

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. 12,236

APPLICATION OF PRAIRIE SUN, INC., FOR)
COMPULSORY POOLING, EDDY COUNTY,)
NEW MEXICO)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MARK ASHLEY, Hearing Examiner

October 21st, 1999

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, MARK ASHLEY, Hearing Examiner, on Thursday, October 21st, 1999, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, 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

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 Examiner Hearing
 CASE NO. 12,236

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A P P E A R A N C E S

FOR THE DIVISION:

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* * *

1 WHEREUPON, the following proceedings were had at

2 12:52 p.m.:

3 EXAMINER ASHLEY: The Division calls Case 12,236,
4 Application of Prairie Sun, Inc., for compulsory pooling,
5 Eddy County, New Mexico.

6 Call for appearances.

7 MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe,
8 representing Exxon Corporation. I have a brief statement
9 and some brief testimony from Mr. Mathew, who I would like
10 the record to reflect has already been sworn and qualified
11 in this matter as an expert landman.

12 EXAMINER ASHLEY: That's fine. Before we go any
13 further, I just want to say that, you know, originally this
14 case was -- Mr. Carroll, on behalf of Prairie Sun, asked
15 that this case be continued very late in the afternoon
16 yesterday. It wasn't enough time for you to make plans or
17 changes for your client. So we're going to go ahead and
18 take this testimony and then continue this to my next
19 docket, which I believe is sometime in December.

20 MR. BRUCE: That's acceptable to us, Mr.
21 Examiner.

22 EXAMINER ASHLEY: Okay.

23 MR. BRUCE: I did submit, as I stated -- well,
24 not on the record, but as I stated earlier, I did submit a
25 letter in response to Mr. Carroll's, but it apparently got

1 lost somewhere in Energy and Minerals. So for your file is
2 a copy of that letter.

3 Mr. Examiner, as you said, this matter was heard
4 six weeks ago. It was continued to this hearing to allow
5 the parties additional time to negotiate, and really at
6 this point I would just like to ask Mr. Mathew a few
7 questions about the status of the negotiations during that
8 period. We would just like to establish that for the
9 record.

10 M.P. BOB MATHEW,

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

13 DIRECT EXAMINATION

14 BY MR. BRUCE:

15 Q. Mr. Mathew, briefly, what was Exxon's original
16 proposal on a farmout or term assignment on this acreage?

17 A. We were going to deliver a 75-percent NRI for
18 some sort of a cash consideration.

19 Q. And what was the last offer that you knew of at
20 the time of the last hearing, from Prairie Sun?

21 A. At the time of the last hearing we had not
22 received a formal offer from Prairie Sun, other than a
23 request for just a generic farmout. But since the hearing
24 Prairie Sun submitted an offer to purchase a one-year term
25 assignment for \$75 per net acre if we were to deliver a 78-

1 percent NRI.

2 I countered that offer and said that we would
3 deliver a 75 NRI for the same consideration. And
4 eventually we dropped our request for consideration and
5 were willing to deliver just a 75 NRI for a term assignment
6 or a farmout, as they needed.

7 Q. With no cash to Exxon?

8 A. Yeah, with no cash to Exxon.

9 Q. Okay. Now, what was the reason for asking that
10 75-percent NRI. What burdens are there currently on the
11 lease?

12 A. Currently there's a 7-1/2-percent overriding
13 royalty burden out to parties from whom Exxon acquired the
14 lease from. So if we were to deliver a 75 NRI, our
15 overriding royalty in the deal would be 5 percent.

16 Q. And under Prairie Sun's --

17 A. Under Prairie Sun's offer, it would only be two
18 percent.

19 Q. And just for the record, can you identify what's
20 been marked Exxon Exhibit 1?

21 A. It's the assignment and the chain of title into
22 Exxon where the 7-1/2-percent override was created.

23 In my conversations with Gene Lee --

24 Q. -- of Prairie Sun.

25 A. -- of Prairie Sun, he was under the impression

1 that there was no burden created in the past. His
2 correspondence to me indicated that his understanding was
3 that we would get an 8-1/2-percent override.

4 Unfortunately, Mr. Lee did not return some of my
5 calls before this hearing, so I wasn't able to present all
6 of the facts to the...

7 Q. Okay.

8 A. But he did indicate he had title worked out on
9 the tract, in writing.

10 Q. Handing you what's been marked Exxon Exhibit 2,
11 could you identify that for the Examiner and just briefly
12 go through it?

13 A. It's basically a chronology of the events that
14 have transpired from the beginning with my initial contact
15 with Prairie Sun.

16 Since the last hearing, which would be September
17 2nd, I talked partially with Gene Lee at the hearing, after
18 it was over, and told him that we would be flexible in the
19 cash bonus that was usually received for deals in the area.

