

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 NO. 13,692

APPLICATION OF MARBOB ENERGY CORPORATION )  
FOR COMPULSORY POOLING, EDDY COUNTY, NEW )  
MEXICO )

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID R. CATANACH, Hearing Examiner

May 11th, 2006

Santa Fe, New Mexico

2006 MAY 30 PM 2 32

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday, May 11th, 2006, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

\* \* \*

## I N D E X

May 11th, 2006  
Examiner Hearing  
CASE NO. 13,692

	PAGE
APPEARANCES	3
APPLICANT'S WITNESSES:	
<u>ROSS DUNCAN</u> (Landman)	
Direct Examination by Mr. Carr	4
Examination by Examiner Catanach	14
REPORTER'S CERTIFICATE	20

\* \* \*

## E X H I B I T S

Applicant's	Identified	Admitted
Exhibit 1	8	14
Exhibit 2	8	14
Exhibit 3	11	14
Exhibit 4	11	14
Exhibit 5	12	14
Exhibit 6	14	14

\* \* \*

## A P P E A R A N C E S

## FOR THE DIVISION:

GAIL MacQUESTEN  
Deputy General Counsel  
Energy, Minerals and Natural Resources Department  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

## FOR THE APPLICANT:

HOLLAND & HART, L.L.P., and CAMPBELL & CARR  
110 N. Guadalupe, Suite 1  
P.O. Box 2208  
Santa Fe, New Mexico 87504-2208  
By: WILLIAM F. CARR

\* \* \*

1 WHEREUPON, the following proceedings were had at  
2 1:00 p.m.:

3 EXAMINER CATANACH: Call the hearing to order,  
4 and at this time I'll call Case 13,692, Application of  
5 Marbob Energy Corporation for compulsory pooling, Eddy  
6 County, New Mexico.

7 Call for appearances.

8 MR. CARR: May it please the Examiner, my name is  
9 William F. Carr with the Santa Fe office of Holland and  
10 Hart, L.L.P. We represent Marbob Energy Corporation in  
11 this matter, and I have one witness who needs to be sworn.

12 EXAMINER CATANACH: Okay. Any additional  
13 appearances in this case?

14 Okay, will the witness please stand to be sworn  
15 in?

16 (Thereupon, the witness was sworn.)

17 ROSS DUNCAN,  
18 the witness herein, after having been first duly sworn upon  
19 his oath, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. CARR:

22 Q. Would you state your full name for the record,  
23 please?

24 A. Ross Duncan.

25 Q. Mr. Duncan, where do you reside?

1 A. Artesia, New Mexico.

2 Q. And by whom are you employed?

3 A. Marbob Energy Corporation.

4 Q. And what is your current position with Marbob  
5 Energy Corporation?

6 A. I'm a landman.

7 Q. Have you previously testified before the New  
8 Mexico Oil Conservation Division?

9 A. No, I haven't.

10 Q. Could you summarize for Mr. Catanach your  
11 educational background?

12 A. I have a bachelor's degree in business from West  
13 Texas A&M University, which I obtained in August of '03.

14 Q. And since graduation for whom have you worked?

15 A. I worked two years for Mack Energy Corporation  
16 and this last year was with Marbob Energy.

17 Q. Are you familiar with the Application filed in  
18 this case on behalf of Marbob?

19 A. Yes.

20 Q. In fact, you are the person who is charged in  
21 Marbob with putting the interests together for the subject  
22 spacing unit; is that not right?

23 A. Yes, I was.

24 Q. And you're familiar with the status of the lands  
25 in the general area?

1           A.    Yes.

2           MR. CARR:  At this time we tender Mr. Duncan as  
3 an expert in petroleum land matters.

4           EXAMINER CATANACH:  Mr. Duncan is so qualified.

5           Q.    (By Mr. Carr)  Would you briefly review for Mr.  
6 Catanach what it is that Marbob seeks with this  
7 Application?

