

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 DEVON ENERGY PRODUCTION CASE NOS. 20152,
COMPANY, L.P. FOR A STANDARD HORIZONTAL 20153
SPACING AND PRORATION UNIT, DOWNHOLE
COMMINGLING AND COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

January 10, 2019

Santa Fe, New Mexico

BEFORE: WILLIAM V. JONES, CHIEF EXAMINER
KATHLEEN MURPHY, TECHNICAL EXAMINER
LEONARD LOWE, 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; Kathleen Murphy and Leonard Lowe,
Technical Examiners; and David K. Brooks, Legal
Examiner, on Thursday, January 10th, 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
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APPEARANCES

FOR APPLICANT DEVON ENERGY PRODUCING COMPANY, L.P.:

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INDEX

PAGE

Case Numbers 20152 and 20153 Called	3
Case Presented by Affidavit	3
Proceedings Conclude	22
Certificate of Court Reporter	23

EXHIBITS OFFERED AND ADMITTED

Devon Energy Production Company, L.P. Exhibit Numbers 1 through 4 in each case	21
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1 (11:19 a.m.)

2 EXAMINER JONES: Let's move right ahead.

3 And, Mr. McMillan, any of these cases being
4 combined?

5 MR. McMILLAN: Yes, in pairs. Let's do the
6 Jayhawk, which is 20155 -- oh, no. Let's do 20152 and
7 20153.

8 EXAMINER JONES: Call Cases 20152 and
9 20153. This is application of Devon.

10 Call for appearances in these two cases.

11 MR. McMILLAN: Mr. Examiner, Seth McMillan
12 of Montgomery & Andrews, on behalf of Devon.

13 EXAMINER JONES: Other appearances?

14 MS. BENNETT: Mr. Examiners, Deana Bennett
15 on behalf of Chevron, USA, Inc. in Cases 20152 and
16 20153.

17 EXAMINER JONES: So Chevron is making an
18 appearance.

19 And other appearances?

20 Mr. McMillan, can you summarize the --
21 since the examiner did not read the summary of the case,
22 could you please do that?

23 MR. McMILLAN: Okay. Mr. Examiner, Case
24 Number 20152 is the application of Devon Energy
25 Production Company, L.P. for a standard horizontal

1 spacing and proration unit, downhole commingling and
2 compulsory pooling, Lea County, New Mexico.

3 In this matter, we're seeking an order
4 creating a standard 640-acre horizontal spacing and
5 proration unit comprised of the east half of Section 18
6 and Section 19, both of which are -- these are the
7 sections we'll be talking about in both of these cases,
8 and they are both called irregular sections. My client
9 calls them corrections sections.

10 In any event, we are in Township 24 South,
11 Range 33 East, N.M.P.M., Lea County, New Mexico, and we
12 seek to pool all mineral interests in the Bone Spring
13 Formation. We were told we're in two separate pools by
14 Paul, the Triple X; Bone Spring, West Pool, 96874, and
15 WC-025 G-06 S253201M, Upper Bone Spring. Those are our
16 two pools, and we seek to pool all mineral interests in
17 those pools underlying the standard unit.

18 The horizontal spacing unit is to be
19 dedicated to three wells. Our defining well is the Bell
20 Lake 19-18 State Com 7H well. That's to be drilled
21 horizontally from an approximate surface-hole location
22 of 481 from the south line and 1,122 feet from the east
23 line of Section 19 to an approximate bottom-hole
24 location 20 feet from the north line and 1,284 feet from
25 the east line of Section 18.

1 The infill wells are the Bell Lake 19-18
2 State Com 9H and the Bell Lake 19-18 State Com 10H, the
3 locations for which will be presented in our materials.

4 Is that enough by way of introduction?

5 EXAMINER JONES: That is.

6 MR. McMILLAN: All right. Probably more
7 than enough. I'm trying to Mr. Brooks' advice in mind
8 here.

9 EXAMINER BROOKS: Yes. We've been besieged
10 with more hearings.

11 MR. McMILLAN: Yes.

12 EXAMINER JONES: I guess I better -- before
13 you continuance, Mr. Kautz is indicating he will not
14 contract one pool and expand the other; is that correct?

