

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 MARBOB ENERGY CORPORATION)
FOR COMPULSORY POOLING, EDDY COUNTY, NEW)
MEXICO)

CASE NO. 13,692

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID R. CATANACH, Hearing Examiner

May 11th, 2006

Santa Fe, New Mexico

2006 MAY 30 PM 2 32

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday, May 11th, 2006, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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Examiner Hearing
CASE NO. 13,692

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A P P E A R A N C E S

FOR THE DIVISION:

GAIL MacQUESTEN
Deputy General Counsel
Energy, Minerals and Natural Resources Department
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Santa Fe, New Mexico 87505

FOR THE APPLICANT:

HOLLAND & HART, L.L.P., and CAMPBELL & CARR
110 N. Guadalupe, Suite 1
P.O. Box 2208
Santa Fe, New Mexico 87504-2208
By: WILLIAM F. CARR

* * *

1 WHEREUPON, the following proceedings were had at
2 1:00 p.m.:

3 EXAMINER CATANACH: Call the hearing to order,
4 and at this time I'll call Case 13,692, Application of
5 Marbob Energy Corporation for compulsory pooling, Eddy
6 County, New Mexico.

7 Call for appearances.

8 MR. CARR: May it please the Examiner, my name is
9 William F. Carr with the Santa Fe office of Holland and
10 Hart, L.L.P. We represent Marbob Energy Corporation in
11 this matter, and I have one witness who needs to be sworn.

12 EXAMINER CATANACH: Okay. Any additional
13 appearances in this case?

14 Okay, will the witness please stand to be sworn
15 in?

16 (Thereupon, the witness was sworn.)

17 ROSS DUNCAN,
18 the witness herein, after having been first duly sworn upon
19 his oath, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. CARR:

22 Q. Would you state your full name for the record,
23 please?

24 A. Ross Duncan.

25 Q. Mr. Duncan, where do you reside?

1 A. Artesia, New Mexico.

2 Q. And by whom are you employed?

3 A. Marbob Energy Corporation.

4 Q. And what is your current position with Marbob
5 Energy Corporation?

6 A. I'm a landman.

7 Q. Have you previously testified before the New
8 Mexico Oil Conservation Division?

9 A. No, I haven't.

10 Q. Could you summarize for Mr. Catanach your
11 educational background?

12 A. I have a bachelor's degree in business from West
13 Texas A&M University, which I obtained in August of '03.

14 Q. And since graduation for whom have you worked?

15 A. I worked two years for Mack Energy Corporation
16 and this last year was with Marbob Energy.

17 Q. Are you familiar with the Application filed in
18 this case on behalf of Marbob?

19 A. Yes.

20 Q. In fact, you are the person who is charged in
21 Marbob with putting the interests together for the subject
22 spacing unit; is that not right?

23 A. Yes, I was.

24 Q. And you're familiar with the status of the lands
25 in the general area?

1 A. Yes.

2 MR. CARR: At this time we tender Mr. Duncan as
3 an expert in petroleum land matters.

4 EXAMINER CATANACH: Mr. Duncan is so qualified.

5 Q. (By Mr. Carr) Would you briefly review for Mr.
6 Catanach what it is that Marbob seeks with this
7 Application?

8 A. Marbob seeks an order pooling all mineral
9 interests from the surface to the base of the Morrow
10 formation under the following described acreage in Section
11 14, Township 22 South, Range 26 East, NMPM, Eddy County,
12 New Mexico:

13 The east half for all formations and/or pools
14 developed on a 320-acre spacing, which includes the
15 Undesignated South Morrow -- or South Carlsbad-Morrow Gas
16 Pool, Undesignated South Carlsbad-Atoka Gas Pool, South
17 Carlsbad-Wolfcamp Gas Pool, and the Undesignated South
18 Carlsbad Strawn Pool;

19 The southeast quarter for all formations and/or
20 pools developed on 160-acre spacing;

21 The southeast quarter of the southeast quarter
22 for all formations and/or pools developed on a 40-acre
23 spacing, which includes but is not necessarily limited to
24 the Undesignated South Carlsbad-Delaware Pool.

25 This is all to be dedicated to our Whiskey Girl

1 Fee Number 1 well.

2 The well is to be drilled at a surface location
3 of 464 feet from the south line, 1119 feet from the east
4 line, with a bottomhole location of 660 feet from the south
5 line and 990 feet from the east line in unit letter P of
6 Section 14.

