

1 STATE OF NEW MEXICO
2 ENERGY, MINERAL AND NATURAL RESOURCES DEPARTMENT
3 OIL CONSERVATION COMMISSION

ORIGINAL

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

7 CASE NO. 15448

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9 NONSTANDARD OIL SPACING AND PRORATION UNIT AND
10 COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO

11 CASE NO. 15449

12 BEFORE: MICHAEL McMILLAN, Lead Examiner
13 DAVID K. BROOKS, Legal Examiner
14 WILLIAM JONES, Examiner

15 TRANSCRIPT OF PROCEEDINGS

16 March 31, 2016

17 Santa Fe, New Mexico

18 This matter came on for hearing before the New
19 Mexico Oil Conservation Division, MICHAEL McMILLAN,
20 Lead Examiner, and DAVID K. BROOKS, Legal Examiner,
21 and WILLIAM JONES, Examiner, on Thursday, March 31,
22 2016, at the New Mexico Energy, Minerals and Natural
23 Resources Department, 1220 South St. Francis Drive,
24 Room 102, Santa Fe, New Mexico.

25 REPORTED BY: PAUL BACA, CCR #112

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I N D E X

CERTIFICATE OF COURT REPORTER 27

EXHIBIT:	DESCRIPTION	
1	Affidavit of John Langhoff	12
2	Drilling Title Opinion	12
3	Affidavit of Wes Perry	12

1 EXAMINER McMILLAN: I'd like to call Case
2 Number 15448, application of Mewbourne Oil Company
3 for a nonstandard oil spacing and proration unit and
4 compulsory pooling, Eddy County, New Mexico.

5 Call for appearances.

6 MR. BRUCE: Mr. Examiner, Jim Bruce of
7 Santa Fe representing Mewbourne Oil Company.

8 EXAMINER McMILLAN: Any other appearances?

9 MR. HALL: Mr. Examiner, Scott Hall,
10 Montgomery & Andrews, Santa Fe, appearing on behalf
11 of EGL Resources, Incorporated, and Black Mountain
12 Operating Company.

13 And, Mr. Examiner, I believe you can also
14 call Case 15449.

15 EXAMINER McMILLAN: Okay. This will be
16 combined with Case Number 15449, application of
17 Mewbourne Oil Company for a nonstandard oil spacing
18 and proration unit and compulsory pooling, Eddy
19 County, New Mexico.

20 I assume the appearances will be the same?

21 MR. HALL: Yes, sir.

22 MR. BRUCE: Yes, sir.

23 EXAMINER McMILLAN: I guess the first
24 thing we're going to do is talk about the motion to
25 dismiss?

1 MR. BRUCE: Correct.

2 EXAMINER McMILLAN: Okay. Please proceed
3 with that.

4 MR. HALL: It's my motion, Mr. Examiner.

5 So by its applications in these two cases,
6 Mewbourne is asking you to force pool acreage that
7 my clients contend is covered by an existing
8 operating agreement. And because an operating
9 agreement is the same as a voluntary plan for
10 consolidation, compulsory pooling authority under
11 the pooling statute cannot be applied.

12 Mewbourne is going to dispute the
13 applicability of the operating agreement. They are
14 contending that the operating agreement has expired
15 by virtue of some of gaps in production from a well
16 that's located on the acreage.

17 And this is -- for the record, let me get
18 the acreage. It's the -- for both units it's
19 basically the south half of Section 28, Township 18
20 south, Range 29 east.

21 And Mewbourne is proposing two 160-acre
22 wells in the north half/south half, and the other
23 south half/south half.

24 And so if you would refer to our motion,
25 we have given you some excerpts from the operating

1 agreement. And the salient language in that has to
2 do with the term of the agreement.

3 We've outlined that for you at page 2 of
4 our motion, and I can summarize this language for
5 you, basically.

6 So the term of the agreement shall
7 continue in force so long as any well or wells
8 produce or are capable of production, and for an
9 additional period of 90 days from cessation of all
10 production.

