

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. 12,674

APPLICATION OF CONCHO RESOURCES, INC., )  
FOR COMPULSORY POOLING, EDDY COUNTY, )  
NEW MEXICO )

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID BROOKS, Hearing Examiner

August 9th, 2001

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID BROOKS, Hearing Examiner, on Thursday, August 9th, 2001, 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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OIL CONSERVATION DIV.  
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## I N D E X

August 9th, 2001  
Examiner Hearing  
CASE NO. 12,674

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\* \* \*

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

## FOR THE APPLICANT:

JAMES G. BRUCE, Attorney at Law  
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 Santa Fe, New Mexico 87501  
 P.O. Box 1056  
 Santa Fe, New Mexico 87504

## ALSO PRESENT:

DAVID R. CATANACH  
 Hearing Examiner  
 New Mexico Oil Conservation Division  
 1220 South Saint Francis Drive  
 Santa Fe, NM 87501

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2   11:04 a.m.:

3           MR. BROOKS: We need to call the next Case,  
4   Number 12,674, Application of Concho Resources, Inc., for  
5   compulsory pooling, Eddy County, New Mexico.

6           MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe,  
7   representing the Applicant. I have one witness.

8           EXAMINER BROOKS: Are there any other  
9   appearances?

10          Very good, would your witness stand, identify  
11   yourself by name?

12          MS. MUHLINGHAUSE: Meg Muhlinghouse.

13          (Thereupon, the witness was sworn.)

14          EXAMINER BROOKS: You may proceed when ready, Mr.  
15   Bruce.

16          MR. BRUCE: Mr. Examiner, before we begin, just  
17   so you're aware of what we're getting at here in this case,  
18   we're seeking to force pool an unleased mineral interest  
19   owner who subsequent to the pooling Application leased  
20   their interest. I will make a short closing at the end,  
21   but I believe that this should still be considered an  
22   unleased mineral interest for purposes of this case, but we  
23   will go into that in a little detail. The well --

24          EXAMINER BROOKS: I don't know the facts, but it  
25   sounds reminiscent of another case we have under

1     advisement, we've been trying to figure out what to do  
2     with.

3             MR. BRUCE:   And the other -- A couple other facts  
4     in this case, just so you're aware, that Concho Resources  
5     -- and I'll have the witness state that on the record --  
6     Concho Resources, Inc., has merged into Devon Energy  
7     Production Company just a month or so ago, and that company  
8     is the actual Applicant at this time.

9             And the other matter is, the well has been  
10    drilled and we will not be asking for a penalty.

11            EXAMINER BROOKS:   Okay.

12                    MEG MUHLINGHAUSE,  
13    the witness herein, after having been first duly sworn upon  
14    her oath, was examined and testified as follows:

15                    DIRECT EXAMINATION

16    BY MR. BRUCE:

17            Q.    Would you please state your name and city of  
18    residence for the record?

19            A.    Meg Muhlinghouse, Edmond, Oklahoma.

20            Q.    Who do you work for and in what capacity?

21            A.    Devon Energy Corporation, Oklahoma City, and I'm  
22    employed as a senior landman.

23            EXAMINER BROOKS:   Would you spell your last name  
24    for me, please?

25            THE WITNESS:   M-u-h-l-i-n-g-h-a-u-s-e.

1 EXAMINER BROOKS: Okay, I wasn't even close.

2 THE WITNESS: Not many people are.

3 EXAMINER BROOKS: You may continue, Mr. Bruce.

4 Q. (By Mr. Bruce) And have you previously testified  
5 before the Division?

6 A. Yes, I have.

7 Q. And were your credentials as an expert petroleum  
8 landman accepted as a matter of record?

9 A. Yes.

10 Q. And are you familiar with the land matters  
11 involved in this case?

12 A. Yes.

13 Q. And just so we go into it, this matter was filed  
14 by Concho; is that correct?

15 A. Yes.

16 Q. And have you reviewed the land files of Concho  
17 with respect to this matter, to get up to speed on this  
18 case?

19 A. Yes, I have.

20 MR. BRUCE: I would tender the witness as an  
21 expert petroleum landman.

22 EXAMINER BROOKS: Her credentials will be  
23 accepted.

24 Q. (By Mr. Bruce) And again this Application was  
25 filed by Concho Resources, Inc., Ms. Muhlinghouse. When

1 did Concho merge into Devon?