15 MR. McMILLAN: No. We didn't ask for any
16 such relief, so to speak. We asked what pools our
17 wellbore will be crossing through here, and he gave us
18 two separate pools.

19 EXAMINER JONES: So you have two separate
20 spacing units then?

21 MR. McMILLAN: Do we, in fact?

22 EXAMINER JONES: Because you've got two
23 separate pools.

24 EXAMINER BROOKS: Well, that's debatable
25 under the horizontal well rule.

1 MR. McMILLAN: Right.

2 EXAMINER BROOKS: And we have not really
3 resolved that issue, whether you have two separate
4 spacing units, but you do have to file them as two
5 separate spacing units because that's the way we do
6 things, whether they're really two spacing units or not.
7 It doesn't really matter from the compulsory pooling
8 point of view because you're going to compulsory pool
9 the whole horizontal spacing unit, right?

10 MR. McMILLAN: Right. Right. That's
11 exactly correct.

12 EXAMINER BROOKS: You're going to have to
13 file a spacing unit in each pool, and you're going to
14 have to file separate C-102s.

15 MR. McMILLAN: And I believe that's
16 precisely what we've done, when we take a look at the
17 exhibits.

18 EXAMINER BROOKS: Okay. I think as far as
19 we've clarified the law now, that's as best we can tell
20 you --

21 MR. McMILLAN: Okay.

22 EXAMINER BROOKS: -- because I think it's
23 going to be a pooled unit, in any case.

24 MR. McMILLAN: That's our hope, is that
25 we're pooling a single unit. Yes, two different pools

1 are implicated, but two separate C-102s have been filed.

2 EXAMINER BROOKS: Well, as long as they're
3 designated as separate spacing units in the two pools, I
4 think that we can combine them in a single pooled unit.

5 MR. McMILLAN: That was the approach that
6 we were hoping the Division would be taking in these
7 cases.

8 EXAMINER JONES: Are you still asking for
9 commingling?

10 MR. McMILLAN: Well, only if necessary. If
11 downhole commingling is out the window here, then we'll
12 withdraw the request.

13 Go ahead.

14 EXAMINER JONES: Hoping the new rules
15 didn't require downhole commingling.

16 EXAMINER BROOKS: Does not. It does not
17 require downhole commingling for -- provided the two
18 pools are in the same formation.

19 MR. McMILLAN: As is the case here.

20 EXAMINER BROOKS: Yeah.

21 MR. McMILLAN: Okay. Great. Then with
22 that -- I guess I anticipated that would be the
23 interpretation.

24 EXAMINER BROOKS: Now, are the vertical
25 boundaries of the two pools identical?

1 MR. McMILLAN: I believe so.

2 EXAMINER BROOKS: Okay. Well, then there
3 is no question about it. We've had a question come up,
4 which is another one of the many things not -- questions
5 not answered by the horizontal well rule, if you have
6 two pools in the same formation but their vertical
7 boundaries are somewhat different, then how do you
8 resolve that? But that's not involved here.

9 MR. McMILLAN: I don't believe it is.

10 EXAMINER BROOKS: Good.

11 MR. McMILLAN: Well, shall I go back to our
12 application and just --

13 EXAMINER JONES: Is the interest going to
14 be separately detailed for each of the two portions that
15 are in the separate pools?

16 MR. McMILLAN: It should be. Let me just
17 lead us through the materials and see if we find what we
18 hope we find.

19 Okay. I've been through what this case is
20 about.

21 The amended application is Devon's Exhibit
22 1. We had originally -- as the footnote indicates, we
23 had originally filed December 6, 2018. We amended,
24 since we did indicate these are, quote, unquote,
25 "irregular sections." In any event, that Exhibit 1 is

1 our operative application here.

