

Law Office of
DON M. FEDRIC
Board Certified Specialist - Oil & Gas Law

Hunker-Fedric, P.A.
George H. Hunker, Jr. (1914-2001)
Don M. Fedric

500 N. Kentucky
P O Box 1837
Roswell NM 88202-1837

Telephone 575-622-2700
Telefax 575-622-2702
dmfedric@fedric.com

October 8, 2010

Cimarex Energy Company
600 N. Marienfeld St.
Suite 600
Midland, Texas 79701

Attn: Land Department

Re: Cimarex Force Pooling Proceedings
#14415 and 14416
(your Franklin 18 Fed Com #3 & 4 Wells)

Gentlemen:

I represent the heirs of H. N. Smith, deceased, who are Robin E. Birnie, Allison L. Birnie, Camron Birnie, Cindy Kochi and Jason Bond, regarding the captioned proceedings. Cimarex Force Pooled these people under orders No. R-13287 and R-13221 which were issued in the captioned proceedings.

In both proceedings Cimarex reported to the Oil Conservation Division that the Smith heirs could not be located to receive notice of the proposed force pooling. In fact, in less than one day's time, Roswell Landman, Rolla Hinkle, found the Birnie heirs, in Los Angeles County, California, where their father, Richard Birnie had his will probated. The Personal Representative of the Richard Birnie Estate was his sister Olive Bond. By finding the Birnie Heirs, the Bond heirs were also found. Interestingly, Jason Bond lives in Roswell, New Mexico. In the Cimarex proceedings both Richard Birnie and Olive Bond were listed as the inheriting heirs of H. N. Smith. Thus, the Cimarex research to find their parties was preliminary enough to know Richard Birnie and Olive Bond existed. Since Cimarex had that knowledge it should have known that Richard Birnie was locatable in Los Angeles County, California.

Oil Conservation Division
Case No. 2
Exhibit No. _____

I do know that Cimarex viewed the E/2 of Section 18 as a valuable Oil and Gas property. Cimarex was willing to budget 3.7 million dollars each to drill 2 horizontal wells in that half-section. Sources indicate 200,000 to 300,000 barrels of recoverable oil as a projection for each well. At \$70.00 a barrel of oil that is potential gross recovery of up to \$21,000,000 per well. The Birnie heirs and Bond heirs each have a 6.25% working interest in each well, but they were never given an opportunity to benefit from their ownership. By Force Pooling these parties at 300% pay out their interests have been effectively taken without compensation by Cimarex. As stated in Albuquerque Commons Partnership v. City Council of Albuquerque 146 NM 568, "The Fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." Due process requires the giving of notice to parties whose interest in a property would be affected by a proposed action as long as the names and addresses of such parties are "reasonably accessible". Brown v. Grieg 106 NM 202. Also, see generally, Udden v. New Mexico Oil Conservation Commission 112 NM 528 wherein our New Mexico Supreme Court citing among several cases was persuaded by an Oklahoma case, Cravens v. Corporation Commission 613 p201 442 OK 1980 OK 1980, which held that when the names and addresses of affected parties are known or are easily ascertainable by the exercise of due diligence, notice by publication does not satisfy constitutional due process requirements.

As you know, the OCD retains jurisdiction in such matters, and I am prepared to petition the OCD to re-open both proceedings and set aside their Forced Pooling Order as to my clients. I am prepared to have Landman, Rolla Hinkle, and investigative services representative, Kelly Owen, testify before the OCD that Mr. Owen, on Mr. Hinkle's behalf, found the Birnie heirs the same day he was requested to initiate a search. Further, I am prepared to present to the OCD how very valuable this property is to Cimarex, and the value that has been taken from my clients. It seems to me that in today's world of numerous powerful internet search engines, where an extremely valuable property is concerned, it is not enough to simply allege a good faith effort to locate. Where you

have an oil company with superior knowledge state it cannot locate the owners of very valuable interests while a lone Landman with no vested interest can find these people in a quick and easy fashion, there can be little doubt that no real diligent search was made to find these individuals. I do not know what practices you have employed in the past and in other pending OCD proceedings, but in the present instance due diligence was clearly lacking. Their property was effectively taken without constitutional due process. I think we should talk.

Please promptly advise if you are willing to discuss this matter.

Yours very sincerely,

A handwritten signature in black ink that reads "Don M. Fedric". The signature is written in a cursive style with a horizontal line at the end.

Don M. Fedric

DMF/bhs

Law Office of
DON M. FEDRIC
Board Certified Specialist - Oil & Gas Law

Hunker-Fedric, P.A.
George H. Hunker, Jr. (1914-2001)
Don M. Fedric

500 N. Kentucky
P O Box 1837
Roswell NM 88202-1837

Telephone 575-622-2700
Telefax 575-622-2702
dmfedric@fedric.com

October 20, 2010

Mr. Hayden P. Tresner
Cimarex Energy Company
Suite 600
Midland, Texas 79701

Re: Cimarex Force Pooling Proceedings
#14415 and 14416
(your Franklin 18 Fed Com #3 & 4 Wells)

Dear Hayden,

Thank you for the opportunity to meet with you at your office in Midland to discuss my client's concerns regarding the captioned matter.

