

**BEFORE THE OIL CONSERVATION DIVISION
EXAMINER HEARING JANUARY 9, 2020**

**APPLICATION OF DEVON ENERGY PRODUCTION COMPANY, L.P.,
FOR A HORIZONTAL SPACING UNIT AND COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO**

Case No. 20962

Danger Noodle 29-20 Fed Com 1H Well
Danger Noodle 29-20 Fed Com 2H Well
Danger Noodle 29-20 Fed Com 3H Well

Case No. 20963

Danger Noodle 29-20 Fed Com 4H Well
Danger Noodle 29-20 Fed Com 5H Well
Danger Noodle 29-20 Fed Com 6H Well
Danger Noodle 29-20 Fed Com 7H Well

Devon Energy Production Company, L.P.

HEARING: SUPPLEMENTAL EXHIBIT 4

Consolidated Case Nos. 20962 and 20963

Supplemental Exhibit 4: Affidavit of Notice; Affidavits of Publication; and
Legal Issue Under Advisement, Pursuant to Order No. R-20979

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

**APPLICATION OF DEVON ENERGY PRODUCTION COMPANY, LP
FOR A HORIZONTAL SPACING UNIT AND COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO**

CASE NO. 20962

**APPLICATION OF DEVON ENERGY PRODUCTION COMPANY, LP
FOR A HORIZONTAL SPACING UNIT AND COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO**

CASE NO. 20963

ORDER No. B-20979

ORDER

These applications of Devon Energy Production Company, LP ("Applicant") came on for hearing before the Oil Conservation Division ("OCD") on December 12, 2019. At the hearing, Applicant acknowledged that it failed to timely publish notice of the hearing and did not have the affidavit of publication as required by 19.15.4.12(B) NMAC. However, at the hearing and in a brief submitted after the hearing, Applicant asserted that published notice was not required because certain royalty interest owners who could not be located were not entitled to such notice.

Having considered the matter, and being fully advised in the premises,

IT IS HEREBY ORDERED:

1. The applications are reopened for the limited purpose of allowing Applicant to comply with the notice publication requirements in 19.15.4.12(B) NMAC.
2. The applications are continued to the OCD hearing on January 9, 2020.
3. Prior to the OCD hearing, Applicant shall publish notice as specified in 19.15.4.12(B) NMAC.

4. At the OCD hearing, Applicant shall present an affidavit stating its compliance with notice publication requirements and the affidavit of publication. If the unlocatable person(s) file(s) an entry of appearance, OCD at the hearing will determine whether the application will be heard by affidavit or witnesses.
5. OCD will take the legal issue raised by Applicant under advisement.



ADRIENNE SANDOVAL
DIRECTOR

Date: 12/17/19



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


**APPLICATION OF DEVON ENERGY PRODUCTION
COMPANY LP FOR A HORIZONTAL SPACING UNIT
AND COMPULSORY POOLING, LEA COUNTY, NEW MEXICO**

Consolidated Case Nos. 20962 and 20963

AFFIDAVIT OF NOTICE

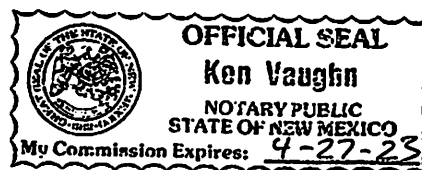
STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

Darin C. Savage, attorney and authorized representative of Devon Energy Production Company, L.P., the Applicant herein, being first duly sworn, upon oath, states that the above-referenced Applications were under publication of notice in the Hobbs News-Sun on December 20 and 21, 2019, in compliance with 19.15.4.12(B) NMAC, and that proof of publication is attached hereto and provided for the January 9, 2020 Docket.



Darin C. Savage

SUBSCRIBED AND SWORN to before me this 31st day of December, 2019, by Darin C. Savage.





Notary Public

My Commission Expires:

April 27, 2023



Affidavit of Publication

STATE OF NEW MEXICO
COUNTY OF LEA

I, Daniel Russell, Publisher of the Hobbs News-Sun, a newspaper published at Hobbs, New Mexico, solemnly swear that the clipping attached hereto was published in the regular and entire issue of said newspaper, and not a supplement thereof for a period of 1 issue(s).