2 Exhibit 2 is the affidavit of Andy Bennett.

3 Andy Bennett is a land professional with Devon. His
4 qualifications are set both in paragraph three. He has
5 not previously been qualified as a land expert before
6 the Division. We hope that his qualifications would
7 allow that to be the case here.

8 Mr. Bennett has attached as Exhibit A his
9 plats outlining the unit to be pooled, also showing the
10 location of the proposed wells within the unit.

11 Exhibit B to Mr. Bennett's affidavit is a
12 list of the parties to be pooled, the nature of their
13 interests and their last known addresses. This covers
14 working interest owners and overriding royalty interest
15 owners. And it appears yes, that in his Exhibit B,
16 Mr. Bennett has broken out -- broken this out into three
17 tracts and showing ownership within each.

18 EXAMINER JONES: Okay. So Tracts 3 and 2
19 are two separately --

20 MR. McMILLAN: 3 is 100 percent Devon
21 ownership.

22 EXAMINER JONES: And so that's one state
23 lease. Is that two separate assignments? If it is,
24 they're going to have to get a com agreement. Do you
25 know if they're going to get a com agreement?

1 MR. McMILLAN: I'm not aware of whether
2 there is a com agreement here.

3 EXAMINER JONES: I know that within the
4 whole 640, there is definitely two separate state
5 leases. So it kind of boils down to whether you're
6 going to get one com agreement and what the size of it
7 it's going to be as to whether we can call this one a
8 spacing unit or not.

9 EXAMINER BROOKS: Well, I believe the State
10 Land Office takes the position that they have to have a
11 separate com agreement for each -- for each pool
12 because -- I don't know for sure. You need to check
13 with the State Land Office on that, though. And that
14 does create a problem for us. But, of course, if we
15 have a problem, you have a problem.

16 MR. McMILLAN: Indeed. Indeed.

17 EXAMINER BROOKS: But check with the State
18 Land Office and see what their position is going to be
19 on that --

20 MR. McMILLAN: Okay.

21 EXAMINER BROOKS: -- because I'm not sure.

22 MR. McMILLAN: Okay. Given the names of
23 the proposed wells here, it's suggestive to me that we
24 do have a com agreement, but I'll have to look into
25 that. I don't know off the top of my head.

1 EXAMINER BROOKS: Well, usually they don't
2 do com agreements until the well is drilled, right?

3 EXAMINER JONES: No. They do them, but the
4 date is prior to the first date of production.

5 EXAMINER BROOKS: Backdated to the first
6 day of production.

7 EXAMINER JONES: It can't be after the
8 first date of production.

9 EXAMINER BROOKS: Yeah. But they're not
10 ordinarily signed until after -- after the well is
11 completed.

12 EXAMINER JONES: No. You can sign them
13 before.

14 EXAMINER BROOKS: Is that the legal
15 practice?

16 EXAMINER JONES: Yeah. Mr. Warnell is in
17 the back of the room. He can confirm that.

18 EXAMINER WARNELL: That's true. But I
19 would strongly suggest you contact Maureen at the State
20 Land Office.

21 EXAMINER JONES: She's going to be basing
22 it on what Paul puts in a separate spacing unit, so --
23 because it flows through Tax and Rev on to the State
24 Land Office.

25 EXAMINER BROOKS: Yeah. We're going to

1 have to find some way to solve this problem of the
2 pool -- of the wells in two pools, but we haven't found
3 it yet.

4 EXAMINER JONES: Unless you can expand and
5 contract.

6 MR. McMILLAN: Yeah. We do need to know
7 how to proceed in this case.

8 EXAMINER BROOKS: Well, you said you hadn't
9 asked Paul whether he could modify the pools.

10 MR. McMILLAN: No, we had not. Perhaps
11 that's the first -- it didn't occur --

12 EXAMINER JONES: He wheels and deals down
13 there, so --

14 MR. McMILLAN: And should we convince Paul
15 to do this, should we submit it to you folks?

16 EXAMINER JONES: I think it depends on what
17 other wells exist in these pools within this -- the
18 bounds of this acreage or what we can add.