2 A. Concho merged into Devon Energy Production  
3 Company, L.P., in late June.

4 Q. Okay. Would you identify Exhibit 1 and describe  
5 what Devon seeks in this case?

6 A. Exhibit 1 is a land plat highlighting the south  
7 half of Section 32, Township 18 South, Range 24 East. We  
8 seek an order pooling the south half of Section 32 from the  
9 surface to the top 200 feet of the Mississippian formation  
10 for all pools or formations spaced on 320 acres. We also  
11 seek to pool the southwest quarter for 160-acre units.

12 MR. BRUCE: Mr. Examiner, this well unit is about  
13 two or two and a half miles of the well unit in the prior  
14 case, just to give you a point of reference.

15 EXAMINER BROOKS: Okay.

16 Q. (By Mr. Bruce) What is the well's location?

17 A. It is 1750 feet from the south line and 1980 feet  
18 from the west line. The well was spudded on May 13th,  
19 2001, and was completed as a producing well in the Morrow  
20 formation on June 6th, 2001.

21 Q. What is the ownership of the well unit?

22 A. The north half of the south half of Section 32 is  
23 covered by State Lease Number V-4972, and the south half of  
24 the south half of Section 32 is a fee tract covered by  
25 numerous leases. The leases are owned by Devon, Yates and

1 other entities. All of them have signed an operating  
2 agreement and have either participated in the well or have  
3 gone nonconsent under the operating agreement.

4 There is one unleased mineral interest owner in  
5 the well unit; that is a 7.5-percent mineral interest owned  
6 of record by Virginia Collier Howell in the south half of  
7 the south half of Section 32, being a 3.75-percent interest  
8 in the south-half proration unit.

9 Q. And now all of these -- the north half, north  
10 half of that state lease, that's undivided as to depths and  
11 everything, is it not?

12 A. Correct.

13 Q. And the south half of the south half, is that --  
14 the mineral interests in that, are they also undivided? In  
15 other words, is it one sole tract? There's not sub-tracts  
16 with it?

17 A. No, correct, it's one tract. It just has a huge  
18 number of owners in that one tract.

19 Q. Okay. Let's discuss the efforts made to obtain  
20 the voluntary joinder of Mrs. Howell. What is Exhibit 2?

21 A. Exhibit 2 contains copies of our correspondence  
22 regarding this well. Concho originally started putting the  
23 well together about a year ago. It had a title opinion  
24 prepared which showed Ms. Howell's unleased mineral  
25 interest, which she acquired by a deed executed in the



1 early 1950s. The deed did not contain an address.

2 An independent landman out of Midland tried to  
3 track down Ms. Howell and gave Concho an address for her in  
4 Virginia. Several letters were mailed to her, and after  
5 receiving no response, a pooling application was filed in  
6 October of 2000. It was later determined that the wrong  
7 Virginia Collier Howell had been located. The correct Ms.  
8 Howell was subsequently located in Beaumont, Texas, and she  
9 was contacted late March or early April to see if she would  
10 lease here interest.

11 The lease request was sent, a lease request  
12 letter was sent. Also enclosed with that lease request was  
13 a bank draft and a proposed lease form in case she wished  
14 to lease here interest. Their attorney was also talked to  
15 and sent lease requests.

16 There was no response received, so on April 20th  
17 of 2001 a well-proposal letter was sent with an AFE and was  
18 mailed to her. At that time -- it was also thought that  
19 her children may have acquired an interest due to the death  
20 of Ms. Howell's spouse, and they were also sent a proposal  
21 letter.

22 Concho then received a letter dated May 2nd from  
23 Robert Wade, the attorney for Ms. Howell, and he also  
24 requested that we pay him \$2000 for his fees to prepare a  
25 lease.

1           On the next day a pooling Application was filed.

2           Q.   Now, in Exhibit 2, just so we're going through  
3 reference, although there was apparently some telephone  
4 conferences, there was an April 5 letter which went out to  
5 the Howell family, was it not?

6           A.   Yes.

7           Q.   And that was also copied to Robert Wade, who's  
8 the attorney for Mrs. Howell?

9           A.   Yes.

10          Q.   And --

11          A.   I believe he got his own --

12          Q.   His own set.

13          A.   -- set.

14          Q.   And those letters and leases and the drafts and a  
15 portion of the title opinion occupy about the first half of  
16 this package of information, does it not?

17          A.   Correct.

18          Q.   And then, like you said, they -- Concho sent out  
19 an AFE to Mrs. Howell and invited her to join in the well?