7 Q. Now Mr. Duncan, we have an unorthodox surface
8 location?

9 A. Correct.

10 Q. What was the reason for that?

11 A. There are multiple dwellings around where we're
12 drilling this well.

13 Q. You are anticipating, however, that the well will
14 be at a standard location if it's in any formation
15 developed on 320-acre spacing?

16 A. Yes.

17 Q. And it would be at a standard location if you
18 encountered a producing formation spaced on 40 acres?

19 A. Yes, it would be.

20 Q. It might be standard on 160, might not?

21 A. Well, at this time I'm not aware of any
22 formations that would require 160-acre spacing.

23 Q. If you intersect a formation developed on 160-
24 acre spacing, Marbob would survey the well and, if needed,
25 then come back and seek an unorthodox location --

1 A. Correct.

2 Q. -- is that right?

3 Could you go to what's been marked as Marbob
4 Exhibit Number 1, please, and identify that and review it
5 for Mr. Catanach?

6 A. Yes, Exhibit Number 1 is a land map showing the
7 spacing unit, well location and ownership in the area.

8 Q. And what is the primary objective of the proposed
9 well?

10 A. The primary objective is the Morrow formation and
11 Undesignated South Carlsbad-Morrow Gas Pool.

12 Q. Let's go to Exhibit Number 2. Exhibit Number 2
13 sets forth mineral interest owners in the spacing unit; is
14 that right?

15 A. That's correct.

16 Q. And these are all the mineral interest owners and
17 the percentage interest that they own, as reflected by the
18 record title for this property?

19 A. Correct.

20 Q. When did you start working on this prospect?

21 A. In August of '05.

22 Q. And how did you go about determining who owned
23 interest in the spacing unit that was the subject of the
24 case?

25 A. I went off of title opinions prepared by Jim Haas

1 at Losey, Carson and Haas.

2 Q. And when did you receive those title opinions?

3 A. I started receiving them in November of '05.

4 Q. And when did you first contact the owners in the
5 spacing unit?

6 A. February of '06.

7 Q. And who did you contact?

8 A. I contacted all the working interest and mineral
9 interest owners of record at the time.

10 Q. Okay, and what success have you had?

11 A. I have reached an agreement on 100 percent of the
12 working interests, and on the mineral interest I have all
13 the interests committed except for the interests from
14 owners from -- who I could not find an address for. I have
15 reached an agreement -- If you'd look on Exhibit Number 2,
16 I have reached an agreement with Ruth Monk, Larry Gene
17 Davis and Donald Davis.

18 Q. What did you do to try and locate these other
19 interest owners?

20 A. I searched county records, Internet searches, and
21 contacted -- I've had contact with individuals at the last
22 known address.

23 Q. And how large are the interests that are
24 currently outstanding in the spacing unit?

25 A. The interests are small. They were created when

1 a subdivision -- the Holly subdivision was created. The
2 minerals were severed when tracts were reconveyed.
3 Approximately 98.5 percent of the minerals have been
4 voluntarily committed to the well.

5 Q. And since the time that the Application was
6 filed, a couple of interest owners have popped up and you
7 have been negotiating leases with them; is that right?

8 A. That's correct.

9 Q. And we notified everyone who had a record
10 interest as of the day the Application was filed?

11 A. That is correct.

12 Q. As to funds attributable to any interest of any
13 unknown owner, what does Marbob propose to do with those?

14 A. We'll place the funds in an escrow account in
15 Eddy County, New Mexico.

16 Q. In your opinion, have you made a good faith
17 effort to locate and obtain voluntary participation of the
18 owners of all interests in the units that are subject to
19 pooling?

20 A. Yes.

21 Q. Let me ask you, I mean, we have -- we're seeking
22 pooling of a 320-acre unit, a 160 unit and a 40-acre unit?

23 A. Yes.

24 Q. And depending on the size of the unit, the
25 percentage ownership changes slightly on each of these

1 owners, does it not?

2 A. Now you're talking about --

3 Q. Each of the people that are outstanding. Their
4 percentages might change, but you've got the same people?

5 A. You've got the same people, yes.

6 Q. Is Exhibit Number 3 copies of letters reflecting
7 your efforts to reach voluntary agreement with the mineral
8 owners that are identified on Exhibit Number 2?

9 A. Yes, it is.

10 Q. What is Exhibit Number 4?

11 A. Exhibit Number 4 is Marbob's authority for
12 expenditure for our Whiskey Girl Fee Well. Note that the
13 surface location is listed and the bottomhole location is
14 not. That was just a mistake on our part, not listing the
15 bottomhole.