19 EXAMINER BROOKS: I would say -- to be more
20 optimistic, I would say what, if any.

21 EXAMINER JONES: What, if any.

22 EXAMINER BROOKS: If we find there are
23 none, that makes it so much easier.

24 EXAMINER JONES: Yeah.

25 MR. McMILLAN: Yeah. In any event, we'll

1 work with Paul on that piece.

2 Are you anticipating that we're going to
3 have to somehow amend or make changes to what you're
4 seeing now based on Paul's work? Can we submit
5 supplementally?

6 EXAMINER BROOKS: Well, not so much on what
7 Paul does but on what the State Land Office does.
8 Because if the State Land Office says they can't
9 communitize the whole area, I don't know where that
10 leaves us exactly. If they can join it all in one com
11 agreement, then fine. But they have this idea that they
12 can only communitize a spacing unit and -- our spacing
13 unit, and I don't know if they take the view that they
14 can't combine two -- two units because they're in
15 separate pools. I don't know. I haven't talk to them
16 about that ever, even before the change of
17 administration.

18 EXAMINER JONES: But it seems to me like
19 all the interests are being notified here, and they're
20 all going to be included in these two-mile wells.

21 MR. McMILLAN: Indeed.

22 EXAMINER JONES: So as far as the pools and
23 the spacing unit, it could be that you could proceed
24 here, and I would think the bulk of the evidence could
25 be presented.

1 EXAMINER BROOKS: Well, yeah. Let's go
2 ahead and present the evidence, and then we'll decide
3 what to do.

4 MR. McMILLAN: Okay. Thank you.

5 EXAMINER BROOKS: And I'm going to be
6 leaving, so you can reserve the matter until I get back.

7 EXAMINER JONES: The land evidence should
8 be while you're here, Mr. Brooks.

9 MR. McMILLAN: Let me wrap it up. There's
10 not much left.

11 EXAMINER BROOKS: Well, the affidavits --
12 it's by affidavit anyway.

13 EXAMINER JONES: Go ahead.

14 MR. McMILLAN: Sure. Sure.

15 Just wrapping up the summary of
16 Mr. Bennett's affidavit, Exhibit C to his affidavit are
17 the C-102s showing that they have been broken out by
18 pool.

19 Exhibit D to Mr. Bennett's affidavit is a
20 sample of his well-proposal letter and an AFE for the
21 proposed wells. He testifies that the estimated costs
22 set forth are fair, reasonable and comparable. Devon
23 requests overhead and administrative rates of 8,000 per
24 month for drilling each well and 800 per month for
25 producing the wells. The rates are fair and comparable,

1 in Mr. Bennett's opinion. Devon also requests the
2 maximum cost plus 200 percent risk charge be assessed
3 against nonconsenting working interest owners.

4 EXAMINER JONES: Did Chevron have a
5 statement or a reason for making an appearance?

6 MS. BENNETT: No. I'm sure we do,
7 actually. I am just unaware of it.

8 EXAMINER JONES: You thought it was
9 worthwhile making an appearance anyway.

10 EXAMINER BROOKS: They just like to pay
11 attorneys.

12 MS. BENNETT: Yeah.

13 MR. McMILLAN: That concludes, I believe,
14 Mr. Bennett's affidavit.

15 Exhibit 3 is the affidavit of John Green
16 who is a geologist with Devon. He also has not had his
17 credentials made a matter of record previously and been
18 qualified. He sets them forth in paragraph four.

19 Exhibit A is Mr. Green's Bone Spring
20 structure map showing the unit to be pooled and the
21 rectangle showing the apparent structural dip and
22 showing that no major structural hazards exist at this
23 location. He also has his A to A prime cross-section
24 line shown in Exhibit A.

25 Exhibit B is a Bone Spring stratigraphic

1 cross section hung on the first Bone Spring Limestone.
2 It shows consistent target thickness in wells near the
3 Bell Lake wells. The well logs give a representative
4 sample and demonstrate reasonable well control. And the
5 target zone for the wells is the so-called Leonard
6 Formation indicated by the blue line in Exhibit B.
7 Mr. Green's exhibit demonstrates the target zone is
8 continuous across the well unit.

