

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:

ORIGINAL

APPLICATION OF MEWBOURNE OIL
COMPANY FOR A NONSTANDARD OIL
SPACING AND PRORATION UNIT AND
COMPULSORY POOLING, EDDY COUNTY,
NEW MEXICO.

CASE NOS. 15548,
15550,
15551,
15552
(Re-opened)
Consolidated with

APPLICATION OF MEWBOURNE OIL
COMPANY FOR COMPULSORY POOLING
AND AN UNORTHODOX GAS WELL
LOCATION, EDDY COUNTY, NEW MEXICO.

CASE NOS. 15547,
15549
(Re-opened)
Consolidated with

APPLICATION OF MEWBOURNE OIL
COMPANY FOR A NONSTANDARD SPACING
AND PRORATION UNIT, COMPULSORY
POOLING, AND AN UNORTHODOX GAS WELL
LOCATION, EDDY COUNTY, NEW MEXICO.

CASE NO. 15562
(Re-opened)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
EXAMINER HEARING
November 8, 2017
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
Wednesday, November 8, 2017, 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
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500 4th Street, Northwest, Suite 105
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1 (1:30 p.m.)

2 EXAMINER McMILLAN: I would like to call
3 this hearing back to order. I'd like to call --

4 The first question is are all the cases
5 going to be combined?

6 MR. HALL: Yes.

7 MR. BRUCE: Yes.

8 EXAMINER BROOKS: For purposes of hearing.

9 EXAMINER McMILLAN: For purposes of
10 hearing.

11 So Case Number 15548, re-opened,
12 application of Mewbourne Oil Company for a nonstandard
13 oil spacing and proration unit and compulsory pooling in
14 New Mexico.

15 The next case to be combined is Case Number
16 15549, re-opened, application of Mewbourne Oil Company
17 for compulsory pooling and an unorthodox gas well
18 location, Eddy County, New Mexico.

19 The next case to be combined is Case Number
20 15550, re-opened, application of Mewbourne Oil Company
21 for a nonstandard oil spacing and proration unit and
22 compulsory pooling, Eddy County, New Mexico.

23 The next case is Case Number 15551,
24 re-opened, application of Mewbourne Oil Company for a
25 nonstandard oil spacing and proration unit and

1 compulsory pooling, Eddy County, New Mexico.

2 The next case to be combined is Case Number
3 15552, re-opened, application of Mewbourne Oil Company
4 for a nonstandard oil spacing and proration unit and
5 compulsory pooling, Eddy County, New Mexico.

6 The last case to be combined is Case Number
7 15562, re-opened, application of Mewbourne Oil Company
8 for a nonstandard spacing and proration unit, compulsory
9 pooling and an unorthodox gas well location, Eddy
10 County, New Mexico.

11 Call for appearances.

12 MR. HALL: Mr. Examiner, Scott Hall,
13 Montgomery & Andrews, Santa Fe, appearing on behalf of
14 James Wesley Welch, Joe Michael Welch, Barbara Grace
15 Parker [sic], and Tuffy Oil, LLC.

16 MR. BRUCE: Your Honor -- Mr. Examiner
17 (laughter) --

18 I was in court this morning, you know, for
19 a change.

20 EXAMINER McMILLAN: We'll let it slide.

21 MR. BRUCE: Jim Bruce of Santa Fe
22 representing Mewbourne Oil Company.

23 I would note you omitted Case Number 15547,
24 the first case to be called.

25 EXAMINER McMILLAN: Okay. Case Number

1 15547, application of Mewbourne Oil Company for
2 compulsory pooling and an unorthodox gas well location,
3 Eddy County, New Mexico shall be combined with the other
4 cases for hearing, but it will have a separate order.

5 And you also represent, Mr. Hall,
6 applicants in that case, too, 15547?

7 MR. HALL: I represent the Movants. He
8 (indicating) represents the Applicant, Mewbourne.

9 EXAMINER McMILLAN: Okay.

10 EXAMINER BROOKS: Yeah, that's correct, as
11 far as I can tell. It's Mr. Hall's motion on behalf of
12 the various parties. I assume you named them all.

13 MR. HALL: The Welches, for short.

14 EXAMINER BROOKS: The thing I am
15 probably -- I reread the transcript, and I did screw
16 this up. But I read the transcript carefully enough,
17 but I was still unclear on whether all of the parties
18 who claimed interests in the Welch estate, other than
19 Blair Seaton Crooke, were actually the people -- the
20 people you represent and Blair Seaton Crooke, are those
21 all the parties that claim interest Welch estate
22 adversely to -- what's the oil company?

