.  
Post Office Box 1056  
Santa Fe, New Mexico 87504  
(505) 982-2043  
jamesbruc@aol.com

1	INDEX	
2		PAGE
3	Case Numbers 20520 and 20521 Called	4
4	Exhibit Offered	4
5	Argument	5 - 14
6	Marathon Oil Permian, LLC's Case-in-Chief:	
7	Witnesses:	
8	Travis Prewett:	
9	Direct Examination by Ms. Bradfute	15
	Cross-Examination by Mr. Feldewert	31
10	Redirect Examination by Ms. Bradfute	35
11	Proceedings Conclude	39
12	Certificate of Court Reporter	40
13		
14		
15	EXHIBITS OFFERED AND ADMITTED	
16		PAGE
17	Chisholm Energy Operating, LLC Exhibit E	5
18	Marathon Oil Permian, LLC Exhibit Numbers Exhibit	
19	Numbers 1 through 7	31
20		
21		
22		
23		
24		
25		

1 (1:47 p.m.)

2 EXAMINER McMILLAN: Okay. Now we're going  
3 to start hitting the compulsory poolings. We're going  
4 to call Case Number 20520, application of Chisholm  
5 Energy Operating.

6 MS. LUCK: This is the application of  
7 Chisholm Energy Operating, LLC for compulsory pooling,  
8 Lea County, New Mexico, and Kaitlyn Luck on behalf of  
9 Chisholm Energy Operating, LLC.

10 EXAMINER McMILLAN: Any other appearances.

11 MS. BRADFUTE: Mr. Examiner, Jennifer  
12 Bradfute, with Marathon Oil Permian, LLC, on behalf of  
13 Marathon.

14 EXAMINER McMILLAN: Any other appearances?

15 MS. BRADFUTE: Mr. Examiner, I have one  
16 witness with me.

17 And, Ms. Examiner, it is just a little bit  
18 more than just a notice case, but I'll let Ms. Luck open  
19 up.

20 EXAMINER McMILLAN: Okay.

21 MS. LUCK: Mr. Examiner, this case was  
22 continued from an earlier docket to perfect notice upon  
23 two additional overriding royalty interest owners, and  
24 the affidavit you have before you marked as Exhibit E  
25 indicates that notice of the hearing was provided to the

1 additional overriding royalty interest owners. And  
2 because two of the mailings were not delivered at the  
3 time of the hearing, we've also included proof of  
4 publication that notice was also published.

5 And so with that, I move the admission of  
6 Exhibit E into the record.

7 MS. BRADFUTE: No objection.

8 EXAMINER McMILLAN: Exhibit E may now be  
9 accepted as part of the record.

10 (Chisholm Energy Operating, LLC Exhibit E  
11 is offered and admitted into evidence.)

12 MS. BRADFUTE: Mr. Examiner, Marathon Oil  
13 recently was informed, through the Commission of some  
14 title work, that it owns working interests within a  
15 descent portion of the proposed spacing units. In fact,  
16 it would own an 18.3 percent in each of proposed spacing  
17 units. Its interests are of record, so it's not a title  
18 dispute. It has interests that are duly recorded  
19 documents in the county records. It did not receive a  
20 well-proposal letter or AFE from Chisholm about these  
21 well proposals. Marathon did notify Chisholm of its  
22 title, and Chisholm has refused to recognize Marathon's  
23 title interests.

24 We did move for a continuance because our  
25 counsel in this case was out of town. She had to go to

1 a hearing in Montana this week. The Division did decide  
2 to deny that request for continuance, which is fine,  
3 because I was able to come and be present here at the  
4 hearing today.

5 But I do have a landman who is here who can  
6 testify as to Marathon's title. We're not asking that  
7 the Division adjudicate title in any way. What we're  
8 asking for is Marathon wants to receive a well-proposal  
9 letter, they want to receive an AFE, and we would like  
10 the interest to be subject to a pooling order that's  
11 issued by the Division.

12 MS. LUCK: Mr. Examiner, Chisholm would  
13 object to any evidence that Marathon intends to present  
14 of its working interest ownership because it's  
15 established precedent that the Division does not have  
16 jurisdiction over title issues, and we provided that  
17 citation in our response to the opposed motion for  
18 continuance that was filed. And because Marathon's only  
19 interest here at this hearing is due to a title dispute,  
20 we would just ask the Division not proceed with hearing  
21 any evidence of that and the record stands as presented  
22 at the June 13th hearing.

23 MS. BRADFUTE: And, Mr. Examiner, if I may,  
24 there are some well-established cases about -- that have  
25 been followed by the Division for as long as I've

1 practiced in front of the Division, maybe longer, which  
2 both state that the Division requires a well-proposal  
3 letter and an AFE to be submitted to working interest  
4 owners. It's part of the good-faith negotiation  
5 process, which isn't required by statute, but it is  
6 required by Division precedent. And so I've got a copy  
7 of both of these orders for the Division's use during  
8 this hearing.