11 That's the focus of our inquiry today.

12 There -- I think it's undisputed.

13 If you look at the motion and the
14 response, there was a Morrow well drilled on the
15 south half of Section 28 years and years ago, and I
16 could anticipate that Mr. Bruce is going to provide
17 you with some OCD production information for that
18 well. It's the Trigg-Jennings Com Number 1
19 originally drilled to the Morrow.

20 We acknowledge there were some gaps in
21 production.

22 In 2004 my client, EGL Resources,
23 reentered that well and recompleted it in the Strawn
24 formation, and it's continued to produce from that
25 ever since the recompletion.

1 I don't think there's any dispute about
2 the production history here.

3 MR. BROOKS: Let me ask you a question
4 just to clarify that, though.

5 The Morrow zone has been plugged, and it
6 has never produced since 2004.

7 Is that correct?

8 MR. HALL: I believe that's correct.

9 MR. BROOKS: Well --

10 MR. HALL: I would have to refer back to
11 the --

12 MR. BROOKS: I don't know whether I'm
13 supposed to do that or not, but I did look at the
14 OCD file on this, and I think that's what it said.
15 I didn't print it out.

16 MR. HALL: I think that's right.

17 MR. BROOKS: Go ahead.

18 MR. HALL: So that's going to be the focus
19 of the inquiry: Was there production of the well?

20 MR. BROOKS: Right.

21 MR. HALL: I think there's no dispute.

22 MR. BROOKS: It was recompleted in the
23 Strawn?

24 MR. HALL: That's correct, and it
25 continues to produce from the Strawn.

1 MR. BROOKS: Right.

2 MR. HALL: And so Mewbourne will point out
3 to you that, Well, we have these gaps in production;
4 and, therefore, the operating agreement terminated
5 by its own terms. And we disagree with that.

6 Because if you look specifically at the
7 language it says, as I said, wells -- so long as any
8 well or wells produced or are capable of producing.
9 It doesn't say must be producing in paying
10 quantities. It just says capable of producing.

11 And so what we've done is, we provided you
12 with what I've marked as Exhibit Number 1, and
13 that's the affidavit of John Langhoff. He's a
14 petroleum engineer for EGL Resources.

15 And appended to his affidavit is a well
16 workover report that begins on April 26, 2004.
17 That's the very first entry, and that's when EGL
18 moved in to recompleting the well in the Strawn.

19 And what they did, if you look at that
20 very first entry, when they took the casing valve
21 off, the well began to flow out of the Morrow
22 formation and they had to kill the well in order to
23 do the recompletion.

24 So Mr. Langhoff was on location for that
25 workover. And his affidavit indicates as much, that

1 the well was capable of producing and, in fact, it
2 flowed from the Morrow.

3 They continued with the operation and put
4 the Strawn on completion, so I think that
5 establishes that the well was capable of production
6 and has been producing ever since.

7 So we have also provided you with -- if
8 you'll refer to a copy of Exhibit Number 2.

9 Exhibit Number 2 is an excerpted copy of a
10 52-page drilling title opinion that Mewbourne Oil
11 Company generated in-house just this year.

12 And what I've done for you is, I've
13 attempted to give you every page of that title
14 opinion where the existence of this operating
15 agreement is noted.

16 And if you'll look at page 2, the first
17 notation of that is the operating agreement dated
18 February 5, 1979, covering the south half of
19 Section 28, and it is noted in 10 other places in
20 here.

21 And I can represent to you -- and I have
22 the complete title opinion. If you wish to wade
23 through 52 pages of title opinion I can leave that
24 with you.

25 But I can represent to you that nowhere in

1 that title opinion does it say the operating
2 agreement does not apply to these lands. It says
3 just the opposite.

4 If you will look at page 8, for instance,
5 at the very top of the page it says this interest --
6 and it's talking about lease interest.

7 "This interest is subject to an operating
8 agreement dated February 5, 1979."

9 And if you look at the bottom of page 8 it
10 shows that the title examiner has credited my
11 client, EGL Resources, with a contract interest
12 under the operating agreement.

13 Mewbourne is recognizing the applicability
14 of the operating agreement in its own title opinion.

15 So what I think this means for you,
16 Mr. Examiner, is your inquiry is to focus on whether
17 or not an operating agreement exists in this case.
18 It's not for you to interpret it.

