

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:

CASE NOS: 20229

Application of Percussion Petroleum
Operating LLC for compulsory pooling,
Eddy County, New Mexico.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

THURSDAY, MARCH 7, 2019

SANTA FE, NEW MEXICO

This matter came on for hearing before the New Mexico Oil Conservation Division, Examiners Leonard Lowe and William Jones, and Legal Examiner David Brooks, on Thursday, March 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.

Reported by: Irene Delgado, NMCCR 253
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A P P E A R A N C E S

For the Applicant: Adam Rankin
Holland & Hart
110 N Guadalupe Street, Suite 1
Santa Fe, NM 87501

I N D E X

CASE NO. 20229 CALLED	
JOE DICHARA (By Affidavit)	03
C.J. LIPINSKI (By Affidavit)	06
TAKEN UNDER ADVISEMENT:	19

E X H I B I T I N D E X

Admitted

Exhibit 1, Attachments A-C	09
Exhibit 2, Attachments A-D	09
Exhibit 3	09

1 MR. RANKIN: Good morning.

2 HEARING EXAMINER: We will call Case Number
3 20229.

4 MR. RANKIN: Good morning, Mr. Examiner. Adam
5 Rankin with the Law Firm of Holland & Hart, Santa Fe, on the
6 behalf of the applicant in this case, Percussion Petroleum
7 LLC. With your permission I will be presenting this case by
8 affidavit.

9 HEARING EXAMINER: Okay.

10 MR. RANKIN: Mr. Examiner, before you is an
11 exhibit packet with three exhibits. The first exhibit is an
12 affidavit and three attachments from the landman.

13 The second exhibit is an affidavit from the
14 geologist with four exhibits, and the last is a notice
15 affidavit. I'll walk through briefly to try to summarize
16 for you. If you have any questions I can answer, I will do
17 my best.

18 In the first exhibit is the affidavit of the
19 landman, Mr. Joe Dichiaro. He previously testified.

20 Percussion is seeking to pool a 200-acre
21 horizontal spacing unit comprised of the N/2 S/2 of Section
22 28, and the NE/4 SE/4 of Section 29, Township 18 South,
23 Range 26 East, Eddy County, New Mexico.

24 The pooler is seeking to put his spacing unit in
25 the Atoka, Glorieta Yeso Pool, Pool Code 3250.

1 Mr. Examiner, in this spacing unit there is a
2 depth severance, and the depth severance at this location is
3 3,200 feet. As a consequence to the depth severance there
4 are different ownerships above and below that line.

5 In this case we are seeking to pool -- Percussion
6 is seeking to pool only the Atoka, Glorietta Yeso Pool from
7 the top of that pool to a depth of 3200 feet, okay, so just
8 that portion, the upper portion of that pool.

9 As laid out in Mr. Dichiarara's affidavit, they
10 have also -- have also proposed and are seeking to pool the
11 deeper depths within this pool in a subsequent case that
12 will be presented to the Division in April. So both the
13 area above the depth severance and below the depth severance
14 will be developed by wells.

15 In this case, Percussion is seeking to pool all
16 interest owners, working interest owners. There are some
17 overriding royalty interest owners and unleased mineral
18 interest owners as well. No interest owner has identified
19 or indicated any opposition to this depth severance pooling
20 case.

21 The Exhibit 1A, which is the second exhibit
22 attached to Mr. Dichiarara's affidavit is a copy of a C-102
23 land dedication plat for the proposed initial well, the
24 Radiohead 1H. It reflects the surface locations, the first
25 state point -- the last state point as well as the bottom

1 hole location in the spacing unit being proposed.

2 Exhibit B is a copy of a land tract map
3 reflecting the different tracts of ownership that comprise
4 the proposed spacing unit.

5 The second page of that Exhibit B, 1B is a
6 breakout of the ownership interests by tract and by depth.
7 I won't spend too much time on it, but you will see in green
8 all the interest owners within the depth that Percussion is
9 seeking to pool and the parties that they are seeking to
10 pool. So, in other words, the folks that are highlighted in
11 green are the parties from the top of the pools, the 3200
12 feet that Percussion is seeking to pool within the spacing
13 unit.

14 Also reflected on that chart are the interest
15 owners who have an interest below this depth who Percussion
16 has noticed, in other words, they notified interest owners
17 in the vertical offset within the pool who are being
18 excluded from the spacing unit as a consequence of the depth
19 severance.

20 Exhibit C is a copy of well proposal letters that
21 Percussion sent out to all the working interest owners and
22 uncommitted interest owners that they are seeking to pool,
23 the sample there reflecting they have sought to reach
24 agreement with the parties that they are seeking to commit
25 to the spacing unit.