9 And I apologize. I don't have enough  
10 copies for everybody. I wasn't expecting as many  
11 examiners.

12 And Marathon's interest is not an  
13 adjudication of title. Marathon's interests are of  
14 record. And so here we have the recorded documents  
15 verifying Marathon's title, and I have a witness who can  
16 verify and discuss those title documents here today.

17 Under the Oil and Gas Act, it clearly  
18 provides that any interest, whether it's an undivided  
19 interest or an interest in a whole part of a tract, is  
20 not committed or pooled voluntarily to the unit that the  
21 Division shall pool that interest. And the word "shall"  
22 is what is used in the statute. So the Division clearly  
23 has jurisdiction to pool uncommitted interests to a  
24 spacing unit, which is what Marathon's asking in relief  
25 today.

1                   EXAMINER BRANCARD:   These are unleased  
2   interests?

3                   MS. BRADFUTE:   No.   They're leased.  
4   They're leased interests that were obtained through  
5   recorded assignments in the county records, and they  
6   vest Marathon with title to part of the spacing units.  
7   Chisholm's position to Marathon informally, which we can  
8   get into in testimony, is they believe that one of the  
9   assignments issued and executed in 2001 was erroneous  
10   somehow and included the wrong depth, but there was no  
11   curative assignment ever recorded in the county  
12   document.   The recorded documents show that Marathon has  
13   title.

14                  MS. LUCK:   Chisholm disputes that title  
15   interest.   And our exhibits from the hearing on June  
16   13th reflect the ownership by tracts, and it's broken  
17   down with the percentage of -- percentage of interest  
18   that each add up to 100 percent.   And so I think that  
19   it's clear from reviewing our exhibits from the June  
20   13th hearing, specifically Exhibit A3 and the unit recap  
21   and the ownership by tract, that Chisholm does dispute  
22   the claimed title interests that Marathon is claiming  
23   and doesn't believe that this is appropriate for  
24   decision by the Division.   It's more appropriate for the  
25   district court to make any kind of quiet title decision

1 in this case.

2 MS. BRADFUTE: And to the extent that  
3 Chisholm is relying on affidavits that were presented at  
4 hearing, under Rule 19.15.4.12, Subsection A(1)(e), the  
5 Division, at an interested party's request, cannot rely  
6 on affidavits. And Marathon is objecting to the  
7 reliance on just affidavit testimony, which is hearsay,  
8 and let's set the matter for hearing, and we  
9 particularly ask that since I didn't get a chance to  
10 cross-examine Chisholm's witnesses and Chisholm is  
11 opposing any actual evidence being presented of the  
12 recording working interest.

13 MS. LUCK: And if I may just respond  
14 briefly, turning to A3 from the original hearing, it  
15 lists Marathon as an override in this section -- I mean  
16 in this spacing unit, and so Marathon was provided  
17 notice of the original hearing.

18 And included with our Exhibit C from the  
19 original hearing, it reflects that Marathon did receive  
20 timely notice of the June 13th hearing but did not enter  
21 an appearance of any kind at that time.

22 MS. BRADFUTE: I have a copy of the rules,  
23 or you may have the rules.

24 So if you turn to page 8 of what I've  
25 provided you or within your own rule book, it's going to

1 be Rule 19.15.4.13, Subsection B, the rule concerning  
2 prehearing statements. This rule speaks as to when a  
3 prehearing statement has to be filed in order to present  
4 testimony at a hearing, and it talks about a prehearing  
5 statement needs to be filed at least four business days  
6 in advance of a scheduled hearing. That's exactly what  
7 we have today. If you look at the hearing announcement  
8 today, both of Chisholm's cases at issue are listed to  
9 be heard today, and there is a disclaimer on top of that  
10 hearing docket which states in order to present anything  
11 at the hearing in the listed cases, you have to file a  
12 prehearing statement at least four business days or no  
13 later than a Thursday.

14 That's exactly what Marathon has done here.  
15 We've complied with the rules. We filed a prehearing  
16 statement last Thursday stating our objections, listing  
17 our witness. Chisholm has had more than adequate  
18 notice. This case was continued. And in the past, I  
19 have not seen the Division deny testimony and evidence  
20 when a party has timely filed a prehearing statement.

21 If any further rules are needed to support  
22 Marathon's position, if you look at Rule 19.15.4.10,  
23 Subsection C in the document that -- it's page 4 -- on  
24 page 4 in the documents that I've provided you, the  
25 hearing examiner is vested with discretion to take

1 testimony and hear testimony and take it under  
2 consideration. So in the past, what has typically  
3 happened is there's been an evaluation as to whether or  
4 not the testimony would be helpful to the Division's  
5 analysis as to whether or not the interests need to be  
6 compulsory pooled, and the hearing examiner has been  
7 given discretion as to whether or not to hear the  
8 testimony and hear the evidence.