16 Q. And the bottomhole location is 660 from the south
17 line and 990 from the east?

18 A. 990 from the east, yes, sir.

19 Q. And that is standard for the targeted formation?

20 A. Yes, it is.

21 Q. Would you review the costs that are set forth on
22 Exhibit 4?

23 A. Sure. The dryhole cost is \$1,528,275, and the
24 completed well cost is \$2,231,250.

25 Q. Are these costs in line with what's charged for

1 similar wells in the area?

2 A. Yes, they are.

3 Q. Do they reflect Marbob's costs for drilling
4 similar wells?

5 A. Yes.

6 Q. Is Exhibit Number 5 a copy of the accounting
7 procedures for joint operations that is part of the joint
8 operating agreement proposed for this well?

9 A. Yes.

10 Q. Do these COPAS procedures provide for periodic
11 adjustment of overhead and administrative charges?

12 A. Yes, they do.

13 Q. And does Marbob request that the order entered in
14 this case provide that the overhead and administrative
15 costs be adjusted in accordance with COPAS procedures?

16 A. Yes.

17 Q. Have you made an estimate of the overhead and
18 administrative costs while drilling the well and also while
19 producing it?

20 A. Yes.

21 Q. And what are those?

22 A. The drilling well rate is \$5050, and the
23 producing rate is \$505, and --

24 Q. And --

25 A. -- and all the working interest owners have

1 agreed to that.

2 Q. As to the working interest owners, you have
3 signed agreements, conveyances, from everyone with one
4 exception; isn't that right?

5 A. Correct.

6 Q. And that one you've reached agreement with and
7 you're just waiting for that to come back?

8 A. I have a letter agreement in place with them, and
9 they've agreed to term assign.

10 Q. But you don't have a signature yet?

11 A. Not on the official instrument that's going to be
12 recorded.

13 Q. And for that reason you're seeking a full pooling
14 order?

15 A. Yes.

16 Q. Do you recommend that these figures be
17 incorporated into any order that results from this hearing?

18 A. Yes.

19 Q. Does Marbob request that the 200-percent charge
20 for risk, as authorized by statute, be imposed on each
21 cost-bearing interest owner not -- or interest, not
22 voluntarily committed to the well?

23 A. Yes.

24 Q. And Marbob seeks to be designated operator of the
25 well?

1 A. Yes.

2 Q. Is Exhibit Number 6 an affidavit confirming that
3 notice of the hearing was provided in accordance with the
4 Rules of the Division?

5 A. Yes, it is.

6 Q. And were Exhibits 1 through 6 either prepared by
7 you or compiled under your direction and supervision?

8 A. They were.

9 MR. CARR: May it please the Examiner, at this
10 time we would move the admission into evidence of Marbob
11 Energy Corporation Exhibits 1 through 6.

12 EXAMINER CATANACH: Exhibits 1 through 6 will be
13 admitted.

14 MR. CARR: And that concludes my direct
15 examination of Mr. Duncan.

16 EXAMINATION

17 BY EXAMINER CATANACH:

18 Q. Mr. Duncan, the interest owner that you've not
19 reached an agreement with, who is that?

20 A. That's Douglas Oil and Gas. And I believe
21 they've recently sold to Rex Energy Corporation.

22 Q. So you're negotiating with Rex at this point?

23 A. Yes, but they haven't filed anything stating, you
24 know, that Rex has bought Douglas. But yes, we have come
25 to a verbal agreement, as well as he signed -- I believe

1 his name is Tom Schills with Rex has signed my letter
2 agreement, agreeing to term assign.

3 Q. Okay. But at this point, since they haven't
4 signed, you seek to pool them?

5 A. Yes, I do.

6 Q. Okay. What is Marbob's interest -- how much
7 interest do they own in this spacing unit, approximately?

8 A. They own approximately 60 percent.

9 Q. And you have various other interest owners that
10 have signed a JOA; is that correct?

11 A. Yes.

12 Q. Okay. Now the parties listed on Exhibit 2 were
13 the only outstanding mineral interest owners that have not
14 agreed to participate, right?

15 A. At the time that we filed for pooling, yes. And
16 as I stated, Ruth Monk, Larry Gene Davis and Donald Davis
17 have leased.

18 Q. Okay. The other four interest owners you have
19 not been able to locate?

20 A. Gerald Adkins, I have just recently been able to
21 locate the heirs of that interest, and I'm in negotiations
22 with that family right now. I believe there's eight heirs
23 to that interest.