20 And then Mr. Lee faxed an offer to me where he
21 offered \$75 per net mineral acre for a one-year term
22 assignment for the rights in questions. The NRI that Exxon
23 was to deliver was 78 percent.

24 I called Gene Lee back to discuss the trade. He
25 never returned my call.

1 I called him again on September 15th, left a

2 message on the voice mail, didn't receive a call back.

3 Then I sent a letter outlining the terms of the
4 trade that Exxon would propose, and the only difference
5 between the two offers was the NRI to be delivered by
6 Exxon. Prairie wanted a 78-percent, and Exxon was willing
7 to deliver a 75.

8 On September 22nd, I received a voice-mail
9 message from Mr. Lee advising that he had received my fax
10 and telephone calls, but he was out of town and therefore
11 unable to return the calls. Therefore, he was faxing a
12 response that they would decline their offer, and he would
13 pretty much stick to the 78 NRI. And in that letter he
14 indicated that we -- with a 78 NRI offer, we would be
15 getting 8-1/2-percent override in the deal. And then of
16 course I did receive that letter by fax and by mail.

17 Then on September 28th I received another letter
18 dated September 15th, which was written by Gene Lee,
19 advising that if Exxon didn't respond to his letter of
20 September 7th, that Prairie was going to go forward with
21 the force-pooling.

22 What was interesting about this letter was, it
23 was typed during the period where he said he was out of
24 town and couldn't respond to my calls, and it had the
25 appearance of just being produced as an exhibit for this

1 hearing.

2 I called Gene Lee back and asked if there was any
3 flexibility to negotiate the NRI issue. He didn't return
4 my phone call.

5 And on October 5th, I again called Gene to
6 discuss the NRI issue. This time his voice mail or
7 answering machine was not in effect, so I couldn't leave a
8 message.

9 Then on October 7th, which was the last
10 communication I had with him verbally, he stated that there
11 had been a lot of delay and that he was going to advise his
12 attorney to go forward with the force-pooling application.

13 I also told him that we had a deal that I had
14 negotiated with several other parties that were willing to
15 take the trade from Exxon in the same terms that I was
16 offering him, that it would be in his interest to go ahead
17 and do the deal with us, since he would have a 50-percent
18 interest, that we would deliver the same 75 NRI, there
19 would be a 5-percent override to Exxon, that I was willing
20 to do it with him, give him the priority to do the deal, as
21 opposed to some other parties that I've been talking to
22 about the acreage.

23 And he wrote back by letter on October the 8th,
24 in which he said that he was basically unwilling to accept
25 the 75 NRI deal from Exxon. And I believe that letter --

1 Is that --

2 Q. Yes, handing you Exxon Exhibit 3, would you
3 identify that for the Examiner, please?

4 A. This is the last written communication received
5 from Prairie Sun. It's a letter in which basically he
6 states that as agent for Prairie Sun that he is not willing
7 to accept the 75 NRI deal for no bonus from Exxon.

8 Q. Now, based on the statements in this letter you
9 believed that this matter would proceed to hearing today?

10 A. That's right.

11 Q. And that's why you're up here?

12 A. That's right.

13 Q. Now, again, there are other parties who are
14 willing to accept the same deal that you've outlined for
15 Prairie Sun?

16 A. Yes. In fact, there was one company that I --
17 was very interested in speaking to Gene Lee about his plans
18 for the wellbore, but they also have been unsuccessful in
19 reaching him, either -- They've told me that either he does
20 not return their calls, or he's unable to reach at the
21 number given for Prairie Sun that's on the letterhead of
22 their letters.

23 Q. Now, when you've talked with Mr. Lee, has he
24 often said he's had to speak with other people about coming
25 to terms with Exxon?

1 A. Yes, he's always indicated that he's an agent for
2 Prairie Sun, that he had other principals who had to give
3 their okay regarding any terms that were proposed. So I
4 did a brief search of the Public Regulation Commission
5 records to identify Prairie Sun. It appears that Gene Lee
6 is the director of Prairie Sun, and it appears some of his
7 family members are involved in this corporation.

8 It was also interesting to note that the purpose
9 of the corporation was to manufacture and deal in retail
10 and wholesale sportswear.

11 Q. In conclusion, Mr. Mathew, Exxon would like to
12 come to a deal with Prairie Sun?

13 A. That's true.

14 Q. Exxon is no longer in the business of exploring
15 for and developing as a participating working interest
16 owner certain properties in New Mexico?

17 A. Yeah, especially this tract.

18 Q. Especially this tract.

19 And if it's force pooled, it's force pooled. But
20 Exxon will come to terms with someone on this deal?

21 A. That's right. If Prairie Sun is not interested
22 in taking our offer, we have other interested parties who
23 will take it from us, who will either want to operate the
24 well, in lieu of Prairie Sun operating it, or will be
25 taking it subject to the force pooling order.