Beginning with the issue dated
December 20, 2019
and ending with the issue dated
December 20, 2019.

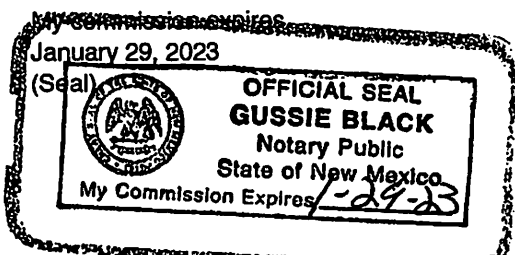


Publisher

Sworn and subscribed to before me this
20th day of December 2019.



Business Manager



This newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Laws of 1937 and payment of fees for said

LEGAL NOTICE DECEMBER 20, 2019

CASE No. 20862: Notice to all affected parties and persons having any right, title interest or claim to this case, including overriding royalty interest owners, as well as the known and unknown heirs, devisees and successors of TRAINER PARTNERS, LTD., CONOCOPHILLIPS COMPANY, EOG RESOURCES ASSETS, LLC, EOG RESOURCES INC., MAGNUM HUNTER PRODUCTION INC., SHARBRO ENERGY, LLC, MCCOMBS ENERGY, LLC, OXY USA, INC., OXY Y-1 COMPANY, CACTUS ENERGY INC., CM ROYALTIES LP, HIGHLAND TEXAS ENERGY COMPANY, MCMULLEN MINERALS, LLC, PEGASUS RESOURCES, LLC, PONY OIL OPERATING LLC, ROCK RIDGE ROYALTY COMPANY, LLC, STEVEN M BURR AND CHRISTY B. BURR, H&W, TD MINERALS LLC, TRUITT MATTHEWS AND MICHELLE R. MATTHEWS, H&W, AMY BEHERMANN, TRUSTEE OF ANDERSON TRUST, ANN E. HEARN, AUDREY ELAINE (DEATHRIDGE) BERNARD, BILL STINEBUCK, CAROLINA R. GREENE, CBF COMPANY (WELLS FARGO NA REAL ESTATE), DANIEL E. GONZALES, DEE ETTA DEAN, DILLARD LEE DORLAND AKA D.L. DORLAND, DONNA P. LANDRETH, E.L. LATHAM COMPANY, ERMA JO (HOLMAN) SPELL, HENRY C. WUNSCH AND MARY ANN WUNSCH, H&W, JACKSON: GARRETT BERNARD, JAMES L. DORLAND, JR., JASON W. HICKS, JENNIFER HERRERA, JENNIFER S. HICKS, JOHN BERNARD AKA JOHN PIER BERNARD, JOHNSON COMPANY, GARY SCHUBERT MANAGING PARTNER, KELSEY LEAH BERNARD RAMIREZ, KENNETH R. DEAN, KEVEN JUAN BERNARD, KIM COMBS, KIMBERLY KAY (DORLAND) COMBS, KYLE FAY SHEPARD, LANTY FAY BERNARD, DECEASED, MCMULLEN MINERALS, LLC, NORMA J. CHANDLER, PATRICIA C. STEWART, PFZ LLC, RITA H. GONZALES, ROBERT F. BYRON & JEANNINE HOPPER BYRON TRUSTEES OF ROBERT & JEANNINE BYRON REVOCABLE TRUST DTD 6-18-03, ROBERT E. LANDRETH, ROMAN FOUR CORPORATION, ROY G. BARTON, SALLY ANN HINDMAN, SALLY FAEGIN, STEPHEN B. HOWARD, THE ESTATE OF ELLIOT JOHNSON, DECEASED, THE ESTATE OF FRANK EDWARDS, DECEASED, THE ESTATE OF MARIA ESTER MARQUEZ, DECEASED, VIRGINIA BLACK, PAULETTE WILLIAMSON PARTNER OF WILLIAMSON ENTERPRISES, AND KIMBERLY KAY COMBS TRUSTEE OF THE ZONETTA MOORE TRUST KIMBERLY of Devon Energy Production Company, L.P.'s applications for approval of a spacing unit and compulsory pooling, Lea County, New Mexico. The State of New Mexico, through its Oil Conservation Division, hereby gives notice that the Division Examiner will conduct a public hearing at 8:15 a.m. on January 9, 2020, at 1220 S. Francis, Santa Fe, New Mexico, 87505, as a continuance of its hearing held December 12, 2019. Devon Energy Production Company, L.P., at 333 W. Sheridan Ave., Oklahoma City, OK 73102, seeks an order from the Division: (1) creating a standard 640-acre, more or less, horizontal spacing and proration unit comprised of the W/2 of Sections 20 and 29, Township 23 South, Range 33 East, NMPM, Lea County, New Mexico, and (2) pooling all mineral interests in the Bone Spring formation (CRUZ; BONE SPRING (14865); TRIPLE X; BONE SPRING (59900)) underlying the unit. Said horizontal spacing unit is to be dedicated to the proposed Danger Noodle 29-20 Fed Com 2H Well, to be horizontally drilled from a surface location in SW/4 SW/4 (Unit M) of Section 29 to a bottom hole location in the NW/4 NW/4 (Unit D) of Section 20. This Well defines the HSU. Also proposed to be drilled are: (1) the Danger Noodle 29-20 Fed Com 1H Well to be horizontally drilled from a surface location in the SW/4 SW/4 (Unit M) of Section 29 to a bottom hole location in the NW/4 NW/4 (Unit D) of Section 20; and (2) the Danger Noodle 29-20 Fed Com 3H Well to be horizontally drilled from a surface location in the SW/4 SW/4 (Unit M) of Section 29 to a bottom hole location in the NE/4 NW/4 (Unit C) of Section 20. The completed intervals and first take and last take points for all wells proposed in the unit meet the Division's statewide setback requirements for horizontal oil wells. Devon will utilize proximity tracts. Also to be considered will be the cost of drilling and completing the wells and the allocation of the costs thereof; actual operating costs and charges for supervision; the designation of the Applicant as Operator of the wells; downhole commingling; and a 200% charge for the risk involved in drilling and completing the wells. The wells and lands are located approximately 3 miles east of Artesia, New Mexico. #35009

