

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION

Application of Heirs of H.N. Smith, deceased, to  
reopen Oil Conservation Division Case NO. 14415, the  
application of Cimarex Energy Co. for a non-standard  
oil spacing proration unit and compulsory pooling,  
to amend Order No. R-13287 to clarify the status of  
the interests of parties not properly pooled by said  
order, Chaves County, New Mexico.

Case No. 14415 and 14416

March 17, 2011  
8:15 A.M.  
Santa Fe, New Mexico

**COPY**

HEARING EXAMINER: WILLIAM JONES

DAVID BROOKS, Esq.

For The Heirs:

HOLLAND & HART, LLP  
110 N. Guadalupe St. #1  
Santa Fe, New Mexico 87501  
BY: WILLIAM F. CARR  
505-988-4421

DON M. FEDRIC, Esq.  
P.O. Box 1837  
500 N. Kentucky  
Roswell, New Mexico 88202-1837  
575-822-2700

For Cimarex:

JAMES GARRETT BRUCE, Esq.  
P.O. Box 1056  
Santa Fe, New Mexico 87504

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1 HEARING EXAMINER JONES: Back on the  
2 record. I don't mean to throw a kink in the  
3 hearing, but we have one case and I think I better  
4 just call it before I forget. Case No. 14598,  
5 Application of Yates Petroleum Corporation for a  
6 Non-Standard Spacing and Proration Unit and  
7 Compulsory Pooling, Eddy County, New Mexico, call  
8 for appearances? There being none, we will take the  
9 case under advisement.

10 Okay. We have two cases left on the  
11 docket and I will call both of them.

12 MR. CARR: Yes, we would like them  
13 consolidated.

14 HEARING EXAMINER JONES: Let's call cases  
15 14415 and 14416 Reopened, Application of the heirs  
16 of H.N. Smith, deceased, to reopen Oil Conservation  
17 Division Case No. 14415 and 14416, Applications of  
18 Cimarex Energy Company for non-standard oil spacing  
19 proration unit and compulsory pooling to amend  
20 Orders No. R-13287 and R-13221 to clarify the status  
21 of the interests of parties not properly pooled by  
22 said order, Chaves County, New Mexico. Call for  
23 appearances.

24 MR. CARR: May it please the Examiner, my  
25 name is William F. Carr. I am appearing with Don M.

1 Fedric. We represent the heirs of H.N. Smith and we  
2 have four witnesses.

3 MR. BRUCE: Jim Bruce of Santa Fe  
4 representing Cimarex Energy Company. I have two  
5 witnesses.

6 HEARING EXAMINER JONES: Will all  
7 witnesses please stand. For the record, state your  
8 names.

9 (Note: Witnesses Comply).

10 (Note: All witnesses sworn)

11 HEARING EXAMINER JONES: Would you briefly  
12 state what your application is in this case.

13 MR. FEDRIC: Mr. Examiner, is it possible  
14 to enter the rule to exclude witnesses who are not  
15 parties?

16 MR. BROOKS: You know, we have never done  
17 that in this forum, and the Rules of Civil Procedure  
18 do not apply, but do you have an objection to that,  
19 Mr. Bruce?

20 MR. BRUCE: I would like my witnesses to  
21 hear what the other people say. I would object to  
22 that.

23 MR. BROOKS: So we have a collision here.

24 MR. FEDRIC: It doesn't matter that much.

25 MR. BROOKS: Based on the established

1 precedent I'm going to deny the request because we  
2 have never done that in the ten years I have been  
3 here, and I know that our rules say that the Rules  
4 of Civil Procedure may be applied by analogy, but  
5 they do not apply. So I will go ahead and deny the  
6 request.

7 MR. CARR: May it please the Examiner, the  
8 issue in this case are two compulsory pooling orders  
9 that were entered by the Division and they pooled  
10 the interests of the H.N. Smith heirs. The Smiths  
11 own a 6.25 working interest in each of the  
12 horizontal well project areas that were pooled by  
13 the Division. The Division also imposed on those  
14 interests a 200 percent risk charge.

15 The evidence will show that an inadequate  
16 search was made to locate those individuals and  
17 their interests were pooled, and as a result of the  
18 Division's order they have suffered a substantial  
19 financial loss and that we are here asking you to  
20 declare that before you can pool you must make a  
21 reasonably diligent search to find individuals, and  
22 that if you do not do that, you cannot make the Oil  
23 Commission your accomplice in taking away a property  
24 interest.

25 HEARING EXAMINER JONES: Mr. Bruce?

1           MR. BRUCE: I agree with most of what  
2 Mr. Carr said. And I think the issues are two-fold  
3 in this case. Number one, were any of the parties  
4 reasonably locateable, number one; and number two,  
5 did the operator make a reasonable search, a  
6 comprehensive search. We believe that these  
7 parties, for the most part, were not reasonably  
8 locateable, but Cimarex did make a decent search to  
9 locate them. That's all I have to say.

10           HEARING EXAMINER JONES: Would the  
11 applicant proceed with its case?

12           MR. FEDRIC: Mr. Examiner, I have exhibits  
13 that I thought I would give you. We also have a  
14 hearing brief on due process. I call Rolla Hinkle,  
15 please.

16           MR. BROOKS: Before you start, I was under  
17 the impression that there was a New Mexico case  
18 involving compulsory pooling that had something to  
19 do with what happens when somebody doesn't get  
20 notice -- other than the Uhden case which I'm  
21 familiar with -- but I don't see it cited here. I  
22 will have to look that up at the next break and see  
23 if I can find it. Should be easy to find if it  
24 exists.

25           HEARING EXAMINER JONES: Let's go off the

1 record.

2 (Note: A discussion was held off the  
3 record).

4 HEARING EXAMINER BROOKS: Mr. Jones has  
5 requested that I take over as presiding examiner for  
6 the purposes of this case. Since we are both  
7 appointed to this case, I think we can do that. So  
8 I will take over presiding and you may proceed.

9 ROLLA HINKLE  
10 after having been first duly sworn under oath,  
11 was questioned and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. FEDRIC

14 Q. State your name, please?

15 A. Rolla R. Hinkle, III.

16 Q. Where do you live?

17 A. Roswell New Mexico.

18 Q. What is your occupation?

19 A. Petroleum landman.

20 Q. Do you work for someone?

21 A. I work for myself.

22 Q. What type of things do you do?

23 A. We do it all. We put together deals, sell  
24 deals, you know, make a little on the acreage,  
25 retain override. You name it, we can do it.

1 Q. Do you work for other people?

2 A. We did probably ten years ago but since  
3 then it's just for my brother and I.

4 Q. So you work for yourself; is that correct?

5 A. Completely.

6 Q. The matter before the hearing examiner  
7 involves the forced pooling of interests owned by  
8 the heirs of H.N. Smith. What's your involvement  
9 with this matter?

10 A. Well, in the Roswell Daily Record I saw  
11 the advertisement for the pooling and I said, "I  
12 think that's the deal Michael Richardson was working  
13 on," so I went next-door. I said, "Did they ever  
14 find the Smith guy?" He said, "I don't think they  
15 did." I said, "I will find him." So I figured  
16 okay, if I can find him I can probably try to buy  
17 it.

18 I called Joanie down at Guarantee Title  
19 and said, "Is there anything in Eddy County on H.N.  
20 Smith or Ethel Smith?" She said, "Yes, there's a  
21 probate on H.N. and two affidavits on Ethel." I  
22 said send me the probate. She said, "You have to  
23 get that in the clerk's office." I said, "That's  
24 right."

25 So I went ahead and she faxed me the

1 affidavits on Ethel and I called the probate office  
2 and they faxed me the one for H.N. I said, "Here we  
3 go. It's pretty clear. You have Richard Birnie and  
4 Olive Bond as the heirs of Ethel Smith and H.N.  
5 Smith. So I do an internet search and there's here  
6 and there. So I'm, like, let's see if they are  
7 deceased. So I did my death index search and sure  
8 enough they were deceased.

9           Then I did some looking around. No way I  
10 could find obituaries. They both died in  
11 California. It's tough to find people in  
12 California. That's when I contacted Kelly Owens and  
13 I said, "Find me some obituaries for these two  
14 individuals."

15           Q.     And did Mr. Owens do that for you?

16           A.     He sure did.

17           Q.     How long was it from the time that you  
18 contacted him until the time you heard from him?

19           A.     Probably a day or so. No, on that it was  
20 probably over a week because I had gone on vacation  
21 and when I came back he had the information for me  
22 there.

23           Q.     Let me show you the Applicant's Exhibit  
24 No. 1. Is that a copy of the invoice that you  
25 received from Mr. Owens?

1 A. This is it. It appears to be.

2 Q. All right. And looking at that invoice,  
3 does it find Birnie heirs and Bond heirs -- or  
4 Birnie heirs?

5 A. It states the alleged heirs of these two  
6 people. Because, of course, this is out of an  
7 obituary. It's not a probate so these are possible  
8 heirs. It's a way to try to find the actual heirs.

9 Q. Who does it show the heirs to be?

10 A. Let's see. Mr. Bond -- Olive Francis Bond  
11 was the wife of Jason Bond. They had one daughter,  
12 Cindy Roll who at the time of death was listed as  
13 the spouse of Bob Roll, aunt of Robin, Allison and  
14 Cameron Birnie. Ms. Bond was buried in Forest Lawn,  
15 Hollywood Hills, California. The services were held  
16 by Forest Lawn Mortuary. No obituary was found on  
17 Mr. Birnie. Only the death notice was located.  
18 They described him as the father of Robin, Allison  
19 and Cameron Birnie. There is no surviving spouse  
20 listed for Mr. Birnie. He was buried at Forest Lawn  
21 and the service was handled by Forest Lawn Mortuary.

22 Q. Is there an address in there for the  
23 Birnies?

24 A. There's not.

25 Q. Did you get an address for them?

1           A.       That's when I searched for Robin and the  
2       Birnie heirs, because Birnie is an odd name. Sure  
3       enough, I found Allison and Birnie living together.  
4       I mean Allison and Robin living together. I said  
5       that's got to be them. No phone number though.

6           Q.       Let me show you our applicant's Exhibit 2.  
7       Would you explain what that is, please?

8           A.       This is my first letter to Allison L.  
9       Birnie and Robin E. Birnie dated February 24th that  
10      I am trying to locate them because they have an  
11      interest in an oil and gas lease in Chaves County,  
12      New Mexico.

13          Q.       Did you get a response from anyone?

14          A.       I did not.

15          Q.       Then what did you do?

16          A.       Kind of -- well, I have other things I do.  
17      This is kind of just for fun actually. So then, oh,  
18      a couple months later I told Kelly Owens, "Hey, I  
19      never heard from them." He looked it up and said,  
20      "Send it again but put a 2 or 22 at the end of the  
21      street address." I did and sent it off.

22          Q.       Let me ask you to look at Exhibit 3. Is  
23      that an invoice from Mr. Owens having to do with  
24      finding an address of 2 or 22?