19 We think the operating agreement is clear
20 and unambiguous, in the sense that as long as there
21 is a well capable of production the operating
22 agreement continues to subsist --

23 Now I will point out to you, when you look
24 at the term of operating agreements, the level of
25 scrutiny is much higher than what you would give to

1 a conveyance, a lease, or an assignment.

2 An operating agreement is not an
3 instrument of conveyance.

4 The term is not a clause of limitation.
5 It's not a habendum clause. It's not automatic.

6 Someone under an operating agreement who
7 has contractual rights has to make an affirmative
8 step to seek the termination of an operating
9 agreement, and that's not been done here.

10 However, I would point out to you, if you
11 would look back to the operating -- or title
12 opinion.

13 If you look at page 11 of that and the
14 preceding page -- so the preceding page, page 10, is
15 a portion of the lease summary.

16 And the lease that I've highlighted for
17 you here is Federal Lease NMNM030752. It's shown
18 covering most of the south half of Section 28.

19 I've underlined that for you there.

20 Then you will look at the explanation for
21 that lease, and I will quote to you from the title
22 opinion itself. And this is discussing the term of
23 the lease. It says:

24 "By decision dated January 9, 2015,
25 communitization agreement CASRN1567 terminated;

1 therefore, Federal Lease NMNM030752, which is held
2 by actual production, was automatically extended two
3 years, through December 1, 2011, and for so long
4 thereafter as oil and gas is produced in pay
5 quantities."

6 So that's a far lower threshold of inquiry
7 that the title examiner makes when he's looking at
8 the effective -- effectiveness of the lease.

9 And in this case they found that the lease
10 was good. Even though there may have been gaps in
11 production, the lease continued in full force and
12 effect beyond the point in 2004 when the workover
13 was started.

14 So that's just an example. If the lease
15 subsisted, then the operating agreement has to
16 subsist as well.

17 And finally, if you would look at what
18 we've marked as Exhibit Number 3, that's the
19 affidavit of Wes Perry. He's president of EGL
20 Resources. And this is simply an affidavit
21 authenticating the title opinion which they obtained
22 from Mewbourne. It's maintained in EGL's files.

23 Again I have available to you, if you
24 wish, full copies of both the operating agreement
25 and the title opinion.

1 And that concludes my argument.

2 MR. BROOKS: Well, I have some questions.

3 But I guess the first one, before I allow Mr.- --
4 before I invite Mr. Bruce to respond -- I'm assuming
5 he probably wants to -- but the question of these
6 exhibits.

7 Are you going to offer those in evidence
8 for the purposes of this motion to compel?

9 MR. HALL: Yes, and I do so.

10 MR. BROOKS: Okay. And that's Exhibits 1,
11 2, and 3?

12 MR. HALL: Right.

13 MR. BRUCE: I have no objections.

14 MR. BROOKS: Okay. Exhibits 1, 2, and 3
15 will be admitted for purposes of ruling on the
16 motion to compel.

17 MR. BROOKS: And you may proceed to
18 respond.

19 Well, I have one threshold question for
20 you.

21 Is there any dispute that the interest
22 in -- to Mewbourne -- of Mewbourne is governed by
23 this operating agreement if, indeed, it is in force?

24 MR. BRUCE: Mewbourne asserts that the JOA
25 does not affect its interest because the agreement

1 terminated.

2 MR. BROOKS: I agree. I understood that
3 from your response.

4 But is it -- is it agreed that Mewbourne
5 derives its interest from a party who was bound by
6 the joint operating agreement originally? There's
7 no dispute about that?

8 MR. BRUCE: Yeah. I mean they derive
9 parties from -- the interest from the JOA owners.

10 MR. HALL: Yes.

11 MR. BROOKS: I wanted to clarify that for
12 the record.

13 Okay. You may proceed, Mr. Bruce.

14 MR. BRUCE: Yes. Mr. Examiner, in what
15 you were talking about earlier, if you'd -- let's go
16 to my response to the motion.

17 Attached as Exhibit A is simply the
18 well -- the original well completion report in the
19 Morrow formation from January -- the well was
20 completed in April of 1979 in the Morrow formation
21 and did produce for a number of years from the
22 Morrow formation.