20          A.   Correct.

21          Q.   Okay. Now, that proposal letter went out with  
22 the AFE about April 20th, but the Application was filed on  
23 May 3rd. Why was the pooling Application filed?

24          A.   This was filed due to rig scheduling. The well  
25 was commenced on May 13th and Concho at the time hoped to

1 get the pooling accomplished promptly. I'm sure you all  
2 are aware of it, rig availability in New Mexico has been  
3 quite a problem, and for the first six months the rig  
4 availability was extremely tight, and for a 3.75-percent  
5 interest Concho was willing to carry them if necessary.

6 Q. And the problem originally resulted due to a bad  
7 address from the landman about six months before this; is  
8 that correct?

9 A. Correct.

10 Q. Okay. What happened after the pooling  
11 Application was filed?

12 A. The pooling notice letter was received by Ms.  
13 Howell and her attorney Robert Wade on May 7th. Mr. Wade  
14 then called Concho's attorney and asked for geologic data  
15 and a continuance of the hearing. He also asked that no  
16 further contact be made with Ms. Howell, that all contact  
17 was to be made with him.

18 By a letter to Mr. Wade dated May 7th, Concho  
19 provided title data because Mr. Wade had said that the  
20 wrong persons may have been provided the well proposal,  
21 that the interest may be in a family trust. The proved to  
22 be incorrect.

23 Concho also agreed to show its geologic data to  
24 Ms. Howell in their office. Concho's letter asked Mr. Wade  
25 to provide a lease form for Concho's review if Ms. Howell

1 was interested in leasing and if she didn't like the form  
2 that Concho had previously provided.

3 Also enclosed was an operating agreement if she  
4 wished to participate in the well, and Concho in their  
5 letter declined to pay Mr. Wade's attorney's fees.

6 Q. Did Mrs. Howell or her representatives examine  
7 the geology offered by Concho?

8 A. No, they did not.

9 Q. Did Mrs. Howell or Mr. Wade her attorney provide  
10 a lease form to Concho for their review, or did they sign  
11 the operating agreement?

12 A. No, they didn't.

13 Q. What happened next?

14 A. Concho's attorney received a letter dated May  
15 31st stating that Mrs. Howell had leased her interest, and  
16 asked if Concho would be interested in acquiring the lease  
17 for \$2000, the same fee previously requested by the  
18 attorney, and --

19 MR. BRUCE: Mr. Examiner, if you'd go to the  
20 second page from the end of Exhibit 2 --

21 EXAMINER BROOKS: That's what I was looking for.

22 MR. BRUCE: -- that is the letter which was  
23 copied to the Division.

24 EXAMINER BROOKS: Thank you.

25 Q. (By Mr. Bruce) Go ahead, Ms. Muhlinghouse.

1           A.    The \$2000 fee, this was the same fee previously  
2 requested. In addition to that, they wanted a 2-percent  
3 overriding royalty, in addition to the quarter royalty  
4 provided in the lease.

5           Concho continued the pooling hearing in order to  
6 have time to review the lease. Concho wrote to Mr. Wade on  
7 June 6th, requesting a copy of the lease. On about June  
8 20th Concho's attorney called Mr. Wade, and finally the  
9 lease was faxed to Concho. And about this time the Concho-  
10 Devon merger occurred, and the case was continued until  
11 today.

12          Q.    What is Exhibit 3?

13          A.    Exhibit 3 is a copy of the lease faxed from Mr.  
14 Wade. It is dated May 14th, and it is from Mrs. Howell by  
15 her alleged attorney-in-fact, to a company called  
16 Rhinoceros Ventures Group, Inc.

17          Q.    Okay. Now, we don't have any documents that show  
18 that Charles Howell is the attorney-in-fact for Virginia  
19 Howell, do we?

20          A.    No, we do not.

21          Q.    Now, what is the date of this lease? What was  
22 that again?

23          A.    May 14th.

24          Q.    And is that lease dated after the pooling  
25 Application was filed and after the pooling notice was

1 received by Mrs. Howell?

2 A. Yes, it is.

3 Q. To the best of your knowledge, was this lease  
4 recorded in Eddy County?

5 A. Yes, I found out that it has been recorded in  
6 Eddy County.

7 Q. Sometime in May?

8 A. At the end of May, May 23rd.

9 Q. Devon has been offered this lease. Is Devon  
10 willing to accept an assignment of this lease?

11 A. No, we aren't. This is one of the most onerous  
12 lease forms I've ever seen in the 18 years I've been doing  
13 land work. In my opinion, you would have to have a full-  
14 time employee in order to monitor all the provisions and  
15 stipulations that are incorporated in this lease. Some of  
16 the provisions in this lease form we wouldn't even have the  
17 ability to comply with. For a 3.75-percent interest it  
18 would be cost-prohibitive for us to monitor all the  
19 stipulations and requests that this lease form asks for  
20 somebody to comply with.