9                   Here, we timely complied with all the  
10 prehearing statement requirements. We gave notice to  
11 Chisholm. We've reached out to Chisholm multiple times  
12 telling them about our title. They're saying they think  
13 there is an error in a recorded document. They're not  
14 presenting any other title evidence to us. And it's  
15 kind of outlandish for Chisholm to say, "No. You don't  
16 get to present anything before your interests" --

17                   EXAMINER BRANCARD: Well, the whole -- the  
18 whole logic behind a compulsory pooling hearing is that  
19 those people who have interests are given an opportunity  
20 to participate. And it's -- it's correct that, you  
21 know, we're not really a title-deciding agency, although  
22 on the other hand, I mean, our rule, as was pointed out,  
23 says that notice is given to any interest whose --  
24 interest is evidenced by a written conveyance document  
25 either of record or known to the Applicant at the time

1 of the application. And so I think it's difficult to go  
2 on without notice to the proper parties in this case and  
3 have an opportunity to be heard.

4 Would the appearance of Marathon in this  
5 case satisfy Marathon's request or -- I mean -- I mean,  
6 you're not objecting to the compulsory pooling? You  
7 just want to have --

8 MS. BRADFUTE: That is correct.

9 EXAMINER BRANCARD: -- the Applicant give  
10 you an opportunity to -- to respond to an offer after  
11 the pooling order is issued; is that correct?

12 MS. BRADFUTE: Well, we would like a  
13 well-proposal letter and an AFE and the opportunity to  
14 evaluate the proposal and the interest to be subject to  
15 a pooling hearing. That could happen after the pooling  
16 order is entered. We wouldn't have the same amount of  
17 time afforded to the other interest owners, and Chisholm  
18 has not tried to engage in any sort of voluntary pooling  
19 of the interests. And those are protections that are  
20 typically afforded to working interest owners in almost  
21 every other case.

22 EXAMINER BRANCARD: But our pooling order  
23 normally requires each interest pooled to be given an  
24 opportunity to voluntarily sign off.

25 EXAMINER McMILLAN: Yes.

1 EXAMINER BRANCARD: Right.

2 MS. BRADFUTE: Yes.

3 EXAMINER BRANCARD: So you would get that  
4 after a pooling order.

5 MS. BRADFUTE: Yes. You would get a  
6 proposal under the pooling order, and instead of getting  
7 the 30 days before something goes to hearing like  
8 everybody else, that gets cut off. So we don't  
9 necessarily need delay in this case. We just want a  
10 reasonable time to evaluate the proposal so we can  
11 decide whether or not we want to participate or not.  
12 And whatever the Division deems reasonable, Marathon  
13 will be okay with.

14 But in every other -- if you look at the  
15 two orders in front of you, if you look at the order  
16 issued in Order Numbers R-13165 and R-13166, there are  
17 highlighted portions in both of these orders. In one  
18 case, the Division dismissed the application because an  
19 AFE and a well proposal were not sent before the hearing  
20 to a working interest owner. In the other case, the  
21 case was continued for a period of 30 days so that a  
22 well proposal and AFE could be sent to the interested  
23 party to evaluate. And that's the binding precedent  
24 that's been followed by the Division historically. And  
25 so it would require a 30-day period to evaluate.

1 Marathon doesn't intend to challenge operatorship here.

2 EXAMINER BRANCARD: So, Mr. Examiner, we  
3 can either, I think, go forward with hearing the  
4 testimony and sort of decide whether Marathon should be  
5 included in the order, or I think you can simply  
6 continue the case for a month to have the notice and the  
7 issue be resolved during that time frame.

8 MS. LUCK: And if I may, the motion to  
9 continue was denied prior to hearing, and so we would  
10 ask that the case not be continued any further.

11 MS. BRADFUTE: In that case, I would object  
12 to the submission by affidavit, and pursuant to the  
13 Division's rules, we ask that this matter be set with a  
14 hearing on -- including the Applicant's own witnesses so  
15 that they may be subject to cross-examination, and  
16 that's under the regulations.

17 EXAMINER BRANCARD: I mean, if you think  
18 you've already decided the issue, you can go forward on  
19 this.

20 EXAMINER McMILLAN: I haven't.

21 EXAMINER BRANCARD: I mean, this issue can  
22 be appealed de novo to the Commission, so these issues  
23 can be raised in that situation, too.

24 EXAMINER McMILLAN: I think we ought to  
25 just let them -- Marathon present their expert witness.

1 EXAMINER BRANCARD: Okay.

2 EXAMINER McMILLAN: Okay. We're going to  
3 allow Marathon's expert witness.

4 MS. BRADFUTE: Thank you.

5 So I have one witness with me here today.

6 EXAMINER McMILLAN: Okay. Get sworn in.

7 TRAVIS PREWETT,  
8 after having been first duly sworn under oath, was  
9 questioned and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. BRADFUTE:

12 Q. Good afternoon.

13 A. Hello.

14 Q. Could you please state your full name for the  
15 record?

16 A. Yes. My name is Travis Prewett.

17 Q. And, Mr. Prewett, who do you work for?

18 A. I work for Marathon Oil Permian, LLC.

19 Q. And what is your position at Marathon?

20 A. I am a land professional.

21 Q. Okay. And what are your responsibilities as a  
22 land professional at Marathon?

23 A. I'm a subsurface land professional, and I get  
24 the well set up to be drilled, and I work with other  
25 operators on different trades. And I come here before

1     this committee and present our force pooling.