25          A.       It is.

- 1 Q. Let me have you look at Exhibit 4?
- 2 A. No telephone number.
- 3 Q. Is that your next letter to the Birnies?
- 4 A. Yes, it is.
- 5 Q. And did you attach a copy of those
- 6 affidavits from Eddy County to that letter?
- 7 A. I did as stated in my letter.
- 8 Q. Did you get a response to that?
- 9 A. I did. I got a response the next day.
- 10 Q. How was that?
- 11 A. I got it on my BlackBerry and I was, like,
- 12 wow, I found them. Cool. But I didn't know what to
- 13 do with them by then because I knew they had been
- 14 pooled.
- 15 Q. Who did you talk to?
- 16 A. I talked to Robin.
- 17 Q. And this is Robin Birnie?
- 18 A. That's correct.
- 19 Q. Did you ask her about the first letter you
- 20 sent to her?
- 21 A. She said that she received it and she
- 22 tried to contact me but I did not get any contact.
- 23 Q. But she did contact you after the second
- 24 letter; is that correct?
- 25 A. She sure did.

1 Q. When you talked to her, was she aware of a  
2 possible inherited mineral interest in Section 18 of  
3 Township 15 South, Range 31 East in Chaves County,  
4 New Mexico?

5 A. She was aware that she owned part of a  
6 lease in Chaves County, New Mexico.

7 Q. Did she know anything about where it was  
8 or anything?

9 A. No, she had no clue.

10 Q. After you found this information, did you  
11 reach any kind of an agreement with her?

12 A. Well, I said, "Now that I know where you  
13 live and I get addresses from everybody and your  
14 cousin Cindy, I would like to send you an offer  
15 letter." So I sent an offer letter. They called  
16 back and said, "Is that what it's worth?" I said,  
17 "I really don't know what it's worth. I just put a  
18 figure on it." I know that it's going to be a while  
19 because they were pooled. I didn't know if you  
20 could get in or not. So I was kind of like I had a  
21 cat by the tail and didn't know what to do with it.

22 Q. Did you strike any deal with any of the  
23 heirs?

24 A. No. At that point I was, like, let me  
25 just try to help you get back in the well.

1 Q. Did you at any time talk with anybody at  
2 Cimarex about the fact that you found the Birnies?

3 A. I did.

4 Q. Who did you talk to?

5 A. I talked with Hayden.

6 Q. This is Hayden Tresner?

7 A. Yes.

8 Q. He is a landman for Cimarex; is that  
9 correct?

10 A. That's correct.

11 Q. Do you know if they had drilled any wells  
12 on the land?

13 A. By then they had drilled one.

14 Q. Do you know if they drilled the second  
15 one?

16 A. I don't think they drilled the second one.  
17 I'm not sure of the dates though.

18 Q. You told him that you had found the Birnie  
19 heirs; is that correct?

20 A. That's correct.

21 Q. Was he interested in the fact that you  
22 found them?

23 A. He said, "Well, they have been pooled,"  
24 and I said, "That's all you can do for me?" And he  
25 said, "Yeah." And I said, "Oh, well, if that's all

1 you can do." I don't know. I thought it was wrong,  
2 you know.

3 I'm like, "Just let them back in on a  
4 farm-out basis or term assignment," you know. But  
5 no, they were pooled. And he was right. He  
6 couldn't do anything. They had been pooled.

7 Q. That's all we have for the witness.

8 CROSS-EXAMINATION

9 BY MR. BRUCE

10 Q. Mr. Hinkle, you talked about seeing the  
11 ad. When do you recall seeing the ad?

12 A. January 6th. That was the date it came  
13 out in the Roswell Daily Record.

14 Q. And did you know of the H.N. Smith family?

15 A. No.

16 Q. Now, you mentioned Kelly Owens. What does  
17 he do for a living?

18 A. He is a private investigator or claims to  
19 be.

20 Q. And the interest -- since I know you've  
21 looked at it, the interest we are talking about is  
22 not an unleased mineral interest; it's a leasehold  
23 working interest?

24 A. That's correct. From a lease back in the  
25 '50s or '40s.

1 Q. I think it was mid '50s.

2 A. Before I was born so it doesn't count.

3 Q. And just out of curiosity, have the Smith  
4 heirs assigned their interest to anyone or do they  
5 still have it?

6 A. They had assigned part of it to whoever  
7 had that Queen Unit out there, but that was only  
8 part of it and they reserved the deep rights with  
9 the other three people that were on the lease.  
10 Collier -- and I can't remember. There was four  
11 individuals that were in on the deal. Old buddies  
12 from Artesia, I guess.

13 Q. That's all I have.

14 REDIRECT EXAMINATION

15 BY MR. FEDRIC

16 Q. Mr. Hinkle in connection with the  
17 assignment you're talking about, you're not talking  
18 about these Birnie heirs who assigned anything, you  
19 are talking about H.N. Smith?

20 A. H.N. Smith and his wife.

21 Q. Not Robin, Cameron and Allison Birnie?

22 A. No.

23 Q. You are not talking about Jason Bond or  
24 Cindy Kochi assigning anything to anybody?

25 A. No, this was right after the lease was

1 purchased. They sold it to the predecessor -- maybe  
2 the Gulf or someone. I can't remember who, but this  
3 was H.N. Smith ed ex Ethel.

4 Q. This was 50 years ago or so?

5 A. Yes. Somewhere. Whenever they put the  
6 unit together in the '60s, I think. But it was H.N.  
7 Smith and Ethel Smith, and then they reserved the  
8 deep rights. That's why -- that stuff just falls  
9 off the face of the earth that way.

10 Q. That's all we have of the witness.

11 HEARING EXAMINER BROOKS: Well, do you  
12 have information -- I suppose other witnesses will  
13 fill in the details but when did H.N. Smith pass  
14 away?

15 THE WITNESS: Like the '50s.

16 HEARING EXAMINER BROOKS: The 1950s.

17 THE WITNESS: Yeah, long time ago.

18 HEARING EXAMINER BROOKS: Ethel was his  
19 wife?

20 A. Yes.

21 Q. She passed away?

22 A. In the '80s.

23 HEARING EXAMINER BROOKS: Much later?

24 THE WITNESS: Yeah.

25 HEARING EXAMINER BROOKS: Which did you

1 say had the probate?

2 THE WITNESS: H.N. and it was done in Eddy  
3 County, New Mexico.

4 HEARING EXAMINER BROOKS: The people you  
5 identified as heirs, were they children of H.N. and  
6 Ethel?

7 THE WITNESS: They were niece and nephew  
8 of Ethel.

9 HEARING EXAMINER BROOKS: What were the  
10 names of the niece and nephew?

11 THE WITNESS: Olive Bond and Richard E.  
12 Birnie. They were niece and nephew of Ethel Smith.

13 HEARING EXAMINER BROOKS: Okay.

14 THE WITNESS: Because they had no issue.

15 HEARING EXAMINER BROOKS: Ethel.

16 THE WITNESS: H.N. had no issue prior to  
17 that so it went down the tree to Ethyl's heirs and a  
18 sister, I'm assuming.

19 HEARING EXAMINER BROOKS: Nobody  
20 established -- since H.N. died first, if he didn't  
21 have children, then Ethel would get --

22 THE WITNESS: It was community property.  
23 She received all of it.

24 HEARING EXAMINER BROOKS: Ethel would get  
25 the entire interest, so there wouldn't be a

1 possibility of there being any outstanding heirs  
2 because they wouldn't have inherited.

3 THE WITNESS: It was community property  
4 and he died with a Will anyway. Pushing it there.

5 HEARING EXAMINER BROOKS: Olive Bond and  
6 Richard Birnie are deceased now?

7 THE WITNESS: That's correct.

8 HEARING EXAMINER BROOKS: Who succeeded to  
9 those interests?

10 THE WITNESS: Jason is the widower of  
11 olive Bond. Robin, Allison and Cameron are the  
12 three children of Richard Birnie.

13 HEARING EXAMINER BROOKS: Robin Allison  
14 and Cameron. Okay.

15 MR. FEDRIC: Hearing Examiner Brooks,  
16 there was one other child of Olive and Jason Bond  
17 which was a girl, Cindy Kochi, and she survived.

18 HEARING EXAMINER JONES: She is the child  
19 of Jason Bond?

20 MR. FEDRIC: Just, Jason and olive.

21 HEARING EXAMINER BROOKS: Okay.

22 MR. BRUCE: How do you spell that?

23 MR. FEDRIC: K-O-C-H-I, C-I-N-D-Y.

24 HEARING EXAMINER BROOKS: So at present  
25 the interest is owned half by Cindy Kochi and

1 one-sixth each by Robin, Allison and Cameron?

2 THE WITNESS: Jason is still in the deal,  
3 too, on the Olive Bond side.

4 HEARING EXAMINER BROOKS: Jason is still  
5 alive.

6 THE WITNESS: I don't know if Olive Bond  
7 had a probate or not.

8 HEARING EXAMINER BROOKS: And let's see.  
9 One of them, you said, died in California? Who was  
10 that?

11 THE WITNESS: They both died in  
12 California.

13 HEARING EXAMINER BROOKS: Olive Bond and  
14 Richard Birnie died in California?

15 THE WITNESS: Yes.

16 HEARING EXAMINER BROOKS: Do you know  
17 when?

18 THE WITNESS: '86 for Richard Birnie --  
19 this is off memory -- and '92 for Olive Bond.

20 HEARING EXAMINER BROOKS: This is probably  
21 going back over what you already said, but where did  
22 you best find information about that?

23 THE WITNESS: He is not only a private  
24 investigator but he has a 48-hour Service. That's  
25 what the name of it is. He has people he can

1 contact anywhere from L.A. to Indianapolis to have  
2 them check the records in the courthouses and  
3 obituaries to locate stuff for him. It's a  
4 networking deal. So he hired somebody to go out to  
5 Los Angeles County, California and dig through the  
6 records to find the obituaries for these two  
7 individuals.

8 HEARING EXAMINER BROOKS: He is going to  
9 testify, right?

10 THE WITNESS: Yes, sir.

11 HEARING EXAMINER BROOKS: Very good. I  
12 won't ask you anything further. Any questions?

13 MR. FEDRIC: I call Kelly Owens.

14 KELLY OWENS

15 after having been first duly sworn under oath,  
16 was questioned and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. FEDRIC

19 Q. Would you state your name and address  
20 please?

21 A. My name is Kelly Michael Owens and I live  
22 at 4703 West Pamela Drive in Roswell, 226 North Main  
23 in Roswell.

24 Q. What is your occupation?

25 A. I am a licensed private investigator in

1 New Mexico.

2 Q. Were you engaged by Rolla Hinkle to find  
3 the heirs of H.N. Smith?

4 A. Yes, I was.

5 Q. What did you do?

6 A. Mr. Hinkle gave me the names of two people  
7 that he was interested in locating and it was last  
8 names Birnie and Bond. He believed they were in  
9 California. I conducted initial searches to try to  
10 locate them. I suspected that they were deceased  
11 and told him as much and then he ordered me to try  
12 to locate an obituary for them, and I did.