24 Q. And they will be given the opportunity to
25 participate?

1 A. Yes, they will.

2 Q. And the other three interest owners, no luck with
3 those ones?

4 A. No luck at all. In fact, I had -- I've had
5 Ronnie Miles' office working for me, trying to find these
6 people, and we just haven't had any luck at all. Ronnie's
7 the -- he's just a landman that I hired to go out and do
8 the fieldwork for me.

9 EXAMINER CATANACH: Mr. Carr, can you provide a
10 summary of the interest ownership in these spacing units?
11 I don't --

12 MR. CARR: We can do that, and show you who has
13 signed and, as of the day we filed the application, exactly
14 who was record title owner. You know, we've got these tag-
15 alongs that have surfaced, but they were not -- their
16 interests were not of record. And so we notified everyone
17 who had an interest of record, and I'll give you a complete
18 breakdown on that with their percentage ownership.

19 EXAMINER CATANACH: Okay, and you might want to
20 do that by unit also.

21 MR. CARR: I can do that by spacing unit size.

22 EXAMINER CATANACH: Okay.

23 MS. MacQUESTEN: But Mr. Carr, are the only
24 individuals who are seeking to pool those who are on
25 Exhibit Number 2 who haven't signed?

1 MR. CARR: That's correct, we're only seeking to
2 pool the parties whose addresses we were unable to obtain,
3 and since the time of filing we have had an heir of Gerald
4 Adkins surface, and we're negotiating a lease with him and
5 trying to find other people through him, but that's where
6 we are now.

7 EXAMINER CATANACH: And were those parties
8 provided notice of the hearing?

9 MR. CARR: No, they were not, they came up after
10 -- they've only come up recently, and they had nothing of
11 record at the time we filed or notified, either one.

12 EXAMINER CATANACH: So how would you propose we
13 deal with that issue?

14 MR. CARR: well, you know, you file a pooling
15 application and you notify people whose interests are of
16 record, you escrow the funds that are attributable to the
17 owners that you can't locate, and the day that's the
18 operative date, my understanding, is the day you filed the
19 Application. And the heirs of Gerald Adkins, had they not
20 surfaced, their interests would be placed in escrow. They
21 have surfaced, and we have offered to lease from them, have
22 leases from maybe as many as three of them and leases out
23 to a couple more, but we still can't even through them find
24 the other Gerald Adkins interests.

25 So everyone of record title was noticed, everyone

1 with record title or of record was provided with notice of
2 the hearing, and in accordance with the Rules. We've just
3 had these interests pop up later. They popped up now, and
4 so we're dealing with them now. If they hadn't surfaced
5 until two weeks from now and the order had been entered,
6 we'd deal with them in exactly the same way, we'd offer
7 them an opportunity to participate in the well or be
8 nonconsent, and the share of their proceeds would be
9 escrowed so that it would be paid to them in accordance
10 with the Order.

11 EXAMINER CATANACH: Okay. So the Gerald Adkins
12 interest is the interest of record?

13 MR. CARR: Yes, that is the record interest. And
14 I think, and Mr. Duncan can confirm, there was no evidence
15 of a probate, nothing on the Internet. Going to his last
16 known residence, no one knew who he was or where he was,
17 and it was only through the efforts of Mr. Miles that he
18 found someone with a similar name, and they appeared to
19 have an interest. They have since leased, and they're
20 hopefully identifying other family members that we can find
21 that way.

22 But that's just the ongoing process, you know,
23 and at some point you have to go ahead and pool.

24 EXAMINER CATANACH: But their interest isn't
25 recorded anywhere?

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MR. CARR: No.

THE WITNESS: No.

MR. CARR: All you have is, you have an interest in Gerald Adkins, and we know he's deceased, and when we filed that's all we could find.

EXAMINER CATANACH: Okay. Let's see. Do you have anything, Gail?

MS. MacQUESTEN: No, thank you.

EXAMINER CATANACH: That's all I have.

MR. CARR: Thank you, that concludes our presentation in this case.

EXAMINER CATANACH: Okay, there being nothing further, Case 13,692 will be taken under advisement.

(Thereupon, these proceedings were concluded at 1:17 p.m.)

* * *

I do hereby certify that the foregoing is a complete record of the proceedings in the Examiner hearing of Case No. 13692, heard by me on May 11, 2006.
David R. Catnach, Examiner
Oil Conservation Division

CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL May 28th, 2006.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006