2           Q.     And do you review title?

3           A.     Yes, I do.

4           Q.     Okay. Have you previously testified before the  
5     Division?

6           A.     Yes, I have.

7           Q.     And have you been qualified as an expert in  
8     petroleum land matters?

9           A.     Yes, I have.

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

12          A.     Yes, they were.

13          Q.     Does your area of responsibility at Marathon  
14     include the area of Lea County in southeastern New  
15     Mexico?

16          A.     Yes.

17          Q.     And are you familiar with the applications that  
18     have been filed by Chisholm in Case Numbers 20520 and  
19     20521?

20          A.     I am.

21          Q.     And are you familiar with the status of  
22     Marathon's interest within the lands that are the  
23     subject matter of those applications?

24          A.     Yes, I am.

25                     MS. BRADFUTE: I'd like to tender

1 Mr. Prewett as an expert witness in petroleum land  
2 matters.

3 EXAMINER McMILLAN: Any objections?

4 MS. LUCK: No objection.

5 EXAMINER McMILLAN: So qualified.

6 MS. BRADFUTE: Thank you.

7 Q. (BY MS BRADFUTE) Could you please turn to the  
8 exhibit packet in front of you?

9 A. (Witness complies.)

10 Q. And could you please explain what this diagram  
11 shows to the hearing examiners?

12 A. Yes. This is a plat review showing the -- the  
13 two wells that were proposed by Chisholm. This is going  
14 to be the east half of Section 14 and the northeast  
15 quarter of Section 23. Marathon's interest is in the  
16 north half of Section 14, so it would be the northeast  
17 quarter specifically.

18 Q. And so here shaded on this diagram, there is  
19 shaded in a rectangle space on Section 14, correct?

20 A. Yes.

21 Q. And that is because we're focused on the  
22 interests located within Section 14, right?

23 A. That's correct.

24 Q. Could you please explain what Marathon's  
25 interests are within Section 14?

1           A.    Yes.  We have a 55 percent working interest  
2   from the surface to 12,808 feet in the north half of  
3   Section 14.

4           Q.    Okay.  Could you please turn to Exhibit 2 in  
5   the packet in front of you?

6           A.    (Witness complies.)

7           Q.    Does Exhibit 2 contain an affidavit executed by  
8   Beau Sullivan, who is a landman at Chisholm?

9           A.    Yes.

10          Q.    And could you please look at paragraph 13 in  
11   Mr. Sullivan's affidavit, which is located --

12                   MS. BRADFUTE:  If everybody looks, there  
13   are handwritten page numbers on the bottom of each page  
14   in the exhibit packet, so it's handwritten page number 3  
15   of the exhibit packet.

16          Q.    (BY MS. BRADFUTE) Does this paragraph state  
17   that Chisholm prepared an ownership exhibit in order to  
18   show the interest owners and percentage of ownership  
19   within the spacing unit?

20          A.    Yes.

21          Q.    Okay.  And could you please turn a couple of  
22   pages to page 7 and it's a document entitled "Ownership  
23   By Tract."  I believe this is a three-page document.  If  
24   you could skim through this document and let me know if  
25   you see Marathon Oil Permian, LLC or Marathon Oil

1     Company anywhere listed on this document, I'd appreciate  
2     it.

3             A.     No.

4             Q.     Okay. So Marathon's interests are not  
5     located -- they're not listed within this exhibit; is  
6     that right?

7             A.     That is correct.

8             Q.     Okay. I'd like to turn back to Mr. Sullivan's  
9     affidavit and focus on page 4 of the exhibit packet and  
10    look at paragraph 14. Does paragraph 14 of this  
11    affidavit specifically state that Chisholm is only  
12    seeking to force pool the interests listed on the  
13    ownership exhibit that we just looked at?

14            A.     That is correct.

15            Q.     So based on these statements contained in  
16    Mr. Sullivan's affidavit, is it your opinion that  
17    Chisholm is not seeking to force pool Marathon's  
18    interests in its application?

19            A.     Yes.

20            Q.     Could you please look at paragraphs 16 and 17  
21    within the affidavit? Do these paragraphs state that  
22    Chisholm sent well proposals and AFEs to the working  
23    interest owners located in the proposed spacing units?

24            A.     Yes.

25            Q.     Did Marathon receive a well-proposal letter

1     **from Chisholm for either of the proposed wells?**

2           A.     No, we did not.

3                     (Examiner Brancard exits the room; Examiner

4                     Sita enters the room, 2:08 p.m.)

5           **Q.     Did Marathon receive AFEs?**

6           A.     No, we have not.

7           **Q.     Has Marathon contacted Chisholm to inform it**  
8 **about its working interests within the north half of**  
9 **Section 14?**

10          A.     Yes, we have. We had a letter that was sent to  
11 them on July 12th and also on August 7th.

12          **Q.     And what was Chisholm's response?**

13          A.     Chisholm did not recognize our interests.

14          **Q.     Does Marathon want to receive a well-proposal**  
15 **letter and AFE for the proposed operation?**

16          A.     Yes.

17          **Q.     Why? Why is that?**

18          A.     We just would like the opportunity to evaluate  
19 the well to see if we want to participate in it.

20          **Q.     Could you please turn to Exhibit 3, and could**  
21 **you please explain what this document is to the hearing**  
22 **examiner?**

23          A.     Yes. This is the timeline of communication  
24 just going through the recent communications that we've  
25 had with Mewbourne [sic] back and forth. Starting out

1 here, on July 12th, there is that letter that I  
2 mentioned. It was from our outside counsel to Chisholm  
3 explaining to them what our -- what our interest was in  
4 these lands.