23 MR. CARSON: Premier.

24 EXAMINER BROOKS: -- Premier. Is that
25 correct -- is that a correct statement in the situation?

1 MR. HALL: That's right.

2 EXAMINER BROOKS: So there is nobody being
3 left out that we haven't -- assuming you're right and I
4 think you clearly -- I think you are, but I don't know
5 what other people are going to say.

6 Except you (indicating) filed an answer.

7 MR. PADILLA: We filed a response for
8 Premier.

9 EXAMINER BROOKS: And Premier is not
10 claiming under any of Mr. Hall's clients, or are they
11 claiming adversely to his clients?

12 MR. PADILLA: That's right.

13 EXAMINER BROOKS: Claiming under the other
14 side of the litigation; is that correct?

15 MR. PADILLA: Correct.

16 EXAMINER BROOKS: Okay. Very good. That
17 clears some things up a little bit.

18 You may proceed.

19 (The court reporter requested announcement
20 of appearances.)

21 MR. PADILLA: Ernest L. Padilla, appearing
22 with Joel Carson III, for Premier Oil & Gas Inc.

23 EXAMINER BROOKS: And nobody is appearing
24 for Mr. Crooke here?

25 MR. PADILLA: Mr. Morgan.

1 EXAMINER BROOKS: Yes. He appeared in the
2 pleadings, but neither --

3 MR. BRUCE: He did not -- yeah. He is not
4 here today, Mr. Examiner.

5 MR. CARSON: So Mr. Morgan appeared for
6 Crooke initially. Crooke's interest is now owned by
7 Premier.

8 EXAMINER BROOKS: Oh, okay. So you've
9 taken -- Premier's taken a lease?

10 MR. CARSON: Well, they took the fee
11 mineral interests from Crooke.

12 EXAMINER BROOKS: Okay.

13 MR. HALL: And, therefore, they're subject
14 to the JOA.

15 MR. CARSON: Right.

16 MR. HALL: Well, I'll start. If you've had
17 a chance to look at our motion, we're --

18 EXAMINER BROOKS: I did.

19 MR. HALL: -- asking for three things. And
20 what I've given you in the packet are copies of all of
21 the orders in order of the case number. There are seven
22 altogether. All but the sixth one are dash A orders,
23 and they are basically identical.

24 EXAMINER BROOKS: Yeah. And the other was
25 brought as a new compulsory pooling case.

1 MR. HALL: That's right. So it has a new
2 order number, R-14415.

3 And all of these applications sought
4 basically the same thing, compulsory pooling. Some
5 sought nonstandard units, and one or more may have had
6 an unorthodox location. But other than the well
7 locations and the acreages, they're all basically the
8 same and you've heard them all together.

9 The A orders came out -- and you can turn
10 to any one of those. I have highlighted the findings
11 that I think are a little problematic. Really we just
12 want them corrected to reflect --

13 EXAMINER BROOKS: Excuse me.

14 MR. HALL: -- the elements that conform to
15 the pleadings.

16 EXAMINER BROOKS: I did not bring my
17 glasses, and I'm going to need them.

18 MR. HALL: Okay.

19 EXAMINER BROOKS: So I have to call a very
20 brief recess to get my glasses because I can't read
21 these things without them.

22 (Recess, 1:38 p.m. to 1:41 p.m.)

23 EXAMINER BROOKS: Sorry about the
24 interruption. You were telling me about findings that
25 were problematic, Mr. Hall.

1 EXAMINER McMILLAN: This hearing is back to
2 order.

3 MR. HALL: So I had explained that most of
4 the dash A orders are just about the same in terms, and
5 the only different one is the sixth order in the packet,
6 and I'll address it separately.

7 But as to all of the dash A orders, if you
8 want to turn to any one of those orders, you can look at
9 Finding paragraph eight. That paragraph identifies all
10 the Welches, Tuffy Oil, Mr. Crooke, Premier as
11 Respondents, all the same. And then if you look at
12 Finding paragraph 12, it says, "Respondents" -- all of
13 them -- "claim" -- or "may claim interests in the oil
14 and gas within the Unit and have not agreed to pool
15 their interests...." And then paragraph 13 indicates
16 that "None of the Respondents except...Mr. 'Crooke'
17 claims a working or unleased mineral interest in the
18 Unit." I believe those are in error, and that's what
19 we'd like to have corrected.

20 If you'll turn to Order Number -- under Tab
21 6, it's Order Number R-14415 --

22 EXAMINER BROOKS: Right.

23 MR. HALL: -- page 2 of that, all of the
24 uncommitted owners are identified as contingent owners,
25 in paragraphs 6 and 7, and they are specified by name as

1 well, again, the Welches, Tuffy Oil, Premier and Blair
2 Seaton Crooke.