13 Q. How did you do that?

14 A. Through my business I am a subscriber to  
15 Credit Header Agency Information. I can obtain  
16 information on individuals in the United States  
17 either with a name or a social security number or a  
18 last known address and I can run it through a  
19 computer through an information broker and I can  
20 come back and they give me the last known addresses  
21 that they have. I don't guarantee that these people  
22 are at the addresses and I tell my clients who hire  
23 me to do that much, I tell them that I'm not sure  
24 they will be there if you knock on the door.

25 And that is how I developed the

1 information on Bond and Birnie to begin with. I  
2 think we discovered they were deceased through an  
3 obituary search, but what the initial header  
4 searches identified was the last known communities  
5 that they were in, so what I do in those situations  
6 and have done for Mr. Hinkle for several years is I  
7 will go to the largest major newspaper to try to  
8 locate obituaries for those people and I did locate  
9 the obituary for Mrs. Bond in the Los Angeles Times  
10 and I located a death notice for Mr. Birnie in the  
11 L.A. Times.

12           The problem here was that the L.A. Times  
13 has a cut-off of the year 2000. They have all of  
14 the obituaries you want to look at after the year  
15 2000. Previous to the year 2000 they direct you to  
16 the Los Angeles Public Library. And because I am a  
17 private investigator, I work with other  
18 investigators and court researchers throughout the  
19 United States. I retained a researcher as close as  
20 I could geographically get to the Los Angeles Public  
21 Library and he went into the library and on their  
22 microfische films he obtained a copy of the obituary  
23 for Mrs. Bond and the death notice for Mr. Birnie  
24 and I supplied that information to Mr. Hinkle.

25           Q.     And did the information you acquired from

1 the Los Angeles Times and the library, did that give  
2 you heirs to look at?

3 A. Yes.

4 Q. For both of these individuals?

5 A. Well, at that time I communicated what I  
6 found to Mr. Hinkle and I said, "This is what I've  
7 got." I believe it identified a city that some of  
8 the heirs were possibly living in and it identified  
9 the funeral home and where the arrangements were  
10 made.

11 Q. Do you recall if you gave him an address?

12 A. I believe I located some folks in Sherman  
13 Oaks, California. I had a street address but there  
14 was a discrepancy. They were in an apartment and  
15 there was a discrepancy whether it was 2 or 22, and  
16 I suggested Mr. Hinkle try both of the apartment  
17 addresses and I believe he found them.

18 Q. In connection with the job he gave you to  
19 do, what amount of time passed between the time that  
20 he gave you the job to do and the time that you  
21 found information adequate to give to him?

22 A. The initial request was about a week, and  
23 then I discovered that, of course, Mrs. Bond and  
24 Mrs. Birnie were deceased. And then it might have  
25 been a week to two weeks to get the researcher on

1 the ground in Los Angeles to go to the public  
2 library. These are people who are normally  
3 accustomed to going to courthouses and getting court  
4 files and sending them back to you, but in this case  
5 I had to explain to the researcher we are looking  
6 for these obituaries in the library and these are  
7 the years and months of their possible death. And  
8 with that information, in two to three weeks tops.

9 Q. You sent Mr. Hinkle a bill for \$600 and  
10 something bucks and \$80 something bucks to do all  
11 this, correct?

12 A. I did.

13 Q. Do you find people as a regular type thing  
14 in your occupation?

15 A. I do.

16 Q. In your work as an investigator, the  
17 sources that you used to find the people were they  
18 unique and unusual?

19 A. No, sir.

20 Q. Would you say they were normally used in  
21 the type of thing you would use to find a missing  
22 person?

23 A. All of my brethren, my people, private  
24 investigators, we compare notes as to the  
25 information brokers we all use. The information

1 brokers that some that I can name off the top of my  
2 head, LexisNexis, IRB, they are trade names in the  
3 industry. I do a great deal of work for financial  
4 institutions. There are trade names in financial  
5 institutions, trade names in law offices. I have  
6 never worked in a landman capacity or I have never  
7 worked in the oil and gas business but I have worked  
8 for other landmen, but I don't know if they have  
9 access to those but I understand those information  
10 brokers solicit whoever they can to buy their  
11 product.

12 Q. These sources that we're talking about,  
13 are they something that you would find on the  
14 internet?

15 A. Absolutely.

16 Q. If you had a last known city or a county  
17 address for a person, are these the type of sources  
18 that you would use to try to find these people?

19 A. Precisely who I would go to.

20 MR. FEDRIC: That's all I have.

21 HEARING EXAMINER JONES: Mr. Bruce?

22 MR. BRUCE: I can't think of any right  
23 now. If you have questions, go ahead.

24 HEARING EXAMINER BROOKS: One. Which of  
25 the people was it you found an address for?

1           THE WITNESS: I initially found addresses  
2 for both Mrs. Bond and Mr. Birnie. But when I  
3 received this information back from my supplier, it  
4 also identifies them by age. And it also identifies  
5 the report that they are reporting the address.  
6 Well, these people were identifying ages possibly in  
7 their early 90s or late 80s, if I recall, and I  
8 expected that they might be deceased being at that  
9 age.

10           HEARING EXAMINER BROOKS: So that's when  
11 you undertook the obituary search?

12           THE WITNESS: Right. I have done this a  
13 great deal for Mr. Hinkle over the years. When we  
14 have located people who have or elderly, I indicated  
15 to him that sarcastically, I said, "We better  
16 hurry," and a great deal of the time those people  
17 are indeed deceased and I have gone either to the  
18 public library or the courthouse to find the  
19 obituary or the probate.

20           HEARING EXAMINER BROOKS: Is the obituary  
21 information that you get through your brokers, is  
22 that something that you have to be a licensed  
23 private investigator to get?

24           THE WITNESS: The people that I contract  
25 with require that I prove to them that I am a

1 licensed private investigator and that I'm also a  
2 bonafide business in the community I have. And I  
3 renew my contract with them every year and I have to  
4 supply them copies of my PI license and my city  
5 business license. I think I have to give them a  
6 copy of my driver's license, too.

7 But sir, I want to tell you, they don't  
8 provide me obituary information. They provide me  
9 what prevalent information they have on the  
10 individual. They don't identify them as deceased.  
11 Sometimes on rare occasion they do identify them as  
12 deceased. But if we are unable to reach them at the  
13 last known address, that's when we suspect they may  
14 be, and we head for the newspapers and the  
15 courthouses to see if there are obituaries or  
16 probates.

17 HEARING EXAMINER BROOKS: The obituary  
18 records in Los Angeles, are they available to the  
19 general public as public information?

20 THE WITNESS: Many newspapers you can go  
21 directly to and get the obituary. The Los Angeles  
22 Times is such a massive newspaper with a massive  
23 deal of information that anything prior to 2000 they  
24 house in the L.A. Public Library. And most of the  
25 newspapers and the United States store their

1 obituary files and their newspaper files in  
2 microfilm files and anyone off the street with go in  
3 and access it.

4 HEARING EXAMINER BROOKS: Thank you. I  
5 think that's all I have.

6 MR. BRUCE: Every one of the questions I  
7 was going to ask.

8 MR. FEDRIC: I call Jason Bond.

9 JASON JAMES BOND  
10 after having been first duly sworn under oath,  
11 was questioned and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. FEDRIC

14 Q. Would you state your name, please?

15 A. Jason James Bond.

16 Q. Where do you live, Mr. Bond?

17 A. In Roswell, New Mexico.

18 Q. Are you retired? Are you still working?

19 A. No, I'm retired.

20 Q. Tell me who was Olive F. Bond?

21 A. That was my wife.

22 Q. And what was her relationship to H.N.  
23 Smith and Ethel Smith?

24 A. She was their niece.

25 Q. And she was the daughter of whom?

1           A.     The daughter of Gregory and Bertha Birnie.  
2           Q.     Bertha Birnie. Okay. And Olive is  
3     deceased; is that correct?  
4           A.     That's right.  
5           Q.     When did she pass away?  
6           A.     In 1992.  
7           Q.     She was survived by you; is that correct?  
8           A.     Yes.  
9           Q.     And the two of you, did you have any  
10    children?  
11          A.     Yes, we had one daughter, Cynthia N. Bond.  
12          Q.     What is her name now?  
13          A.     Cindy.  
14          Q.     And what's her last name?  
15          A.     Kochi.  
16          Q.     Did Olive or you have any other children?  
17          A.     No.  
18          Q.     Did Olive have a will?  
19          A.     No.  
20          Q.     The matter we have today involves forced  
21    pooling orders given by the Commission to Cimarex  
22    Energy pertaining to 160 acres of land, specifically  
23    the southeast quarter of Section 18, Township 15  
24    South, Range 31 East in Chaves County in which Olive  
25    Bond had an inherited interest. So due to forced

1 pooling, Cimarex published a notice of the forced  
2 pooling in January of 2010 in the Roswell paper.

3 Did you see that notice?

4 A. No.

5 Q. Are you familiar with the names Robin  
6 Birnie, Allison Birnie and Cameron Birnie?

7 A. Yes.

8 Q. Who are they?

9 A. They were the family of Richard Birnie and  
10 his wife, Pat.

11 Q. They were the three children; is that  
12 correct? Two daughters and a son?

13 A. Yes.

14 Q. Okay. And where did they live?

15 A. They live in Los Angeles, California.

16 Q. Are you listed in the phonebook in the  
17 Roswell phonebook?

18 A. Yes.

19 Q. And Roswell is the principal city in  
20 Chaves County; is that correct?

21 A. Yes.

22 Q. And how many Bonds are listed in the  
23 phonebook of Chaves County, do you know?

24 A. I think it was three. I'm not sure.

25 Q. Did Cimarex or anyone else call you about

1 this matter in 2008?

2 A. No.

3 Q. In 2009 or 2010?

4 A. No.

5 Q. Have you ever been contacted by anyone  
6 with Cimarex Energy?

7 A. No.

8 Q. That's all I have, Mr. Examiner.

9 HEARING EXAMINER BROOKS: Okay.

10 Mr. Bruce?

11 CROSS-EXAMINATION

12 BY MR. BRUCE

13 Q. Mr. Bond, one question. When did you move  
14 from California to Roswell?

15 A. I believe in 2002. No, it's not that.  
16 I'm getting a little older and I can't remember.

17 Q. It was a number of years after your wife's  
18 death? Several years after your wife's death?

19 A. Yes. That would be six years.

20 Q. Did you know that she owned a oil and gas  
21 interest? Did you know that your wife owned or had  
22 inherited an oil and gas interest in Chaves County?

23 A. Yes, I knew that.

24 Q. That's all I have.

25 HEARING EXAMINER BROOKS: I guess I don't

1 have any questions for this witness. Mr. Jones?

