STATE OF NEW MEXICO
DEPARTMENT OF ENERGY AND MINERALS
OIL CONSERVATION DIVISION

IN THE MATTER OF THE APPLICATION
OF MARATHON OIL COMPANY FOR
AMENDMENT OF POOLING ORDER
R-8282 AND R-8282-A
LEA COUNTY, NEW MEXICO. CASE: 9146

CERTIFICATE OF MAILING
AND
COMPLIANCE WITH ORDER R-8054

In accordance with Division Rule 1207 (Order R-8054) I hereby certify that on May 12, 1987, notice of the hearing, and a copy of this application, were mailed at least twenty days prior to hearing originally set for June 3, 1987 to the operators and interested parties listed in Exhibit "A" attached to application.

W. Thomas Kellahin

SUBSCRIBED AND SWORN to before me this 2nd day of June, 1987.

Notary Public

My Commission Expires:

9-26-87

STATE OF NEW MEXICO

ENERGY AND MINERALS DEPARTMENT

OIL CONSERVATION DIVISION

GARREY CARRUTHERS
GOVERNOR

February 1, 1988

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-5800

Mr. Thomas Kellahin
Kellahin, Kellahin & Aubrey
Attorneys at Law
Post Office Box 2265
Santa Fe, New Mexico

Re: CASE NO. 9146 (Reopened)
ORDER NO. R-8282-D

Applicant:

Marathon Oil Company

Dear Sir:

Enclosed herewith are two copies of the above-referenced Division order recently entered in the subject case.

Sincerely,

Florene Davidson

FLORENE DAVIDSON
OC Staff Specialist

Copy of order also sent to:

Hobbs OCD X
Artesia OCD X
Aztec OCD

Other

January 12, 1988

Mr. W. Thomas Kellahin
Kellahin, Kellahin and Aubrey
P. O. Box 2265
Santa Fe, New Mexico 87504-2265

Re: Application of Marathon Oil Company
to Reopen Division Case No. 9146 and
for the Amendment of Division Orders
R-8282 and R-8282-A
Marathon Oil Company No. 1 Benson Well
Township 16 South, Range 38 East, NMPM
Section 14: S/2 SE/4
Lea County, New Mexico

Dear Tom:

On behalf of J. A. Davidson, we advise that Mr. Davidson does not intend to enter an appearance at the captioned hearing set for February 20, 1988.

January

Please let me know if you have any questions in connection with this matter.

DICKERSON, FISK & VANDIVER

Chad Dickerson

Chad Dickerson

CD:pvw

cc: Oil Conservation Division
Mr. J. A. Davidson

STATE OF NEW MEXICO

ENERGY AND MINERALS DEPARTMENT

OIL CONSERVATION DIVISION

September 21, 1987

GARREY CARRUTHERS
GOVERNOR

POST OFFICE BOX 2088
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO 87501
(505) 827-5800

Mr. Thomas Kellahin
Kellahin, Kellahin & Aubrey
Attorneys at Law
Post Office Box 2265
Santa Fe, New Mexico

Re: CASE NO. 9146
ORDER NO. R-8282-B

Applicant:

Marathon Oil Company

Dear Sir:

Enclosed herewith are two copies of the above-referenced Division order recently entered in the subject case.

Sincerely,

Florene Davidson

FLORENE DAVIDSON
OC Staff Specialist

Copy of order also sent to:

Hobbs OCD x
Artesia OCD x
Aztec OCD

Other Chad Dickerson

KELLAHIN, KELLAHIN AND AUBREY
Attorneys at Law
El Patio - 117 North Guadalupe
Post Office Box 2265
Santa Fe, New Mexico 87504-2265

W. Thomas Kellahin
Karen Aubrey

Jason Kellahin
Of Counsel

Telephone 982-4285
Area Code 505

RECEIVED

JUN 22 1987

OIL CONSERVATION DIVISION

June 22, 1987

Mr. David R. Catanach
Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87504

"Hand Delivered"

Re: Application of Marathon Oil Company to amend compulsory pooling order and to create a new Siluro-Devonian Oil Pool, Lea County, New Mexico

Dear Mr. Catanach:

On behalf of Marathon Oil Company please find enclosed our memorandum and proposed orders for entry in Division Case 9145, which you heard on June 3, 1987.

Very truly yours,

W. Thomas Kellahin

WTK:ca
Enc.

cc: Chad Dickerson, Esq.