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KAIYA TOOP
ABADIE SCHILL
555 RIVERGATE LANE 84-180
DURANGO, CO 81301

Affidavit of Publication

STATE OF NEW MEXICO
COUNTY OF LEA

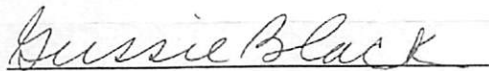
I, Daniel Russell, Publisher of the Hobbs News-Sun, a newspaper published at Hobbs, New Mexico, solemnly swear that the clipping attached hereto was published in the regular and entire issue of said newspaper, and not a supplement thereof for a period of 1 issue(s).

Beginning with the issue dated
December 21, 2019
and ending with the issue dated
December 21, 2019.



Publisher

Sworn and subscribed to before me this
21st day of December 2019.

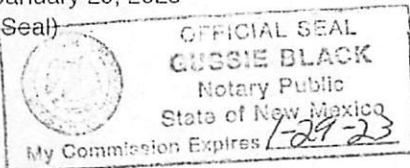


Business Manager

My commission expires

January 29, 2023

(Seal)



This newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Laws of 1937 and payment of fees for said

LEGAL

LEGAL

LEGAL

LEGAL NOTICE DECEMBER 21, 2019

SE No. 20963: Notice to all affected parties and persons having any interest, title interest or claim to this case, including overriding royalty interest owners, as well as the known and unknown heirs, devisees and successors of TRAINER PARTNERS, LTD., CONOCOPHILLIPS COMPANY, EOG RESOURCES ASSETS, LLC, EOG RESOURCES INC., MAGNUM HUNTER PRODUCTION INC., SHARBRO ENERGY, LLC, MCCOMBS ENERGY, LLC, OXY USA, INC., OXY Y-1 COMPANY, CACTUS ENERGY INC., CM ROYALTIES LP, HIGHLAND TEXAS ENERGY COMPANY, MCMULLEN MINERALS, LLC, PEGASUS RESOURCES, LLC, PONY OIL OPERATING LLC, ROCK RIDGE ROYALTY COMPANY, LLC, STEVEN M BURR AND CHRISTY B. BURR, H&W, TD MINERALS LLC, TRUITT MATTHEWS AND MICHELLE R. MATTHEWS, H&W, AMY REHERMANN TRUSTEE OF ANDERSON TRUST, ANN E. HEARN, AUDREY ELAINE (DEATHRIDGE) BERNARD, BILL STINEBUCK, CAROLINA R. GREENE, CBF COMPANY (WELLS FARGO NA REAL ESTATE), DANIEL E. GONZALES, DEE ETTA DEAN, DILLARD LEE DORLAND AKA D.L. DORLAND, DONNA P. LANDRETH, E.L. LATHAM COMPANY, ERMA JO (HOLMAN) SPELL, HENRY C. WUNSCH AND MARY ANN WUNSCH, H&W, JACKSON GARRETT BERNARD, JAMES L. DORLAND, JR., JASON W. HICKS, JENNIFER HERRERA, JENNIFER S. HICKS, JOHN BERNARD AKA JOHN PIER BERNARD, JOHNSON COMPANY GARY SCHUBERT MANAGING PARTNER, KELSEY LEAH BERNARD RAMIREZ, KENNETH R. DEAN, KEVEN JUAN BERNARD, KIM COMBS, KIMBERLY KAY (DORLAND) COMBS, KYLE FAY SHEPARD, LANTY FAY BERNARD, DECEASED, MCMULLEN MINERALS LLC, NORMA J. CHANLEY, PATRICIA C. STEWART, PFZ LLC, RITA M. GONZALES, ROBERT P. BYRON & JEANNINE HOPPER BYRON TRUSTEES OF ROBERT & JEANNINE BYRON REVOCABLE TRUST DTD 6-18-03, ROBERT E. LANDRETH, ROMAN FOUR CORPORATION, ROY G. BARTON, SALLY ANN HINDMAN, SALLY FAEGIN, STEPHEN B. HOWARD, THE ESTATE OF ELLIOT