2 MR. JONES: No questions.

3 HEARING EXAMINER BROOKS: Anything  
4 further?

5 MR. FEDRIC: I had one question.

6 REDIRECT EXAMINATION

7 BY MR. FEDRIC

8 Q. Mr. Bond, did you know what specific  
9 property your wife had in Chaves County?

10 A. No. I had only been to the site of the  
11 oil well once and that was -- I didn't even know  
12 when that was.

13 Q. When was that?

14 A. That was in -- that had to be in the late  
15 '80s.

16 Q. So you are talking about going out to an  
17 oil well in the late '80s; is that correct?

18 A. Yes.

19 Q. And your wife, did she receive some kind  
20 of income from some property in Chaves County?

21 A. She did.

22 Q. How much was that, do you recall?

23 A. I think the biggest check was \$27.

24 Q. That's all I have.

25 HEARING EXAMINER BROOKS: Thank you.

1 Anything further, Mr. Bruce?

2 MR. BRUCE: No.

3 HEARING EXAMINER JONES: You may step  
4 down.

5 MR. FEDRIC: We call Robin Birnie.

6 ROBIN BIRNIE

7 after having been first duly sworn under oath,  
8 was questioned and testified as follows:

9 EXAMINATION

10 BY MR. FEDRIC

11 Q. Would you give your name and address,  
12 please?

13 A. My full name a Robin Elizabeth Birnie. My  
14 home address is 14435 Benefit Street, unit No. 2,  
15 Sherman Oaks, California 91423.

16 Q. And what is your occupation? What do you  
17 do?

18 A. My background preliminarily is film  
19 production. I am currently between jobs but that is  
20 my background.

21 Q. Who was Ethel Smith?

22 A. She was my great aunt.

23 Q. And who was she married to?

24 A. Hugh N. Smith.

25 Q. Is he also known as H.N. Smith?

1           A.     Yes, he was.

2           Q.     Okay.  And is he deceased?

3           A.     Yes, he is.

4           Q.     How about Ethel?  Is she deceased?

5           A.     Yes, she is.

6           Q.     Do you recall when each of them passed

7     away?

8           A.     Hue died in the late '60s and Ethel died

9     in the mid '70s.

10          Q.     Did they have any children?

11          A.     No.

12          Q.     Neither of them apart or together had any

13     children; is that correct?

14          A.     No.

15          Q.     Who was Bertha Birnie?

16          A.     That would be Ethel's sister, my

17     grandmother.

18          Q.     Who is Richard M. Birnie?

19          A.     That would be my father.

20          Q.     And what was his relationship to Bertha

21     Birnie?

22          A.     She was his mother.

23          Q.     How about Olive F. Bond?  What was her

24     relationship to Bertha Birnie?

25          A.     That was her daughter.

1 Q. So --

2 A. Wait. Let me make sure that's clear.

3 Olive was Bertha's daughter.

4 Q. So Olive and Richard were the son and  
5 daughter of Bertha Birnie; is that correct?

6 A. Yes.

7 Q. And when did your father, Richard M.  
8 Birnie, die?

9 A. May 1986.

10 Q. Where did he pass away?

11 A. Los Angeles, California. Specifically,  
12 Woodland Hills.

13 Q. Did he leave a will?

14 A. Yes, he did.

15 Q. Who inherited under that will?

16 A. My brother, Cameron; my sister, Allison;  
17 and myself.

18 Q. Who was the executor of the estate?

19 A. His sister, Olive Bond.

20 Q. Were there any other children or heirs of  
21 Richard Birnie?

22 A. No.

23 Q. So he didn't have any children by any  
24 prior wife?

25 A. No.

1 Q. And you, as a daughter, and Cameron as a  
2 son, and Allison as a daughter, had no other  
3 siblings; is that correct?

4 A. No, we did not.

5 Q. And you are saying that Olive is deceased?

6 A. Olive is deceased.

7 Q. And where did she pass away?

8 A. Do you want the city? It's Los Angeles in  
9 1992. Redondo Beach.

10 Q. Was she survived by a husband?

11 A. Yes, she was.

12 Q. Who was that?

13 A. Jason Bond.

14 Q. By the way, how old is Jason?

15 A. Jason is 92, about to turn 93 in May.

16 Q. And Jason is your uncle; is that correct?

17 A. Absolutely.

18 Q. Did Jason and Olive have any children?

19 A. One, Cindy Kochi.

20 Q. Where does she live?

21 A. She lives in Los -- it's not really Los  
22 Angeles -- Redondo Beach, California.

23 Q. You have been in contact with her about  
24 the matter; is that correct?

25 A. Absolutely.

1 Q. Where does Jason live?

2 A. Jason lives now full-time in Roswell, New  
3 Mexico.

4 Q. In the two matters that are before the  
5 examiner, forced pooling of 160 acres of land, which  
6 is specifically the southeast quarter of Section 18,  
7 Township 15 South, Range 31 East Chaves County, New  
8 Mexico, prior to 2010 were you aware that you had an  
9 inherited interest in that land through your father?

10 A. Not at all.

11 Q. Did you know if your father had anything  
12 in Chaves County, New Mexico?

13 A. No.

14 Q. As far as minerals or any time of oil and  
15 gas interest?

16 A. No.

17 Q. When and how did you first find out of the  
18 existence of the land and your possible ownership in  
19 the land?

20 A. In February of 2010 I received a letter  
21 from Rolla Hinkle, III explaining the situation and  
22 I thought it was the craziest thing I had ever heard  
23 in my life, but I E-mailed him directly after  
24 receiving the letter, and for some reason I believe  
25 he said that it went to his spam or something. He

1 never received my reply.

2 Then I received an overnight letter in  
3 June, and this time I phoned him right away.

4 Q. And you discussed the possible ownership  
5 interest that you have in the Chaves County  
6 property; is that correct?

7 A. Absolutely.

8 Q. Prior to that contact do you know if your  
9 brother or sister or Cindy Kochi were aware of an  
10 interest, inherited interest in Chaves, County New  
11 Mexico?

12 A. None of them were.

13 Q. And you were not aware of that; is that  
14 correct?

15 A. Absolutely not.

16 Q. Until you heard from Mr. Hinkle?

17 A. Absolutely.

18 Q. Did Cimarex Energy Company ever notify you  
19 of a forced pooling proceeding?

20 A. No.

21 Q. Have you ever been directly contacted by  
22 Cimarex about anything?

23 A. No, sir.

24 Q. Cimarex says it's your fault, by the way?

25 A. I understand that.

1 Q. For not protecting yourself or putting  
2 something in the county records where they could  
3 find you. Do you have any response to that?

4 A. Yes, I do. I would like to say that it's  
5 impossible to protect yourself against something of  
6 which you have absolutely no knowledge.

7 Q. What is it you want from Cimarex?

8 A. I just want my family. I want what's  
9 fair.

10 Q. That's all I have, Mr. Examiner.

11 HEARING EXAMINER BROOKS: Mr. Bruce?

12 CROSS-EXAMINATION

13 BY MR. BRUCE

14 Q. Just a couple of questions, and I don't  
15 remember, but I used to live in L.A. Is Redondo  
16 beach part of L.A. County?

17 A. You know, it may be.

18 Q. I just don't remember?

19 A. I just don't know either.

20 Q. One of the addresses given is Arleta.  
21 That's a suburb of L.A., isn't it?

22 A. Yes, absolutely. Arleta.

23 Q. San Fernando Valley?

24 A. Yes. When I was born actually in the  
25 '50s, which I am dating myself, it was known as

1 Pacoima, but it then became Arleta.

2 Q. Then I was looking at some affidavits.  
3 Just a second. This is an affidavit that you  
4 signed. Was your mother and that of your brother  
5 and sister, Patricia?

6 A. Yes.

7 Q. And Verita, is that the right name?

8 A. Yes.

9 Q. Sounds like that's not your favorite  
10 person?

11 A. She was my stepmother.

12 Q. Were they divorced before your father  
13 died?

14 A. Yes, they were divorced in 1983 and my  
15 father passed away in 1986.

16 MR. BRUCE: That's all I have.

17 HEARING EXAMINER BROOKS: In you were born  
18 in the 1950s, that sounds young to me. Actually, I  
19 have that very much on my mind today right now  
20 because my birthday was three days ago and I am 63.

21 THE WITNESS: Happy birthday. Today is my  
22 brother's birthday actually.

23 HEARING EXAMINER BROOKS: Okay. Now, I'm  
24 probably going over something that's already been  
25 said. My memory is not as good as it used to be

1 either, but fortunately I will get a transcript so  
2 don't think I'm --

3 THE WITNESS: There are a lot of details.

4 HEARING EXAMINER BROOKS: Don't think that  
5 I am missing out on anything. Did you say that you  
6 did or did not know that your uncle owned a mineral  
7 interest?

8 THE WITNESS: I did not know.

9 HEARING EXAMINER BROOKS: So you didn't  
10 know anything about this interest then in New  
11 Mexico?

12 THE WITNESS: Not at all.

13 HEARING EXAMINER BROOKS: Or even that he  
14 owned any mineral interests in New Mexico?

15 THE WITNESS: No.

16 HEARING EXAMINER BROOKS: I think that's  
17 the only question I have.

18 THE WITNESS: Sir? Do you have a  
19 question? Okay.

20 MR. FEDRIC: That's all we have.

21 MR. BRUCE: Start with my witnesses?

22 HEARING EXAMINER BROOKS: I believe that  
23 would be appropriate unless you wish to make an  
24 opening statement.

25 MR. BRUCE: No, I would rather make a

1 short closing. I call Mr. Avery to the stand,  
2 please.

3 HEARING EXAMINER BROOKS: Let's take a  
4 ten-minute break.

5 (Note: The hearing stood in recess at  
6 2:14 to 2:25.)

7 MR. FEDRIC: Before we start but on the  
8 record, we would like to offer the four exhibits  
9 that we have for H.N. Smith, applicant heir and the  
10 brief that we submitted to you.

11 HEARING EXAMINER BROOKS: Okay.

12 MR. BRUCE: No objection.

13 HEARING EXAMINER BROOKS: Do you have  
14 those marked as exhibits?

15 MR. FEDRIC: We do and they are in your  
16 hand and a copy in the clerk's hands.

17 HEARING EXAMINER BROOKS: What are the  
18 exhibit numbers?

19 MR. FEDRIC: Exhibits 1, 2, 3 and 4.

20 MR. BRUCE: No objection.

21 HEARING EXAMINER BROOKS: H.N. Smith  
22 Exhibits 1, 2, 3 and 4 are admitted.

23 (Note: Exhibits 1 through 4 admitted.)

24 MR. FEDRIC: We also ask if we can release  
25 Witnesses Owens and Hinkle. Mr. Bruce has no

1 objection.