3 And then if you look at paragraph 12, it
4 says simply there are interest owners in the unit that
5 have not agreed to pool their interests. So those
6 particular findings in those orders, I think, are
7 contrary to the evidence.

8 So I think what my job is today is to --
9 I'll walk you through the transcript very quickly, and
10 that is under page 8 -- I'm sorry -- Tab 8. And if
11 you'll look at pages 12 and 13, I've highlighted
12 testimony there. And this is -- Mr. Corey Mitchell, who
13 was Mewbourne's landman, was asked by Mr. Bruce who they
14 were there to pool, and he makes it clear it's only
15 Mr. Crooke's interest being pooled.

16 And then if you refer to the highlighted
17 transcript on pages 19 and 20, that testimony, also from
18 Mr. Mitchell, pursuant to questions from me establishes
19 that the Welch heirs committed their interest pursuant
20 to a voluntary agreement.

21 And then you look again at pages 27 and 28,
22 Mr. Bruce again questioning Mr. Mitchell. He clarifies
23 that all of the Welch heirs but one -- that would be
24 Mr. Crooke -- have ratified a JOA provisionally.

25 And then if you look at page 30, I think in

1 response to questions from you, Mr. Brooks, the witness
2 explained that the disputed interests are mineral
3 interests, and depending on the outcome of the
4 litigation, it would be a lease interest if
5 Mr. Padilla's clients prevail in that litigation, or an
6 unleased mineral interest if my clients prevail in the
7 litigation.

8 So we think those are the particular issues
9 that nunc pro tunc orders could quickly address and then
10 correctly state the types of the ownership interests,
11 whether or not they are committed. That's basically
12 what we're seeking to correct.

13 I can tell you that the litigation in
14 district court, subject to correction, there was, I
15 believe, a summary judgment issued in favor of
16 Mr. Padilla's clients.

17 EXAMINER BROOKS: Yeah. I noticed that --
18 you said a judgment had been issued in August.

19 MR. HALL: Correct.

20 EXAMINER BROOKS: I'm wondering if the time
21 for appeal has passed.

22 MR. HALL: A notice of appeal has been
23 filed, and there is also a motion for reconsideration or
24 for amendment before the district court now. So the
25 litigation is not final.

1 EXAMINER BROOKS: Okay.

2 MR. HALL: We don't know the final answer
3 yet to ownership.

4 EXAMINER BROOKS: To shorten these
5 proceedings, does anybody disagree with anything
6 Mr. Hall said?

7 You filed a response?

8 MR. PADILLA: We don't object, but I think
9 in our response -- well, we did say that we agreed.
10 Premier was not a respondent in that it had participated
11 in drilling of the wells in some form or another,
12 whether a joinder on the JOA or oil and gas leases or
13 ownership of the minerals, outright purchase of the
14 minerals. But our main response and objection to the
15 motion goes to claim of ownership.

16 You'll notice on the last page of the
17 transcript, pages 37 and 38, we were guarding against
18 any kind of implication that any proceeding before the
19 Division would be an adjudication of title or some kind
20 of evidence of claim to ownership. And in light of the
21 district court judgment, we believe that any claim by
22 the Welches is really moot. Obviously, I'm not going to
23 argue about whether or not the motion is for
24 reconsideration or the notice of appeal or what may
25 happen in the appellate court. It's still subject to

1 final determination. But I've been involved in a lot of
2 litigation involving land interests pretty much --
3 particularly in northern New Mexico, and people make
4 arguments of a claim for ownership, and this is one
5 instance. And this is not the first instance that
6 someone has tried to jump off the order of the Oil
7 Conservation Division or the Commission to claim some
8 entitlement or encroachment to title. And that's our
9 primary objective here in opposing the motion.

10 But insofar as what's in the transcript as
11 to whether the Welches participated or not, we really
12 don't have an objection to that.

13 We also argue that under paragraph nine of
14 the A orders and the new order, the Division covered it
15 well, and this -- any compulsory pooling case, no one's
16 left out if you ultimately win. In paragraph nine or
17 paragraph 11, under the -- under the new order, anyone
18 can participate. So you fashioned a remedy that works.
19 So whether or not your findings are incorrect or not, in
20 the end, anyone can participate based on the ultimate
21 outcome of the litigation.

