

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. 13,775

APPLICATION OF OXY USA WTP LIMITED)
PARTNERSHIP FOR COMPULSORY POOLING,)
EDDY COUNTY, NEW MEXICO)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID R. CATANACH, Hearing Examiner

September 28th, 2006

Santa Fe, New Mexico

2006 OCT 12 AM 10 11

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday, September 28th, 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.

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I N D E X

September 28th, 2006
Examiner Hearing
CASE NO. 13,775

PAGE

APPEARANCES

3

APPLICANT'S WITNESS:

DAVID RAY EVANS (Landman)

Direct Examination by Mr. Carr

5

Examination by Examiner Catanach

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REPORTER'S CERTIFICATE

14

* * *

E X H I B I T S

Applicant's

Identified

Admitted

Exhibit 1

6

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Exhibit 2

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Exhibit 3

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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

* * *

1 WHEREUPON, the following proceedings were had at
2 8:58 a.m.:

3 EXAMINER CATANACH: Case 13,775, Application of
4 OXY USA WTP Limited Partnership for compulsory pooling,
5 Eddy County, New Mexico.

6 Call for appearances.

7 MR. CARR: Mr. Examiner, my name is William F.
8 Carr with the Santa Fe office of Holland and Hart, L.L.P.
9 We represent OXY USA WTP Limited Partnership in this
10 matter. I have one witness, David Evans, who has
11 previously been sworn and his credentials as an expert in
12 petroleum land matters have been accepted and made a matter
13 of record.

14 EXAMINER CATANACH: And that has been done today,
15 in previous cases today, Mr. Carr.

16 Mr. Evans is so qualified.

17 You may proceed.

18 MR. CARR: I'd like to advise you, Mr. Examiner,
19 that again this case is similar to the one we presented
20 first for the Admiral Federal, that we have three
21 overriding royalty interest owners, that we have been
22 unable to get their interests committed to the well.

23 We would have done these by affidavit, but we had
24 other cases that we had to bring to hearing, and so since
25 the witness was here we decided to proceed that way.

1 EXAMINER CATANACH: Okay.

2 DAVID RAY EVANS,

3 the witness herein, having been previously duly sworn upon
4 his oath, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. CARR:

7 Q. Mr. Evans, are you familiar with the Application
8 filed in this case?

9 A. Yes, I am.

10 Q. And are you familiar with the status of the lands
11 in the area that's the subject of this Application?

12 A. Yes, I am.

13 Q. Would you please advise Mr. Catanach what it is
14 that OXY seeks with this Application?

15 A. We're looking for an order pooling all minerals
16 from the surface to the base of the Morrow formation under
17 the following standard unit: the east half of Section 13,
18 located in Township 18 South, Range 27 East, Eddy County,
19 New Mexico, the east half for all formations or pools
20 developed on 320, which includes but not limited to the
21 undesignated Red Lake-Atoka-Morrow Gas Pool; the southeast
22 quarter for all formations and pools developed on 160-acre
23 spacing; and the southwest, southeast for all formations or
24 pools developed on the 40-acre.

25 Q. And what is the name of the well to which these

1 tracts will be dedicated?

2 A. OXY Whiptail State Com Well Number 1.

3 Q. And what is the location of that well?

4 A. 950 from the south line, 1900 feet from the east
5 line, Unit O, Section 13.

6 Q. What is the current status of that well?

7 A. Producing.

8 Q. Is it a good well?

9 A. It's a great well.

10 Q. What producing rates have you been able to
11 achieve?

12 A. Initially at about 43 million, and currently at
13 about 21.

14 Q. Could you refer to what has been marked OXY
15 Exhibit Number 1?

16 A. That is our plat for the OXY Whiptail State Com
17 Number 1, reflecting the well location in Section 13, the
18 east half.

19 Q. And on this exhibit you have indicated the three
20 overriding royalty interest owners that you've been unable
21 to get voluntary in the well, and those interests are shown
22 over the tracts in which they own their interest; is that
23 correct?