1 Behind that well proposal letter is a copy of an
2 estimate of cost, an AFE, reflecting the cost that is
3 anticipated for drilling this well. In Mr. Dichiarara's
4 affidavit you'll see he testifies that the cost that they
5 proposed in the affidavit in the AFE are in line with what
6 Percussion and other operators have incurred to drill
7 similar or other wells in this area.

8 Percussion is seeking administrative costs of
9 \$7,000 per month while drilling and \$700 per month while
10 producing. Mr. Dichiarara testified this is consistent with
11 what other operators have incurred for administrative costs
12 in the area for drilling similar wells.

13 The second exhibit is an affidavit of Mr. C.J.
14 Lipinski. He is a geologist at Percussion. He has
15 testified before the Division.

16 Mr. Lipinski reviews the geology in the area in
17 his affidavit in exhibits. Exhibit 2A of Mr. Lipinski's
18 affidavit is a US land locator map reflecting the proposed
19 spacing unit outlined in red.

20 Within the spacing unit are two proposed wells,
21 the Radiohead 1H, which is the well that Percussion is
22 proposing to designate to the spacing unit, and an
23 anticipated infill well, the Radiohead 2H, is also reflected
24 on this exhibit, and I will explain why in just a moment.

25 The next Exhibit 2-B is a copy of a structure map

1 that Mr. Lipinski's created. I believe that it's on the top
2 of the Glorieta. This map depicts the data points, as well
3 as the offsetting Glorietta Yeso well in green.

4 The next map, Exhibit C, is a similar map without
5 the structure, but it shows, in blue, A to A prime line
6 cross-section. It shows three wells that Mr. Lipinski has
7 chosen that he testifies are representative of geology in
8 the area.

9 Exhibit D is a cross-section map reflecting the
10 cross-section of those wells that he has identified by -- I
11 said three wells, there are more than that -- in the area.
12 On this map, the landing, the parting interval for the
13 initial proposed Well 1H, the Radiohead 1H is identified as
14 approximate depth of 2725 feet in the orange color.

15 Also on this cross-section Mr. Lipinski has
16 placed the depth severance at a depth of 3200 feet in a red
17 dash line, and you will see that the proposed landing target
18 for the 1H is several hundred feet above the depth
19 severance.

20 In addition, he has also identified on this map
21 an anticipated infill well, which is the Radiohead 2H with a
22 target landing interval of approximately 2850 feet. You
23 will see that's a little bit closer to the depth severance
24 than the initial proposed well.

25 Mr. Lipinski testified in his affidavit that it's

1 more than 300 from the second proposed -- the anticipated
2 infill well is more than 300 feet from the depth severance,
3 and that neither the initial well, the Radiohead 1H, nor the
4 anticipated infill well, the 2H, would drain from across
5 that depth severance based on the distance from the depth
6 severance line.

7 Mr. Lipinski in his affidavit states that
8 Percussion would agree to appear before the Division in the
9 event that it proposed to drill any additional infill well
10 closer to the depth severance line than the anticipated
11 Radiohead 2H well as depicted in Exhibit 2D which I just
12 reviewed with you.

13 Mr. Lipinski testified that the proposed
14 orientation, laydown orientation in this area is appropriate
15 for development of the spacing unit, that there is no
16 impediment to the development of the horizontal laterals in
17 this area based on geology, no pinchouts or faulting, and
18 that the geology in the area is conducive to the development
19 and construction of the horizontal wells as they are
20 proposed, and that each of the tracts as comprised basically
21 would contribute more-or-less equally to the development and
22 production from the well.

23 Exhibit 3 is a copy of the affidavit as prepared
24 by me and my office reflecting that we have provided notice
25 to the parties that Percussion is seeking to pool, as well

1 as the parties in the vertical offset within the Atoka,
2 Glorietta Yeso Pool that are being excluded from this
3 proposed spacing unit.

4 In Exhibit 3 behind the affidavit is a copy of
5 the letter that was sent out by my office providing notice
6 to those individuals identified by Percussion. And the
7 subsequent pages are copies of the United States Postal
8 Service tracking receipts reflecting that those parties
9 either signed or received the information for the notice
10 packets, or that they are awaiting, still waiting to be
11 picked up at the post office.

12 After flipping through all of those pages, you
13 will see at the very end there is a notice of publication
14 reflecting that each of the parties we have identified by
15 name have received constructive notice through an affidavit,
16 through a publication in the newspaper, and that affidavit
17 of publication is the last two pages of the exhibit.

18 With that, Mr. Examiner, I would move the
19 admission of Exhibits 1, 2 and 3, along with their
20 attachments for the record. And if you have any questions
21 that I can try to answer, I would be happy to.