2 HEARING EXAMINER BROOKS: If he doesn't  
3 have an objection then I have no objection. You may  
4 proceed.

5 GREG AVERY  
6 after having been first duly sworn under oath,  
7 was questioned and testified as follows:

8 EXAMINATION

9 BY MR. BRUCE

10 Q. State your name.

11 A. Greg Avery, Midland Texas.

12 Q. What is your occupation?

13 A. Petroleum landman.

14 Q. And would you give a brief summary your  
15 educational and employment background.

16 A. I went to McMurray College in Abilene and  
17 to Midwestern State, completed about two years of  
18 college, never finished my degree. I started as a  
19 landman in 1996 with Perry & Perry, Inc. out of  
20 Midland. I have been continuously in the land  
21 business since that time as a landman. Six years  
22 ago I started our -- my wife and I started our own  
23 brokerage, G & L Petroleum Land Services.

24 Q. And what is your relationship to Cimarex  
25 in this matter?

1           A.     It's actually through another broker that  
2 was -- her name is Elizabeth Moses. Elizabeth Moses  
3 is a broker in Midland. When she gets a little busy  
4 and can't get to certain jobs, she calls us and we  
5 try to help her out.

6           Q.     So you were hired by -- were you hired by  
7 Cimarex to check the title in Section 18 of 15 South  
8 31 East?

9           A.     Not directly but through Elizabeth, yes.

10          Q.     And you did check that title?

11          A.     Yes.

12          Q.     I have handed you what's been marked as  
13 Cimarex Exhibit 1. Could you briefly describe that  
14 for the examiner?

15          A.     Basically the first letter November 2010,  
16 Hayden had called and told me that there was a  
17 situation with the H.N. Smith heirs and basically  
18 wanted me to go through the records that we might  
19 have in our files to see if there were, you know --  
20 what we might have done to try to locate the heirs  
21 of H.N. Smith. So we went digging through our  
22 files, and on the internet and so forth, my wife's  
23 computer actually, and found some information. I  
24 didn't think we would find anything just because it  
25 was in 2008 when we did it, but there was a little

1 bit of information in there.

2 One of those was the actual report dated  
3 September 4, 2008. That's to Elizabeth Moses, and  
4 in there it states as far as in this case, H.N.  
5 Smith and basically the information that we found  
6 while we basically were asked to go to Lea and Eddy  
7 County, New Mexico and check the public records for  
8 any information we could find on H.N. Smith, which  
9 is what we did. And this was the report that went  
10 with it. It basically -- should I read it? It  
11 pretty much is what we heard today is basically what  
12 we found the probate in Eddy County as well as the  
13 two affidavits.

14 Q. Okay.

15 A. At the same time there's other information  
16 in here that you will see that's from computer  
17 E-mail, and that was done by my wife and her oldest  
18 daughter, Leslie. Leslie was -- every once in a  
19 while when we need to track some people down or try  
20 to track them down we ask her -- she is a member of  
21 Ancestry.com and we also use PrivateEye.com, just  
22 general searches on the internet also.

23 So a lot of it, we didn't have a lot of  
24 information that was found, you know, except for the  
25 probate and the two affidavits, but where it stopped

1 in Lea and Eddy County as far as with Olive Bond and  
2 Richard Birnie, you know, basically came to a dead  
3 stop there in the county.

4 Q. But the property is actually in Chaves  
5 County, the property that we are here talking about.

6 A. That's correct.

7 Q. But you had to go to Eddy and Lea County  
8 to try to find something?

9 A. Yes.

10 Q. And the only matters on H.N. Smith and  
11 Ethel Smith were in Eddy County?

12 A. That's correct.

13 Q. And they were what, recorded about 30  
14 years ago?

15 A. Yes. 1981 and 1982.

16 Q. And you mentioned a couple affidavits.  
17 Those affidavits are attached also --

18 A. Yes, they are also attached.

19 Q. -- for the examiners. So you checked the  
20 county records but you did conduct an internet  
21 search, too?

22 A. I'm sorry?

23 Q. You or your wife conducted an internet  
24 search trying to track them down?

25 A. We did, yes. Just trying to find

1 anything. A lot of the information as far as the  
2 addresses and things that we found on this report  
3 dated September of '08 came off of the internet for  
4 the most part.

5 Q. And Exhibit 1 and its contents was  
6 prepared by you, was it not?

7 A. Yes.

8 MR. BRUCE: Mr. Examiner, I move the  
9 admission of Exhibit 1.

10 MR. FEDRIC: To make sure I understand,  
11 Exhibit 1 is all these documents?

12 MR. BRUCE: Yes.

13 MR. FEDRIC: There's three documents in  
14 here that I don't think have any evidentiary value  
15 or any pertinence to the case. There's a letter  
16 from me to Mr. Hayden Tresner from Cimarex --

17 MR. BRUCE: I am talking Exhibit 1.

18 MR. FEDRIC: Which part is which?

19 MR. BRUCE: Take off the paper clip.

20 MR. FEDRIC: Oh, it divides. Mine wasn't  
21 divided. I'm sorry.

22 MR. BRUCE: Just Exhibit 1.

23 MR. FEDRIC: I'm sorry about that.

24 HEARING EXAMINER BROOKS: Exhibit 1 is the  
25 invoice?

1 MR. BRUCE: No, those are Mr. Fedric's  
2 exhibits.

3 HEARING EXAMINER BROOKS: Your exhibits,  
4 Exhibit 1 is the petroleum land services letterhead.

5 MR. BRUCE: That's correct.

6 HEARING EXAMINER BROOKS: And there's a  
7 bunch of attached --

8 MR. BRUCE: It basically sets forth what  
9 Mr. Avery found and then documents from the Eddy  
10 County.

11 HEARING EXAMINER BROOKS: It's everything  
12 that's stapled together? Okay. Thank you.

13 MR. FEDRIC: No objection to Exhibit 1.

14 HEARING EXAMINER BROOKS: Exhibit 1 is  
15 admitted.

16 (Note: Exhibit 1 admitted.)

17 MR. CARR: With your permission, I will do  
18 the cross-examination.

19 CROSS-EXAMINATION

20 BY MR. CARR

21 Q. Mr. Avery, when I look at Exhibit 1 it's  
22 comprised of a letter 2010. Did you provide any  
23 other information to Cimarex other than what is  
24 contained in this information?

25 A. This was it, yes, sir.

1 Q. And if we look at your letter to Elizabeth  
2 Moses dated September 4, 2008, this was provided to  
3 Cimarex?

4 A. I believe so. It went to Elizabeth and I  
5 am assuming she forwarded it to Cimarex.

6 Q. With Exhibit 1, this letter from you, it  
7 said, "A file search has been completed in order to  
8 furnish you with information we gathered concerning  
9 the estate of H.N. Smith." Did you attach this  
10 letter?

11 A. Yes, I believe so.

12 Q. And so this actually did go to  
13 Mr. Tresner?

14 A. Yes.

15 Q. Okay. And this letter indicates that when  
16 Smith and his wife died, the property was, in fact,  
17 left to Olive Bond and Richard Birnie; is that  
18 right?

19 A. Yes, sir.

20 Q. This letter also indicated that Mr. Birnie  
21 had been married to a Vetrina L. Kowalski?  
22 Something like that? And that they had divorced.  
23 It then went on to say, "We did find that Rita L.  
24 Birnie did live at 22661 Marion Place, West Tails,  
25 California." You gave her phone number in 1995,

1 "And according to different address searches on the  
2 internet she apparently still resides at said  
3 address. Further information may be obtained by  
4 contacting Ms. Birnie." Did you make any further  
5 contacts in this matter?

6 A. No, sir.

7 Q. Was that something you would have done or  
8 you were just to identify the interest?

9 A. Just trying to identify who they may need  
10 to contact, yes.

11 Q. Attached to that are various E-mail  
12 messages. Since these are from your wife and  
13 daughter, I understand why they say "love you." Is  
14 that right?

15 A. Yes, sir.

16 Q. We wondered what kind of a title search  
17 group we had working on this project. You do have  
18 an affidavit of heirship that again shows that the  
19 interest went to Richard Birnie and Olive Bond; is  
20 that right?

21 A. Yes.

22 Q. And that's all I have. Thank you. One  
23 other thing. What internet searches do you use?  
24 Where did you go?

25 A. When you use -- sometimes you just use

1 Google for names. PrivateEye.com.

2 Q. Peoplesearch on AOL? Would that do?

3 A. Probably. I have never used it.

4 PrivateEye.com is a pay service.

5 Q. But you didn't do an additional search  
6 after 2008, you just conveyed your file to Cimarex?

7 A. Yes, sir.

8 MR. BRUCE: I don't have any -- oh, if I  
9 could ask one question.

10 REDIRECT EXAMINATION

11 BY MR. BRUCE

12 Q. The affidavits that you attached to your  
13 package here, Mr. Avery, those are from the Eddy  
14 County records? They were recorded documents in the  
15 Eddy County records?

16 A. Yes, sir.

17 MR. BRUCE: That's all I have.

18 HEARING EXAMINER BROOKS: I don't believe  
19 I have any questions for this witness. Thank you.

20 HAYDEN TRESNER

21 after having been first duly sworn under oath,  
22 was questioned and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. BRUCE

25 Q. Would you state your name and city of

1 residence for the record?

2 A. Hayden Philip Tresner. I reside in  
3 Midland, Texas.

4 Q. Who do you work for?

5 A. Cimarex Energy. I work as a landman.

6 Q. You've previously testified in the  
7 Division, haven't you?

8 A. Yes.

9 Q. As an expert petroleum engineer?

10 A. Landman.

11 Q. Sorry about that. Mr. Hayden, I don't  
12 know if I gave you a copy of this, Exhibit 1, that  
13 Mr. Avery was testifying about?

14 A. Yes. It's right in front of my chair,  
15 should be.

16 Q. Mr. Avery testified that he gave this  
17 information to Elizabeth Moses who is an independent  
18 landman that Cimarex uses quite a bit, isn't she?

19 A. Yes.

20 Q. Was that information passed on to Cimarex?

21 A. Yes, it was passed on to me.

22 Q. Did you take this data from Mr. Avery and  
23 try to contact these individuals at these addresses?

24 A. Yes, we did.

25 Q. For instance, Verita Kowalski, did you try

1 to call the number?

2 A. Yes, it was not a working number.

3 Q. Did you try to mail letters to these last  
4 known addresses?

5 A. Yes, we did.

6 Q. Were they returned?

7 A. To the best of my knowledge they were.

8 Q. Did you yourself conduct any additional  
9 internet searches trying to locate these people?

10 A. Just some Google searches to come up with  
11 more telephone numbers to call.

12 Q. Did you ever come up with a telephone  
13 number?

14 A. We called quite a few numbers and couldn't  
15 get any response.

16 Q. Now, I have given you Exhibit 2. This is  
17 something that Mr. Fedric was perhaps objecting to,  
18 and there's really no -- I'm really just offering  
19 it. You and Mr. Fedric have met and exchanged  
20 correspondence to discuss this matter, have you not?

