

KELLAHIN, KELLAHIN and AUBREY
Attorneys at Law

W. Thomas Kellahin
Karen Aubrey

El Patio - 117 North Guadalupe
Post Office Box 2265

Telephone 982-4285
Area Code 505

Jason Kellahin
Of Counsel

Santa Fé, New Mexico 87504-2265

Fax: 505/982-2047

December 6, 1989

HAND DELIVERED

Mr. William J. LeMay
Oil Conservation Division
P.O. Box 2088
Santa Fe, New Mexico 87501

Re: Application for DeNovo Hearing on the
Application of Marathon Oil Company
for an Unorthodox Gas Well Location,
Eddy County, New Mexico
NMOCD Case 9802
Order R-9050

RECEIVED
DEC 6 1989
OIL CONSERVATION DIVISION

Dear Mr. LeMay:

On behalf of Marathon Oil Company, please find enclosed
our Application for DeNovo Hearing of the referenced case
and order entered on November 21, 1989.

We are anxious to have this matter heard by the Commis-
sion at the earliest convenience. Please let me know when
that hearing will be held.

Very truly yours,


W. Thomas Kellahin

WTK/tic
Enclosure

xc: Larry Garcia, Esq.
Marathon Oil Company
P.O. Box 3128
Houston, Texas 77253

William F. Carr, Esq.
Campbell & Black, P.A.
P.O. Box 2208
Santa Fe, New Mexico 87504-2208

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

RECEIVED

DEC 6 1989

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION COMMISSION
FOR THE PURPOSE OF CONSIDERING:

OIL CONSERVATION DIVISION

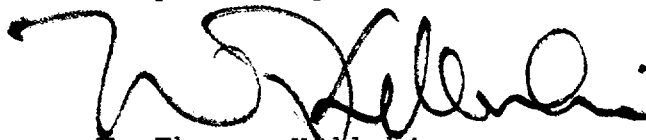
CASE NO. 9802
ORDER NO. R-9050

APPLICATION OF MARATHON OIL COMPANY
FOR AN UNORTHODOX GAS WELL LOCATION
AND SIMULTANEOUS DEDICATION, EDDY
COUNTY, NEW MEXICO

APPLICATION FOR DENOVO HEARING

Comes now MARATHON OIL COMPANY, a party of record adversely affected by Division Order R-9050 entered effective November 21, 1989, and in accordance with the rules and regulations of the Oil Conservation Division seeks a Hearing DeNovo before the full Commission to be set at the earliest possible opportunity.

Respectfully submitted:



W. Thomas Kellahin
Kellahin, Kellahin & Aubrey
P.O. Box 2265
Santa Fe, New Mexico 87504

Larry Garcia, Esq.
P.O. Box 3128
Houston, Texas 77253
Attorneys for Marathon Oil Company

CAMPBELL & BLACK, P.A.

LAWYERS

JACK M. CAMPBELL
BRUCE D. BLACK
MICHAEL B. CAMPBELL
WILLIAM F. CARR
BRADFORD C. BERGE
MARK F. SHERIDAN
WILLIAM P. SLATTERY
PATRICIA A. MATTHEWS

JEFFERSON PLACE
SUITE 1 - 110 NORTH GUADALUPE
POST OFFICE BOX 2208
SANTA FE, NEW MEXICO 87504-2208
TELEPHONE: (505) 988-4421
TELECOPIER: (505) 983-6043

HAND-DELIVERED

April 11, 1990

RECEIVED

APR 11 1990

OIL CONSERVATION DIVISION

William J. LeMay, Director
Oil Conservation Division
New Mexico Department of Energy,
Minerals and Natural Resources
State Land Office Building
Santa Fe, New Mexico 87503

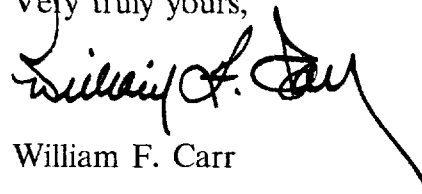
***Re: Case 9802: Application of Marathon Oil Company for an Unorthodox Gas Well
Location, Eddy County, New Mexico***

Dear Mr. LeMay:

Enclosed in triplicate, please find the Application for Rehearing of ORYX Energy Company in the above-referenced case.

