

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 PERCUSSION PETROLEUM CASE NOS. 20191,
OPERATING, LLC FOR COMPULSORY POOLING 20263
EDDY COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

February 7, 2019

Santa Fe, New Mexico

BEFORE: SCOTT DAWSON, CHIEF EXAMINER
KATHLEEN MURPHY, TECHNICAL EXAMINER
TERRY WARNELL, TECHNICAL EXAMINER
DAVID K. BROOKS, LEGAL EXAMINER

This matter came on for hearing before the New Mexico Oil Conservation Division, Scott Dawson, Chief Examiner; Kathleen Murphy and Terry Warnell, Technical Examiners; and David K. Brooks, Legal Examiner, on Thursday, February 7, 2019, at the New Mexico Energy, Minerals and Natural Resources Department, Wendell Chino Building, 1220 South St. Francis Drive, Porter Hall, Room 102, Santa Fe, New Mexico.

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APPEARANCES

FOR APPLICANT PERCUSSION PETROLEUM OPERATING:

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1 (9:37 a.m.)

2 EXAMINER DAWSON: At this time we'll get
3 back on the record and we're going forward
4 with Percussion Petroleum, LLC for compulsory pooling,
5 Nirvana #1H, in Eddy County, New Mexico.

6 Please call for appearances.

7 MS. KESSLER: Mr. Examiner, Jordan Kessler,
8 from the Santa Fe office of Holland & Hart, on behalf of
9 the Applicant. And we would ask that this case be
10 consolidated with Case Number 20263.

11 EXAMINER DAWSON: Okay. So 20191 will be
12 consolidated with 20623 [sic]?

13 MS. KESSLER: 20263.

14 EXAMINER DAWSON: 20263, which is --

15 MS. KESSLER: That's case number 61 on page
16 4 of the spreadsheet.

17 EXAMINER DAWSON: Okay.

18 -- which is case number 61 on the
19 spreadsheet. It's Case 20263, Percussion Operating, LLC
20 for compulsory pooling, Eddy County, New Mexico for the
21 Nirvana #3H. Cases 20191 and 20263 are consolidated.

22 Ms. Kessler.

23 MS. KESSLER: Thank you.

24 Mr. Examiners, I'd like to give just a
25 brief introduction for these two cases before I walk

1 through the affidavits.

2 This case involves a depth severance in the
3 Yeso. Percussion is seeking to compulsory pool the
4 entire pool, which is the Penasco Draw; San Andres-Yeso
5 Pool. And within the Yeso, there is a depth severance
6 at 3,200 feet. What Percussion has proposed is to
7 compulsory pool two separate intervals, the top of the
8 pool down to a depth of 3,200 feet and 3,200
9 feet -- actually 3,201 and below to the base of the
10 pool. There will be two separate wells that are
11 proposed, and I will discuss -- to develop -- each of
12 those two intervals. And the geology testimony and
13 affidavit will reflect that Percussion, due to the
14 placement of the two wells, does not expect hydrocarbons
15 to be developed on either side of that depth severance.

16 EXAMINER DAWSON: Okay.

17 MS. KESSLER: So with that introduction,
18 I'll move forward through the affidavits.

19 EXAMINER DAWSON: Okay.

20 MS. KESSLER: If you turn to --

21 EXAMINER DAWSON: No witnesses?

22 MS. KESSLER: No witnesses.

23 EXAMINER DAWSON: No witnesses.

24 And no contested or opposing parties in
25 this case?

1 Okay, Ms. Kessler. Go ahead.

2 MS. KESSLER: Thank you.

3 The first exhibit in front of you labeled
4 Exhibit 1 is an affidavit of Mr. Joe Dichiaro. He has
5 previously testified by affidavit before the Division.
6 And he describes, in Case Number 20191, that Percussion
7 seeks an order pooling uncommitted interests from the
8 top of the Yeso Formation -- and as I'll discuss later,
9 that's synonymous with the top of the pool -- to a depth
10 of 3,200 feet in the Penasco Draw; San Andres-Yeso Pool
11 underlying the south half-south half of Section 28 and
12 the southeast-southeast quarter of Section 29, Township
13 18 South, Range 26 East, Eddy County. And that will be
14 dedicated to the Nirvana 1H well.

15 The lower section of the pool, which will
16 be a separate spacing unit, will be pooling 3,201 to the
17 bottom of the Yeso Formation in that same pool, also in
18 the south half-south half of Section 28 and the
19 southeast-southeast of Section 29, and that will be
20 dedicated to the 3H well. And both of those wells are
21 at orthodox locations.

22 If I turn to Exhibit A, these are the draft
23 C-102s for each of the two wells. You'll see that it
24 reflects up there they're in the same proposed acreage,
25 separate spacing units, because they'll be separately

1 pooled. And I did contact Paul Kautz to request pool
2 information, and that's included in the affidavit.