21 A. Yes, we have.

22 Q. And did you meet personally? Mr. Fedric  
23 wrote to you and did you meet personally with him?

24 A. Mr. Fedric wrote me first and requested  
25 the meeting and he came to Midland and we talked

1 there at Cimarex's office.

2 Q. Did Mr. Fedric subsequently make Cimarex  
3 an offer regarding these H.N. Smith heirs?

4 A. Yes, he did. That's the second letter in  
5 Exhibit 2.

6 Q. And did Cimarex think that offer was  
7 reasonable?

8 A. No. We did not accept his offer and  
9 countered with an offer that is described in the  
10 third letter in Exhibit 2.

11 Q. But have you been able to reach agreement  
12 with him regarding participation of these interests?

13 A. No, we have not.

14 Q. What is Exhibit 3?

15 A. Exhibit 3 were the results of an online  
16 search, some unclaimed property searches that we did  
17 in the State of New Mexico and California.

18 Q. These were done quite recently by you,  
19 were they not?

20 A. Yes, they were.

21 Q. Briefly what do they show?

22 A. It just shows that Richard Birnie and  
23 Olive Bond both have money in suspense that's being  
24 held by the State, money that Chesapeake Operating  
25 paid, most likely has some suspense from a well or

1 multiple wells.

2 Q. And then in California there's also money  
3 held --

4 A. From Plains Marketing.

5 Q. Recently did you have the Chaves County  
6 records searched to see if anything else had been  
7 placed of record regarding the H.N. Smith heirs'  
8 interest?

9 A. Yes, I originally had Elizabeth Moses  
10 update -- search the records from 2005 forward to  
11 current date. We searched seven names, the Birnie  
12 heirs and Jason Bond and Cindy Kochi.

13 Q. And are the results of the search marked  
14 as Exhibit 4?

15 A. Yes. The only two instruments that were  
16 found were the affidavit of heirship by Robin E.  
17 Birnie, copies of the probate proceedings for the  
18 Estate of Richard Birnie and then a communication  
19 agreement where Cimarex communitized the lower auto  
20 formation in the Franklin 18 Federal Con No. 4 well.

21 Q. In looking at the cover page of Exhibit 4,  
22 Mr. Tresner, I note in the first two paragraphs  
23 there that there appears to be a typo. They said  
24 they searched through certain dates in 2010. You  
25 asked them to conduct the search through --

1           A.     Through 2011, yes.

2           Q.     So it must be a typo?

3           A.     This was done last week or two weeks ago.

4           Q.     Okay. Mr. Tresner, do you believe that  
5     Cimarex made a reasonable effort to locate the H.N.  
6     Smith heirs?

7           A.     Yes, I do.

8           MR. BRUCE: Mr. Examiner, there are four  
9     more exhibits. Since they have been referenced in  
10    these hearings, there's Exhibit 5. These are taken  
11    from the original case files. Exhibit 5 from 14415,  
12    14416. These are the publication notices that were  
13    published in the Roswell newspaper. Again, there's  
14    another typo here. If you look, as Mr. Hinkle said,  
15    he saw these the date they were published, January  
16    6, 2010. The affidavit of notice states they were  
17    published 2009, understandable in early January.

18           Then I am submitting and giving the  
19    originals to you, Exhibits 6A and 6B. The only  
20    reason I am giving those is to show that had  
21    Mr. Tresner can confirm that these wells were  
22    originally oriented in an east/west direction and  
23    they were later reoriented north/south. Publication  
24    was made in the Roswell newspaper also for the  
25    east/west wells which were then subsequently amended

1 and new publications given. So Exhibits 5 from each  
2 of the cases and Exhibits 6A and 6B are simply  
3 publication notice also in the Roswell newspaper.

4 With that, Mr. Examiner, I move the  
5 admission of Cimarex --

6 Q. Well, Mr. Tresner, other than Exhibits 5  
7 and 6 were these Exhibits 2, 3 and 4 prepared by you  
8 or under your supervision or were they compiled from  
9 Cimarex's business records?

10 A. Yes, they were.

11 MR. BRUCE: Move the admission of Cimarex  
12 Exhibits 2 through 6B.

13 MR. FEDRIC: We object to No. 2, which is  
14 a letter from this individual to Cimarex telling  
15 them that we felt they had made a mistake in due  
16 process in connection with reference to Birnie  
17 heirs. Then the October letter is from me to  
18 Cimarex having to do with a potential way to resolve  
19 the matter by settlement and then there's this  
20 prompt response in January, two-and-a-half months  
21 later, in which they don't say anything about  
22 rejecting what I pitched in October but they say,  
23 "How about this?" There's no probative value in  
24 this, no evidentiary value in this. I realize we  
25 are not in the court of law, but settlement stuff

1 would not be allowed to come in and it serves no  
2 purpose to this court.

3 I think what matters to this court is what  
4 is said as factual matters, not opinion in  
5 negotiations. So we object to No. 2.

6 HEARING EXAMINER BROOKS: Mr. Bruce?

7 MR. BRUCE: Mr. Examiner --

8 HEARING EXAMINER BROOKS: I would say  
9 starting out that I think he is right about  
10 settlement negotiations are not admissible. But I  
11 haven't looked at this. Is there something else in  
12 there that would make it admissible?

13 MR. BRUCE: I don't have any -- first of  
14 all, the first letter from Mr. Fedric to Cimarex  
15 pretty much restates what he states in his  
16 applicant's hearing brief. And then we are not  
17 trying to show settlement offers here or anything.  
18 And, of course, this isn't strictly a forced pool  
19 hearing. It's just that in forced pool hearings you  
20 usually show negotiations between the parties.

21 HEARING EXAMINER BROOKS: Right, but these  
22 were subsequent to the forced pooling.

23 MR. BRUCE: Absolutely. Mr. Carr got  
24 subpoenas issued and they wanted all of the land  
25 data and I submitted all this data to Mr. Carr a

1 couple weeks ago or a week and a half ago. That's  
2 all it is.

3 HEARING EXAMINER BROOKS: Okay. I will  
4 sustain the objection to Exhibit No. 2. Exhibits 1,  
5 3, 4, 5A and 5B, 6A and 6B will be admitted.

6 MR. BRUCE: I have no further questions of  
7 Mr. Tresner.

8 (Note: Exhibits 1, 3, 4, 5A, 5B, 6A, 6B  
9 admitted.)

10 CROSS-EXAMINATION

11 BY MR. CARR

12 Q. Mr. Tresner, you are the Cimarex  
13 landperson who was responsible for pooling the land  
14 interest together in the east half of Section 18 for  
15 the two wells that had been drilled on the property;  
16 is that right?

17 A. Yes.

18 Q. And, in fact, you have been responsible  
19 for a number of these horizontal well project areas  
20 over the last couple years?

21 A. Yes.

22 Q. Is it fair to say that as a landman what  
23 you are trying to do is first identify the interest  
24 owners and then seek their voluntary participation?

25 A. Yes.

1 Q. And that's what you were doing?

2 A. Yes.

3 Q. Does Cimarex have any internal policy or  
4 procedure for landmen such as you are required to  
5 follow when you go out and attempt to bring these  
6 interests together?

7 A. No. Everyone makes a good faith effort to  
8 locate everyone involved.

9 Q. Do you have any established procedures for  
10 keeping records or files on efforts that you made?

11 A. Yes.

12 Q. We subpoenaed all of the land records in  
13 this case. Do you have other files on the interest  
14 of H.N. Smith other than what we have seen today?

15 A. Yes.

16 Q. And do those contain telephone logs that  
17 would show when you made calls to individuals?

18 A. No, they do not.

19 Q. Do they contain return receipts or return  
20 letters to the attention?

21 A. Unfortunately, no.

22 Q. What kinds of other information do you  
23 have?

24 A. Pretty much anything that pertains to the  
25 well and the property: Title opinions, all of the

1 regulatory filings and so forth, permits, plats.

2 Q. Would there be any other letters addressed  
3 to the Birnie interest?

4 A. Not that I'm aware of.

5 Q. Is it typical when you are trying to  
6 identify individuals in these properties that you  
7 use outside contract landpeople?

8 A. Yes.

9 Q. And then you get the reports back from  
10 them and then what do you do after you get the  
11 report?

12 A. Try to establish contact.

13 Q. And you do that by telephone contact?

14 A. Letters, telephone.

15 Q. Do you do independent internet searches?

16 A. Sometimes.

17 Q. Did you in this case?

18 A. I believe I did.

19 Q. And what internet services do you think  
20 you used?

21 A. I think it was just a Google search.

22 Q. Do you look in telephone directories?

23 A. It just depends.

24 Q. In this case did you?

25 A. No. Los Angeles.

1 Q. Only Los Angeles?

2 A. Yes.

3 Q. The property is located in Chaves County,  
4 is it not?

5 A. That is correct.

6 Q. You wouldn't look at the Roswell  
7 directory?

8 A. The owners were not living in Chaves  
9 County.

10 Q. Let's look at the exhibits that were  
11 presented to you by Mr. Avery for a minute. First  
12 there is the letter from Mr. Avery to Elizabeth  
13 Moses dated September 4, 2008. Do you have that?

14 A. Yes, I do.

15 Q. If we look at this letter, this letter  
16 tells you that after Mr. and Mrs. Smith died they  
17 had no children but left all of their property to a  
18 niece, Olive Bond, with her address and to a nephew,  
19 Richard Birnie, correct?

20 A. Yes.

21 Q. So in your search you at least got as far  
22 as Olive Bond and Richard Birnie?

23 A. We traced it out to California. That's  
24 where the chain of title ends.

25 Q. You filed a verified statement in this

1 case that was an original pooling case?

2 A. Yes.

3 Q. Do you have a copy of that?

4 A. Yes, I do.

5 Q. If you go to the second page there is a  
6 paragraph concerning interest of the Smith heirs and  
7 the last sentence says, "Both companies, meaning  
8 Cimarex and Chase Oil?

9 A. Chase Oil Corporation.

10 Q. Both companies were unable to locate Olive  
11 Bond and Richard Birnie?

12 A. That's correct.

13 Q. Did you look for their heirs? Did you  
14 look beyond that?

15 A. No.

16 Q. This letter, and I read it to Mr. Avery a  
17 few minutes ago, identified Mr. Birnie's ex-wife and  
18 suggested maybe additional information could be  
19 found there. Did you attempt to do that?

20 A. Yes, I did.

21 Q. Did you call that telephone number?

22 A. Yes.

23 Q. Did you write that address?

24 A. I believe so.

25 Q. You don't have a copy of that letter?

1           A.     I do not.

2           Q.     If you could have found her she could have  
3 possibly helped you go beyond Birnie and -- Olive  
4 Bond and Richard Birnie, correct?

5           A.     Yes.

6           Q.     There are also attached a number of  
7 E-mails. There was an E-mail provided that was  
8 attached to Mr. Avery's letter identifying H.N.  
9 Smith in Tucumcari, New Mexico. Did you follow up  
10 on those?