5 They came back with a letter on July 23rd  
6 basically telling us that they didn't interpret that the  
7 same way. They said that there was an incomplete depth  
8 limitation in the documents we provided them.

9 And then we sent them another letter on  
10 August 7th, and it was just confirming what our interest  
11 was, and it was also just bringing up, you know, the  
12 notion of wanting to discuss some sort of commercial  
13 resolution to this. And then following that, there were  
14 a couple of phone calls back and forth between  
15 Marathon's land department and Chisholm's land  
16 department where we were discussing different  
17 opportunities in some sort of fashion that we could  
18 resolve this.

19 Q. Is it your opinion that Marathon has properly  
20 informed Chisholm of its working interests within the  
21 north half of Section 14?

22 A. Yes.

23 Q. Okay. Could you please turn to Exhibit 4 in  
24 the packet in front of you? Is it Exhibit 4 -- does  
25 Exhibit 4 contain the July 12th letter that you just

1 discussed informing Chisholm about Marathon's interest?

2 A. Yes.

3 Q. Okay. And could you please turn to Exhibit 5  
4 within the packet? Does Exhibit 5 contain the August  
5 7th letter further explaining Marathon's interest to  
6 Chisholm within the proposed spacing units?

7 A. Yes.

8 Q. Could you please turn to Exhibit 6? I now want  
9 to talk briefly about the record -- record-title basis  
10 for Marathon's working interest within this section.  
11 Could you please briefly explain in broad strokes what  
12 Exhibit 6 contains for the hearing examiners?

13 A. Okay. So this is an exhibit that just  
14 identifies the few instruments that are the basis of our  
15 title. Just to hit -- hit this real quick, there is a  
16 state lease that Phillips Petroleum had acquired and --  
17 or was a lessee of. And Phillips assigned to  
18 Marathon -- excuse me -- to Marathon's predecessor,  
19 Southwestern, 55 percent interest -- all right, title  
20 and interest to surface down to 12,808 feet.

21 Subsequent to that, Southwestern then term  
22 assigned what they had just acquired from Phillips,  
23 which was at 55 percent with that depth limitation.  
24 They term assigned that to another company called  
25 Nearburg. And yeah, that's kind of where we are right

1 now, and this term assignment did expire.

2 Q. Okay. So I just want to break this down a  
3 little bit. So the interest -- the working interests  
4 within the north half of Section 14 are created under a  
5 state lease, correct?

6 A. That's correct.

7 Q. And that state lease number is E1923; is that  
8 right?

9 A. Yes. That is correct.

10 Q. And that state lease was issued to Phillips  
11 Petroleum Company?

12 A. Yes.

13 Q. Is that state lease still in full force and  
14 effect?

15 A. It is.

16 Q. Okay. So there have been no expirations of the  
17 mineral interests under that lease, right?

18 A. That is correct.

19 Q. Okay. So now it looks like the next title  
20 document in the chain of title is a partial assignment  
21 of interests that was executed on June 4th, 2001; is  
22 that right?

23 A. Yes.

24 Q. And Phillips, it looks like they assigned 55  
25 percent of their right, title and interest from the

1 surface to 12,808 feet to Southwestern; is that right?

2 A. Yes.

3 Q. Okay. And that assignment -- was that  
4 assignment recorded?

5 A. It was.

6 Q. Okay. So it's of record in Lea County?

7 A. That's correct.

8 Q. Okay. So the next event in title looks like a  
9 term assignment that happened June 1st, 2004; is that  
10 right?

11 A. That is correct.

12 Q. Could you briefly explain just really broadly  
13 what a term assignment is to the hearing examiners?

14 A. Right. So Southwestern was giving Nearburg an  
15 opportunity to drill some wells to earn some acreage and  
16 some interests. And so Southwestern had termed assigned  
17 what they had acquired so that Nearburg could drill  
18 these wells for them, and they gave them a two-year -- a  
19 two-year primary term. And Nearburg did drill a well in  
20 there, but there is a continuous drilling, so you have  
21 to continuously drill. And once you're done drilling,  
22 then that term assignment is going to expire.

23 Q. Okay. And it looks like here, if I jump kind  
24 of to the end of the outline, in 2016, all production  
25 from -- from the area under the term assignment ceased

1     for all drilling within the term-assigned depth, surface  
2     to 12,808, stopped and the term assignment expired,  
3     right?

4           A.     That is correct.

5           Q.     And Marathon's predecessor in interest is  
6     Southwest Energy Production Company, right?

7           A.     Yes.

8           Q.     Okay. And Southwest Energy Production Company  
9     then, I assume, assigned its interest to other entities;  
10    is that right?