8           A.    Marbob seeks an order pooling all mineral  
9 interests from the surface to the base of the Morrow  
10 formation under the following described acreage in Section  
11 14, Township 22 South, Range 26 East, NMPM, Eddy County,  
12 New Mexico:

13                The east half for all formations and/or pools  
14 developed on a 320-acre spacing, which includes the  
15 Undesignated South Morrow -- or South Carlsbad-Morrow Gas  
16 Pool, Undesignated South Carlsbad-Atoka Gas Pool, South  
17 Carlsbad-Wolfcamp Gas Pool, and the Undesignated South  
18 Carlsbad Strawn Pool;

19                The southeast quarter for all formations and/or  
20 pools developed on 160-acre spacing;

21                The southeast quarter of the southeast quarter  
22 for all formations and/or pools developed on a 40-acre  
23 spacing, which includes but is not necessarily limited to  
24 the Undesignated South Carlsbad-Delaware Pool.

25                This is all to be dedicated to our Whiskey Girl

1 Fee Number 1 well.

2 The well is to be drilled at a surface location  
3 of 464 feet from the south line, 1119 feet from the east  
4 line, with a bottomhole location of 660 feet from the south  
5 line and 990 feet from the east line in unit letter P of  
6 Section 14.

7 Q. Now Mr. Duncan, we have an unorthodox surface  
8 location?

9 A. Correct.

10 Q. What was the reason for that?

11 A. There are multiple dwellings around where we're  
12 drilling this well.

13 Q. You are anticipating, however, that the well will  
14 be at a standard location if it's in any formation  
15 developed on 320-acre spacing?

16 A. Yes.

17 Q. And it would be at a standard location if you  
18 encountered a producing formation spaced on 40 acres?

19 A. Yes, it would be.

20 Q. It might be standard on 160, might not?

21 A. Well, at this time I'm not aware of any  
22 formations that would require 160-acre spacing.

23 Q. If you intersect a formation developed on 160-  
24 acre spacing, Marbob would survey the well and, if needed,  
25 then come back and seek an unorthodox location --

1 A. Correct.

2 Q. -- is that right?

3 Could you go to what's been marked as Marbob  
4 Exhibit Number 1, please, and identify that and review it  
5 for Mr. Catanach?

6 A. Yes, Exhibit Number 1 is a land map showing the  
7 spacing unit, well location and ownership in the area.

8 Q. And what is the primary objective of the proposed  
9 well?

10 A. The primary objective is the Morrow formation and  
11 Undesignated South Carlsbad-Morrow Gas Pool.

12 Q. Let's go to Exhibit Number 2. Exhibit Number 2  
13 sets forth mineral interest owners in the spacing unit; is  
14 that right?

15 A. That's correct.

16 Q. And these are all the mineral interest owners and  
17 the percentage interest that they own, as reflected by the  
18 record title for this property?

19 A. Correct.

20 Q. When did you start working on this prospect?

21 A. In August of '05.

22 Q. And how did you go about determining who owned  
23 interest in the spacing unit that was the subject of the  
24 case?

25 A. I went off of title opinions prepared by Jim Haas

1 at Losey, Carson and Haas.

2 Q. And when did you receive those title opinions?

3 A. I started receiving them in November of '05.

4 Q. And when did you first contact the owners in the  
5 spacing unit?

6 A. February of '06.

7 Q. And who did you contact?

8 A. I contacted all the working interest and mineral  
9 interest owners of record at the time.

10 Q. Okay, and what success have you had?

11 A. I have reached an agreement on 100 percent of the  
12 working interests, and on the mineral interest I have all  
13 the interests committed except for the interests from  
14 owners from -- who I could not find an address for. I have  
15 reached an agreement -- If you'd look on Exhibit Number 2,  
16 I have reached an agreement with Ruth Monk, Larry Gene  
17 Davis and Donald Davis.

18 Q. What did you do to try and locate these other  
19 interest owners?

20 A. I searched county records, Internet searches, and  
21 contacted -- I've had contact with individuals at the last  
22 known address.