3 Paragraph six of Exhibit 1 discusses the
4 depth severance of 3,200 feet and gives the
5 stratigraphic equivalent for the top of the pool and the
6 base of the pool tied to a log.

7 And paragraph seven discusses the origin of
8 that depth severance. It is due to a Pugh clause for an
9 old well, the Mallard HM #2 well. And the document
10 creating the depth severance does define the depth
11 severance at 3,200 feet, as measured in that log. If
12 you'd like a copy of that document, I'd be happy to
13 provide it, but the information is contained in the
14 affidavit.

15 EXAMINER DAWSON: Okay.

16 MS. KESSLER: So ownership is different
17 above and below the depth-severance line.

18 Exhibit B shows the ownership in the upper
19 spacing unit, so top of the pool down to 3,200 feet.

20 And then Exhibit Tab C shows the ownership,
21 3,201 and below. I believe the difference is those
22 different percentages and that OXY owns above. So
23 highlighted in green are the interest owners -- I'm
24 sorry. It's the Vladin, V-L-A-D-I-N, LLC owns below,
25 and they do not own above.

1 Exhibits D and E are the well-proposal
2 letters and AFEs that were sent out to the parties that
3 Percussion seeks to pool.

4 And paragraph 12 of the affidavit discusses
5 Percussion's efforts to reach an agreement with the
6 interest owners that they seek to pool.

7 All of the working interest owners were
8 locatable. There was one overriding royalty interest
9 owner who was unlocatable. Her name is specified in
10 paragraph 14. That's Helen Holt. And notice was
11 published directly to Ms. Holt.

12 Also, paragraph 15 states that in addition
13 to providing notice of the hearing to the parties that
14 Percussion seeks to pool, they provided notice to the
15 vertical offsets in the depth severance. So all of the
16 interest owners received notice both of the pooling
17 hearing and also of the spacing unit that they're being
18 effectively excluded from.

19 I'll move to the geology affidavit, the
20 affidavit of Mr. C.J. Lipinski. He has testified a
21 number of times before the Division. He provides the
22 usual exhibits. I'll specifically go over paragraph
23 four, which shows -- which states that the log shows the
24 top of the pool is at 2,279 feet, measured depth, and
25 the base of the Yeso's at 4,460 feet.

1 2A is a location map showing the proposed
2 spacing unit. There is also a structure map in which he
3 states he doesn't observe any faulting or pinch-outs.

4 2C is just a map showing the wells used for
5 his cross-section exhibit.

6 I'd like to spend a moment on Exhibit D,
7 which is his cross-section exhibit. It shows the top of
8 the Glorieta and the top of the Yeso. It shows the
9 target for the 1H well at 2,765, and then it shows the
10 depth severance at 3,200 feet at the red line, and it
11 shows the 3H well at 3,620. So you will note that there
12 are over 400 feet between the depth severance and each
13 of the two wells. He's also called out silts that he's
14 identified with green brackets, which he opines in his
15 affidavit will act as a frac barrier, preventing
16 drainage from the other side of the depth-severance
17 line.

18 His affidavit states that due to the
19 location of the well and the existence of the silt, he
20 does not expect that either of the wells will drain
21 across the severance line.

22 And in paragraph 12, he states that in the
23 event that Percussion wants to drill any infill wells
24 closer to the depth-severance line, that they will
25 reappear before the Division. So they will not infill

1 closer to the depth-severance line than the proposed
2 wells.

3 Finally, he states that the area is
4 suitable for horizontal development and that he believes
5 that Percussion's application will be in the best
6 interest of conservation, for the prevention of waste
7 and the protection of correlative rights.

8 Exhibit 3 is an affidavit prepared by my
9 office and the attached letters that provide notice both
10 to the parties that Percussion seeks to pool in each of
11 these two cases and the vertical offsets.

12 And I'll note that I think I skipped over
13 this. There are overriding royalty interests owners.
14 They're reflected on the ownership exhibits, B and C,
15 and their interest type is just noted as overriding
16 royalty interest owners. So they have been provided
17 notice of this hearing, and Percussion is seeking to
18 pool them.

19 Finally, Examiners, Exhibit 4 contains two
20 Affidavits of Publication. And as I noted previously,
21 Ms. Holt did have mail returned undeliverable. She's an
22 overriding royalty interest owner. So she was served
23 constructive notice.

24 EXAMINER DAWSON: Okay.

25 MS. KESSLER: I would move admission of

1 these exhibits, Mr. Examiner.

2 EXAMINER DAWSON: Okay. At this point
3 Exhibits 1 through 4, with additional tabs underneath
4 each exhibit, will be admitted to the record.

5 MS. KESSLER: Thank you.

6 (Percussion Petroleum Operating, LLC
7 Exhibit Numbers 1 through 4 are offered and
8 admitted into evidence.)

