

**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. 20319**

JUN 10 2019 PM 04:02

**RESPONSE IN OPPOSITION TO MOTION TO DISMISS**

Lime Rock Resources II-A, L.P. (“Lime Rock”) submits its response in opposition to Ann Landrith Holdings, LLC’s (“ALH’s”) Motion to Dismiss (“the Motion”).

**INTRODUCTION**

The Motion misapprehends the Division’s controlling pooling authority in asserting that a spacing restriction in a 1954 lease - which predates the advent of horizontal drilling - should be enforced by the Division. ALH cites a single Texas case, *Browning Oil Co., Inc. v. Luecke*, 38 S.W.3d 625 (Tex. App. 2000), to support its assertion. That case involved voluntary pooling, and does not address the precise issue presented here, which is: what is the effect of an anti-dilution clause in a lease on the Division’s statutory authority to grant a compulsory pooling application?

More importantly, the Motion fails to acknowledge the caselaw and treatises that uniformly recognize the proposition that a state’s pooling authority supersedes private contracts. The courts and commentators that have analyzed the issue have unanimously concluded that a lease clause purporting to limit pooling has no impact on a state’s pooling authority. Based on this prevailing legal authority, and the Division’s pooling authority under the Oil and Gas Act, the Division should deny the Motion.

## ARGUMENT

ALH'S assertion that Lime Rock cannot ignore the terms of the pooling clause in the 1954 lease misses the point entirely. That assertion might have some force if Lime Rock were disregarding the lease provision in seeking to enforce a voluntary pooling agreement, as such an action could potentially be construed to be a breach of the lease. The issuance of a compulsory pooling order, however, is an action taken by the Division. See Kramer & Martin, *The Law of Pooling and Unitization* (3d ed.) § 13.08.

Similarly, ALH's argument that "an oil and gas lease is a contract" has no bearing on the issue presented. The Division is not bound by the terms of a private lease. Moreover, as the New Mexico cases cited by ALH instruct, the Division lacks authority to engage in contract interpretation, which is the province of the courts. See *ConocoPhillips Co. v. Lyons*, 2013-NMSC-009, ¶ 23, 299 P.3d 844; *Leonard v. Barnes*, 1965-NMSC-080, ¶26, 75 N.M. 331.

The prevailing consensus is that an anti-dilution clause in a private lease does not prevent an oil and gas regulatory agency from exercising its pooling authority because oil and gas leases are entered into subject to state law. 1A Summers Oil and Gas § 6:10 (3d ed.) ("[A] compulsory pooling order in conflict with a lease pooling clause will prevail in the event of a conflict."); Kramer & Martin § 13 ("[C]ontracts generally are made subject to the state's exercise of the police power,"); *Hladick v. Lee*, 541 P.2d 196 (Okla. 1975) (Corporation Commission's pooling authority supersedes private agreement); *Humble Refining Co. v. Jones*, 157 So. 2d 110 (La. App. 1963) (voluntary unit superseded by state conservation unit). The Supreme Court of North Dakota recently examined the circumstances presented here. In *Egeland v. Continental Resources, Inc.*, 616 N.W.2d 861 (N.D. 2000), an operator applied for a compulsory pooling order despite an anti-dilution clause in the lease. After recognizing the difference between voluntary pooling and

compulsory pooling, the court held that seeking a compulsory pooling order did not constitute a breach of the lease. *Id.* at 865. The court stated that “[p]enalizing as a breach of contract an interested person’s use of the application procedure for forced pooling would inhibit use of a statutory procedure designed to implement the strong public policy of fostering the efficient development and use of the state’s oil and gas resources.” *Id.* at 865-66.

### **CONCLUSION**

The Motion provides no legal support for the contention that Lime Rock’s pooling application should be dismissed based on the pooling provision in the 1954 lease. Consequently, the Division should summarily deny the Motion.

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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>th</sup> day of June 2019, I served a true and correct copy of Lime Rock Resources II-A, L.P.’s Response in Opposition to Motion to Dismiss via email to:

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