23 MR. BROOKS: Okay.

24 MR. BRUCE: And also attached is a C-102.

25 And then attached as Exhibit D is the well

1 completion report in the Strawn formation from May
2 of 2004, along with the dedication plat.

3 But again, we are looking at the same
4 provision that Scott referenced. The agreement
5 remains valid for as long as there is a well capable
6 of producing plus 90 days, and so I think we're
7 looking at the clear language of the JOA.

8 First and foremost, I would say that I
9 think when something says capable of producing, the
10 implication at law is producing in paying
11 quantities. Certainly that's the interpretation of
12 oil and gas leases.

13 So I don't think you just look at marginal
14 production, I think you look at producing in paying
15 quantities.

16 And looking at that, then you turn to
17 exhibit -- Attachment B to my response and turn to
18 the production plat.

19 And in the OCD readouts of production, I
20 think if you look at that, certainly there was no
21 production for a year. Absolutely zero production
22 for a year.

23 And for about four years before that it
24 was not capable of producing in paying quantities.

25 If you look at the production from prior

1 years, sometimes it might have produced 17 MCF a
2 month, 1 MCF a month, 22 MCF a month.

3 Even at that point, under those operating
4 costs, it was not capable of producing in paying
5 quantities.

6 And then for a while it was apparently
7 incapable of producing at all.

8 I recognize what Scott said about his
9 affidavit saying that when they went in to rework
10 the well they had to kill the well; there was some
11 production problem.

12 If that was the case, why didn't they just
13 continue producing from the Morrow? Clearly, it was
14 not capable of producing in paying quantities.

15 And based thereon, we assert that the --
16 one more thing.

17 I think you have to look at capable
18 production, not just there's some uphole zone. I
19 think you're looking at what the well is completed
20 in.

21 And it definitely ceased producing for 90
22 days from the Morrow formation. You don't look at
23 speculative uphole zones.

24 Was the well capable of producing from the
25 zone it was completed in?

1 And it clearly was not capable of doing
2 that.

3 And they have produced no evidence that
4 the ratif- -- that the JOA was ratified after 2004,
5 and I think you need something in writing to ratify
6 it.

7 And therefore we assert, again, that the
8 JOA has terminated by its own terms and Mewbourne is
9 entitled to move forward with its forced pooling.

10 MR. BROOKS: What was -- if I had the
11 production data in front of me -- and I believe
12 Mr. McMillan has it.

13 But what was the last month before
14 April 26, 2004, that this well -- that production
15 from this well was reporting to the OCD?

16 MR. BRUCE: Well, it was reported in March
17 of 2000- -- well, wait a minute. Let me get the
18 right amount.

19 And on what I gave you, the printout from
20 the OCD, it does reference whether the production
21 was from the Turkey Track Morrow north pool or from
22 the Empire Strawn gas pool.

23 MR. BROOKS: That was what I was noticing
24 yesterday, and I thought usually we reported --
25 usually production was shown separately from

1 different pools. But it looked like there was only
2 one production table in that file, which surprised
3 me.

4 MR. BRUCE: Yeah. But looking at
5 production from 2003 to 2004, in January of 2000- --
6 let me make sure I've got the right numbers here.

7 In January of 2003 the well produced 44
8 MCF of gas.

9 In February of 2003, zero.

10 March of 2003, 4 MCF of gas.

11 MR. BROOKS: So there was production
12 reporting in very small quantities --

13 MR. BRUCE: So in --

14 MR. BROOKS: -- through March of 2004 or
15 2003?

16 MR. BRUCE: 2003.

17 MR. BROOKS: 2003. What about 2000- --

18 MR. BRUCE: In 2004 it did not produce
19 until May of 2004, and that was Strawn production.

20 Although -- although it -- the heading at
21 the top for 2004 says Turkey Track Morrow, clearly,
22 the well was recompleted in May of 2000- --

23 MR. BROOKS: Well, the specific question I
24 was interested in, I believe, then, was -- is that
25 the last time it produced from the Morrow was March

1 of 2003.