11          A.     Where is this?

12          Q.     I have an E-mail that is provided to me  
13 and it's dated August 26, 2008. And it's to  
14 mamacohotrr.com or something like that, Subject H.N.  
15 Smith and it said in the text of it, "I did find two  
16 H.N. Smiths in the public directories," and it gave  
17 addresses in Tucumcari.

18          A.     That E-mail was not part of the report  
19 that was provided to me.

20          Q.     It was provided to us. Did you get this?

21          A.     Recently.

22          Q.     How recently?

23          A.     Within the past few weeks.

24          Q.     So you wouldn't have had that before  
25 approving the application?

1 A. That's correct.

2 Q. There's some other E-mails here and  
3 probably they fall in that same category. One with  
4 an address -- is it fair to say that you received --

5 A. I knew that he was dead, so I don't know  
6 why I would try calling.

7 Q. But you wouldn't call those addresses to  
8 see if there was someone there who might know about  
9 his heirs?

10 A. Not H.N. Smith, no.

11 Q. So no calls were made?

12 A. Not to H.N. Smith. He was dead.

13 Q. There was an affidavit of heirship that  
14 came from Mr. Avery. It didn't just go to Richard  
15 Birnie and Olive Bond; is that right?

16 A. Excuse me?

17 Q. There was also the affidavit of heirship  
18 that was attached and it was signed by a Margaret  
19 Anderson. But again, that just took the interest as  
20 far as Olive Bond and Richard Birnie, right?

21 A. Yes, sir.

22 Q. Then there was a recent affidavit of  
23 heirship. It was attached to the new material that  
24 you have recently received executed by Robin Birnie.  
25 But again, that was after the pooling application;

1 is that right?

2 A. Yes, it was filed of record after the  
3 pooling.

4 Q. So when you got the subsequent letter  
5 concerning the information that you recently sought  
6 and obtained, that was all obtained after the  
7 interests were already pooled?

8 A. Yes.

9 Q. Okay. Now, in your verified statement you  
10 stated that you had been unable to locate Olive Bond  
11 and Richard Birnie; that you looked in telephone  
12 directories, and it's your testimony that you did  
13 not look in Chaves County directories; is that  
14 correct?

15 A. I don't recall.

16 Q. You did examine Chaves County records?

17 A. We did, that's correct.

18 Q. And it said that you had also looked in  
19 internet directories. I'm not trying to beat a dead  
20 horse here, but you don't recall which ones you  
21 looked at? You Googled it?

22 A. I think I just did a Google search, yes.

23 Q. Are you familiar with doing those Google  
24 searches? Do you do them often?

25 A. Not too often.

1 Q. Do you know one when you see one?

2 A. Yes.

3 Q. Let me hand you something. I'm handing  
4 you what's marked as Cimarex Exhibit 5. I will tell  
5 you that about 8:00 o'clock last night I decided to  
6 do a search on my computer at home to see if I could  
7 see find Olive Bond, and if you will see down at the  
8 bottom it's dated 3/16/2011. In the center do you  
9 see where I typed in the name Olive F. Bond?

10 A. Yes.

11 Q. Below the dark bar. There's a little red  
12 search. I hit that button and that is the sum total  
13 of my computer knowledge, and this is what I got.  
14 If you will look at this, can you see that there  
15 were no Olive F. Bonds found in New Mexico?

16 A. Yes.

17 Q. If you go to the bar, about a quarter of  
18 the way down the page it says "Name, Olive F.  
19 Bond," and as you move across it says "89," and it  
20 also says "previous cities, Rita California." Don't  
21 you think we probably have the proper Olive Bond?

22 A. I think we did in my report as well. This  
23 is not a Google search, this is paid.

24 Q. I didn't pay for this. This is AOL  
25 Peoplesearch. If you go over on the right side it

1 says "relatives." Do you see that?

2 A. Yes.

3 Q. And the names are listed. The bottom one  
4 is Jason James Bond. If you had looked just in a  
5 Peoplesearch in AOL you might have found Mr. Bond;  
6 is that right?

7 A. I don't use AOL.

8 Q. Would that be a reasonable place to look?

9 A. No, the reasonable place to look would be  
10 the county courthouse.

11 Q. You said you did internet searches but you  
12 didn't do one like this?

13 A. Not that I remember.

14 Q. You said you looked in telephone  
15 directories, but Mr. Bond testified that he is in  
16 the Roswell telephone directory.

17 A. I had no reason to start in Roswell.

18 Q. So your reasonable search involved lots of  
19 things but didn't involve the five minutes it took  
20 me last night to find Mr. Bond, right?

21 A. I looked longer than that.

22 Q. Now, are you familiar with compulsory  
23 pooling?

24 A. Yes.

25 Q. You understand that the heirs of H.N.

1 Smith have a 6.25 interest in each of these wells;  
2 isn't that right?

3 A. That's correct.

4 Q. And the AFE that you attached to some  
5 information earlier showed that the AFE cost for the  
6 wells were each 3.7 million. Now, when you pool the  
7 Birnie's interest in the well and get a 200 percent  
8 risk charge, do you know what that risk charge  
9 applies to, how you compute that?

10 A. The actual well policy.

11 Q. So you start with that?

12 A. Right.

13 Q. Then you multiply by their interest, 6.25  
14 percent?

15 A. Right.

16 Q. And you would come up with something like  
17 \$231,000. Does that seem right?

18 A. Their share of the well policy?

19 Q. Yeah.

20 A. If you did that, I guess.

21 Q. If you have a risk policy and you want to  
22 do it times two, that would be \$460,000?

23 A. Yes.

24 Q. That's the amount being withheld for the  
25 risk taken?

1 A. Yes.

2 Q. In two wells, so \$925,000. So because you  
3 didn't find these people like I could in five  
4 minutes, you are taking from them almost a million  
5 dollars. Isn't that what happened?

6 A. No.

7 Q. It isn't?

8 A. No.

9 Q. Why would that not be the case? You are  
10 going to withhold out of production that amount?

11 A. We tried to locate them and we couldn't.

12 Q. You failed?

13 A. Their ownership was not documented.

14 Q. You looked and you couldn't find it.

15 A. So we drilled the well with their share of  
16 the interest.

17 Q. But I'm asking you this. You looked for  
18 them and you couldn't find them?

19 A. Yes.

20 Q. Because you couldn't find them you get to  
21 withhold these funds out of their interests?

22 A. Right.

23 Q. Now, while it's costing them \$925,000,  
24 that's \$925,000 Cimarex has that they wouldn't have  
25 because you wouldn't have a risk penalty if they had

1 joined; isn't that right?

2 A. What?

3 Q. If they didn't have a risk penalty you  
4 would receive less money.

5 A. Yes.

6 Q. And the only reason we have a risk penalty  
7 against them and for you is because you couldn't  
8 find them as I did in five minutes last night?

9 A. If you say it took you five minutes.

10 Q. That's all I have.

11 REDIRECT EXAMINATION

12 BY MR. BRUCE

13 Q. Mr. Tresner, if you have Exhibit 1,  
14 Mr. Avery's thing, and turn to Page 2.

15 HEARING EXAMINER BROOKS: Which exhibit?

16 MR. BRUCE: Exhibit 1.

17 Q. Just turn to Page 2. There is an address  
18 there for Olive Bond in Arleta, California, correct?

19 A. Yes.

20 Q. Then look at the Smith Exhibit 5 that  
21 Mr. Carr just handed you. This also shows Olive  
22 Bond in Arleta, California, correct?

23 A. Yes.

24 Q. And Mr. Bond in relatives in the right,  
25 does it state they live in Roswell, New Mexico?

1 A. No.

2 Q. Mr. Carr also asked you, there have been  
3 lots of these Abbo Wolfcamp wells drilled in this  
4 township, right?

5 A. Yes.

6 Q. Cimarex has a couple -- how many?

7 A. Approximately 25 to 27.

8 Q. And there are a number of other operators  
9 who have drilled wells in this township?

10 A. Yes.

11 Q. It's been pretty heavily developed over  
12 the last self years?

13 A. Yes.

14 Q. In Cimarex's other wells were there also a  
15 number of people you had to try to track down in  
16 order to lease or get term assignments or forced  
17 pool?

18 A. Yes.

19 Q. There have been a substantial number of  
20 people in these cases?

21 A. Yes.

22 Q. And almost all of them have been tracked  
23 down; isn't that correct?

24 A. That's correct.

25 Q. And you were the landman responsible for

1 all of that?

2 A. Yes.

3 Q. That's all I have, Mr. Examiner.

4 HEARING EXAMINER BROOKS: Do you have  
5 something further?

6 MR. CARR: Yes, I think I do.

7 RE-CROSS-EXAMINATION

8 BY MR. CARR

9 Q. You found the others but you didn't find  
10 the H.N. Smith heirs, correct?

11 A. Correct.

12 Q. Mr. Hinkle testified at one point in time  
13 he even told you they could be located?

14 A. I think anyone can be located if you look  
15 long enough.

16 Q. When he told you that, did that suggest  
17 that you might do follow-up to see where they could  
18 be found?

19 A. I don't understand the question.

20 Q. Mr. Hinkle said, "Hayden, these people can  
21 be found." Did you, because of that, engage in any  
22 further search?

23 A. I don't know why Mr. Hinkle would have  
24 told me that.

25 Q. Are you saying he did not?

1           A.     I don't recall that.

2           Q.     And then we have these follow-up documents  
3     and the letter that's your Exhibit 4 dated March 10.  
4     That's what you had checked after this proceeding  
5     began; isn't that right?

6           A.     Yes.

7           Q.     Thank you.

8           HEARING EXAMINER BROOKS:   Just to clarify,  
9     you never actually, in your searching, your work,  
10    you never actually got beyond the names Olive Bond  
11    and Richard Birnie?

12          THE WITNESS:   No, sir.

13          HEARING EXAMINER BROOKS:   You never found  
14    the name Jason Bond?

15          THE WITNESS:   No, sir.   That's where the  
16    title ended and we --

17          HEARING EXAMINER BROOKS:   Or Virginia Bond  
18    or Cindy Kochi?

19          THE WITNESS:   No, sir.

20          HEARING EXAMINER BROOKS:   Okay.   Any  
21    further questions from counsel?

22          MR. BRUCE:   None.

23          HEARING EXAMINER BROOKS:   Very good.   The  
24    witness may stand down.   Either of you wish to make  
25    a closing statement?

1           MR. BRUCE: Let me first address Mr.  
2 Fedric's hearing brief in which he prominently cites  
3 the Uhden case which any attorney tries to use  
4 against me.

5           HEARING EXAMINER BROOKS: I think  
6 everybody around here knows about the Uhden case.  
7 For some reason when I made a speech down in  
8 Albuquerque at a CLE and I said, "Well, there's two  
9 cases for the OCD proceedings. There's Johnson and  
10 the other has a funny name but for some strange  
11 reason I can't remember it today."

12           MR. BRUCE: I will tell you that when I  
13 was arguing that case in the various places I  
14 portrayed Virginia Uhden as this poor little old  
15 lady. Unfortunately she lived in Palos Verde  
16 Estates, California.