24 A. That's correct.

25 Q. And this well is producing from what formation?

1 A. The Morrow formation.

2 Q. Is the development of this acreage governed by
3 statewide rules?

4 A. Yes, they are.

5 Q. Would you identify for the record the names and
6 the percentage overriding royalty interest of each three
7 owners who you seek to be pooled?

8 A. The heirs of Steve Falletti, who owns a .0068359-
9 percent override; the heirs of Milton and Ruby Kuschke,
10 .006835-percent override; and Russell Folsom, .0068359
11 percent.

12 Q. A hundred percent of the working interest has
13 been voluntarily committed to the well --

14 A. That's correct.

15 Q. -- and the com agreement has been approved by the
16 Commissioner of Public Lands and by the Bureau of Land
17 Management; is that right?

18 A. That's right.

19 Q. And a copy of that com agreement bearing the
20 signatures of the working interest owners is attached
21 hereto as Exhibit Number 2; is that right?

22 A. That's right.

23 Q. Let's go to Exhibit Number 3, and I'd ask you to
24 briefly review the efforts you've made to identify these
25 interest owners.

1 A. Letters -- We hired a California land broker to
2 find Steve Falletti, through Doug Rowan, and that is dated
3 May the 17th. Found a death certificate of Steve Falletti
4 on June 2nd. You'll note there's no heirs of Steve
5 Falletti, he died a single man in the 1950s. Yates
6 Petroleum provided an old Division order with an old
7 address of 1959.

8 And we simply were unable to find the heirs of
9 Milton and Ruby Kuschke, spent about \$14,254 looking for
10 the override owners through Doug Rowan.

11 Q. What about Russell Folsom?

12 A. Russell Folsom also, uh-huh. And that was
13 provided -- that information was provided by Yates, and it
14 was as old as 1959.

15 Q. Have you made a good faith effort to locate each
16 of these interest owners?

17 A. We've gone on various websites like
18 gravesite.com, the heirship websites, spent at least three
19 months looking for these people.

20 Q. What will you do with the proceeds that are
21 attributable to these interest owners?

22 A. Accounts will be set up in Eddy County, and
23 moneys will be disbursed to those bank accounts.

24 Q. And held there until -- ?

25 A. Held there until someone can claim the moneys.

1 Q. And if they don't, they'll escheat to the State
2 of New Mexico at some time; is that right?

3 A. That's correct.

4 Q. In Exhibit Number 3 is a copy of various
5 documents that evidence your efforts to locate these
6 individuals?

7 A. That's correct.

8 Q. As overriding royalty interests, they're not
9 subject to an AFE, they don't pay costs --

10 A. No, sir.

11 Q. -- they don't sign the --

12 A. -- operating agreement.

13 Q. -- subject to the JOA, and the overhead and
14 administrative costs and the risk penalties do not apply,
15 do they?

16 A. That's correct.

17 Q. Does OXY USA WTP Limited Partnership seek to be
18 designated operator of the well?

19 A. Yes.

20 Q. No notice was provided, because the whereabouts
21 of these individuals is unknown; is that right?

22 A. That's correct.

23 Q. Were Exhibits 1 through 3 prepared by you or
24 compiled under your direction?

25 A. Yes.

1 MR. CARR: May it please the Examiner, at this
2 time we'd move the admission into evidence of OXY Exhibits
3 1 through 3.

4 EXAMINER CATANACH: Exhibits 1 through 3 will be
5 admitted.

6 MR. CARR: And that concludes my direct
7 examination of Mr. Evans.

8 EXAMINATION

9 BY EXAMINER CATANACH:

10 Q. What types of leases are involved in this unit?

11 A. These are -- I want to say they're state leases.

12 MR. CARR: Mr. Catanach, they're shown on Exhibit
13 1, the --

14 THE WITNESS: State of New Mexico.

15 MR. CARR: One State of New Mexico, and the other
16 is a federal lease, and that's why the BLM approved the com
17 agreement.