JOHNSON, DECEASED, THE ESTATE OF FRANK EDWARDS, DECEASED, THE ESTATE OF MARIA ESTER MARQUEZ, DECEASED, VIRGINIA BLACK, PAULETTE WILLIAMSON PARTNER OF WILLIAMSON ENTERPRISES, AND KIMBERLY KAY COMBS TRUSTEE OF THE ZONETTA MOORE TRUST KIMBERLY of Devon Energy Production Company, L.P.'s applications for approval of a spacing unit and compulsory pooling, Lea County, New Mexico. The State of New Mexico, through its Oil Conservation Division, hereby gives notice that the Division Examiner will conduct a public hearing at 8:15 a.m. on January 9, 2020, at 1220 S. St. Francis, Santa Fe, New Mexico, 87505, as a continuance of its hearing held December 12, 2019. Devon Energy Production Company, L.P., at 333 W. Sheridan Ave, Oklahoma City, OK 73102, seeks an order from the Division: (1) creating a standard 640-acre, more or less, horizontal spacing and proration unit comprised of the W/2 of Sections 20 and 29, Township 23 South, Range 33 East, NMPM, Lea County, New Mexico, and (2) pooling all mineral interests in the Wolfcamp formation (BRINNINSTOOL: WOLFCAMP, WEST [96689]) underlying the unit. Said horizontal spacing unit is to be dedicated to the proposed Danger Noodle 29-20 Fed Com 6H Well, to be horizontally drilled from a surface location in SE/4 SW/4 (Unit N) of Section 29 to a bottom hole location in the NE/4 NW/4 (Unit C) of Section 20. This Well defines the HSU. Also proposed to be drilled are: (1) the Danger Noodle 29-20 Fed Com 4H Well to be horizontally drilled from a surface location in the SW/4 SW/4 (Unit M) of Section 29 to a bottom hole location in the NW/4 NW/4 (Unit D) of Section 20; (2) the Danger Noodle 29-20 Fed Com 5H Well proposed to be horizontally drilled from a surface location in the SW/4 SW/4 (Unit M) of Section 29 to a bottom hole location in the NW/4 NW/4 (Unit D) of Section 20; and (3) the Danger Noodle 29-20 Fed Com 7H Well proposed to be horizontally drilled from a surface location in the SE/4 SW/4 (Unit N) of Section 29 to a bottom hole location in the NE/4 NW/4 (Unit C) of Section 20. The completed intervals and first take and last take points for all wells proposed in the unit meet the Division's statewide setback requirements for horizontal oil wells. Devon will utilize proximity tracts. Also to be considered will be the cost of drilling and completing the wells and the allocation of the costs thereof; actual operating costs and charges for supervision; the designation of the Applicant as Operator of the wells; downhole commingling; and a 200% charge for the risk involved in drilling and completing the wells. The wells and lands are located approximately 3 miles east of Artesia, New Mexico. #35011