Your attention to this matter is appreciated.

Very truly yours,



William F. Carr

WFC:sg

Enclosure

cc: Mr. Charles A. Gray (w/enclosures)

FILE
NO ACTION
TO BE TAKEN.

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION FOR THE PURPOSE OF
CONSIDERING:

CASE NOS. 9802 (De Novo)
ORDER NO. R-9050-A

APPLICATION OF MARATHON OIL COMPANY
FOR AN UNORTHODOX GAS WELL LOCATION
AND SIMULTANEOUS DEDICATION,
EDDY COUNTY, NEW MEXICO.

APPLICATION FOR REHEARING OF
ORYX ENERGY COMPANY

Comes now ORYX ENERGY COMPANY ("ORYX") pursuant to the provisions of N.M.Stat.Ann. § 70-2-25 (1978) and applies to the New Mexico Oil Conservation Commission ("Commission") for Rehearing of the above-captioned case and in support thereof states:

1. On October 5, 1989, Marathon Oil Company ("Marathon") filed its application in this case.

2. The Division heard the case on November 1, 1989 and on November 22, 1989 entered Order No. R-9050 granting Marathon's application for an unorthodox gas well location for a well to be drilled at a point 330 feet from the South line and 1650 feet from the West line of Section 9, Township 21 South, Range 23 East, N.M.P.M., in the Indian Basin-Upper Pennsylvanian Gas Pool, Eddy County, New Mexico. This Order,

penalizes the allowable assigned to this well by 80% because of its unorthodox location.

3. An Application for Hearing De Novo was filed by Marathon on December 6, 1989.

4. The full Commission heard this case on January 18, 1990 and Order No. R-9050-A was entered on March 22, 1990 which again approved Marathon's application for an unorthodox well location. This Order reduced the allowable penalty to 14% of the well's normal monthly allowable.

5. Within twenty days of the date of Order No. R-9050-A, ORYX filed this Application for Rehearing.

GROUND FOR REHEARING

I.

THE PENALTY IMPOSED ON THE MARATHON WELL
BY ORDER NO. R-9050-A IS ARBITRARY, CAPRICIOUS
AND UNREASONABLE AND IMPAIRS THE
CORRELATIVE RIGHTS OF ORYX

In Order No. R-9050-A, the Commission finds that Marathon's gas proration unit should be assigned a penalty which reflects the proportionate distance the proposed location is moved toward the corner of the unit (Finding 16). The Commission then reasons that this penalty should be further reduced because ORYX, a diagonal offset, has less acreage that will be drained by the Marathon well (Finding 18).

With these findings, the Commission erroneously focuses on the number of acres that can be drained by the Marathon well instead of focusing on the amount of

uncompensated drainage from this acreage.

When the Commission acts to offset the advantage one producer gains over another with an unorthodox well location, it should consider the rate of withdrawal of gas from a pool and the corresponding uncompensated drainage from offsetting tracts. With a 28% penalty, Marathon's production would be limited because it is 28% closer to ORYX than a standard location.

Here, however, the Commission makes the number of acres that can be drained the determining factor and cuts the penalty in half because only half as many acres are affected.

The result of this cut is that each ORYX acre experiences more drainage and the correlative rights of ORYX are thereby impaired.

Order No. R-9050-A denies ORYX the opportunity to produce its share of reserves from the Indian Basin-Upper Pennsylvanian Pool. Rehearing, therefore, should be granted and an Order entered which penalizes the Marathon well based on the additional drainage which will occur from the ORYX tract not on how many ORYX acres will be subject to drainage.

The Commission's decision to cut the 28% penalty on the Marathon well in half is also arbitrary and capricious for it is based on assumptions of circular drainage and equal drainage radii (Finding 19). These assumptions are contrary to the record in this case and inconsistent with the testimony of both ORYX and Marathon concerning the effect of the dolomite reservoir facies in this pool. The decision of the Division to reduce the penalty on the Marathon well is arbitrary, capricious and unreasonable. It impairs the

correlative rights of ORYX, is contrary to the duties imposed on the Commission by the Oil and Gas Act and not supported by substantial evidence. For these reasons, rehearing should be granted.