22 So -- but primarily we don't want to be
23 saying, Well, it looks like maybe they may have an
24 ownership interest here. We don't want that. But as
25 far as whether or not somebody is consenting or

1 nonconsenting, that owner -- that definitely applies.
 2 Whether contingent or not, that definitely applies to
 3 the compulsory pooling before the Division. But to say
 4 that we have an interest or we claim an interest, I
 5 think that implies something that is incorrect and is
 6 properly before the district court or the appellate
 7 court.

8 But I make the last statement on the last
 9 page of the transcript making sure that anything that
 10 was said here was not an adjudication of title or
 11 implication -- I didn't go that far, but an implication
 12 that maybe the Welches had title.

13 MR. BRUCE: And, Mr. Brooks, from
 14 Mewbourne's standpoint, Mewbourne concurred in the Welch
 15 heirs' motion. I think it's pretty clear from your
 16 statement on page 38 of the transcript that the Division
 17 does not adjudicate title.

18 EXAMINER BROOKS: Well, that's been pretty
 19 clear from some things, from some Division orders
 20 that --

21 MR. BRUCE: Yes. But, you know, clearly
 22 there are some factually incorrect findings in the
 23 orders.

24 EXAMINER BROOKS: There are.

25 MR. BRUCE: And I think --

1 EXAMINER BROOKS: That is to say there are
2 some findings that are not in accordance with the
3 transcript.

4 MR. BRUCE: With the transcript, yes. And
5 we would like to see those corrected also.

6 EXAMINER BROOKS: Well, I think that, if I
7 understand -- and Mr. Mitchell testified on behalf of
8 Mewbourne, I believe -- that the -- that the Welch
9 heirs, Mr. Hall's clients, had ratified the joint
10 operating agreement, correct?

11 MR. BRUCE: Correct. I think there was a
12 JOA for each well, I think, or at least several JOAs.
13 But regardless, their interest in each particular well
14 were subject to -- are subject -- if they own an
15 interest are subject to a JOA.

16 EXAMINER BROOKS: So it's correct that --
17 well, no, it's not correct. They do own unleased
18 mineral interests. They own unleased mineral interests
19 that are now subject to a JOA.

20 MR. BRUCE: That's subject to the court
21 proceedings.

22 EXAMINER BROOKS: However, that's what
23 the -- the record says.

24 MR. BRUCE: That is correct.

25 EXAMINER BROOKS: That's my understanding.

1 MR. BRUCE: Yes.

2 EXAMINER BROOKS: And I re-read it
3 yesterday, and that was the conclusion I came to, that I
4 had misstated the facts in several respects, one in
5 respect to not recognizing that Mr. Mitchell had, in
6 fact, testified that they had ratified the JOA. I was a
7 little concerned about that because I was aware of the
8 statement they had agreed to participate, but, you know,
9 if somebody has agreed to participate and they haven't
10 signed the JOA, that's somewhat -- somewhat ambiguous.
11 But if they have ratified the JOA -- and that's what
12 your client testified to, I believe.

13 MR. BRUCE: That is correct.

14 EXAMINER BROOKS: -- then I believe there
15 is no doubt about the situation. So the only person
16 that needs to be -- and there are no other heirs --

17 MR. BRUCE: I'm pretty sure that's been
18 thoroughly litigated.

19 EXAMINER BROOKS: -- except the people that
20 leased to Premier.

21 MR. CARSON: Right. There are a bunch of
22 heirs, but they're all tied up by Premier, other than
23 Mr. Hall's clients.

24 EXAMINER BROOKS: And Blair Seaton Crooke?

25 MR. CARSON: And Blair Seaton Crooke is now

1 tied up by --

2 EXAMINER BROOKS: Okay. Well, then we
3 don't have to compulsory pool anybody.

4 Well, has he been tied up by the orders, or
5 has he been tied up by something else?

6 MR. CARSON: Both. The Court entered
7 summary judgment against him, and he forewent appeal as
8 part of the settlement.

9 EXAMINER BROOKS: Oh, okay.

10 Well, I guess we can go ahead and
11 compulsory pool him. That doesn't matter because -- I
12 mean, otherwise, we're going to have to try and figure
13 out and recite why we don't -- I don't know what you-all
14 want to do about it.

15 What is your preference? It's your case.

16 MR. BRUCE: Well, I think -- I think you're
17 factually correct there. I just don't like seeing the
18 wrong statements of fact in an order.

19 EXAMINER BROOKS: Well, I want to do a new
20 order that corrects the facts. The thing about Blair
21 Seaton Crooke is that we have no evidence of what
22 happened to his interest. So we can compulsory pool
23 it --

24 MR. BRUCE: And, once again, it doesn't --
25 assuming -- assuming I can believe Mr. Carson over

1 there --

2 MR. CARSON: That's a rash assumption.

3 (Laughter.)

