



December 29, 2010

**HAND DELIVERED**

Mark E. Fesmire, JD, PE  
Acting Director  
Oil Conservation Division  
New Mexico Department of Energy,  
Minerals and Natural Resources  
1220 South Saint Francis Drive  
Santa Fe, New Mexico 87505

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Re: CASE 14415 (REOPENED): Application of the heirs of H. N. Smith, deceased, to reopen Oil Conservation Division Case No. 14415, the application of Cimarex Energy Co. for a non-standard oil spacing proration unit and compulsory pooling, to amend Order No. R-13287 to clarify the status of the interests or parties not properly-pooled by said order, Chaves County, New Mexico.

Dear Mr. Fesmire:

Enclosed in triplicate is the Application of the heirs of H. N. Smith in the above-referenced case as well as a copy of the legal advertisement. Applicants requests that this matter be placed on the docket for the February 3, 2011 Examiner hearings.

Very truly yours,

William F. Carr  
Don M. Fedric  
Attorneys for the Heirs of H. N. Smith

Enclosures

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 CASE NO. 14415, THE APPLICATION  
OF CIMAREX ENERGY CO. FOR A NON-STANDARD OIL SPACING AND  
PRORATION UNIT AND COMPULSORY POOLING, TO AMEND ORDER NO. R-  
13287 TO CLARIFY THE STATUS OF THE INTERESTS OF PARTIES NOT  
PROPERLY POOLED BY SAID ORDER, CHAVES COUNTY, NEW MEXICO.**

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CASE NO. 14415 (REOPENED)

**APPLICATION**

THE HEIRS OF H. N. SMITH (Robin E. Birnie, Allison L. Birnie, Cameron Birnie, Cindi Kochi and Jason Bond) hereinafter collectively referred to as "Applicants," through their undersigned attorneys, hereby make application to the Oil Conservation Division ("Division") to reopen Division Case No. 14415 (1) to allow Applicants to respond to errors in the application and testimony of Cimarex Energy Co. ("Cimarex") in this case, and (2) to amend Order No. R-13287 entered therein to clarify the status of the interests of the parties who were not been properly pooled by said Order, and in support of this application state:

1. Applicants are working interest owners in the W/2 E/2 of said Section 18, Township 15 South, Range 31 East, N.M.P.M., which is the acreage Cimarex sought to compulsory pool in Case No. 14415.
2. By Order R-13287 the Division granted the application of Cimarex for an order pooling the interests of Applicants and others from the surface to the base of the Abo/Wolfcamp Formation in the W/2 E/2 of said Section 18.
3. Before the Division can exercise its police powers to pool the Applicants' interest in this spacing unit and designate Cimarex operator thereof, Cimarex is required to make a good faith effort to locate the Applicants and to attempt to reach a voluntary agreement with them for the development of their mineral interests.

4. In Cimarex' application in this case, it states that it had "in good faith sought to obtain the voluntary joinder of all other mineral interest owners in the W/2 E/2 of Section 18." At no time were the Applicants contacted by Cimarex concerning participation in this spacing unit and the proposed well.

5. Cimarex testified that the Applicants were not locatable (Tressner Verified Statement, Paragraph 2(a) and that it had attempted to locate the Applicants by examining "Chaves County records, telephone directories and records in the counties of the last known residences of the interest owner, and internet directories." (Tressner Verified Statement, Paragraph 2c).

6. Applicants' whereabouts can easily be found through the sources identified in Cimarex's Verified Statement.

7. Because of Cimarex's failure to make a reasonable records search, it could not attempt to reach a voluntary agreement with them for the development of this spacing unit and thereafter it used the Rules of the Oil Conservation Division to impair Applicants property interest in these lands by (i) taking over the operation of these lands, and (ii) obtaining a Division Order that imposes a 200% charge for risk on Applicants mineral interest.

8. Cimarex, failed to meet the statutory preconditions for a pooling order and is not entitled to invoke the pooling provisions of the Oil and Gas Act against the Applicants.

9. Division Order No. R-13287 pooled Applicants' interests in this horizontal well project area under the erroneous assumption that "There are no unlocated owners in the Unit." Order No. R-13287, Finding (10).

10. The provisions of Order No. R-13287 pooling Applicant's interest were based on the inaccurate representations of Cimarex and a misunderstanding of the facts as they relate to the Applicants.

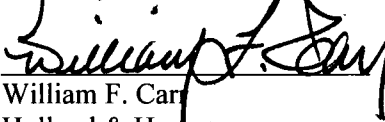
11. Because of Cimarex' failure to meet the statutory preconditions imposed by the Oil and Gas Act on the Division's authority to compulsory pool, the provisions in Division Order No. R-13287 that pool Applicants' interests in the subject acreage violate their correlative rights and are void.

WHEREFORE, Applicants request that this application be set for hearing before an Examiner of the Oil Conservation Division on February 3, 2011 and, after notice and hearing as required by law, the Division enter its order:

- A. Declaring the provisions in Division Order No. R-13287 that pool the W/2 E/2 of Section 18, Township 15 South, Range 31 East, N.M.P.M., void as to Applicants' interests;
- B. Declaring that the interests of the heirs of H. N. Smith: Applicants Robin E. Birnie, Allison L. Birnie, Cameron Birnie, Cindi Kochi and Jason Bond, from the surface to the base of the Abo/Wolfcamp Formation in the W/2 E/2 of said Section 18 shall not be subject to a penalty for the risk assumed by Cimarex in drilling and completing any existing well on this spacing unit since the risk, if any, has already been incurred by Cimarex; and
- C. Granting such other relief as the Division deems appropriate.

Respectfully submitted,

Don M. Fedric  
Post Office Box 1837  
Roswell, New Mexico 88202

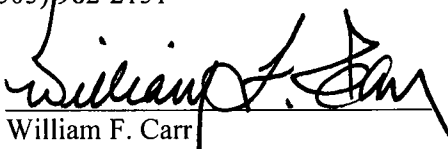
  
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ATTORNEYS FOR THE HEIRS OF H. N. SMITH:  
ROBIN E. BIRNIE, ALLISON L. BIRNIE, CAMERON  
BIRNIE, CINDI KOCHI AND JASON BOND

CERTIFICATE OF SERVICE

I certify that on December 29, 2010, I served a copy of the foregoing document to the following by Facsimile:

James Bruce, Esq.  
Post Office Box 1056  
Santa Fe, New Mexico 87504-1056  
Facsimile No. (505)982-2151

  
William F. Carr

**CASE 14415 (REOPENED):** Application of the heirs of H. N. Smith, deceased, to reopen Oil Conservation Division Case No. 14415, the application of Cimarex Energy Co. for a non-standard oil spacing proration unit and compulsory pooling, to amend Order No. R-13287 to clarify the status of the interests or parties not properly pooled by said order, Chaves County, New Mexico. Applicant in the above-styled cause seeks an order (1) declaring the provisions in Division Order No. R-13287 that pool the W/2 E/2 of Section 18, Township 15 South, Range 31 East, N.M.P.M., void as to the interests of the Applicants, and (2) amending Order No. R-13287 to clarify the status of the interests of the parties who were not properly pooled by this Order. Said area is located approximately 14 miles north-northeast of Loco Hills, New Mexico.