9 Exhibit C is a gross isochore of the Bone
10 Spring showing the thickness of the target interval and
11 showing that that target interval is uniform across the
12 proposed well unit.

13 Mr. Green's conclusions are that the
14 horizontal spacing and proration unit is justified from
15 a geologic standpoint. There are no structural
16 impediments or faulting that will interfere with
17 horizontal development, and each quarter-quarter section
18 of the unit will contribute more or less equally to
19 production. The preferred well orientation here is
20 south to north, and that's what we're doing.

21 And that is the conclusion of my summary of
22 Mr. Green's geology affidavit.

23 EXAMINER JONES: Okay.

24 MR. McMILLAN: I'll just finish up.

25 Exhibit 4 is my Affidavit of Notice, as well as an

1 Affidavit of Publication from the "Hobbs News-Sun"
2 showing that all parties were either served with actual
3 notice or if, for some reason, their letter was lost in
4 the mail, they were notified by publication.

5 EXAMINER JONES: Okay. Okay.

6 MR. McMILLAN: That is Case 20152. 20153
7 is very similar.

8 EXAMINER JONES: Okay.

9 MR. McMILLAN: Should I make a quick record
10 there?

11 EXAMINER JONES: Yes.

12 All right. So Case 20152, the evidence has
13 been presented. And I've been told that taking under
14 advisement is not necessarily closing the record anyway,
15 so --

16 MR. McMILLAN: Okay.

17 EXAMINER JONES: And there is a possibility
18 that this case might appear on a future docket. I'll
19 just state that on the record.

20 MR. McMILLAN: Okay. In the meantime, I'd
21 ask that the case be taken under advisement, and we'll
22 see where --

23 EXAMINER JONES: Okay. Case 20152 is taken
24 under advisement.

25 MR. McMILLAN: Case 20153 is similar.

1 We're dealing here with the west half of Section 18 and
2 Section 19. This is where the fact that these sections
3 are irregular plays into our request for the size of our
4 horizontal spacing unit. The actual acreage will be
5 629.6 acres because of the irregular sections. However,
6 it's otherwise a standard unit.

7 We're seeking to pool all mineral interests
8 in the Bone Spring Formation in the same two pools that
9 were discussed in Case 20152. We withdraw here our
10 request for downhole commingling, given the examiner's
11 guidance in 20152. We will, however, pursue with Paul
12 Kautz the possibility of contracting and expanding,
13 somehow working these pools into a single pool so we can
14 move forward.

15 The wells proposed here are the Bell Lake
16 19-18 State Com 17H well. That's the defining well.
17 The Bell Lake 19-18 State Com 13H well is our first
18 proposed infill well. These are all orthodox wells.
19 The completed intervals at first and last take points
20 meet the setback requirements. The same, I should note,
21 is true of the wells in 20152.

22 Let's see. Attached as exhibits to our
23 application are an affidavit of Andy Bennett, the land
24 professional. He's testifying very similarly to how he
25 testified in 20152.

1 His Exhibit A is the plat showing the
2 location of the proposed wells within the unit.

3 His Exhibit B lays out the interest owners,
4 the nature of their interests and their last known
5 addresses. He notes that there are no depth severances
6 in the Bone Spring Formation, nor were there any in
7 20152. He lists the locations and proposed depths of
8 the wells to be drilled.

9 He outlines his efforts to locate all
10 interest owners and has attached as his Exhibit D a
11 sample proposal letter and AFE.

12 Exhibit C are the proposed C-102s for these
13 wells, and, again, they are broken out by pool.

14 Devon again requests overhead and
15 administrative rates of 8,000 per month for drilling and
16 800 per month for producing. Mr. Bennett testifies
17 these rates are fair and comparable. Devon also
18 requests maximum costs and the 200 percent risk charge
19 be charged against nonconsenting working interest
20 owners. Devon, of course, requests it be designated
21 operator of the wells. And that should do it for
22 Mr. Bennett's affidavit.