23 Q. And how large are the interests that are  
24 currently outstanding in the spacing unit?

25 A. The interests are small. They were created when

1 a subdivision -- the Holly subdivision was created. The  
2 minerals were severed when tracts were reconveyed.  
3 Approximately 98.5 percent of the minerals have been  
4 voluntarily committed to the well.

5 Q. And since the time that the Application was  
6 filed, a couple of interest owners have popped up and you  
7 have been negotiating leases with them; is that right?

8 A. That's correct.

9 Q. And we notified everyone who had a record  
10 interest as of the day the Application was filed?

11 A. That is correct.

12 Q. As to funds attributable to any interest of any  
13 unknown owner, what does Marbob propose to do with those?

14 A. We'll place the funds in an escrow account in  
15 Eddy County, New Mexico.

16 Q. In your opinion, have you made a good faith  
17 effort to locate and obtain voluntary participation of the  
18 owners of all interests in the units that are subject to  
19 pooling?

20 A. Yes.

21 Q. Let me ask you, I mean, we have -- we're seeking  
22 pooling of a 320-acre unit, a 160 unit and a 40-acre unit?

23 A. Yes.

24 Q. And depending on the size of the unit, the  
25 percentage ownership changes slightly on each of these

1 owners, does it not?

2 A. Now you're talking about --

3 Q. Each of the people that are outstanding. Their  
4 percentages might change, but you've got the same people?

5 A. You've got the same people, yes.

6 Q. Is Exhibit Number 3 copies of letters reflecting  
7 your efforts to reach voluntary agreement with the mineral  
8 owners that are identified on Exhibit Number 2?

9 A. Yes, it is.

10 Q. What is Exhibit Number 4?

11 A. Exhibit Number 4 is Marbob's authority for  
12 expenditure for our Whiskey Girl Fee Well. Note that the  
13 surface location is listed and the bottomhole location is  
14 not. That was just a mistake on our part, not listing the  
15 bottomhole.

16 Q. And the bottomhole location is 660 from the south  
17 line and 990 from the east?

18 A. 990 from the east, yes, sir.

19 Q. And that is standard for the targeted formation?

20 A. Yes, it is.

21 Q. Would you review the costs that are set forth on  
22 Exhibit 4?

23 A. Sure. The dryhole cost is \$1,528,275, and the  
24 completed well cost is \$2,231,250.

25 Q. Are these costs in line with what's charged for

1 similar wells in the area?

2 A. Yes, they are.

3 Q. Do they reflect Marbob's costs for drilling  
4 similar wells?

5 A. Yes.

6 Q. Is Exhibit Number 5 a copy of the accounting  
7 procedures for joint operations that is part of the joint  
8 operating agreement proposed for this well?

9 A. Yes.

10 Q. Do these COPAS procedures provide for periodic  
11 adjustment of overhead and administrative charges?

12 A. Yes, they do.

13 Q. And does Marbob request that the order entered in  
14 this case provide that the overhead and administrative  
15 costs be adjusted in accordance with COPAS procedures?

16 A. Yes.

17 Q. Have you made an estimate of the overhead and  
18 administrative costs while drilling the well and also while  
19 producing it?

20 A. Yes.

21 Q. And what are those?

22 A. The drilling well rate is \$5050, and the  
23 producing rate is \$505, and --

24 Q. And --

25 A. -- and all the working interest owners have

1     agreed to that.

2           Q.     As to the working interest owners, you have  
3     signed agreements, conveyances, from everyone with one  
4     exception; isn't that right?

5           A.     Correct.

6           Q.     And that one you've reached agreement with and  
7     you're just waiting for that to come back?

8           A.     I have a letter agreement in place with them, and  
9     they've agreed to term assign.

10          Q.     But you don't have a signature yet?

11          A.     Not on the official instrument that's going to be  
12     recorded.

13          Q.     And for that reason you're seeking a full pooling  
14     order?

15          A.     Yes.

16          Q.     Do you recommend that these figures be  
17     incorporated into any order that results from this hearing?