1 Q. And one of your main purposes up here is just to
2 say that Exxon will work with people?

3 A. That's right. We're willing to make a deal in
4 fair terms. We believe we are giving Prairie Sun and
5 anybody else who's interested an offer that's a lot more
6 generous than what we normally get for our acreage in New
7 Mexico.

8 Q. Oftentimes, you're getting \$250 an acre and
9 bonus?

10 A. That's right. In fact --

11 Q. Together with an override?

12 A. Yes. In fact, that was very similar to the
13 Penwell deal that this acreage was turned to Penwell under
14 an earlier deal where we did get a bonus for it.

15 Q. Mr. Examiner -- Or excuse me, Mr. Mathew, were
16 Exhibits 1 through 4 prepared by you or obtained from
17 company records?

18 A. Yes.

19 MR. BRUCE: Mr. Examiner, I'd move the admission
20 of Exxon's Exhibits 1 through 4.

21 EXAMINER ASHLEY: Exhibits 1 through 4 will be
22 admitted as evidence.

23 EXAMINATION

24 BY EXAMINER ASHLEY:

25 Q. Mr. Mathew, you say when other parties have been

1 agreeable to Exxon's proposal. What do you mean by that?

2 Other --

3 A. Well, there are other companies that are
4 interested in taking the 50-percent working interest we
5 would have in this deal, and they're willing to take a
6 farmout or a term assignment along the same terms that I've
7 offered to Gene Lee at Prairie Sun. Because they would
8 like -- they see some promise in what Gene Lee is doing and
9 would like to talk to him more about his ideas for a
10 wellbore.

11 Q. And tell me again what the most recent proposal
12 from you, from Exxon, has been to Mr. Lee.

13 A. We would deliver a 75 NRI. In effect, Exxon
14 would reserve a 5-percent override and no cash bonus, zero
15 cash bonus. I think Gene Lee had requested a one-year term
16 assignment. That's what we would offer.

17 Q. That's what he wants, is a one-year term
18 assignment?

19 A. Right. As long as someone else has not beat
20 Prairie Sun to that deal, it's still, as far as I know,
21 still available.

22 Q. Excuse me?

23 A. As of today, it's still available to Prairie Sun
24 if they should want it on those terms.

25 Q. Your 50 percent?

1 A. Yes. But on Monday there may be another company
2 that might take it, take our interest.

3 Q. And what again would be an average that you would
4 give for somebody?

5 A. An average of --

6 Q. Of participation. Like if they were to take your
7 50 percent, what would that --

8 A. It would be the same deal. We would just deliver
9 a 75 NRI and we would take a 5-percent override, because of
10 the burden in this case, is 7 1/2 percent.

11 Q. But said this offer is a generous offer?

12 A. Yes. Normally we would ask for cash
13 consideration in the range of \$200 to \$300 an acre. In
14 this case we're waiving that.

15 EXAMINER ASHLEY: Okay, I have nothing further.
16 Thank you.

17 MR. BRUCE: Mr. Examiner, I just have one follow-
18 up question just to clarify.

19 FURTHER EXAMINATION

20 BY MR. BRUCE:

21 Q. Mr. Mathew, Exxon is exploring for and developing
22 certain properties in New Mexico, like the Avalon Unit --

23 A. Yes.

24 Q. -- and other properties in Lea County?

25 A. That's true.

1 Q. But you don't have a prospect on the table in
2 this immediate area?

3 A. No, we don't.

4 Q. Which is why you want to peddle this acreage?

5 A. Yeah, we want to promote it.

6 MR. BRUCE: Okay, that's all I have, Mr.
7 Examiner.

8 EXAMINER ASHLEY: Mr. Bruce, will you provide Mr.
9 Carroll a copy of all these?

10 MR. BRUCE: I will provide him -- I will send Mr.
11 Carroll a letter, I will copy you, and I will provide him
12 copies of these exhibits.

13 EXAMINER ASHLEY: Okay, that's fine. Then we
14 will continue this case to my next docket, which I believe
15 is in December. I can't give you an exact date on that.

16 Thank you.

17 THE WITNESS: Thank you.

18 (Thereupon, these proceedings were concluded at
19 1:05 p.m.)

20 * * *

21 I do hereby certify that the foregoing is
22 a complete record of the proceedings in
23 the Examiner hearing of Case No. 12236
heard by me on 10-21-1999
Mark Ashley, Examiner
Off Conservation Division

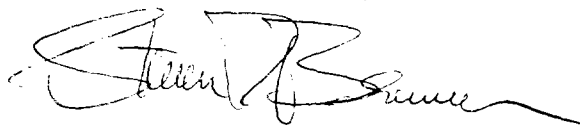
CERTIFICATE OF REPORTER

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 November 3rd, 1999.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 2002