11          A.     Yes.

12          Q.     Okay. Could you briefly explain how that  
13    assignment history worked? Or how did the interest get  
14    into Marathon?

15          A.     Okay. So Marathon acquired our interest from  
16    Black Mountain, and Black Mountain had acquired it  
17    through Legacy, and there's another party between them  
18    and Southwestern. But that's where the chain of title  
19    went. So it went from Southwestern to another company  
20    that escapes my mind and then to a company called Legacy  
21    and then to Black Mountain to Marathon.

22          Q.     And Black Mountain specifically assigned the  
23    interest to Marathon within the north half of Section  
24    14?

25          A.     Yes. Yes. That's correct. It was 176 net

1     acres, which is 55 percent of 320 acres.

2           Q.     And that assignment was recorded and made of  
3     record in Lea County?

4           A.     Yes.

5           Q.     So I now want to look at the attachments to  
6     this outline, if you could flip to Attachment A. Does  
7     Attachment A contain a copy of the State Land Office  
8     lease, Lease Number E1923, covering the north half of  
9     Section 14?

10          A.     Yes.

11          Q.     And if you could please flip to Tab B, does Tab  
12     B contain the partial assignment of the oil and gas  
13     lease from Phillips to Southwestern, which assigned 55  
14     percent of Phillips' interest from the surface down to  
15     the depth of 12,808 feet?

16          A.     Yeah. So you can see here on Exhibit A it  
17     specifically lists the depth limitations, from surface  
18     to 12,808 feet, and it's 55 percent.

19          Q.     Okay. And Exhibit A, the second page of this  
20     document, has a very expressed depth limitation, right?

21          A.     Yes.

22          Q.     So there is no question about that.

23                     If you could please turn to Exhibit C, does  
24     Exhibit C contain a copy of the term assignment from  
25     Southwestern to Nearburg?

1           A.    Yes, it does. In the term assignment, you'll  
2    see it has that two-year term in there where Nearburg  
3    had drilled the well down to -- it was -- it was -- I  
4    think it was TD'd at somewhere like 13,450 feet, but its  
5    producing interval was 13,050 feet, right? So it was  
6    below our 12,808 feet. So this -- you know, this term  
7    assignment would have been expired with or without that.  
8    But that well was not drilled into this acreage that was  
9    term assigned.

10           **Q.    Yeah.**

11                           **And did Southwestern own any rights in**  
12   **those deeper depths below 12,808 feet?**

13           A.    No. No. So Southwestern only owned that --  
14    that -- that surface to 12,808 feet, so they couldn't  
15    have assigned anything deeper than that.

16           **Q.    Because under a term assignment, you can only**  
17   **give rights to what you own, right?**

18           A.    That's correct.

19           **Q.    And so no well was drilled into those shallower**  
20   **depths by Nearburg from the surface to 12,808 feet?**

21           A.    That's correct.

22           **Q.    If you could please turn to Exhibit D, does**  
23   **Exhibit D contain -- is Exhibit D a printout from the**  
24   **Oil Conservation Division's website listing the wells**  
25   **that are producing from Section 14?**

1           A.     Yes.

2           Q.     And I want to focus on the Outland 14 State 1  
3 well. Do you see that well?

4           A.     Yes.

5           Q.     It looks like that well was spud in December of  
6 2004, correct?

7           A.     That is correct.

8           Q.     Okay. And is this the well that you were  
9 talking about that was drilled below the depths of what  
10 Southwestern owned?

11          A.     Yes.

12          Q.     Okay. So why couldn't this well have  
13 perpetuated the term assignment? Was it drilled too  
14 deep?

15          A.     Right. Right. Yeah. So the acreage that  
16 Southwestern owned -- the interest they owned, not the  
17 acreage, is set aside. It's 55 percent of a shallower  
18 depth. And so that's not going to be part of the 45  
19 percent in the deeper depths. It's a different  
20 ownership.

21          Q.     Okay. And so if you look here, if you flip to  
22 the next page of this attachment, this is the C-102 for  
23 that deep Morrow well, correct?

24          A.     Yes.

25          Q.     And it shows that it was -- the pool that it's

1     developing is the Wilson Morrow Pool, right?

2           A.     That is correct.

3           Q.     If you flip to the next page, this is the Form  
4     C-105 for the Outland 14 State well, correct?

5           A.     That is correct.

6           Q.     And this document in box 26 states that the  
7     well was drilled below 13,000 feet, right?

8           A.     Yes.

9           Q.     Okay. And Marathon did, in fact, obtain an  
10    statement from its predecessors in interest to the  
11    working interest in the north half of Section 14, right?

12          A.     That is correct.

13          Q.     And that assignment is filed of record, right?

14          A.     Yes.

15          Q.     If you could flip to Exhibit 7, is this a copy  
16    of that assignment?

17          A.     That is correct.

18          Q.     And if you could please turn to page 42 of the  
19    exhibit packet, does page 42 contain the exhibit for  
20    this assignment between Black Mountain and Marathon?

21          A.     Yes.

22          Q.     And it's the exhibit of leases included in the  
23    assignment, right?

24          A.     Yes.

25          Q.     If you turn the page to page 43, there is a

1 highlighted row right there, correct?