You know our position about due process as you and I discussed the same in detail, so I will not cover those arguments again except to reassert my view that the OCD would almost be compelled to set aside the Forced Pooling Orders.

As an alternate method of resolution, I propose to you the following:

Give my clients upon an individual basis a choice to choose in whole or in part:

- (1) To Term Assign to Cimarex (as of a date prior to drilling the first well) for a \$1500.00 per acre bonus, reserving the difference in burdens and 75% as an overriding royalty (this assumes an 81.25% NRI lease for a 6.25% reserved ORRI), and the option to convert their respective ORRI to a 25% of 6.25% working interest after pay out. Standard pay out language would be used.

or

- (2) Pay their way in whole or in part in both wells with credit for their shares of production to a selected date for closing. Paying their way would include, drilling, completing and operating.

We would accomplish this mutual resolution by written agreement to contractually cancel the Forced Pooling, set up the options and establish the form for Term Assignment. My folks would additionally execute a Stipulation of Interests Agreement with cross-conveyancing and chain of title representations to cure the gaps in chain of title.

I believe that this approach would be a win-win for both sides. I did not know until you told me that both wells have been drilled. I only knew of the first. Thus, Cimarex has been the risk taker for the Forced Pooled interest on both wells. As such, Cimarex would retain a substantial benefit if my clients mostly selected option #1.

Assume all take Option #1. We would have in each well: $6.25\% \text{ W.I.} \times 6.25\% \text{ ORRI} = .390625\%$ ORRI retained by my clients.

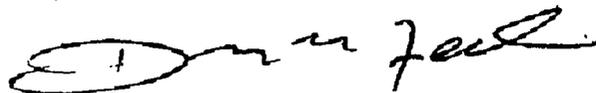
Cimarex retains $5.859375\% \text{ W.I.}$

When pay out occurs, my clients would have the option to convert $.390625\%$ to $25\% \times 6.25\% = 1.5625\%$ of W.I. Cimarex gets the $.390625\%$ back and keeps $4.6875\% \text{ W.I.}$

If Cimarex says no to all of the above, we go to the OCD. If the OCD sets aside the Forced Pooling orders we essentially have Option #2. If my clients cannot pay, they will try to find buyers for their interests. Such buyers will acquire without risk and the risk Cimarex took will not be rewarded. Therefore, I believe that Option #1 would work for both sides. Although I do not know what my clients would choose, I can recommend Option #1 to them; but even a mix of #1 and 2 would recognize my client's individual ownership interests while benefiting the Cimarex risk taking efforts.

Please let me know your thoughts and again, thank for your professional courtesy.

Yours very sincerely,



Don M. Fedric

DMF/bhs

Cimarex Energy Co.
600 N. Marienfeld St.
Suite 600
Midland, Texas 79701
PHONE 432.571.7800



January 7, 2011

Via: U.S. Mail and Facsimile (575) 622-2702

Don M. Fedric
P.O. Box 1837
Roswell, New Mexico 88202-1837

Re: The Smith Heirs
SE/4 of Section 18-T15S-R31E
Chaves County, New Mexico

Dear Don,

Cimarex Energy Co. ("Cimarex") made a diligent effort to identify, locate and contact the Smith heirs multiple times from August of 2008 through December of 2009. During that time the leasing activity in Section 18 became increasingly competitive and Cimarex was not the only company trying to find the Smith heirs. By January of 2010 the Smith heirs were the only remaining record title owners of the two fee leases covering the above-captioned lands that had not been located.

All of the leasehold owners of the two fee leases in question were extremely difficult to locate due to failure to properly document their ownership and title in the public record. Cimarex disagrees strongly with your assertion that we failed to exercise "due process" (which we understand to mean that we did not undertake a reasonable effort to locate all parties). Cimarex puts forth its best effort to succeed when vying for interest in a competitive lease play.

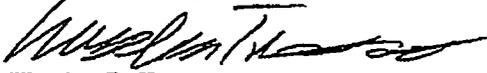
Cimarex is willing to offer your clients the opportunity to assign their respective leasehold interests in the above-captioned lands on the same terms that were offered to the other parties by Cimarex before the first well was drilled:

- 1.) Bonus consideration equal to \$450.00 per net mineral acre
- 2.) Delivery of a 75% net revenue interest lease
- 3.) 2-year term assignment, limited in depth to include the interval from below the base of the South Caprock Queen Unit down to the base of the Wolfcamp formation.

This offer is made subject to Cimarex's final verification and approval of the Smith heir's title. Please advise if your clients would like to take advantage of this opportunity. Contact the undersigned at either (432) 571-7856 or htresner@cimarex.com if you have any questions or concerns.

Respectfully Submitted,

Cimarex Energy Co.



Hayden P. Tresner
Landman

