

Davidson, Florene, EMNRD

From: Thomas Kellahin [tkellahin@comcast.net]
Sent: Tuesday, November 09, 2010 8:23 AM
To: Davidson, Florene, EMNRD
Cc: Brooks, David K., EMNRD; Scott Hall; Compton.Mark
Subject: NMOCD Case 14569
Attachments: Devon Case 14569-amended motion to dismiss.PDF

Dear Florene,

Please find attached for filing, my amended motion to dismiss case 14569. The only change is to correct a mistake in the paragraph (1)(3)(ii)--concerning the interest of Devon within that spacing unit.

Thanks,

Tom Kellahin

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

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

**APPLICATION OF DEVON ENERGY PRODUCTION
COMPANY, L.P. FOR DESIGNATION OF A NON-STANDARD
SPACING UNIT AND FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO
[West Shinnery 15 Fed Com 2H-N2N/2 of Sec 15]**

CASE NO. 14569

**AMENDED
CIMAREX ENERGY CO.'S
MOTION TO DISMISS**

Cimarex Energy Co. of Colorado ("Cimarex") hereby files this Amended Motion to Dismiss to correct an arithmetic error made in the original motion for Devon's interest for the S/2N/2 spacing unit. Devon's interest should be 31.25% and not 50%.

Cimarex moves that the New Mexico Oil Conservation Division dismiss this case because the applicant, Devon Energy Production Company, L.P. ("Devon") prematurely filed this case and failed to comply with the custom and practice of the Division concerning Section 70-2-17.C NMSA 1978 by instituting an application for compulsory pooling prior to conducting good faith efforts to reach a voluntary agreement with Cimarex.

And in support states:

RELEVANT FACTS

(1) Cimarex, upon information, believes the working interest ownership within the Bone Springs formation in the Section 15, T16S, R32E, Lea County, NM is as follows:

NW/4:

(a) Cimarex	=	50.6604%
(b) Devon	=	31.25%
(c) all others	=	18.0896%

SW/4: (a) Cimarex = 100%
(b) Devon = none

NE/4: (a) Cimarex = none
(b) Devon = 100%

- (2) For spacing units consisting of either the E/2W/2 or the W/2W/2 the working interest ownership is believed to be:
- i. Cimarex = 75.32552%
 - ii. Devon = 15.625%
- (3) For a spacing unit consisting of the S/2N/2 the working interest ownership is believed to be:
- i. Cimarex = 50%
 - ii. Devon = 31.25 % (previously miscalculated to be 50%)
- (4) For a spacing unit consisting of the N/2N/2 the working interest ownership is believed to be:
- i. Cimarex = 1.30208%
 - ii. Devon = 81.250 %

(5) On October 6, 2010, Devon filed an application with the Division for compulsory pooling of the N/2N/2 of Section 15, T18S, E32E, Lea County New Mexico.

(6) Then some 12 days later, October 18, 2010 Devon sent its well proposal letter and AFE to Cimarex

ARGUMENT

It has been the Division's longstanding interpretation of NMSA 1978 Section 70-2-17.C of the New Mexico Oil & Gas Act that an applicant is first required to make a good faith effort to obtain the voluntary commitment of interests in a spacing unit before seeking their compulsory pooling. Contrary to the custom and practice before the Division, Devon has instituted compulsory action against Cimarex without first making a "good faith" effort to reach a voluntary agreement as to this new well and the formation a spacing unit on a voluntary basis for the drilling of Shinnery 15 Federal Well No. 2-H.

NMSA 1978 Section 70-2-17.C is very specific in its requirement that the compulsory pooling authority of the Division can only be exercised in those instances where the parties have not agreed to voluntarily pool their interests in a spacing unit for a specifically proposed well on that unit. Under the circumstances of this case, it is impossible to have exhausted a good faith effort to reach a voluntary agreement when the applicant files its application prior to sending a written well proposal letter, including an AFE, that specifies the spacing unit, the well locations, estimated costs and depth. Generally a 30-day waiting period follows the industry's custom set forth in standard Joint Operating Agreements and is meaningful because it provides a period for the party to received the proposal, respond and to obtain further information from the proposing party or otherwise and then make an informed decision.

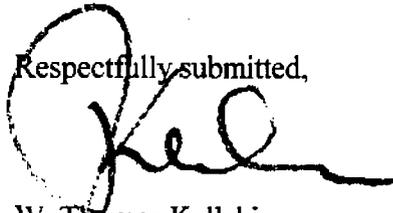
It is premature for any party, including Devon, to proceed with compulsory pooling at this time for a spacing unit for the N/2N/2 of this section. Devon's actions in these cases are contrary to this practice and if allowed by the Division will encourage Devon and others to use compulsory pooling as a negotiating weapon rather than as a remedy of last resort. The Division's files are replete with cases that were dismissed for the same reasons that Devon's case should be dismissed. For example, See NMOCD Order R-10977 (Case 11927) and Order R-10545 (case 11434)

To the best of Cimarex's knowledge there are no expiring leases or other deadlines that constitute an emergency such that the Division should commence hearing Devon's pooling case at this time. To do so, will require the Division to proceed to hearing cases in a piecemeal fashion that ultimately may have been unnecessary. It is no solution to suggest that this fatal flaw can be fixed by simply continuing the case. **See NMOCD Case 11434, Order R-10545.**

Devon's application must be dismissed. Devon failed to propose this well to Cimarex before filing its compulsory pooling application and therefore Devon has not engaged in any effort, good faith or otherwise, to reach a voluntary agreement for this well. It is impossible to have any failure to agree prior to any specific well proposal being made by Devon

Unless this application is dismissed the Division will be establishing a precedent which will allow applicants to avoid complying with NMSA 1978 Section 70--2-17.C.

Respectfully submitted,



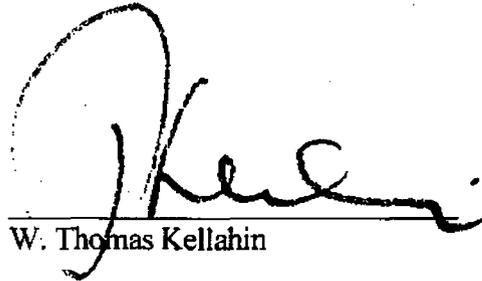
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CERTIFICATION OF SERVICE

I hereby certify that a copy of this pleading was served upon the following counsel of record this 9th day of November 2010, by Email.

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J. Scott Hall Esq.
Attorney for Devon
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W. Thomas Kellahin