22 HEARING EXAMINER: Okay.

23 MR. JONES: Exhibits 1, 2 and 3 are admitted. So
24 basically the landman testified, it seems, that the pooling
25 working interests, overriding interests and --

1 MR. RANKIN: Unleased mineral interest.

2 MR. JONES: -- unleased mineral interests, so
3 those interests, that's only above the 3200 feet?

4 MR. RANKIN: Yeah. So Exhibit 1B, the second
5 page of that exhibit is a spreadsheet that breaks out by
6 tract each of the interest owners in its tract, and by
7 depth.

8 MR. JONES: And by depth. Okay.

9 MR. RANKIN: So you will see, for example, on
10 Tract 14, which is reflected on the first page of this
11 exhibit, if you go back to the spreadsheet you will see on
12 the second page that certain parties are highlighted in
13 green, it shows their percent working interest or if they're
14 an override.

15 MR. JONES: Okay.

16 MR. RANKIN: It also reflects the type of
17 interest.

18 MR. JONES: Okay. So Devon, basically it looks
19 like the big owners are below the depth severance line.

20 MR. RANKIN: Right.

21 MR. JONES: Devon didn't make an appearance in
22 this case?

23 MR. RANKIN: No. And as I stated, Mr. Examiner,
24 the affidavit reflected that the portions of the pool below
25 the depth severance here, the wells have been proposed, and

1 an application has been filed to pool these interests in an
2 upcoming docket.

3 HEARING EXAMINER: Okay.

4 MR. JONES: Okay. Okay. So Percussion --
5 Percussion's interest in this well, is that shown here?

6 MR. RANKIN: Are you asking for a total interest?

7 MR. JONES: An overall interest, yeah.

8 MR. RANKIN: It's not reflected in this exhibit,
9 but if it's something you would like we can provide that.

10 MR. JONES: They have not permitted the well yet,
11 the two wells yet; is that correct?

12 MR. RANKIN: That's my understanding.

13 MR. JONES: Because they don't own an interest in
14 some of the tracts?

15 MR. RANKIN: That's my understanding.

16 MR. JONES: But they do own an interest in some
17 of the tracts; is that correct?

18 MR. RANKIN: Correct. Their affiliate entity is
19 that same --

20 MR. JONES: Okay. Okay.

21 MR. BROOKS: From what you said, I got the
22 impression that there is not a barrier at or close to the
23 depth severance line that would make this an appropriate
24 place to divide this unit from a geologic standpoint.

25 MR. RANKIN: That's my understanding. I think in

1 some cases in this area there are still some other geologic,
2 you know, potential geologic barriers that would help drain.
3 In this case, I don't believe that there is that situation.

4 MR. BROOKS: So the geologist's testimony that
5 they won't interfere is based on the distance from the depth
6 severance line to the well, to the projected well landing
7 area?

8 MR. RANKIN: Correct.

9 MR. BROOKS: And you said that Percussion was
10 agreeable to what we have done in another case, that is, put
11 in the provision that they would file a new application --
12 a hearing application with the Division if they chose to
13 drill a well closer to the depth severance line.

14 MR. RANKIN: Correct, Mr. Brooks. And I would
15 point out that that is based on the location of their
16 proposed infill well as opposed to the initial well. Mr.
17 Lipinski testifies in his affidavit that they have
18 identified a, a landing spot for their -- which would be
19 their first infill well, the 2H, which would be lower than,
20 closer to the depth severance line than the initial proposed
21 well.

22 MR. BROOKS: Well, now, are they going to come
23 back for authorization for that, or do they want
24 authorization for the first --

25 MR. RANKIN: They would like authorization for

1 that first infill well based on its location and his
2 testimony that the depth severance will not result in
3 drainage from below that depth severance.

4 MR. BROOKS: We are wondering a little bit into
5 uncharted territory here, I believe. So we will have to
6 make a decision as to whether we are going to go there or
7 not, given that we have no rule on that to deal with that
8 severance, unfortunately.

9 MR. RANKIN: One thing, you know, just to make
10 the record clear, Mr. Brooks, is that in addition to Mr.
11 Lipinski's testimony about the drainage issues, we also
12 have, on a subsequent docket, the application to address the
13 spacing unit below that depth severance line which is also
14 going to be developed.

15 MR. BROOKS: Okay. Now, Devon, you said, owned
16 the counter-interest. Does Devon own below the depth
17 severance line?

18 MR. RANKIN: It does.

19 MR. BROOKS: Has your company been in
20 negotiations with Devon?

21 MR. RANKIN: I'm not sure of the extent of those
22 discussions. My understanding is there's been no objection
23 to the proposals here or for the pooling.

24 MR. BROOKS: Okay. Now, there are other
25 interests being pooled, but as to which there is depth

1 severance?

2 MR. RANKIN: Yeah. When you look at Exhibit 1B,
3 second page, you will see that there are a couple of other
4 interests that are divided across different depths,
5 principally being Devon's interest. However, there is a EOG
6 that has some. Its interest varies depending on that, as
7 well as the overriding -- some overriding royalty interests.