23 Mr. John Green, Devon's geologist, has
24 submitted an affidavit, submitted his credentials for
25 consideration as an expert in petroleum geology.

1 His Exhibit A is a Bone Spring structure
2 map.

3 His Exhibit B is a stratigraphic cross
4 section hung on the 1st Bone Spring Limestone

5 Exhibit C is his gross isochore of the Bone
6 Spring Formation.

7 His conclusions are that the horizontal
8 spacing unit is justified from a geologic standpoint,
9 that there are no structural impediments or faults that
10 would interfere here with horizontal development and
11 that each quarter-quarter section in the unit will
12 contribute more or less equally to production. He also
13 notes that we are working with the preferred well
14 orientation in this area.

15 That's Mr. Green's affidavit.

16 The final affidavit, Exhibit 4, is my
17 Affidavit of Notice showing the green cards sent and
18 returned and also including an Affidavit of Publication.
19 Again, any party that did not -- for which we did not
20 receive a green card back has been served notice by
21 publication, so we're covered there.

22 I would move the admission of Exhibits 1
23 through 4 in both Cases 20152 and 20153 at this time.

24 MS. BENNETT: No objection.

25 EXAMINER JONES: Exhibits 1 through 4 in

1 20152 are admitted into that record, and Exhibits 1
2 through 4 in Case 20153 are admitted in that case also.

3 (Devon Energy Production Company, L.P.
4 Exhibit Numbers 1 through 4 in each case
5 are offered and admitted into evidence.)

6 MR. McMILLAN: How shall we proceed
7 procedurally?

8 EXAMINER JONES: I think I see what the
9 problem is. He's got an Upper Bone Spring -- he's got
10 an exiting pool, yet he wants to call this Upper Bone
11 Spring for the wildcat portion in one of the sections.
12 So he just needs to be --

13 MR. McMILLAN: He being Paul?

14 EXAMINER JONES: He being Paul. The
15 geologist and the regulatory person with Devon should
16 just work with Paul to figure out why he's calling this
17 Upper Bone Spring instead of -- are you trying to pool
18 only the Upper Bone Spring?

19 MR. McMILLAN: Not to my knowledge, no.

20 EXAMINER JONES: You're pooling the whole
21 Bone Spring.

22 MR. McMILLAN: That's the object of the
23 application, yes. You know, we had some funny back and
24 forth with Paul on this. He had given us a single pool
25 code. Then he gave us two and then changed his mind and

1 then changed his mind again. And this all happened very
2 quickly, and we never had a great deal of insight as to
3 why these changes were made. We'll get him to change
4 his mind back.

5 EXAMINER JONES: If you can't do that, you
6 can bring a nomenclature case and get it done. You can
7 do it that way.

8 MR. McMILLAN: Okay. Let's hope we don't
9 have to take it that far.

10 EXAMINER JONES: It's not a problem. He's
11 just got too much to handle.

12 MR. McMILLAN: Great. I appreciate that
13 guidance there.

14 And I think we're in a position to ask that
15 they be taken under advisement, both of these matters,
16 and we will continue to work with the Division to
17 resolve the issue with the pools.

18 EXAMINER JONES: Case 20153 is taken under
19 advisement.

20 (Case Numbers 20152 and 20153 conclude,
21 11:45 a.m.)

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25

1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

3

4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, Certified Court
6 Reporter, New Mexico Certified Court Reporter No. 20,
7 and Registered Professional Reporter, do hereby certify
8 that I reported the foregoing proceedings in
9 stenographic shorthand and that the foregoing pages are
10 a true and correct transcript of those proceedings that
11 were reduced to printed form by me to the best of my
12 ability.

13 I FURTHER CERTIFY that the Reporter's
14 Record of the proceedings truly and accurately reflects
15 the exhibits, if any, offered by the respective parties.

16 I FURTHER CERTIFY that I am neither
17 employed by nor related to any of the parties or
18 attorneys in this case and that I have no interest in
19 the final disposition of this case.

20 DATED 31st day of January 2019.

21

22

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