

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

IN THE MATTER OF THE APPLICATION OF THE HEIRS OF H. N. SMITH, DECEASED TO REOPEN OIL CONSERVATION DIVISION CASES 14415 AND 14416 IN THE MATTER OF THE APPLICATION OF CIMAREX ENERGY CO. FOR A NON-STANDARD OIL SPACING AND PRORATION UNIT AND COMPULSORY POOLING, TO AMEND ORDERS NO. R-13287 AND R-13221 TO CLARIFY THE STATUS OF THE INTERESTS OF PARTIES NOT PROPERLY POOLED BY SAID ORDER, CHAVES COUNTY, NEW MEXICO.

APPLICANT'S HEARING BRIEF
DUE PROCESS

The exercise of the states police power allows for the procedural taking of one person's property for the benefit of another. That process, however, must necessarily be exercised with great caution. If property and property rights are to be taken from one and granted to another, the proceeding must have a foundation of due process. In the United States Supreme Court case Mullane v. Central Hanover Bank and Trust Co. 339 U.S. 306, 70 S. Ct. 652 (1950) the court said about due process that "...it affords at least a limitation requiring that a deprivation of... property by adjudication be preceded by notice and the opportunity for a hearing appropriate to the nature of the action. The fundamental requisite of due process of law is the opportunity to be heard." (emphasis added).

The opportunity to be heard has no value without notification of the occasion requiring it, so that the affected individual may choose whether to appear or not. Union Texas Petroleum v. The Corp. Comm. of Oklahoma 651 P2d 652 (Okla. 1981) 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."

In **Brown v. Greig** 106 NM 202, 740 P2d 1186 (1987) the New Mexico Taxation and Revenue Department failed to make a diligent search of the record in determining the person or persons entitled to notice. This Court of Appeals case, which the New Mexico Supreme Court declined to review stated: "Due process requires that the State must provide notice of sale to parties who's interest in property would be affected by the sale , as long as that information is reasonably ascertainable." Also, see generally, Uhden v. New Mexico Oil Conservation Commission 112 NM 528 (1991) wherein our New Mexico Supreme Court citing among several cases was persuaded by an Oklahoma case, Cravens v. Corporation Commission 613 P2d 442 (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. (Emphasis Added)