8 MR. BROOKS: Well, I would assume that companies
9 like Devon and EOG can take care of themselves. Are there
10 any interests that are unlocatable or that you have not been
11 in correspondence -- your client has not been in
12 correspondence with that are only below the depth severance
13 line?

14 MR. RANKIN: That's working interest?

15 MR. BROOKS: Yeah.

16 MR. RANKIN: My understanding is there are not.

17 MR. BROOKS: But there are royalty interests.

18 MR. RANKIN: There are overrides below the depth
19 severance.

20 MR. BROOKS: That are different from the
21 overrides above the depth severance?

22 MR. RANKIN: Yes.

23 MR. BROOKS: Okay, I think I get the layout. Of
24 course, one way we could go on this depth severance case
25 is -- I have never seen anybody that wanted to do it yet, so

1 we probably won't go there, but we can't in this case
2 because you -- you are only asking for a depth severance
3 unit. We are going to do the other part later, is my
4 understanding.

5 But my theory is that the Division would have the
6 authority, perhaps, anyway, to pool the entire unit, and
7 agree that any well drilled within the unit would be -- the
8 production from wells above and below the depth severance
9 would be allocated between the parties on a formula that the
10 Division found would be fair and reasonable which hopefully
11 would be agreed upon by the parties which would be the ideal
12 way to get there.

13 That's just thrown out as an idea of where the
14 Division might eventually think it's good to go, but like I
15 say, I don't think I've talked to anybody about doing that.

16 MR. RANKIN: Understood. Absent that, I think
17 the approach here would be just to keep that separate space.

18 MR. BROOKS: And require a new order if you are
19 going to drill closer to the line than the one you are now
20 proposing.

21 MR. RANKIN: And the anticipated infill well.

22 MR. BROOKS: Right, the two.

23 MR. RANKIN: Understood, yeah.

24 MR. BROOKS: Okay. Thank you.

25 MR. JONES: I hate to drag this out, these depth

1 severance barriers just depend on a distance away from them
2 anyway. I mean, hardly you can find a, a barrier that you
3 can't get close enough to frac through it if you -- so, you
4 know, they always depend on that.

5 And the people below have been noticed, and they
6 are agreeable to this. I suppose they run their frac
7 simulation to see if they think the frac is going to be
8 propped down below where -- one way or the other. But the
9 only weakness I see technically in the presentation is that
10 the geologist is saying that it won't go -- it won't be
11 produced below that instead of having a schematic of a frac
12 design from a frac'ing company or the -- the Percussion
13 engineers that show a schematic that it's not going to be
14 propped below the depth barrier line. But the only issue --
15 then it comes back to the issue that if Devon is okay, if
16 everybody is okay with it, well, that's their -- we don't
17 have a depth severance on horizontal drilling rules now
18 anyway between pools.

19 MR. BROOKS: Right.

20 MR. JONES: And we drill, you know, within a few
21 feet sometimes of one pool.

22 MR. RANKIN: In this case it might -- where
23 there is a proposal is out and application to pool for the
24 depths below, I don't see there is any impairment to
25 drilling with that situation.

1 MR. BROOKS: Well, this is a technical issue, and
2 I appreciate your input on it because I really did not know
3 what the significance would be, and I still don't, but I
4 know there's more before you can drill, what is the
5 significance of the testimony to that, as to the existence
6 of a frac barrier in any case, but I have have to rely on
7 the professionals in that area to guide where he might think
8 we ought to go on that. So I just say we need to have some
9 internal discussion on this. We may need some more
10 information from your geologist.

11 MR. JONES: The only other technical information
12 I would ask for if you -- if they have it available is the,
13 is the proposed frac design schematic, but, you know, what
14 the frac influence and what it props and what it drains is
15 always two or three different things, so even that has a lot
16 of weaknesses to it, so --

17 MR. BROOKS: And anything in the physical world,
18 you don't know what you think it's going to be.

19 MR. JONES: It would just be a simulation. It
20 wouldn't be the actual history match post frac report, so --
21 so, really, we don't -- technically, having somebody testify
22 that it's not going to influence is really -- I think the
23 strength of it is, if they notice people below and they are
24 okay.

25 MR. BROOKS: Well, I appreciate your observations

1 because clearly I don't know what the technical significance
2 of the geologist is, or the engineer testifying, what the
3 technical significance of that testimony would be, and we
4 don't it to get like, in your opinion, is this application
5 a -- because that -- the geologist that had that question
6 hasn't informed us very much. Okay, thank you.

7 MR. RANKIN: I ask that Case Number 20 -- 20229
8 be taken under advisement.

9 HEARING EXAMINER: Okay. Case Number 20229 will
10 be taken under advisement.

11 (Adjourned.)

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