21 Q. Could you just mention briefly a couple of the  
22 provisions which you find -- well, shall we say amazing in  
23 this case?

24 A. Oh, one in particular, we have to give them 25  
25 percent of royalty, and we have to pay them the highest

1 price paid in the county, not what we're able to get from  
2 the purchaser, I mean we have to pay them the highest price  
3 paid in the county. So I mean, if we were to accept this  
4 lease, we could inevitably be forced to pay them a much  
5 higher rate than we're actually receiving for the oil or  
6 gas.

7           Additionally they're asking us to consult them on  
8 any transportation -- on any oil contracts and gas  
9 contracts that we negotiate with purchasers, that they have  
10 to approve these contracts. It's just -- I mean, you go on  
11 and on, it's painful to read.

12           Q.   Devon does not want to be liable under this  
13 lease; is that safe to say?

14           A.   Absolutely, absolutely.

15           Q.   Okay. Now, in your opinion, was this lease taken  
16 to prevent negotiations on a lease form between the  
17 parties?

18           A.   I believe so. We requested a lease to be  
19 provided to us so that we could enter into negotiations, as  
20 is normal. You provide them a lease form, and if they  
21 don't like it they provide you a lease form, and you  
22 negotiate from there. And I believe -- Well, we'll go into  
23 this further.

24           Q.   Well, who is Rhinoceros Ventures Group, Inc., the  
25 lessee under the Howell lease?

1           A.    We called the Texas Secretary of State and were  
2 informed that Robert Wade, Mrs. Howell's attorney, is the  
3 secretary and director of the corporation, and in addition,  
4 Annette Hall Wade is the president and director of the  
5 corporation.

6           Q.    Who is the registered agent for Rhinoceros  
7 Ventures?

8           A.    Mr. Wade.

9           Q.    Does it appear that Mr. Wade's own corporation  
10 took a lease from his client?

11          A.    I believe that is true, and I believe that it was  
12 done in order to prevent any lease negotiations to take  
13 place.

14          Q.    In your opinion has Devon made a good faith  
15 effort, Devon and formerly Concho, made a good faith effort  
16 to obtain the voluntary joinder of Mrs. Howell in the well?

17          A.    Yes,

18          Q.    Would you identify Exhibit 3 and discuss the  
19 original proposed cost of the well. Excuse me, that's  
20 Exhibit 4.

21          A.    Exhibit 4, okay. Exhibit 4 is a copy of the AFE  
22 for the well. The well's depth is 8700 feet. It had an  
23 estimated dryhole cost of \$432,900 and a completed well  
24 cost of \$760,900. The actual cost is still being  
25 calculated. The well is in the process of being completed.



1 Q. Is this cost in line with the costs of other  
2 wells drilled to this depth in this area of New Mexico?

3 A. Yes, it is.

4 Q. Does Devon Energy request that it be designated  
5 operator of the well?

6 A. Yes.

7 Q. Do you have a recommendation for the amounts  
8 which Devon should be paid for supervision and  
9 administrative expenses?

10 A. We request that \$5220 a month be allowed for a  
11 drilling well and that \$558 a month be allowed for a  
12 producing well.

13 Q. Are these amounts equivalent to those normally  
14 charged by Devon and other operators in this area for wells  
15 of this depth?

16 A. Yes, they are. Actually, they're less than  
17 what's usually charged as of late. That's what is in our  
18 operating agreement that we have with everyone else.

19 Q. And do you request that these rates be  
20 periodically adjusted as provided by the COPAS accounting  
21 procedures?

22 A. Yes.

23 Q. Does Devon seek a penalty on production?

24 A. No, the well has been successfully completed, so  
25 we do not ask for a risk penalty.

1 Q. Was Mrs. Howell notified of this hearing?

2 A. Yes, and Exhibit 5 is an affidavit of notice.

3 Q. And this notice letter was also sent by certified  
4 mail to Mr. Wade, her attorney, and the registered agent  
5 for Rhinoceros Ventures; is that correct?