17           But I agree with all these cases cited by  
18 Mr. Fedric. The Mullane case, the U.S. Supreme  
19 Court case, that's the number one case. The Union  
20 Texas Petroleum Case is on point. In the Uhden  
21 case, when I was briefing that I cited the Cravens s  
22 case. The only thing I will say is Uhden is not  
23 directly applicable in this matter because Virginia  
24 Uhden had been receiving substantial amounts of  
25 royalty from Amaco Production Company for a number

1 of years and they knew where she was. They had her  
2 address and she was cashing checks every month.

3 This is a tough case, Mr. Examiner. You  
4 have some very nice people here. It's hard to seem  
5 to be a cold-hearted corporation. What you have to  
6 look at is what I said before. Are the persons  
7 reasonably locateable; and two, did the operator  
8 make a reasonable search.

9 The problem in matter is that the  
10 testimony shows that the H.N. Smith heirs knew they  
11 owned some inherited interest, and as a matter of  
12 fact, the documents show Olive Bond was receiving --  
13 or the testimony shows that Olive Bond received  
14 royalty payments.

15 My clients checked the Chaves, Eddy and  
16 Lea County records and the only data in Lea County,  
17 not Chaves County, showed you what was there. And  
18 once again, when I do a title opinion, I just go to  
19 Chaves County. Unless there's something in Chaves  
20 County that reflects otherwise, I'm not going to go  
21 to Eddy County. They did. They found it. They  
22 tracked it down.

23 Several landmen had looked for the people  
24 over the years. Cimarex looked for it and the  
25 documents show that Chase Oil Corporation had looked

1 for it and they haven't found it.

2 Now, I don't think the requirement is that  
3 everybody has to make every search, every possible  
4 search. After all, there hadn't been anything of  
5 record in Chaves County or Eddy County regarding  
6 these interests for 30 years. And I think you have  
7 to look at that. The people made an effort to find  
8 them. They made a reasonable effort. They had  
9 title opinions done, they had landmen search the  
10 records. They did do internet searches and they  
11 made phone calls and sent out letters that were  
12 returned. I think that's a reasonable search.

13 Cimarex recognizes it has an obligation to  
14 try to locate these people, and as Mr. Tresner just  
15 testified, it's done that a number of times in this  
16 township in the drilling of its 2000 wells in this  
17 township. We think we made a reasonable effort and  
18 we think the pooling order should be upheld. Thank  
19 you.

20 HEARING EXAMINER BROOKS: Mr. Carr, do you  
21 want to make a summation?

22 MR. CARR: Yes, I do. May it please the  
23 examiners, what we have at issue are two compulsory  
24 pooling orders. The effect of these orders is to  
25 take a 6.25 percent working interest owned by the

1 Smith heirs, and the OCD with this order gave that  
2 interest to Cimarex for the purpose of drilling two  
3 horizontal wells, and you imposed they should do a  
4 200 percent risk large on these interests.

5 Now, this is a cost to the Smith heirs.  
6 It's approximately \$925,000. You get that by taking  
7 a risk factor, which is their share of the cost,  
8 into 3.7 million dollar wells and multiply that by  
9 two. We are not disputing actual cost, we are  
10 talking about the risk penalty.

11 And that amount of money is a  
12 corresponding benefit to Cimarex. That's money they  
13 get to keep. And the question is: Did they make an  
14 appropriate search to find the heirs of H.N. Smith?  
15 And what the pooling case is, as we all know, is an  
16 exercise of the police power of the State and here  
17 it deprives the Smiths of an interest. When you do  
18 that, it's incumbent on you to ensure that there has  
19 been a good faith effort and that the proceedings  
20 that resulted in this order complied with the rules  
21 of this Division.

22 You know, we all know that pooling affects  
23 constitutionally protected rights and property.  
24 Statutory conditions and conditions in the rules  
25 exist and they have to be met and a reasonable

1 effort has to be made. And as Mr. Fedric's brief  
2 indicates, if you don't do that and if you don't  
3 give people notice, they don't have an opportunity  
4 to come in and protect their interest and their due  
5 process rights are violated.

6 But another issue is that you are charged  
7 with protecting the rights of all interest owners  
8 and the heirs of H.N. Smith. Each of them  
9 individually have rights. They are guaranteed an  
10 opportunity to produce their share, and we do that  
11 by drilling a well or we can do that by entering an  
12 agreement with someone else to drill a well, but  
13 they are afforded under your rules an opportunity to  
14 protect their own interests. Without notice where  
15 they can be found, their correlative rights are  
16 denied.

17 Cimarex has skirted around the notice by  
18 publication issue, but as we all know, as here, in  
19 most cases that is a fall-back position because  
20 notice by publication is, as here, no notice at all.  
21 The evidence in this case shows they couldn't find  
22 the Smiths and they say, "Well, the issue is, you  
23 know, were these people reasonably locateable.  
24 Could we find them through a reasonable search?" I  
25 will tell you, if there is anyone that is a

1 neanderthal when it comes to the computer it's me.  
2 I was amazed that last night in five minutes I could  
3 get this all the way back to Roswell and to  
4 Mr. Bond.

5           They say we looked in Lea, Eddy, Chaves  
6 County and then we see Mr. Tresner's verified  
7 statement that says, "I looked in telephone  
8 directories." He didn't look in Lea, Chaves or Eddy  
9 County. He picked and choosed as we go on our merry  
10 way. And the evidence, although they say they made  
11 an effort, is a little suspect because we made  
12 telephone calls; we have no log. We wrote letters;  
13 we have no copies. We made follow-ups and it all  
14 transpired after the pooling orders were entered.

15           We are all aware we are moving into an era  
16 of horizontal drilling. The wells are much more  
17 expensive. The costs associated with them are  
18 greater. The impact on people being subject to a  
19 pooling order, whether they ultimately join or are  
20 not found, is great. But we also have new search  
21 technologies that enable us to find people much more  
22 easily than we used to when we would have to go  
23 through county records, phone logs, calling their  
24 names, that sort of stuff.

25           And I submit to you that as we are moving

1 to a higher level in terms of how we develop the  
2 resource, we have to adhere to a high or higher  
3 standard when we locate people affected and that you  
4 should not simply accept what on this record appears  
5 to be nothing more than a cursory look at a letter  
6 from 2008.

7 And that's what we have here. Because  
8 this case underscores the big loss to the heirs and  
9 the big windfall to Cimarex, the party who made what  
10 appears to be a cursory review.

11 So the question is who should bear the  
12 consequences of the error in Cimarex's search.  
13 Should it be Cimarex, the oil company that hires  
14 people to regularly find these people and who uses  
15 outside consultants to do it? Or these individuals  
16 who have a valuable property interest protected by  
17 the constitution, and even the rules of this  
18 Division and they have an opportunity to produce  
19 which they are denied if the search isn't  
20 reasonable. They had no knowledge, they had no  
21 opportunity to participate in the first proceeding  
22 because of an error of Cimarex.

23 So we have two issues. One is we think  
24 they are not entitled to interests. They didn't  
25 make an appropriate search. It denies us our

1 correlative rights as that term is defined, and it's  
2 because they did not find us. It is their error.  
3 When they ask you to be their accomplice and take  
4 our interest away, the burden falls on them to do it  
5 right. You should construe their error against the  
6 party who made it, not innocent people who own these  
7 interests and who are losing by virtue of the way  
8 this case was handled.

9           We have a second issue, and this is one  
10 that I have been waiting for months to raise, but I  
11 want to tell you that we think the proceeding in  
12 which these orders were entered was fundamentally  
13 flawed because they violate the rules. Your rules  
14 provide you can pool the interests by affidavit. We  
15 have an alternative procedure and it limits that to  
16 when the proposed unit is not larger in size than  
17 provided in 19-15-5, standard spacing rules, or  
18 applicable special pool order. There is none here.  
19 you are only allowed to undertake in this case by  
20 affidavit if you have a 40-acre unit for oil and  
21 there were no special rules. But you did anyway.

22           So we think your hearings were conducted  
23 outside your ruling, and I would have objected then,  
24 but you know we weren't here because we didn't know  
25 what was going on because we had no notice.

1           Now, there has been a recent shift in OCD  
2 policy, but this is a case where in any event, these  
3 orders would clarify what the Division expects of  
4 operators who are pooling horizontal project areas.  
5 If the rules don't apply, we need to know. If the  
6 rules don't apply we need to know that before we get  
7 on this case before the Commission on appeal.

8           We think the application of H.N. Smith and  
9 heirs must be granted. Their interests weren't  
10 properly pooled.

11           A few minutes ago all the Smith heirs  
12 asked was that they be treated fairly. We think the  
13 order must be set aside and Cimarex should be  
14 ordered to account to the Smith heirs for their  
15 share of the production to date, and that share can  
16 be credited in the future against actual drilling  
17 costs if they come back and pool and we join.

18           In the alternative, if you decide these  
19 orders should stand, we would request that the Smith  
20 heirs not be subject to a charge for risk because  
21 that's the risk that Cimarex assumed when they  
22 marched forward without us. Thank you very much.

23           HEARING EXAMINER BROOKS: I don't think  
24 either party offered evidence on the question of  
25 whether or not these wells reached 100 percent

1 payout, and arguably that's irrelevant to the issue  
2 of whether or not the original order should be set  
3 aside but it's not necessarily irrelevant to the  
4 nature of the order that should be entered if they  
5 are set aside. I suppose that information could be  
6 basically inferred from OCD records, but it can only  
7 be inferred because we don't know what burdens are  
8 on the title. Do you all want to offer any  
9 evidence?

10 MR. CARR: We don't, no.

11 MR. BRUCE: We have given production and  
12 technical data but, Mr. Examiner, we don't have any  
13 problem giving the status of the payout to you.

14 HEARING EXAMINER BROOKS: I think I should  
15 know that for the purposes of determining what I do  
16 next, what I recommend next. Of course, everybody  
17 knows what I recommend can be set aside once the  
18 application is filed but I think I should know that  
19 for the purpose of determining what should be done.  
20 I will not take it into consideration on the due  
21 diligence issue because it has no relevance to the  
22 issue. Okay. We will take case No. 14415 and 14416  
23 under advisement and the hearing will stand  
24 adjourned.

25 (Note: The hearing concluded at 3:25.)

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I do hereby certify that the foregoing is  
 a complete record of the proceedings in  
 the Examiner hearing of Case No. \_\_\_\_\_  
 heard by me on \_\_\_\_\_

\_\_\_\_\_, Examiner  
 Oil Conservation Division

REPORTER'S CERTIFICATE

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I, JAN GIBSON, Certified Court Reporter for the State of New Mexico, do hereby certify that I reported the foregoing proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings and was reduced to printed form under my direct supervision.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case and that I have no interest in the final disposition of this case.

  
\_\_\_\_\_  
JAN GIBSON, CCR-RPR-CRR  
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