

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

IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
DIVISION FOR THE PURPOSE OF  
CONSIDERING:

*REOPENED CASE NO. 10498  
ORDER NO. R-9690-A*

**THE REOPENING OF DIVISION CASE NO. 10498 UPON APPLICATION OF  
MONTY D. McLANE TO EXEMPT CERTAIN WORKING INTERESTS FROM THE  
COMPULSORY POOLING PROVISIONS OF DIVISION ORDER NO. R-9690, LEA  
COUNTY, NEW MEXICO**

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8:15 a.m. on November 19, 1992, at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this 27<sup>th</sup> day of April, 1993 the Division Director, having considered the testimony, the record and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) Division Order No. R-9690, issued in Case No. 10498 and dated July 1, 1992, granted the application of Charles Gillespie to compulsorily pool all mineral interests from the surface to the base of the Strawn formation underlying Lot 3 (Unit C) of Section 1, Township 16 South, Range 35 East, NMPM, Lea County, New Mexico, forming a non-standard 51.08-acre oil spacing and proration unit to be dedicated to a well to be drilled at a standard oil well location thereon.

(3) According to the testimony presented by Charles Gillespie at the June 25, 1992 hearing in Case No. 10498, said Division Order No. R-9690 force-pooled the interests of the following persons in said Lot 3:

(a) Henry H. Lawton of Cattaraugus County, New York;

- (b) Amanda K. Parks of Olean, New York;
- (c) Edward O'Neil of Detroit, Michigan;
- (d) Violet O'Neil Stadwick of Wayne County, Michigan;
- (e) Leonardo S. Anderson, Jr. of Rancho Palos Verdes, California;
- (f) Geraldine Anderson Hill of Rancho Palos Verdes, California;
- (g) Berkeley N. Moynihan of Ft. Lauderdale, Florida;
- (h) Francis J. Moynihan, Jr. of Frewsburg, New York; and
- (i) Rio Pecos Corporation of Midland, Texas.

(4) Subsequent to the issuance of said Order No. R-9690, the following events occurred (listed chronologically):

- |                     |   |
|---------------------|---|
| July 17, 1992:      | Speight Fee Well No. 1 located 660 feet from the North line and 2310 feet from the West line (Unit L) of Section 1 was spudded.   |
| August 16, 1992:    | Total depth of 11,800 feet reached, plug-back total depth at 11,751 feet.   |
| August 31, 1992:    | Monty D. McLane filed in the Lea County Clerk's Office instruments leasing from heirs of Henry H. Lawton and Amanda K. Parks the mineral interest in Lots 3, 4, 5 and 6 of said Section 1.  |
| September 8, 1992:  | Well completed and ready for production from the perforated interval 11,424 feet to 11,548 feet in the Strawn formation.  |
| September 23, 1992: | Division Order No. R-9722 was issued in Case No. 10530, which created and designated the East Big Dog-Strawn Pool in the W/2 SE/4 of Section 33, Township 15 South, Range 35 East, NMPM, Lea County, New Mexico and included a provision for 80-acre spacing and proration units. |

October 6, 1992:	The Division received an application from Monty D. McLane to reopen Case No. 10498.
October 8, 1992:	Division Administrative Order NSP-1652 was issued authorizing a non-standard 91.08-acre oil spacing and proration unit for the Speight Fee Well No. 1 comprising Lots 3 and 6 of said Section 1.

(5) Upon application to reopen Case No. 10498, Monty D. McLane seeks an order from the Division declaring that the interests owned by Henry H. Lawton and Amanda K. Parks and now subject to oil and gas lease to Monty D. McLane, are not subject to the pooling provisions of said Order No. R-9690 because such persons were not given adequate notice of the hearing and therefore were not subject to the jurisdiction of the Division for the purpose of pooling their interest, and for such other relief as the Division may deem appropriate.

(6) This case only affects the interests underlying Lot 3 and not the current 91.08-acre non-standard oil spacing and proration unit comprising Lots 3 and 6 of said Section 1. The remaining 40 acres underlying Lot 6 are presently subject to all applicable provisions contained in Section 70-2-18, NMSA, 1978 where forced pooling has not occurred.

(7) In order for this Division to have jurisdiction over the property interest of a person owning minerals in this State for the purpose of entering an order pooling those interests, the persons owning that interest must receive actual notice if they can be located. Notice by publication is sufficient only if the owners of the interest cannot be located. The New Mexico Supreme Court declared in *Uhden v. Oil Conservation Commission*, 112 N.M. 528, 817 P.2d 721 (1991), that actual notice is required in a spacing rules change case where the whereabouts of an interest owner is known or can be ascertained with due diligence. The diligence required in attempting to locate the owner of an interest which an applicant requests the Division pool by order under its compulsory pooling authority is at least as great if not greater than that required in a spacing change case.

(8) *Chris Hubbard, contract landman for Charles Gillespie, testified at the original hearing and at the reopened hearing that he had conducted a record search in Lea County, New Mexico, and found the names of the various record owners of the minerals. He further testified that he had contacted the Probate Clerk in Cattaraugus County, New*

*York, the last known location of several of the interest owners, and had checked with directory assistance and published directories for that county in an effort to locate the owners of the property, all without success. This uncontroverted evidence indicates that Mr. Hubbard made a professionally competent attempt to locate these parties.*

(9) *The applicant in this reopened case, Monty D. McLane, is an independent landman working for his own account. Knowing that there was drilling in this area and that Gillespie was drilling this well, McLane made a search of the records of Lea County and made inquiries in Cattaraugus County. Although he searched essentially the same record base, McLane's approach was different and he was able to locate the heirs of Henry H. Lawton and the heirs of Amanda Parks, and subsequently acquired a lease on their interests.*

**FINDING:** The heirs of Henry H. Lawton and Amanda K. Parks, owners of interests sought to be pooled, were able to be located with due diligence.

(10) The heirs of Henry H. Lawton and Amanda Parks were not served with personal notice of the application in this case and their interests should not be subject to the compulsory pooling of Order No. R-9096.

(11) All other provisions of said order, including the designation of operator, administrative overhead charges and risk penalty should remain in full force and effect.

(12) Should the operator and Monty McLane as working interest owner of the Lawton and Parks interest be unable to reach an agreement for the consolidation of those interests into the 91.08-acre proration unit, any order entered by the Division pooling the working interest of Monty McLane should require the payment of interest at the judgment rate in New Mexico on those costs which have been paid by Gillespie, should McLane choose not to go under the non-consent provisions of such order.

**IT IS THEREFORE ORDERED THAT:**

(1) The interests of Henry H. Lawton of Cattaraugus County, New York and Amanda K. Parks of Olean, New York underlying Lot 3 (Unit C) of Section 1, Township 16 South, Range 35 East, NMPM, Lea County, New Mexico, are not subject to the provisions of Order No. R-9690 entered by the Division on July 1, 1992, insofar as that order pools mineral interests underlying said Lot 3 (Unit C).

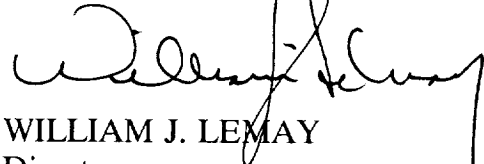
(2) Jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary.

*Reopened Case No. 10498*  
*Order No. R-9690-A*  
*Page No. 5*

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DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION



WILLIAM J. LEMAY  
Director

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