6 A. Yes, and his certified receipt is also included  
7 in Exhibit 5.

8 Q. Were Exhibits 1 through 5 prepared by you or  
9 under your supervision or compiled from company business  
10 records?

11 A. Yes, they were.

12 Q. And in your opinion, is the granting of Devon's  
13 Application in the interests of conservation and the  
14 prevention of waste?

15 A. Yes.

16 MR. BRUCE: Mr. Examiner, I'd move the admission  
17 of Devon Exhibits 1 through 5.

18 EXAMINER BROOKS: Okay, Devon Exhibits 1 through  
19 5 will be admitted.

20 MR. BRUCE: I have nothing further of the  
21 witness.

22 EXAMINER BROOKS: Let me see if I do.

23 EXAMINATION

24 BY EXAMINER BROOKS:

25 Q. What is the primary objective of this well, what

1 formation?

2 A. The Morrow formation.

3 Q. Okay, and what is the field -- what is the -- Is  
4 this undesignated or is this approved?

5 A. I believe --

6 MR. BRUCE: It is in the Antelope Sink-Morrow Gas  
7 Pool, Mr. Examiner.

8 THE WITNESS: Okay.

9 Q. (By Examiner Brooks) And that's on a 320-acre  
10 spacing?

11 A. Yes.

12 Q. Let's see if I've got any other questions. When  
13 you mailed notice to Mr. Wade, it was not directed  
14 specifically to Rhinoceros, Inc., though; is that correct?

15 A. Correct, and we determined that Mr. Wade is  
16 Rhinoceros group in our testimony.

17 Q. And is the address at which you sent it to Mr.  
18 Wade, is that also the registered address of Rhinoceros --  
19 Rhinoceros whatever?

20 A. I do not know.

21 Q. Do you know if this oil and gas lease has been  
22 recorded in Eddy County?

23 A. Yes, it has.

24 Q. Okay. Do you know if Rhinoceros is qualified to  
25 do business in New Mexico?

1           A.    I do not know that.

2           Q.    Let me see if I've got any other questions here.

3           A.    I just totally believe he didn't want to  
4 negotiate with them at all, and that's why he did it. And  
5 if he wants to participate in the well and him be subject  
6 to all of these lease provisions, we're happy for him to do  
7 that; we just don't want to.

8           EXAMINER BROOKS: Okay. Well, I don't believe I  
9 have any further questions. Mr. Catanach?

10          EXAMINER CATANACH: I do not.

11          EXAMINER BROOKS: Witness may stand down.

12          Did you have anything further, Mr. Bruce?

13          MR. BRUCE: I would just simply say, Mr.  
14 Examiner, that the Application was filed on May 3rd, the  
15 notice letter was sent out and received by Mrs. Howell and  
16 her attorney on May 7th. The lease was subsequently  
17 executed. We would urge the Division to treat this  
18 interest as unleased for purposes of force pooling. We  
19 believe this lease was taken in bad faith in order to avoid  
20 the effect of the pooling statutes.

21                I know there are several, as you said, matters in  
22 front of the Division on issues like this, and there are  
23 several options you can pursue. That's Devon's favorite  
24 option.

25                Certainly we will not take this lease, we will

1 not be legally subject to it, but we would urge that this  
2 interest under the decision, such as the Branko-Mitchell  
3 one, be treated as unleased.

4 EXAMINER BROOKS: Okay, that was my next  
5 question, because this matter is before us in some other  
6 cases, and it has been briefed by other counsel, but we  
7 would certainly appreciate your favoring us with any  
8 additional briefing that you can, because there really is  
9 nothing decisive or even really particularly helpful in  
10 what's been presented to us so far, frankly. So if you  
11 have anything further --

12 MR. BRUCE: I will submit a brief --

13 EXAMINER BROOKS: -- we would greatly appreciate  
14 it.

15 MR. BRUCE: -- if I could have until the end of  
16 the next week.

17 EXAMINER BROOKS: That will be acceptable.  
18 Subject to the briefing deadline, Case Number 12,674 will  
19 be taken under advisement.

20 THE WITNESS: Thank you.

21 (Thereupon, these proceedings were concluded at  
22 11:26 a.m.)

23 I hereby certify that the foregoing is  
24 a complete record of the proceedings in  
25 the Examiners' hearing of Case No. 12674  
heard by me on Aug 9, 2001.

*David K. Brooks*, Examiner

Oil Conservation Division

STEVEN T. BRENNER, CCR  
(505) 989-9317

## 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 August 12th, 2001.



STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 14, 2002