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

**APPLICATION OF DEVON ENERGY PRODUCTION
COMPANY LP FOR A HORIZONTAL SPACING UNIT
AND COMPULSORY POOLING, LEA COUNTY, NEW MEXICO**

Consolidated Case Nos. 20962 and 20963

LEGAL ISSUE UNDER ADVISEMENT: ORDER No. R-20979

Legal Issue: Whether 19.15.4.12(A)(1)(a) NMAC properly excludes an Overriding Royalty Interest ("ORRI") Owner from notice in a compulsory pooling hearing when said royalty interest is subject to a pooling or unitization clause.

SUMMARY

As discussed in Applicant's Brief submitted December 16, 2019, an ORRI is a royalty interest, that is, a non-possessory interest in real property void of any rights to drill or to produce, and free of all costs and expenses of production, as well as free of all executive rights, liabilities and accountability involving drilling and production. An ORRI is subject to the pooling and unitization clauses of the underlying lease out of which the ORRI is carved, or subject to the unitization clauses of a federal communitization agreement as governed by federal statute. Furthermore, under the Oil and Gas Act ("Act"), protection of "correlative rights" applies only to a working interest owner's right "to produce without waste," *see, i.e.*, NMSA 1978, § 70-2-33(H), and not to an ORRI owner who has no right to produce or drill, *see id.* at (E); an ORRI owner has only a passive right to receive at the wellhead a small portion of that which working interest owners produce. Consequently, the Act provides proper discretion to the Division to exclude notice to ORRI owners, under 19.15.4.12(A)(1)(a) NMAC, in pursuit of preventing "the greater hazard" of the "dissipation of the [State's] natural resources...." *Rutter & Willbanks Corp. v. Oil Conservation Commission*, 1975-NMSC-6, 87 N.M. 286, 292, 532 P.2d 582, 588 (noting that the Commission's established participation formula preempts an ORRI owner's right to object to an Order for a spacing unit).

Respectfully submitted,

ABADIE & SCHILL, PC

/s/ Darin C. Savage

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lara@abadieschill.com

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed with the New Mexico Oil Conservation Division and was served on counsel of record via electronic mail on December 31, 2019:

Deana M. Bennett
For Cimarex Energy Co.
Modrall, Sperling, Roehl, Harris & Sisk, P.A.
Post Office Box 2168
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Telephone: 505.848.1800
Email: Deana.bennett@modrall.com

/s/ Darin C. Savage

Darin C. Savage

An ORRI is a Royalty Interest

- 2 H. Williams & C. Meyers, Oil and Gas Law § 418.1
- *Christy v. Petrol Resources Corp.*, 1984-NMCA-108, ¶ 21, 102 N.M. 58
- 19.15.4.12A(1)(a) NMAC should apply to an ORRI in the same way it applies to a Lessor's Royalty Interest

ORRI Owner: No Right to Drill or to Produce

- Owns a passive nonoperating royalty interest
- With no executive rights
- Free from the costs of production
- Free from responsibilities, obligations and liabilities of drilling and operating a well
- 1 Kuntz: The Law of Oil and Gas § 16.2, ¶ 3
- *Continental Potash, Inc., v. Freeport-McMoran, Inc.*, 1993-NMSC-039, ¶3, note 2

Singular Interest of ORRI Runs Counter to Conservation

- Economic self-interest of ORRI Owner can undermine conservation: *Continental Oil v. Oil Conservation Commission*, 1962-NMSC-062, ¶28
- ORRI Owner, like a Lessor, shifts risk, liability, and stewardship of the land to Operator and Working Interest Owners who make the decisions directly affecting conservation and waste
- Excluding ORRI Owners from notice optimizes the focus on conservation.
- Excluding ORRI Owners from notice allows Applicants to optimize their focus on operations and Working Interest Owners, which directly impact conservation and waste.