4 EXAMINER BROOKS: That's the problem. If I
5 were to enter an order based on what he said, I would
6 have to have him -- have to get the court reporter to
7 administer the oath and put him on the witness stand.

8 MR. BRUCE: And if he is, in fact -- just
9 like any other pooling case where a pooled party
10 subsequently becomes leased or signs a JOA, a letter to
11 the Division stating that he is no longer subject to the
12 pooling order -- orders would suffice.

13 EXAMINER BROOKS: Yeah, it would. But, you
14 know, if we had -- if I knew judicially that we were
15 going to dispose [sic] is Blair Seaton Crooke's
16 interest, then we could avoid these orders and dismiss
17 the case, because -- dismiss the re-opening of the
18 applications because the other -- the other pooled
19 parties we dealt with in the original orders, except in
20 that one case, right? So that's one alternative. But I
21 can't make any findings based on what counsel said that
22 wasn't under oath. So --

23 MR. BRUCE: I see no harm in amending the
24 orders just to make a factual correction.

25 EXAMINER BROOKS: Okay. Yeah. I won't

1 recite it as nunc pro tunc because that would raise the
2 question of whether it's clerical error or a judicial,
3 when actually it's somewhere in between.

4 But I will just enter corrected orders that
5 will void these orders and make a recitation -- the
6 correct recitation, since I now understand them, which
7 is that there are no other pooled parties that we know
8 about, except the parties represented here and Blair
9 Seaton Crooke and that the heirs -- the Welch heirs
10 claim an unleased mineral interest and that they're not
11 being pooled because their interests are committed to
12 the -- are committed to the wells.

13 MR. BRUCE: That's correct.

14 EXAMINER BROOKS: Okay. We'll get that
15 taken care of.

16 MR. HALL: Let me just clarify because a
17 question comes in up in your mind.

18 EXAMINER BROOKS: Okay.

19 MR. HALL: I believe there was a single
20 master contract area JOA with individual well election
21 letters.

22 EXAMINER BROOKS: Yeah. I don't believe
23 that was in the record. Mr. Mitchell clearly did
24 testify that they had ratified the JOA. I think he
25 was --

1 MR. HALL: Yes.

2 EXAMINER BROOKS: -- asked if they signed
3 the JOA, and he said it was ratified or something to
4 that effect.

5 MR. HALL: It went noncons- -- my clients
6 went nonconsent in two or three wells, but the rest,
7 they participated in.

8 EXAMINER BROOKS: But they're are bound by
9 the JOA.

10 MR. HALL: I believe so.

11 EXAMINER BROOKS: You agree with that,
12 Mr. Bruce?

13 MR. BRUCE: I agree.

14 EXAMINER BROOKS: Okay. That'll take care
15 of it, because bound by the JOA, their interest would
16 not be compulsory pooled anyway. And we need to -- but
17 we'll leave Mr. Crooke alone at this point, and we'll
18 get the orders entered, and we just handle that under
19 the provision of the orders.

20 MR. HALL: I didn't move these (indicating)
21 into evidence. They're already part of the record,
22 but --

23 EXAMINER BROOKS: Yeah. These are all in
24 the record if they're not evidentiary in the sense that
25 they -- the transcript, of course, is, but the

1 transcript -- this is just a copy of the transcript of
2 the prior hearing --

3 MR. HALL: Yes.

4 EXAMINER BROOKS: -- of which that evidence
5 was taken, so that's not evidence. And the other things
6 here are either legal authorities or pleadings. I think
7 we're okay.

8 MR. HALL: Okay.

9 EXAMINER BROOKS: Case Numbers 15547,
10 re-opened; 15548, re-opened; 15549, re-opened; 15550,
11 re-opened; 15551, re-opened; and 15552, re-opened; and
12 Case Number 15562 will be taken under advisement.

13 MR. HALL: Okay. Thanks.

14 EXAMINER McMILLAN: This hearing is
15 adjourned.

16 (Case Numbers 15547 through 15552 and 15562
17 conclude, 2:02 p.m.)

18

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I do hereby certify that the foregoing is
a complete record of the proceedings
for the hearing of the case
heard by me on _____

Oil Conservation Division

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 not
19 final disposition of this case.

20

21

22

23

24

25



MARY C. HANKINS, CCR, RPR
Certified Court Reporter
New Mexico CCR No. 20

Date of CCR Expiration: 12/31/2017

Paul Baca Professional Court Reporters