2 A. Yes.

3 Q. And I apologize. The print is very small on  
4 these exhibits.

5 That is the interest within the north half  
6 of Section 14, correct --

7 A. Yes.

8 Q. -- specifically listed in the assignment?

9 A. That's correct.

10 Q. And when was this assignment recorded and made  
11 of record?

12 A. It's June 8th of 2017.

13 Q. In your opinion, has Marathon established that  
14 it has title to working interests located within Section  
15 14?

16 A. Yes.

17 Q. And does Marathon request that those interests  
18 be force pooled?

19 A. Yes.

20 Q. Before the interests are force pooled, does  
21 Marathon request had Chisholm send it a well proposal  
22 and AFE?

23 A. Yes.

24 Q. Does Marathon further request that Chisholm  
25 present it with a proposed joint operating agreement?

1           A.     Yes.

2           **Q.     Were Exhibits 1 through 7 prepared by you or**  
3           **compiled under your supervision and direction or from**  
4           **company business records?**

5           A.     Yes.

6                     MS. BRADFUTE:  I'd like to tender Exhibits  
7           1 through 7 into the record.

8                     MS. LUCK:  We have no objection.

9                     EXAMINER McMILLAN:  Exhibits 1 through 7  
10          may now be accepted as part of the record.

11                    (Marathon Oil Permian, LLC Exhibit Numbers  
12                    1 through 7 are offered and admitted into  
13                    evidence.)

14                    CROSS-EXAMINATION

15          BY MR. FELDEWERT:

16           **Q.     Mr. Prewett, were you here when this matter was**  
17           **called before the Division on June 13?**

18           A.     No.

19           **Q.     Why?**

20           A.     Well, we were not notified of this as being a  
21          working interest owner.  We, in fact --

22           **Q.     You were notified that you were an overriding**  
23           **royalty interest owner?**

24           A.     Well, no, I don't even think --

25                     MS. BRADFUTE:  Yes, you were.

1 THE WITNESS: We were. Okay.

2 So --

3 Q. (BY MR. FELDEWERT) You don't know?

4 A. No. That's correct.

5 Q. That's correct.

6 MR. FELDEWERT: Let the witness answer.

7 Okay?

8 THE WITNESS: I knew that we had -- it was  
9 a notification.

10 Q. (BY MR. FELDEWERT) Okay. And you got notice of  
11 the hearing.

12 A. Right. So --

13 Q. And you got notice of the hearing that you were  
14 an overriding royalty interest owner, and you chose not  
15 to appear, correct? You didn't appear?

16 A. That -- that is correct.

17 Q. And now you've also looked at Mr. Sullivan's  
18 affidavit here today in which he demonstrates or states  
19 to the Commission back in June that Marathon did not own  
20 a working interest in the spacing unit, correct?

21 A. Could you repeat that?

22 Q. Mr. Sullivan's affidavit that you reviewed here  
23 today was presented in June?

24 A. Yes.

25 Q. And in that affidavit, he indicates that

1     **Marathon does not own a working interest in the spacing**  
2     **unit, correct?**

3           A.     He says we do not own the working interest.

4           Q.     Okay. And now you are here today because you  
5     **dispute that?**

6           A.     That's correct.

7           Q.     And you sent the information that you reviewed  
8     **here today to Chisholm?**

9           A.     Yes.

10          Q.     Okay. And they've gotten back to you?

11          A.     They are -- the ball's in their court right  
12     **now.**

13          Q.     It came back to you and said they disagree?

14          A.     Yes. That's correct.

15          Q.     Correct?

16          A.     Yes.

17          Q.     So we have a dispute over title?

18          A.     Yes.

19          Q.     Okay. Has the company chosen to file an action  
20     **in district court to clear this dispute over title or to**  
21     **address this title dispute?**

22          A.     No.

23          Q.     Why?

24          A.     Well, we just recently were able to get our  
25     **title back on this, and then we were never notified**

1 as a -- we were never sent a well proposal or an AFE.

2 Q. Because Chisholm's records show that you don't  
3 have an interest?

4 A. Right.

5 Q. And there is a disagreement there, I assume?  
6 There is still a disagreement with that?

7 A. Yes.

8 Q. You think you do?

9 A. Yes. That's why we're here today.

10 Q. Are you asking this Division here today to  
11 decide whether you have title to this acreage?

12 A. No. We're here because we want to be force  
13 pooled in the proposed wells.

14 Q. But we have not -- we are not -- we have not --  
15 we have not -- we're not filing an application to force  
16 pool you because we don't show you as an interest in  
17 this acreage, correct?

18 A. Correct.

19 Q. And you're aware then that we're not pooling  
20 Marathon because our records indicate that you do not  
21 own an interest in this acreage?