9 EXAMINER DAWSON: Thank you.

10 Mr. Brooks, do you have questions?

11 EXAMINER BROOKS: Yes.

12 I understand there is a depth severance as
13 to what interest now?

14 MS. KESSLER: Vladin.

15 EXAMINER BROOKS: And they're a working
16 interest owner?

17 MS. KESSLER: They are.

18 EXAMINER BROOKS: And that depth
19 severance -- and you have as parties to this case,
20 parties that own both above and below, right?

21 MS. KESSLER: Correct.

22 EXAMINER BROOKS: That's different parties
23 because that's what creates the depth severance?

24 MS. KESSLER: That's correct.

25 EXAMINER BROOKS: Okay. Now, what you're

1 proposing is that wells drilled above the depth
2 severance will be -- proceeds will be distributed only
3 among the people that own and in proportion to their
4 ownership above, and they're from wells drilled -- wells
5 that are -- which the drain hole is below the depth
6 severance will be distributed among the owners who own
7 in that lower realm?

8 MS. KESSLER: Correct. We'll have two
9 separate spacing units (demonstrating) --

10 EXAMINER BROOKS: Yeah. That's what I was
11 going to ask you.

12 MS. KESSLER: -- divided by the
13 depth-severance line.

14 EXAMINER BROOKS: Is it appropriate if we
15 do two separate spacing units, each one of which will be
16 a part thereof, in terms of Section 17 in the Oil and
17 Gas Act, and that's the authority we would be relying on
18 there.

19 Now, are you establishing a setback, or is
20 it just going to be the depth-severance line for your
21 commitment not to drill wells?

22 MS. KESSLER: What Percussion has included
23 in their affidavit is a statement that their current
24 wells are each about 400 feet off of the depth-severance
25 line above and below, and they will not infill closer

1 than those current proposed wells without coming before
2 the Division.

3 EXAMINER BROOKS: Okay. My belief would be
4 that there should be a provision to that effect in the
5 order. Would that be acceptable to Percussion?

6 MS. KESSLER: Yes. Yes.

7 EXAMINER BROOKS: Okay. 400 feet.

8 MS. KESSLER: Right. So the current
9 proposed wells, I believe, are at maybe 420 feet and 415
10 feet, something like that, but they will not be closer
11 than the current -- no well will be closer to the
12 severance line than the current proposed well without
13 Percussion appearing in front of the Division.

14 EXAMINER BROOKS: Okay. Wherever those
15 proposed wells exactly end up being, which you don't
16 know until you do your horizontal wizardry.

17 MS. KESSLER: Math.

18 EXAMINER BROOKS: That seems like an
19 acceptable way of doing things.

20 Mr. Dawson, would it be acceptable to you
21 if I write the proposed order in this case?

22 EXAMINER DAWSON: Perfectly acceptable to
23 me, Mr. Brooks.

24 EXAMINER BROOKS: Okay.

25 EXAMINER DAWSON: Thank you.

1 EXAMINER BROOKS: I don't know if it would
2 be acceptable to all the examiners, but we'll just
3 impose it.

4 EXAMINER DAWSON: So noted. Thank you,
5 David.

6 EXAMINER BROOKS: You're welcome.

7 EXAMINER DAWSON: Mr. Warnell, do you have
8 any questions?

9 EXAMINER WARNELL: I noticed on the C-102s,
10 Exhibit A, there is no dedicated acreage.

11 MS. KESSLER: I'll have them fill that in.
12 These are draft C-102s. The dedicated acreage should be
13 200 acres because they're both mile-and-a-quarter wells,
14 but I'll ask about them.

15 EXAMINER DAWSON: Which would be the south
16 half of Section -- south half-south half of Section 28
17 and southeast quarter of Section 29 --

18 MS. KESSLER: That's right,
19 southeast-southeast.

20 EXAMINER DAWSON: Correct,
21 southeast-southeast.

22 Ms. Murphy, do you have any questions?

23 EXAMINER MURPHY: No questions.

24 EXAMINER DAWSON: One thing that I would
25 like to request from the geologist of Percussion would

1 be a separate -- the type log with the 3,200-foot line
2 marked on the type log of the Mallard HM #2, API Number
3 30-015 -- 30-015-22052, that well.

4 MS. KESSLER: Yes.

5 EXAMINER DAWSON: Thank you.

6 MS. KESSLER: I would ask these two cases
7 taken under advisement, and I will provide that
8 additional exhibit.

9 EXAMINER DAWSON: Okay. Thank you very
10 much.

11 EXAMINER BROOKS: And since I will be
12 writing this one, copy me when you provide the
13 additional. I've been trying to discourage people from
14 copying me on document correspondence because I got
15 flooded with it.

16 MS. KESSLER: Certainly.

17 EXAMINER DAWSON: So at this point, Case
18 Numbers 20191 and 20263 will be taken under advisement.
19 Thank you.

20 (Case Numbers 20191 and 20263 conclude,
21 9:54 a.m.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

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4 CERTIFICATE OF COURT REPORTER

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

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

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

20 DATED THIS 7th day of March 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