Regulatory and Statutory Authority to Exclude Notice

- 19.15.4.12A(1)(a) NMAC
- NMSA, §70-2-6: authority over all matters related to conservation and waste
- NMSA, §70-233(H): Protection of correlative rights applies only to protection of an owner's right "to produce without waste...."
- NMSA, §70-2-33(E): Only working interest owner has right to produce.
- Order No. R-13124: Owner of well-bore only interest has no right to protection of correlative rights or notice; same should apply to ORRI Owner, who has no right to drill or produce, but only a right to receive at the wellhead a small interest of what other owners produce.

NM Case Law Supports Exclusion of Notice

- *Continental Oil v. Oil Conservation Commission*, 1962-NMSC-062, ¶27: Rights of ORRI Owners must be limited by the Commission's findings on conservation; therefore, the Commission should not be constrained by the singular interest of ORRI Owners.
- *Rutter & Willbanks Corp. v. Oil Conservation Commission*, 1975-NMSC-6, 87 N.M. 286, 292: ORRI Owner has no right to object to the Commission's Spacing Order because it is based on a statutorily-prescribed formula.

Consistent with Industry Standard

- Oklahoma excludes ORRI Owners from notice pursuant to its regulation, OCC Rule 165-5-7012(d)(3); *see also* O'Neill v. Quasar Petroleum Co., 617 P.2d 181 (Okla. 1980)
- Colorado excludes ORRI Owners from notice pursuant to its regulation, COGCC Rule 507(b)(2); *see also* Garman v. Conoco, Inc., 886 P.2d 652 (Colo. 1994)
- Multiple states with comparable force pooling statutes acknowledge the value of excluding ORRI Owners from notice in order to conserve oil and gas.

Pooling and Unitization Clauses of Underlying Lease Apply to ORRI Owners

See *Cook v. El Paso Natural Gas Co.*, 560 F.2d 978 (10th Cir. 1977):

In *Cook*, Plaintiff-Appellee had reserved an ORRI from an Oil and Gas Lease covering interest in Eddy County, New Mexico, when she assigned it to an oil and gas company, as the new Lessee. A covenant of the Lease required the Lessee to drill offset wells to benefit the Lessor, as a royalty owner. The Plaintiff-Appellee, as an ORRI owner, sued the Lessee under the terms of the original Lease.

The court held that the covenants of the underlying Lease applied to the ORRI Owner and therefore the Lease required the Lessee to adhere to its terms for the benefit of the ORRI Owner. The court based its holding on the following analysis as described in *Cook*, 560 F.2d at 987:

1. The application to the ORRI Owner and Lessee of obligations contained within the underlying Lease ***"is said to be a matter of traditional land law."*** (emphasis added)
2. The elements that must be satisfied are (1) that the covenant be in writing; (2) the parties intend that the covenant run to the successor; (3) the covenant touches and concerns the land; and (4) the parties are in privity of estate.
3. As between the ORRI owner and the Lessee, (1) the requirement of writing is satisfied because the covenants are implied in a written instrument; (2) the intent is satisfied in the typical lease which provides for assignment by either party and for the covenants to be binding on heirs, executors, administrators, successors, or assigns, and (3) "the privity of estate as well as the touch and concern requirements are both fulfilled within this kind of [oil and gas] lease."

In *Cook*, the obligations contained in the underlying Lease required the Lessee to drill offset wells for the benefit of the ORRI owner who stepped into the shoes of the Lessor, as Royalty Interest Owner, to exercise this right of the Royalty Interest Owner under the Lease. Under the same legal analysis, the express provisions of a pooling or unitization clause within the underlying Lease would apply to the ORRI Owner in relation to the Lessee-Working Interest Owner because (1) it is a matter of traditional land law; (2) the express terms are in writing; (3) the parties intend that the obligation run to the assignee of the ORRI; and (3) privity of estate as well as the touch and concern requirements are fulfilled between ORRI Owner and Lessee in an oil and gas lease.