18          A.     Yes.

19          Q.     Does Marbob request that the 200-percent charge  
20     for risk, as authorized by statute, be imposed on each  
21     cost-bearing interest owner not -- or interest, not  
22     voluntarily committed to the well?

23          A.     Yes.

24          Q.     And Marbob seeks to be designated operator of the  
25     well?

1 A. Yes.

2 Q. Is Exhibit Number 6 an affidavit confirming that  
3 notice of the hearing was provided in accordance with the  
4 Rules of the Division?

5 A. Yes, it is.

6 Q. And were Exhibits 1 through 6 either prepared by  
7 you or compiled under your direction and supervision?

8 A. They were.

9 MR. CARR: May it please the Examiner, at this  
10 time we would move the admission into evidence of Marbob  
11 Energy Corporation Exhibits 1 through 6.

12 EXAMINER CATANACH: Exhibits 1 through 6 will be  
13 admitted.

14 MR. CARR: And that concludes my direct  
15 examination of Mr. Duncan.

16 EXAMINATION

17 BY EXAMINER CATANACH:

18 Q. Mr. Duncan, the interest owner that you've not  
19 reached an agreement with, who is that?

20 A. That's Douglas Oil and Gas. And I believe  
21 they've recently sold to Rex Energy Corporation.

22 Q. So you're negotiating with Rex at this point?

23 A. Yes, but they haven't filed anything stating, you  
24 know, that Rex has bought Douglas. But yes, we have come  
25 to a verbal agreement, as well as he signed -- I believe

1 his name is Tom Schills with Rex has signed my letter  
2 agreement, agreeing to term assign.

3 Q. Okay. But at this point, since they haven't  
4 signed, you seek to pool them?

5 A. Yes, I do.

6 Q. Okay. What is Marbob's interest -- how much  
7 interest do they own in this spacing unit, approximately?

8 A. They own approximately 60 percent.

9 Q. And you have various other interest owners that  
10 have signed a JOA; is that correct?

11 A. Yes.

12 Q. Okay. Now the parties listed on Exhibit 2 were  
13 the only outstanding mineral interest owners that have not  
14 agreed to participate, right?

15 A. At the time that we filed for pooling, yes. And  
16 as I stated, Ruth Monk, Larry Gene Davis and Donald Davis  
17 have leased.

18 Q. Okay. The other four interest owners you have  
19 not been able to locate?

20 A. Gerald Adkins, I have just recently been able to  
21 locate the heirs of that interest, and I'm in negotiations  
22 with that family right now. I believe there's eight heirs  
23 to that interest.

24 Q. And they will be given the opportunity to  
25 participate?

1 A. Yes, they will.

2 Q. And the other three interest owners, no luck with  
3 those ones?

4 A. No luck at all. In fact, I had -- I've had  
5 Ronnie Miles' office working for me, trying to find these  
6 people, and we just haven't had any luck at all. Ronnie's  
7 the -- he's just a landman that I hired to go out and do  
8 the fieldwork for me.

9 EXAMINER CATANACH: Mr. Carr, can you provide a  
10 summary of the interest ownership in these spacing units?  
11 I don't --

12 MR. CARR: We can do that, and show you who has  
13 signed and, as of the day we filed the application, exactly  
14 who was record title owner. You know, we've got these tag-  
15 alongs that have surfaced, but they were not -- their  
16 interests were not of record. And so we notified everyone  
17 who had an interest of record, and I'll give you a complete  
18 breakdown on that with their percentage ownership.

19 EXAMINER CATANACH: Okay, and you might want to  
20 do that by unit also.

21 MR. CARR: I can do that by spacing unit size.

22 EXAMINER CATANACH: Okay.

23 MS. MacQUESTEN: But Mr. Carr, are the only  
24 individuals who are seeking to pool those who are on  
25 Exhibit Number 2 who haven't signed?

