

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

**APPLICATION OF LIME ROCK RESOURCES
II-A, L.P. FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO.**

Case No. 20210

**APPLICATION OF PERCUSSION PETROLEUM
OPERATING, LLC FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO.**

Case No. 20232

**APPLICATION OF PERCUSSION PETROLEUM
OPERATING, LLC FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO**

Case No. 20371

**APPLICATION OF LIME ROCK RESOURCES II-A, L.P.
FOR COMPULSORY POOLING, EDDY COUNTY
NEW MEXICO.**

Case No. 20319

MOTION TO DISMISS

Ann Landrith Holdings, LLC, by and through its undersigned attorney, moves the
Division for dismissal of the above-captioned application, and as grounds therefor, states:

A. Introduction.

In 1954 John Anton Leavitt and Anna Louise Leavitt, husband and wife, as lessors,
entered into an oil and gas lease in Eddy County, New Mexico with Standard Oil Company of
Texas, as lessee. The lease covered the following described lands in Eddy County:

Township 18 South, Range 26 East, NMPM

Section 13: NW/4, W/2NE/4

Section 14: E/2NE/4

Ann Landrith Holdings, LLC is successor in interest to John Anton Leavitt and Anna
Louise Leavitt. Lime Rock is successor in interest to the lease originally issued to Standard Oil
Company of Texas.

Paragraph 14 of the lease limited the size of a spacing and proration unit to 43 acres for an oil well. By their applications for compulsory pooling, Applicants, Lime Rock and Percussion, seek to pool the lands covered by the lease to form spacing and proration units in excess of 43 acres. In Case No. 20319, Lime Rock Resource's application seeks to pool the N/2N/2 of Section 13 (160 acres) and drill a horizontal well in the Yeso formation. In Case No. 20210 Lime Rock seeks to pool the S/2N/2 of Section 13 and the SW/4NW/4 of Section 18 in Township 18 South, Range 27 East (200 acres) also to drill a horizontal well in the Yeso formation.

In Cases 20232 and 20371, Percussion Petroleum Operating, LLC has filed competing applications to Lime Rock's Case 20210 seeking to pool the same acreage comprised of 200 acres. Percussion's proposed well in Case 20371 is to be drilled below 3001 feet to the base of the Yeso.

The wells proposed by Lime Rock and Percussion are designated to be oil wells.

In 2016 Landrith, through its signed a Designation of Voluntary Unit with Lime Rock, covering the N/2N/2 of Section 13, limited in depth as follows:

The N/2N/2 of Section 13, Township 18 South, Range 26 East, limited in depth to those depths lying below the base of the continuous stratigraphic interval of the subsurface portion of the Unit area occurring between the top of the San Andres Formation and 920 feet below the top of the San Andres Formation, as more particularly described in the Unit Agreement for the Atoka San Andres Unit, dated February 1, 1968, recorded in Book 62, Page 635 of the Miscellaneous Records of Eddy County, New Mexico, and in the Unit Operating Agreement of even date therewith down to 3000 feet, containing 160 acres, more or less,

Prior to bringing its applications, Lime Rock has sought to amend Paragraph 14 of the lease to allow horizontal drilling and increase the size of a spacing and proration unit to conform to horizontal drilling. Lime Rock has not offered any consideration for the right to amend the lease. In the limited negotiations between Landrith and Lime Rock, Landrith has asked for an

increased royalty rate to conform to existing leasing practices in Southeast New Mexico consistent with rates and practices associated with horizontal drilling.

Even though Case 20319, was previously presented by affidavit, the case was continued to May 30 to allow further negotiations between Landrith's representative at the hearing and Lime Rock. No further negotiations have occurred.

Percussion has merely filed its applications for compulsory pooling, seeking only to acquire interests through force pooling the Lime Rock leasehold interests in Section 13, which comprise the majority of the lands dedicated to the proposed wells.

B. Neither Lime Rock or Percussion can ignore the terms of the pooling clause of the lease.

It is clear from Lime Rock's efforts to amend the pooling provisions of the lease, that it did not have the right to pool its interests in the lease beyond 43 acres. All of the captioned cases seeking pooling of the lands covered by the lease with those of other mineral or lease owners outside of 43 acres.

Similar issues were addressed in Browning Oil Co., Inc. v. Luecke, 38 S.W.3d 625, 640 (Tex. App.--Austin 2000) where the court decided a breach of contract dispute ruling that no directive of the Texas Railroad Commission precluded application of the anti-dilution provisions of the oil and gas leases involved in the case. The court said:

Nothing in the pooling provisions limits their applicability to vertical wells. The intent of the parties was to authorize pooling, but to prevent the dilution of the Lueckes' royalties, whether the royalties represented production from vertical wells or horizontal wells. Indeed, it is because the provisions were not specifically limited to vertical wells that Lessees attempted to amend the provisions to gain authority to further dilute the Lueckes' share in horizontal well units. This evidences the Lessees' recognition of the unqualified language in the anti-dilution provisions. And the Lueckes' refusal to sign the amendment evidences their continued interest in anti-dilution protection. We hold that the anti-dilution provisions apply to horizontal wells.²⁰

The Texas Court of Appeals further said at 38 S.W.3d 646-47:

Moreover, in considering public policy, we must attempt to balance two competing interests. First, we recognize that Lessees should not be allowed to ignore anti-dilution provisions and exceed their pooling authority with impunity. A reasonably prudent operator may conclude that horizontal drilling in the Austin Chalk formation will benefit a lessor, and the operator may correctly opine that reasonable prudence dictates the drilling of a horizontal well that exceeds the authority granted under the applicable lease. Nevertheless, rather than ignore the written lease, the prudent operator must seek to negotiate a solution mutually beneficial to both the lessee and the lessor or else forego drilling.

The resolution of this case cannot be simply a resort to the Division with a compulsory pooling applications without any negotiation for inclusion of the Landrith interests in the proposed spacing and proration units other than a proposed amendment to the lease previously made by Lime Rock. Numerous authorities, including Browning cited above follow the rule that an oil and gas lease is a contract and must be interpreted as one. *Id.* at 38 S.W.3d 640. See also, ConocoPhillips Co. v. Lyons, 299 P.3d 844, 852, 2013-NMSC-009 ¶ 23 [(“In interpreting oil and gas leases, courts have generally applied the rules governing contract interpretation. *Leonard v. Barnes*, 75 N.M. 331, 345, 404 P.2d 292, 302 (1965)]. *Id.* 2013-NMSC-009 ¶ 44 (“An oil and gas lease is to be construed in the same manner as a contract.”)].

Here, there is no ambiguity in the lease pooling provisions and there are no established special pool rules setting rules for drilling wells other than applications for non-standard spacing and proration rules, and of course, for compulsory pooling. The rationale of Browning should be applied in this case.

WHEREFORE, for the foregoing reasons the applications should be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing pleading to be sent via e-mail on this 23rd day of May, 2019 to:

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