

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:

CASE NO. 14415 (Re-opened)
ORDER NO. R-13287-A

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.

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on March 17, 2011, at Santa Fe, New Mexico, before Examiner David K. Brooks.

NOW, on this 29th day of June, 2011; the Division Director, having considered the testimony, the record and the recommendations of the Examiner;

FINDS THAT:

(1) Due notice has been given, and the Division has jurisdiction of the subject matter of this case.

(2) By the applications in this case and in Case No. 14416 (Re-opened), Applicants, Jason Bond, Cynthia Bond nee Kochi, Robin Bernie, Allison Bernie and Cameron Bernie, as heirs of H.N. Smith and Ethel Smith, both deceased, ("Applicants"), seek to amend Order No. R-13287 issued in this case and Order No. R-13221 issued in Case No. 14416, which, *inter alia*, pooled an unleased mineral interest belonging to H.N. and Ethel Smith in the SE/4 of Section 18, Township 15 South, Range 31 East, in Chaves County, New Mexico.

(3) Cases Nos. 14415 (Re-opened) and 14416 (Re-opened) were consolidated for purposes of hearing. However, separate orders will be issued, so that each of the

affected previous orders may be modified by an appropriately numbered amendatory order.

(4) Order No. R-13287, issued on June 28, 2010, established a non-standard 160-acre oil spacing and proration unit in the Abo and Wolfcamp formations comprising the W/2 E/2 of Section 18, and purported to pool all interests, whatever they might be, in the oil and gas in that non-standard unit, upon the terms and conditions set forth in that order.

(5) Evidence admitted in the original hearing in Case No. 14415 indicated that H.N. Smith and Ethel Smith were the owners, as shown by the county records of Chaves County, of an unleased 12.5% undivided mineral interest in the SE/4 of Section 18; that the whereabouts of H.N. Smith and Ethel Smith were unknown; and that both were served with notice of the original hearing by publication in the Roswell Daily Record, a newspaper of general circulation in Chaves County, New Mexico.

(6) Pursuant to Order No. R-13287, Cimarex Energy Co. of Colorado ("Cimarex") drilled its Franklin 18 Federal Com. Well No. 3 (API No. 30-005-29139) ("the unit well") as a horizontal oil well, completed in the Abo/Wolfcamp formation, with a surface location 330 feet from the North line and 2270 feet from the East line (Unit B) of Section 18 and a bottomhole location 330 feet from the South line and 2270 feet from the East line (Unit O) of Section 18.

(7) Because Applicants' whereabouts were unknown, Cimarex did not furnish an estimate of well costs to Applicants prior to drilling the unit well, as contemplated by Ordering Paragraph (9) of Order No. R-13287. Applicants filed this application seeking a determination that Order No. R-13287 is invalid as to the interest of H.N. and Ethel Smith and further seeking clarification of the status of their undivided interest in the non-standard unit established by that Order.

(8) Applicants appeared at the hearing through counsel and presented evidence as follows:

(a) Jason Bond and Robin Bernie, two of the Applicants, testified that H.N. Smith and Ethel Smith are both deceased and that Applicants, collectively, are the legal heirs of H.N. and Ethel Smith.

(b) They further testified that none of the Applicants had knowledge of the filing of the original application in this case or of the hearing thereof, or of the legal notice published in the Roswell Daily Record.

(c) Rolla Hinkle, an independent petroleum landman, and Kelly Owens, a private investigator retained by Mr. Hinkle, testified that they located Applicants after the issuance of Order No. R-13287, and described the means by which they did so.

(d) Among other relevant facts, Jason Bond testified that he lives in Roswell, New Mexico, and is listed in the Roswell telephone directory. He is the surviving husband of Olive Bond, a niece of Ethel Smith, who is identified in an affidavit of heirship relating to Ethel Smith that is of record in Chaves County (although that affidavit recites that Olive Bond resides in Los Angeles, California).

(9) Cimarex appeared at the hearing through counsel and presented testimony of a Cimarex landman and an independent landman describing their unsuccessful efforts to locate the heirs of H.N. and Ethel Smith prior to resorting to notice by publication.

The Division concludes that:

(10) Division Rule 4.12.B [19.15.4.12.B NMAC] allows notice by publication only to persons an applicant is unable to locate after exercising "reasonable diligence." What constitutes reasonable diligence depends on the particular facts of each case.

(11) In this case, Cimarex did not exercise reasonable diligence to locate the heirs of H.N. Smith and Ethel Smith prior to resorting to notice by publication.

(12) Accordingly, Applicants did not receive notice of the original hearing in this case as required by Division Rules, and Order No. R-13287 is void as to Applicants and their interests. *Johnson v. New Mexico Oil Conservation Division*, 1999-NMSC-021, 127 N.M. 120, 978 P.2d 327.