2 Is that correct?

3 MR. BRUCE: That's correct.

4 MR. BROOKS: I mean reported production.

5 MR. BRUCE: Reported production, yeah.

6 So 46 MCF for the 2003 calendar year. I
7 mean, you're talking hundreds of dollars of revenue,
8 maybe.

9 Maybe a hundred dollars of revenue for the
10 year.

11 MR. BROOKS: Now, if I had brought my --
12 my copy of the motion to compel down here as I
13 intended to do, but I got down here without it -- I
14 would know the answer to this question, I guess,
15 because it's probably on the cover sheet of -- you
16 probably included the cover sheet of the operating
17 agreement.

18 MR. BRUCE: Uh-huh.

19 MR. BROOKS: But my question, then, is:
20 Which edition of the AAPL oper- -- form is this?

21 MR. HALL: 1977.

22 MR. BROOKS: That's an old one. Hopefully
23 they've improved this language since then.

24 Are you through, Mr. Bruce?

25 MR. BRUCE: I'm through.

1 MR. BROOKS: Do you have anything further,
2 Mr. Hall?

3 MR. HALL: Yeah. I'll just point out at
4 page 2 of the response to our motion to dismiss,
5 Mewbourne is asking you to make the determination
6 that there was no production in paying quantities.

7 And again, I would invite you to look at
8 the expressed language of the operating agreement.
9 The term paying is not expressed anywhere in there.
10 There's nothing about automatically terminates. You
11 won't find language like that in the operating
12 agreement.

13 MR. BROOKS: Right.

14 MR. HALL: I've written more than one
15 title opinion in my career, as I know Mr. Bruce has.

16 MR. BROOKS: And I have.

17 MR. HALL: And you ignore these operating
18 agreements to your peril, and so you do have to deal
19 with them. Frankly, I don't know how Mewbourne gets
20 around it's own title agreement in this case.

21 MR. BRUCE: I agree, in part, with Scott
22 that old JOAs have become the bane of my title
23 existence.

24 MR. BROOKS: Well, at the risk of being
25 accused of assisting my brethren in the profession

1 with -- and to accumulate billable hours, I'm going
2 to ask you-all to brief the issues in this case,
3 because I have read various cases having to do with
4 lease termination.

5 Now, I don't recall that I've ever read a
6 case that construed a provision like this. That's
7 one. That's Item 1.

8 If there's anything that construes this
9 kind of provision in an operating agreement,
10 specifically this form, because it was widely used
11 for a period of time -- probably not as widely used
12 as -- what was it, the 1982 form was the next one?

13 MR. HALL: I think that's right.

14 MR. BRUCE: Correct.

15 MR. BROOKS: The fact that this exact form
16 was probably -- this exact form was probably not the
17 current form for very long may have limited its use,
18 although some people like it.

19 But if there's anything that construes
20 this particular provision in any jurisdiction, I
21 would be interested to find it. I realize it's not
22 easy to find -- it would not be easy to find because
23 what sequence of words would a Court use to describe
24 it? That's hard to predict.

25 And you're going to get -- if you're

1 working on capable of production, you're going to
2 get a gazillion hits, and most of them are going to
3 be lease cases.

4 MR. BRUCE: Correct.

5 MR. BROOKS: The other aspect that
6 fascinates me about this case is that it's
7 well-established that the New Mexico Oil
8 Conservation Division -- and I think it's probably
9 true of conservation agencies in just about every
10 state that has them -- does not have the authority
11 to construe contracts.

12 But we're in a case here where if we have
13 jurisdiction to determine jurisdiction, we would
14 have to exercise it by construing the contract,
15 because you can't come to a conclusion about this
16 without construing the contract.

17 So that's an issue: What is the authority
18 of the Oil Conservation Division when it -- what
19 does the Oil Conservation Division do when it can
20 only determine whether it can proceed to make a
21 decision in the case by first construing a contract?

22 And my guess is, there's -- I think
23 there's no author- -- I'm reasonably convinced
24 there's no authority on that in New Mexico.

25 But I could stand to be corrected if I

1 have overlooked something.

2 MR. BRUCE: Could we not ask the oldest
3 person in the room, Bill Carr?

4 MR. BROOKS: Well, you know, I would
5 certainly appreciate a friend of the Court
6 contributing any information he might have.