STATE OF NEW MEXICO

DEPARTMENT OF ENERGY AND MINERALS

OIL CONSERVATION DIVISION

IN THE MATTER OF THE APPLICATION
OF MARATHON OIL COMPANY FOR THE
CREATION OF A NEW SILURO-DEVONIAN
OIL POOL, INCLUDING A PROVISION FOR
80-ACRE SPACING,

and Case Nos. 9145 & 9146

IN THE MATTER OF THE APPLICATION
OF MARATHON OIL COMPANY FOR
AMENDMENT OF DIVISION
ORDER NO. R-8282,
LEA COUNTY, NEW MEXICO

MARATHON OIL COMPANY'S
MEMORANDUM IN SUPPORT OF ITS APPLICATIONS

Marathon Oil Company ("Marathon") has applied to the Oil Conservation Division for an order creating a new Siluro-Devonian Oil Pool, with 80-acre spacing and for an amendment to Division Order No. R-8282. Division Order R-8282, dated August 21, 1986, which pooled a 40 acre tract in which Mr. James A. Davidson ("Davidson") has a 38.125% interest for the drilling of a wildcat oil well in the Siluro-Devonian formation.

Marathon submits this memorandum in support of its above-captioned applications which are pending before Examiner Catanach.

I.

FACTUAL BACKGROUND

Marathon's application for compulsory pooling was opposed by Davidson before the Division in August 1986. The Division entered its order pooling Davidson on August 21, 1986. Davidson was notified of his right to participate in the well and elected not to participate. He appealed the Division's Order in a de novo hearing before the Commission, which upheld the Order.

On February 11, 1987, Marathon completed the Benson #1 well as a producing well in the Devonian formation. Based upon completion and production data, Marathon now seeks the creation of a new Siluro-Devonian oil pool with temporary special rules, including 80-acre spacing, and an amendment to Order R-8282 to include an additional 40-acre tract. Davidson opposes Marathon's application for amendment of Order R-8282 on the basis that the Division lacks the authority to amend its compulsory pooling order to include the additional 40-acre tract. Davidson's position is that the Division must void its existing order, initiate a new compulsory pooling case for the

80 acres, and give Davidson another opportunity to elect to participate in the well without penalty.

It is Marathon's position that because this was a wildcat well and subject to statewide 40 acre oil spacing at the time the well was drilled, it had no alternative but to pool only the original 40-acre tract. It was only after obtaining the data from the completion and production of the discovery well, did Marathon have a basis upon which to support a change in the spacing for the well.

It is also Marathon's position that the Division has the statutory authority to amend its order to cover the additional 40 acres and that equity precludes Marathon from having to provide Davidson another opportunity to elect to participate in the well. The well is a known producer and such an opportunity to participate is equal to granting Davidson a risk-free interest in the well. Such a grant would be harmful and grossly unfair to Marathon.

II.

ISSUES

The real issue before the Division is not whether the Division has the authority to amend its own spacing and/or pooling orders, but whether Davidson can use the applications pending before the Division to obtain another opportunity to participate in what is now a producing oil well without penalty. He asserts he can and uses the argument that the Division lacks authority to amend its orders to defend his otherwise indefensible position.

Davidson went "non-consent" in the well in 1986 and now that it is a producing well, he wants to participate without penalty. He assumes if the Division rules that Marathon must initiate a new compulsory pooling case against him, he will then get another election to participate, which he can accept this time without risk. Marathon submits that it would be grossly unfair to allow Davidson such an option after Marathon has assumed the total risk and initial costs involved in drilling a wildcat well. Now that the well is completed and producing, Davidson wants to

participate. This is exactly the situation which the risk penalty is designed to prevent.

Davidson's interest in the additional 40 acres is exactly the same as his interest in the original 40 acres, i.e., 38.125%. There is, therefore, no question of any adjustments that will have to be made to Davidson's interest and no question of him being deprived of any of his interest in the well or of his correlative rights being violated by the proposed amendment to the compulsory pooling order.

The Division addressed these very same issues in Case No. 8894 in which the Applicant, HCW Exploration, had obtained a compulsory pooling order of Doyle Hartman's interest in a 160-acre tract for the purpose of drilling a gas well. When the well was actually drilled it was classified as an oil well and HCW applied to the Division for an order downspacing the unit from 160 acres to 40 acres. Mr. Hartman's interest was the same in the 40 acres as in the 160 acres and the Division granted the application for amendment, finding that the proposed amendment did not affect Mr. Hartman's percentage interest in the well and that the amendment afforded him an opportunity to

protect his correlative rights and prevent waste. (Ex. 1 at 2) The Division further found that all provisions in effect under the original order should remain in full force and effect, including the risk penalty and overhead rates charged to the non-consenting working interest owners. (Ex. 1 at 3)

III.

LEGAL ARGUMENT

The authority of a state regulatory agency, such as the New Mexico Oil Conservation Division, to amend its own orders regarding spacing and force pooling is clear. This authority is vested in such an agency by statute and has been repeatedly upheld in the courts, regardless of whether the statutes specifically state the authority in terms of the "power to extend the boundaries of a spacing unit", as the Oklahoma statutes do, or more generally empower the agencies to determine spacing units in such a manner as will prevent waste and protect correlative rights.