(13) Applicants did not present any evidence indicating that the non-standard spacing and proration unit established by Order No. R-13287 was improvidently approved, nor that the terms of the compulsory pooling provided by said order (unless it is construed to impose a risk charge against their interest) were not fair and reasonable. Accordingly, now that Applicants have been accorded a hearing, Order No. R-13287 should be reaffirmed, and Applicants' interest should be pooled along with all other interests in the unit established by that Order. However, since Applicants did not receive proper notice, they should now be afforded an opportunity to participate in the unit well, and, if they so elect, should not be liable for the risk charge provided in the prior Order.

IT IS THEREFORE ORDERED THAT:

(1) Order No. R-13287 is hereby reaffirmed insofar as it establishes a non-standard oil spacing and proration unit in the Abo and Wolfcamp formations comprising the W/2 E/2 of Section 18, Township 15 South, Range 31 East, NMPM, in Chaves County, New Mexico, pools all interests in that unit, and provides for the dedication of that unit to Cimarex's Franklin 18 Federal Com Well No. 3 (API No. 30-005-29139).

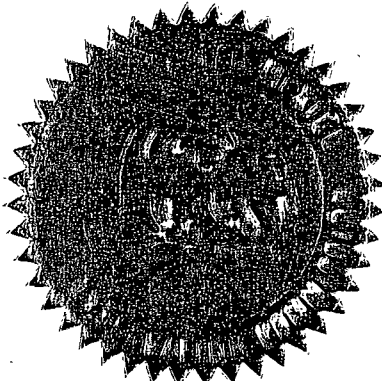
(2) Applicants and their interests in the unit so established shall be subject to Order No. R-13287 from and after the date of this Order, except as otherwise herein provided.

(3) Each of the Applicants shall notify Cimarex within 30 days after the issuance of this Order if they elect to participate in the unit well. Any Applicant so electing shall pay or tender to Cimarex the excess, if any, of such Applicant's share of actual well costs of the unit well, and the costs of operating the unit well (including the charge for supervision provided in Order No. R-13287) to the date of such election, over and above such Applicant's share of production from the unit well from the date of first production to the date of such Applicant's election. Cimarex shall pay to such Applicant the excess, if any, of such Applicant's share of production, over and above such Applicant's share of well costs and costs of operation.

(4) Any Applicant electing to participate in the unit well as provided in Ordering Paragraph (3) of this Order shall not be liable for the risk charge provided in Ordering Paragraph (6)(b) of Order No. R-13287. Any Applicant not so electing shall be liable for such risk charge as provided in the original order.

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

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



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

A handwritten signature in dark ink, appearing to read "Jami Bailey", written over a horizontal line.

JAMI BAILEY
Director

JAMES BRUCE
ATTORNEY AT LAW

POST OFFICE BOX 1056
SANTA FE, NEW MEXICO 87504

369 MONTEZUMA, NO. 213
SANTA FE, NEW MEXICO 87501

(505) 982-2043 (Phone)
(505) 660-6612 (Cell)
(505) 982-2151 (Fax)

jamesbruc@aol.com

June 29, 2011

David Brooks
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

William Jones
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

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2011 JUN 30 P 1:13

Re: Case Nos. 14415 (reopened) and 14416 (reopened)/H.N. Smith heirs
Gentlemen:

As you'll recall, in this case the Smith heirs asserted that Cimarex did not conduct a proper search of various California records to locate the parties they pooled in these cases. Cimarex disputed this claim, asserting it conducted a good faith effort to locate the Smith heirs. Cimarex also asserted that the Smith heirs, who knew they owned a leasehold interest in the subject well units, had an obligation to keep the County records current.

Attached for your review is a summary of two recent North Dakota decisions involving that state's "dormant minerals act." Under that act, if there is no mineral activity on a tract of land for a period of time, or the mineral owner does not record a statement of claim, the mineral interest is deemed abandoned and the surface owner can succeed to the mineral interest. This differs from compulsory pooling in that (i) under compulsory pooling a mineral owner does not lose his interest, but is subject to the recoupment provision of the Oil and Gas Act, (ii) whereas, under a dormant minerals act the mineral owner can permanently lose his interest.

While the cases are not directly on point, both the North Dakota case and the above cases involve a situation where the parties had addresses of record, even if they were not recent. Cimarex notes that it retrieved the addresses from Eddy County, even though the lands are in Chaves County. Thus, Cimarex did not just rely on Chaves County records. You can see that the North

Dakota court put the burden on the mineral owner to protect his interest. Cimarex asserts that the Smith heirs had a similar burden in these cases. Thus, their applications should be denied.

Very truly yours


James Bruce

Attorney for Cimarex Energy Co.

cc: William F. Carr w/encl.
Don M. Fedric w/encl.