18 THE WITNESS: Correct.

19 MR. CARR: The OXY tract is federal, the Pogo
20 tract is state.

21 THE WITNESS: These are actually -- there are
22 one, two, three, four -- five state leases and one federal.

23 EXAMINER CATANACH: Okay, again, I notice that
24 when you were reciting your units, you did not mention that
25 you -- The advertisement for the case actually does request

1 a 80-acre units again.

2 MR. CARR: And again, that's incorrect.

3 EXAMINER CATANACH: It is incorrect?

4 MR. CARR: Yeah. We should have pulled those.
5 We were doing them sort of *en masse*. We do check every
6 time.

7 EXAMINER CATANACH: So we need to delete the 80-
8 acre unit?

9 MR. CARR: Yes, we do.

10 Q. (By Examiner Catanach) So the Falletti interest,
11 you know that he is deceased?

12 A. Correct.

13 Q. And you couldn't find any heirs?

14 A. Found that the body shipped back to Illinois and
15 -- but we couldn't find any heirs, not as of yet. We sent
16 some letters out to Fallettis in Illinois, hoping to find
17 someone.

18 Q. And the other two you just could not find at all?

19 A. That's correct.

20 MR. CARR: Mr. Falletti actually died as an
21 indigent, and held this interest all that time.

22 THE WITNESS: Yeah.

23 Q. (By Examiner Catanach) So his interest is
24 derived -- he had it for a long period of time?

25 A. Yes, sir. We've tracked part of his -- what we

1 thought was -- back to Italy, but it was not.

2 Q. Did the other two interest owners have their
3 interest for a long time as well?

4 A. Yes.

5 Q. So these were leases that were effective back --

6 A. -- 1930s, I think.

7 Q. 1930?

8 A. I'm going to say that, 1930s -- 1950s, I'm sorry.

9 Q. Just never drilled?

10 A. There may be some shallow production. Yates
11 hasn't known any addresses since 1959 for theirs, so...

12 Q. Hm. Well there are some documents dated 1938.

13 A. Yeah.

14 EXAMINER CATANACH: Okay.

15 MR. CARR: Would you like a proposed order on
16 this one too, since it will be very much like the Admiral
17 Federal?

18 EXAMINER CATANACH: No, I think I can just go off
19 that one, I think. I probably can find a similar one that
20 I've issued, but if you would --

21 MR. CARR: We'll look for a similar one you've
22 issued, send it back to you.

23 EXAMINER CATANACH: Okay.

24 MS. MacQUESTEN: Mr. Carr, do you have an
25 affidavit of publication?

1 MR. CARR: No because, see, there was no way to -
2 - We have no addresses for any of these entities, so --

3 MS. MacQUESTEN: Was it published in the
4 newspaper?

5 MR. CARR: Oh, yes, it was, yes, and I'll provide
6 that. I do have that, yes. Yes, I will get that -- bring
7 that to you this afternoon.

8 EXAMINER CATANACH: Okay, there being nothing
9 further, Case 13,775 will be taken under advisement.

10 MR. CARR: Thank you.

11 (Thereupon, these proceedings were concluded at
12 9:10 a.m.)

13 * * *

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15
16 I do hereby certify that the foregoing is
17 a complete record of the proceedings in
18 the Examiner hearing of Case No. 13775,
19 heard by me on September 28, 2006.
20 David R. Catanch, Examiner
21 Oil Conservation Division
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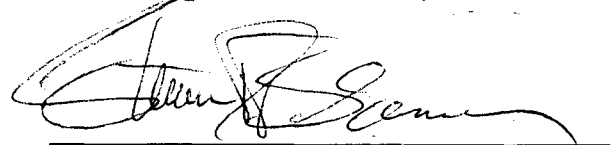
CERTIFICATE OF REPORTER

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 September 28th, 2006.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006