In Continental Oil Company v. Corporation Commission, 376 P.2d 330 (Okla. 1962), Continental applied to the Corporation Commission to amend an order establishing spacing and drilling units to allow

Continental to drill an additional well. The Commission denied the application, Continental appealed, and the Oklahoma Supreme Court reversed the Commission. In doing so, the Supreme Court held that the Legislature intended that orders establishing well spacing and drilling units could and should be modified when necessary to conserve oil or gas or bring about fair and equitable production. The Court found that Continental's expert had presented evidence which disclosed a substantial change in the knowledge of the conditions existing in the area since the original order was entered and amendment of the order was necessary to prevent waste and protect correlative rights.

In Continental, new knowledge was obtained by drilling the well which indicated that an amendment of the existing order was necessary. The Court found that where evidence indicated amendment was necessary the Commission clearly had the authority to effect such amendment. In the present case, the same situation exists. At the time of the Division's original order, Marathon did not have the technical data available nor could it have had, prior to the actual drilling of the

well, to know that the well would drain 80 acres. Recent testimony at the June 3, 1987 hearing has indicated that the subject well will effectively drain 80 acres and that a modification of the Division's order to include an additional 40 acres in the unit is necessary to prevent waste, protect correlative rights and to avoid the drilling of unnecessary wells. The Division clearly has the authority to do this under §§ 70-2-12 and 70-2-17, N.M.S.A., 1978.

In Winter v. Corporation Commission of State of Oklahoma, 660 P.2d 145 (Okla. App. 1983), the Court of Appeals found that the Commission was empowered

> where there is substantial evidence of a change of conditions or knowledge of conditions, to either change the size of the existing units or permit drilling of additional wells where such action is necessary to prevent waste or protect correlative rights. At 147-148.

Similarly in Amoco Production Co. v. N.D. Industrial Commission, 307 N.W.2d 839 (N.D. 1981), the North Dakota Supreme Court found that under its continuing statutory duty to prevent waste and protect correlative rights, the North Dakota Industrial

Commission had the power and authority to modify spacing units.

In Landowners Oil, Gas & Royalty Owners v. Corporation Commission, 420 P.2d 542 (Okla. 1966), landowners appealed a Commission spacing order arguing, inter alia, that it was a taking of private property without due process of law and without compensation. The Oklahoma Supreme Court disagreed and upheld the Commission's order, agreeing that the modified spacing would protect the correlative rights of all concerned and permit owners to recover a fair share of the reservoir substances.

In the present case, Davidson's interest in each of the 40-acre tracts is the same. By expanding the unit to 80 acres, his interests are still protected. He is being afforded the same opportunity to produce the oil underlying his interest on the additional 40 acres as on the original 40. Indeed, if the unit were not expanded, Mr. Davidson's correlative rights might be endangered by drainage from the now existing well.

CONCLUSION

THEREFORE, for the reasons stated herein, Marathon's applications should be granted and Orders

entered by the Division to that effect. We have enclosed for your consideration as Exhibit 2 an Order to Amend the prior compulsory pooling order and as Exhibit 3 an order to create the new pool.

Respectfully submitted,

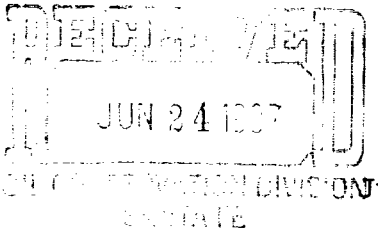
KELLAHIN, KELLAHIN & AUBREY
Post Office Box 2265
Santa Fe, New Mexico 87504

By _____
W. Thomas Kellahin

CERTIFICATE OF MAILING

I hereby certify that a true copy of the forgoing instrument was mailed to opposing counsel of record this 22 day of June, 1987.

_____



June 23, 1987

Energy and Minerals Department
Oil Conservation Division
P. O. Box 2088
Santa Fe, New Mexico 87501

Re: Marathon Oil Company Applications
Case Nos. 9145 and 9146

Gentlemen:

Enclosed for filing in the captioned cases, please find a Memorandum of Law Opposing Marathon Oil Company's Application.

DICKERSON, FISK & VANDIVER

Chad Dickerson

CD:pv
Enclosure

cc w/enclosure: Mr. J. A. Davidson
Mr. W. Thomas Kellahin

Chad Dickerson John Fisk David R. Vandiver Rebecca Reese Dickerson
Seventh & Mahone / Suite E / Artesia, New Mexico 88210 / (505) 746-9841

DICKERSON, FISK & VANDIVER
ATTORNEYS AT LAW