1 MR. CARR: That's correct, we're only seeking to  
2 pool the parties whose addresses we were unable to obtain,  
3 and since the time of filing we have had an heir of Gerald  
4 Adkins surface, and we're negotiating a lease with him and  
5 trying to find other people through him, but that's where  
6 we are now.

7 EXAMINER CATANACH: And were those parties  
8 provided notice of the hearing?

9 MR. CARR: No, they were not, they came up after  
10 -- they've only come up recently, and they had nothing of  
11 record at the time we filed or notified, either one.

12 EXAMINER CATANACH: So how would you propose we  
13 deal with that issue?

14 MR. CARR: well, you know, you file a pooling  
15 application and you notify people whose interests are of  
16 record, you escrow the funds that are attributable to the  
17 owners that you can't locate, and the day that's the  
18 operative date, my understanding, is the day you filed the  
19 Application. And the heirs of Gerald Adkins, had they not  
20 surfaced, their interests would be placed in escrow. They  
21 have surfaced, and we have offered to lease from them, have  
22 leases from maybe as many as three of them and leases out  
23 to a couple more, but we still can't even through them find  
24 the other Gerald Adkins interests.

25 So everyone of record title was noticed, everyone

1 with record title or of record was provided with notice of  
2 the hearing, and in accordance with the Rules. We've just  
3 had these interests pop up later. They popped up now, and  
4 so we're dealing with them now. If they hadn't surfaced  
5 until two weeks from now and the order had been entered,  
6 we'd deal with them in exactly the same way, we'd offer  
7 them an opportunity to participate in the well or be  
8 nonconsent, and the share of their proceeds would be  
9 escrowed so that it would be paid to them in accordance  
10 with the Order.

11 EXAMINER CATANACH: Okay. So the Gerald Adkins  
12 interest is the interest of record?

13 MR. CARR: Yes, that is the record interest. And  
14 I think, and Mr. Duncan can confirm, there was no evidence  
15 of a probate, nothing on the Internet. Going to his last  
16 known residence, no one knew who he was or where he was,  
17 and it was only through the efforts of Mr. Miles that he  
18 found someone with a similar name, and they appeared to  
19 have an interest. They have since leased, and they're  
20 hopefully identifying other family members that we can find  
21 that way.

22 But that's just the ongoing process, you know,  
23 and at some point you have to go ahead and pool.

24 EXAMINER CATANACH: But their interest isn't  
25 recorded anywhere?

1 MR. CARR: No.

2 THE WITNESS: No.

3 MR. CARR: All you have is, you have an interest  
4 in Gerald Adkins, and we know he's deceased, and when we  
5 filed that's all we could find.

6 EXAMINER CATANACH: Okay. Let's see. Do you  
7 have anything, Gail?

8 MS. MacQUESTEN: No, thank you.

9 EXAMINER CATANACH: That's all I have.

10 MR. CARR: Thank you, that concludes our  
11 presentation in this case.

12 EXAMINER CATANACH: Okay, there being nothing  
13 further, Case 13,692 will be taken under advisement.

14 (Thereupon, these proceedings were concluded at  
15 1:17 p.m.)

16 \* \* \*

17  
18  
19 I do hereby certify that the foregoing is  
20 a complete record of the proceedings in  
the Examiner hearing of Case No. 13692,  
heard by me on May 11, 2006.  
21 David R. Catnach, Examiner  
22 Oil Conservation Division  
23  
24  
25

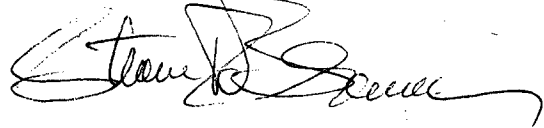
## CERTIFICATE OF REPORTER

STATE OF NEW MEXICO    )  
                              )    ss.  
COUNTY OF SANTA FE    )

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL May 28th, 2006.



STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 16th, 2006