II.

ORDER NO. R-9050-A DOES NOT CONTAIN BASIC JURISDICTIONAL FINDINGS OF FACT CONCERNING THE PREVENTION OF WASTE AND PROTECTION OF CORRELATIVE RIGHTS

Order No. R-9050-A fails to meet applicable statutory and judicial standards for it does not contain findings which show how it will prevent waste and protect correlative rights.

In Continental Oil Company v. Oil Conservation Commission, 70 N.M. 310, 373 P.2d 809 (1962), the New Mexico Supreme Court reviewed the sufficiency of a Commission order. The Court noted that the Commission was created by statute and, pursuant to the New Mexico Oil and Gas Act, its jurisdiction and powers are founded on the duty to prevent waste and to protect correlative rights. The Court then found that Commission Orders must contain findings that are "... sufficiently extensive to show ... the basis of the Commission's Order."

The sufficiency of the findings of a Commission order was also addressed by the New Mexico Supreme Court in Faskin v. Oil Conservation Commission, 87 N.M. 292, 532 P.2d 588 (1975). In this case the Court found that:

In cases where the sufficiency of the Commission's finding is an issue ... the following must appear:

- A. Findings of ultimate facts which are material to the issues (prevention of waste and protection of correlative rights);
- B. Sufficient findings to disclose the reasoning of the Commission in reaching its ultimate findings.

Although the Oil and Gas Act contains definitions of both "underground waste" and "surface waste," N.M.Stat.Ann. § 70-2-3 (1978), Order No. R-9050-A contains no findings which disclose how either surface or underground waste, as defined by this statute, would be prevented by granting Marathon's application with only a 14% penalty.

The New Mexico Oil and Gas Act directs the Commission to protect the correlative rights of "the owner of each property in a pool." N.M.Stat.Ann. §70-2-33H (1978). Although the Commission finds that approval of the application with a 14% penalty will afford Marathon an opportunity to produce its just and equitable share of gas in this pool (Finding 21), no where in the order does the Commission explain how it reaches this conclusion nor how the correlative rights of ORYX will be protected.

The findings in Order No. R-9050-A do not meet the standards announced in the Continental and Faskin decisions. This Order, therefore, is contrary to law, arbitrary and capricious.

III.

ORDER NO. R-9050-A IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

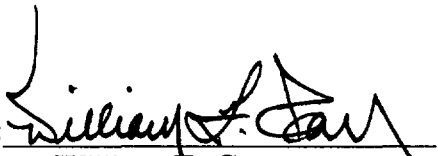
In entering Order No. R-9050-A, the Oil Conservation Commission ignored strong evidence which establishes that a well at the proposed location, without the imposition of a substantial penalty, will result in drainage from the ORYX tract that will not be offset by the counter-drainage unless substantially penalized. Nothing in Order No. R-9050-A even suggests that this portion of ORYX's evidence was considered by the Commission in granting Marathon's application. When the entire record is considered, it is clear that approval of the Marathon application will result in the waste of oil and gas and, furthermore, that approval of this well location with only a 14% penalty will result in drainage from the ORYX tract which cannot be offset by counter-drainage. Order No. R-9050-A, and the findings therein, are inconsistent with the record of the Commission hearing and are not supported by substantial evidence.

CONCLUSION

ORYX request that this Application for Rehearing be granted, and following rehearing, that the Commission enter its Order imposing a sufficient penalty on Marathon's gas proration unit to offset the advantage Marathon is obtaining on ORYX by virtue of this proposed unorthodox location.

Respectfully submitted,

CAMPBELL & BLACK, PA

By: 

William F. Carr


Post Office Box 2208

Santa Fe, New Mexico 87504

Telephone: (505) 988-4421

Attorneys for ORYX Production
Corporation

I hereby certify that a copy of
the foregoing was hand delivered
to Thomas Kellahin, Esq., 117 N.
Guadalupe, Santa Fe, New Mexico
this 11th day April, 1990.



William F. Carr