7 MR. CARR: I'll see if I can formalize the
8 relationship.

9 MR. BROOKS: But I'm not aware of any
10 authority in New Mexico, and I have perused the
11 decisions, the relatively few decisions involving
12 the Oil Conservation Division in New Mexico, with
13 considerable care over the last 15 years.

14 But there might be in Texas or Oklahoma,
15 where there's a lot more conservation -- oil
16 conservation cases than there are in New Mexico.

17 So I'm giving you assignment -- an
18 assignment on which there -- you may be able to
19 accumulate a significant number of billable hours.

20 But that -- my recommendation to the
21 examiner is going to be that we take this motion to
22 dismiss under advisement and proceed to receive
23 evidence on the merits.

24 So if you-all are prepared to go forward
25 on the merits.

1 Are you so prepared, Mr. Bruce?

2 MR. BRUCE: I'm prepared, yeah, but not
3 on -- not today at this time.

4 MR. BROOKS: Not today? Okay. Very good.
5 Then we will have to continue this case
6 until such time as --

7 MR. BRUCE: And I was going to ask, with
8 respect to filing briefs, I -- you know, normally we
9 generally say two weeks. I was wondering if we
10 could ask for three.

11 MR. BROOKS: That's fine with me. I've
12 got plenty of other things to do.

13 MR. BRUCE: And then maybe continue the
14 case provisionally for four weeks, Scott?

15 MR. HALL: I think that's all right.
16 April 14 is not looking --

17 MR. BROOKS: April 14 is getting awfully
18 full.

19 MR. HALL: Yeah.

20 MR. BROOKS: Of course it may get emptied
21 rapidly, like today's docket did.

22 Okay. I will turn it back over to you,
23 Mr. McMillan.

24 EXAMINER McMILLAN: Okay. We're going
25 to...

1 MR. JONES: Are you going to wait to rule
2 on those two, the motion and --

3 MR. BROOKS: I'm going to take the motion
4 under -- I propose we take the motion under
5 advisement.

6 MR. JONES: But you're going to take the
7 evidence they come up with?

8 MR. BROOKS: Yeah. My idea is to take the
9 evidence so we can provide the director with a
10 complete record.

11 My theory on this is that this motion to
12 dismiss, to raise these, is a dispositive -- is, in
13 effect, a dispositive motion; and, therefore, it is
14 something that the examiner probably does not have
15 the authority to rule on. It's something that the
16 director would have to make the decision on.

17 So what I will do, if -- once we've heard
18 the evidence -- is Mr. McMillan will -- I will
19 invite Mr. McMillan to write an order that is
20 subject to our ruling on the motion to dismiss.

21 Then I will write a proposed order on the
22 motion to dismiss, and we'll submit them both to the
23 Honorable Mr. Catanach and let him make a decision.

24 MR. BRUCE: Okay.

25 EXAMINER McMILLAN: So we will take the

1 motion under advisement, and we will go forward with
2 the case based on the merits, and it shall be
3 continued until April 28.

4 MR. BROOKS: Okay. And I would add
5 that -- I don't know if you've been notified of -- I
6 think the order in Case 15433 was signed yesterday.

7 Is that correct?

8 MR. HALL: I heard something about that.

9 MR. BROOKS: My name doesn't appear on
10 that order, but I wrote an opinion on your motion to
11 dismiss, which is basically incorporated within that
12 order.

13 But it has noth- -- it doesn't have
14 anything -- it doesn't contribute to anything in
15 this case because the facts are very different.
16 So...

17 MR. HALL: I agree.

18 MR. BROOKS: I don't think it has anything
19 to do with this case.

20 MR. HALL: I can't wait to read it.

21 MR. BROOKS: Well, I am not known for
22 being short of wind.

23 Thank you.

24 EXAMINER McMILLAN: Okay. This concludes
25 today's docket, and thank you very much.

(Proceedings concluded at 10:35 a.m.)

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I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. _____
heard by me on _____

_____, Examiner
Oil Conservation Division

CERTIFICATE

I, Paul Baca, RPR, CCR in and for the State of New Mexico, do hereby certify that the above and foregoing contains a true and correct record, produced to the best of my ability via machine shorthand and computer-aided transcription, of the proceedings had in this matter.



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