22 A. Apparently.

23 Q. Are you going to go to district court and make  
24 your presentation like you did today, to have a district  
25 court judge determine whether you have an interest in

1     **this acreage?**

2           A.     That's not my decision today.  I'm not trying  
3     to do that right now.  That's not --

4           **Q.     You're not asking the Division to decide your**  
5     **interest today?**

6           A.     No.

7           **Q.     Okay.  That's all the questions I've got.**

8                   MS. BRADFUTE:  If I may redirect?

9                   EXAMINER McMILLAN:  Sure.

10                                 REDIRECT EXAMINATION

11     BY MS. BRADFUTE:

12           **Q.     Mr. Prewett, has Chisholm provided Marathon**  
13     **with any recorded title documents that dispute**  
14     **Marathon's ownership in Section 14?**

15           A.     No.  They -- well, they sent us a term  
16     assignment a long time ago and --

17           **Q.     And is that the same term assignment we looked**  
18     **at today?**

19           A.     It is.

20           **Q.     Is that the only --**

21           A.     That's the only thing that we've received from  
22     them.  And we have since completed our title research on  
23     this, and we've -- and we've revealed the term  
24     assignment that they had not provided us, and the term  
25     assignment clearly has a depth --

1           Q.    Do you mean the partial assignment with the --

2           A.    Yes -- excuse me -- the partial assignment,  
3   also the joint operating agreement with the -- with that  
4   same exact depth limitation.

5           Q.    So let's back up.  Are you saying that there is  
6   a joint operating agreement with the exact same depth  
7   limitation as the partial term assignment?

8           A.    That is correct.  It's dated May 11th, and it's  
9   called the "Cornerstone" -- or the "Corner Pocket Joint  
10   Operating Agreement."

11          Q.    Okay.  And Chisholm has not presented Marathon  
12   with any documents -- any title documents, any recorded  
13   documents that show that somebody else has title to the  
14   18 percent working interest?

15                   MR. FELDEWERT:  You mean other than  
16   Mr. Sullivan's affidavit which was presented in June?

17                   MR. BRADFUTE:  Well, let's let your  
18   witnesses answer the questions, Mike.

19                   MR. FELDEWERT:  I'm just asking.  
20   Mr. Sullivan presented an affidavit in June that  
21   included --

22                   MS. BRADFUTE:  Evidence which is pure  
23   hearsay, and he's not here to be questioned.  But that's  
24   not the point.

25          Q.    (BY MS. BRADFUTE) Have we received any

1 documents that state that title is different?

2 A. No.

3 Q. And so all of the record documents that have  
4 been presented in this case show that Marathon owns an  
5 interest within Section 14, correct?

6 A. Yes.

7 Q. And Marathon is simply asking that this working  
8 interest be subject to the forced pooling order, right?

9 A. That's correct.

10 Q. And it's asking that it be sent a well-proposal  
11 letter and an AFE pursuant to Order R-13165 and Order  
12 R-131 -- I lost the order number -- pursuant to the two  
13 orders that were distributed earlier in the hearing; is  
14 that correct?

15 A. Yes. That is correct.

16 Q. And in your opinion, is there a difference  
17 between an overriding royalty interest and an 18 percent  
18 working interest?

19 A. Yes.

20 Q. Okay. That concludes my questions.

21 EXAMINER McMILLAN: Okay. So basically it  
22 sounds to me like Marathon is asking the Division to  
23 essentially cure a title.

24 MS. BRADFUTE: No, we are not.

25 EXAMINER McMILLAN: That's how I'm seeing

1 it.

2 MS. BRADFUTE: We are -- there is no  
3 cure -- there is no need to cure the title. There is no  
4 evidence of other title.

5 MR. FELDEWERT: Object. There is evidence  
6 of other title in Mr. Sullivan's affidavit. He says in  
7 his affidavit that their records show that they don't  
8 have a title. And you're right. This Division is not  
9 here to determine this title dispute.

10 MS. BRADFUTE: And we're not asking any  
11 determination of title.

12 EXAMINER McMILLAN: So if we go and we  
13 issue an order, whatever it be, you could still have --  
14 if you disagree with it, you can still -- you can still  
15 take it to the Commission. And if you don't like what  
16 the Commission says, you can go to district court,  
17 right?

18 MS. BRADFUTE: Yes, either way. We can  
19 go -- but Marathon has an uncommitted interest in  
20 Section 14. There is no evidence other than a hearsay  
21 statement from a landman that's backed up by no  
22 documentation, and we're asking that all uncommitted  
23 interests, whatever they may be, be subject to the  
24 forced pooling order, which is typically what an order  
25 states.

1 EXAMINER McMILLAN: Okay.

2 (Consultation with counsel off the record.)

3 EXAMINER McMILLAN: Okay. So we're done  
4 with -- we're going to take --

5 MR. BRUCE: Mr. Examiner, just briefly, I  
6 entered an appearance for ConocoPhillips Company in the  
7 last go-around. I wanted to enter an appearance again.  
8 That's all. I have nothing to add.

9 EXAMINER McMILLAN: Okay. The Oil  
10 Conservation Commission is going to take Case Numbers  
11 20520 and 20521 under advisement.

12 MR. FELDEWERT: Thank you.

13 MS. LUCK: Thank you.

14 (Case Numbers 20520 and 20521 conclude,  
15 2:29 p.m.)

16

17

18

19

20

21

22

23

24

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 13th day of September 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