

**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. 13487
ORDER NO. R-12356**

**APPLICATION OF PRESTON EXPLORATION, L.L.C. FOR COMPULSORY
POOLING, EDDY COUNTY, NEW MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on May 5 and 19, 2005, at Santa Fe, New Mexico, before Examiners David R. Catanach and William V. Jones, respectively.

NOW, on this 24th day of May, 2005, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

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

(2) The applicant, Preston Exploration, L.L.C. ("Preston" or "applicant") seeks an order pooling all uncommitted mineral interests from the surface to the base of the Morrow formation, or to a subsurface depth of 9,772 feet, whichever is deeper, underlying the S/2 of Section 2, Township 20 South, Range 25 East, NMPM, Eddy County, New Mexico, to form a standard 320-acre gas spacing and proration unit for all formations and/or pools spaced on 320 acres within this vertical extent, which presently include but are not necessarily limited to the Undesignated Cemetery-Morrow Gas Pool.

(3) The above-described spacing and proration unit (the "Unit") is to be dedicated to the applicant's proposed Cemetery "2" Well No. 2 (API No. 30-015-33763) which is to be drilled at a standard gas well location 660 feet from the South line and 1750 feet from the East line (Unit O) of Section 2.

(4) The subject application was presented at the May 5, 2005 hearing by affidavit pursuant to the provisions of 19.15.14.1207A(1)(b) NMAC. Preston appeared at the hearing through legal counsel.

(5) Mr. Richard Gilliland ("Mr. Gilliland") representing Cimarron Exploration Company ("Cimarron"), also appeared at the hearing on May 5, 2005.

(6) At the hearing on May 5th, legal counsel for Preston stated that:

- (a) Santa Fe Exploration Company is the owner of record of the operating rights on Federal Lease No. NMNM-0553777 which comprises the SW/4 SW/4 of Section 2;
- (b) Preston has been unable to locate Santa Fe Exploration Company;
- (c) prior to the hearing, legal counsel for Preston received a phone call from Mr. Gilliland. Mr. Gilliland informed Preston that Cimarron had acquired the assets of Santa Fe Exploration Company from a bankruptcy proceeding in 1997;
- (d) Preston has examined the bankruptcy trustee's deed and has concluded that since the document did not specifically list this property in Section 2, the document is not sufficient to vest Cimarron with title to this tract; and
- (e) Preston, however, has provided Cimarron with an AFE and joint operating agreement for the Cemetery "2" Well No. 2, and is negotiating with Cimarron for the participation of that interest in the well.

(7) The Division continued this case from the May 5th to the May 19th docket to allow additional time for the parties to negotiate and attempt to clarify the ownership situation of the SW/4 SW/4 of Section 2.

(8) Preston appeared through legal counsel at the hearing on May 19, 2005. Cimarron did not appear at the hearing on that date.

(9) This case was taken under advisement on May 19, 2005.

(10) Two or more separately owned tracts are embraced within the Unit, and/or there are royalty interests and/or undivided interests in oil and gas minerals in one or more tracts included in the Unit that are separately owned.

(11) Applicant is an owner of an oil and gas working interest within the Unit. Applicant has the right to drill and proposes to drill its Cemetery "2" Well No. 2 at a standard gas well location within the SW/4 SE/4 of Section 2 to test the Morrow formation.

(12) There are interest owners in the proposed Unit that have not agreed to pool their interests.

(13) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford to the owner of each interest in the Unit the opportunity to recover or receive without unnecessary expense its just and fair share of hydrocarbons, this application should be approved by pooling all uncommitted interests, whatever they may be, in the oil and gas within the Unit.

(14) The applicant should be designated the operator of the subject well and of the Unit.

(15) Any pooled working interest owner who does not pay its share of estimated well costs should have withheld from production its share of reasonable well costs plus an additional 200% thereof as a reasonable charge for the risk involved in drilling the well.

(16) Reasonable charges for supervision (combined fixed rates) should be fixed at \$4,100.00 per month while drilling and \$410.00 per month while producing, provided that these rates should be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations*."

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to the application of Preston Exploration, L.L.C., all uncommitted mineral interests from the surface to the base of the Morrow formation, or to a subsurface depth of 9,772 feet, whichever is deeper, underlying the S/2 of Section 2, Township 20 South, Range 25 East, NMPM, Eddy County, New Mexico, are hereby pooled to form a standard 320-acre gas spacing and proration unit for all formations and/or pools spaced on 320 acres within this vertical extent, which presently include but are not necessarily limited to the Undesignated Cemetery-Morrow Gas Pool.

(2) The above-described Unit shall be dedicated to the applicant's Cemetery "2" Well No. 2 (API No. 30-015-33763) which is to be drilled at a standard gas well location 660 feet from the South line and 1750 feet from the East line (Unit O) of Section 2.

(3) The operator of the Unit shall commence drilling operations on the Cemetery "2" Well No. 2 on or before September 1, 2005 and shall thereafter continue drilling the well with due diligence to test the Morrow formation.

(4) In the event the operator does not commence drilling operations on the Cemetery "2" Well No. 2 on or before September 1, 2005, Ordering Paragraph (1) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause.

(5) Should the subject well not be drilled and completed within 120 days after commencement thereof, Ordering Paragraph (1) shall be of no further effect, and the Unit created by this Order shall terminate unless the operator appears before the Division Director and obtains an extension of time to complete the well for good cause demonstrated by satisfactory evidence.

(6) Upon final plugging and abandonment of the subject well, the pooled Unit created by this Order shall terminate, unless this order has been amended to authorize further operations.

(7) Preston Exploration, L.L.C. is hereby designated the operator of the subject well and of the Unit.

(8) After pooling, uncommitted working interest owners are referred to as pooled working interest owners. ("Pooled working interest owners" are owners of working interests in the Unit, including unleased mineral interests, who are not parties to an operating agreement governing the Unit.) After the effective date of this order, the operator shall furnish the Division and each known pooled working interest owner in the Unit an itemized schedule of estimated costs of drilling, completing and equipping the subject well ("well costs").

(9) Within 30 days from the date the schedule of estimated well costs is furnished, any pooled working interest owner shall have the right to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production as hereinafter provided, and any such owner who pays its share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges. Pooled working interest owners who elect not to pay their share of estimated well costs as provided in this paragraph shall thereafter be referred to as "non-consenting working interest owners."

(10) The operator shall furnish the Division and each known pooled working interest owner (including non-consenting working interest owners) an itemized schedule of actual well costs within 90 days following completion of the proposed well. If no objection to the actual well costs is received by the Division, and the Division has not objected within 45 days following receipt of the schedule, the actual well costs shall be deemed to be the reasonable well costs. If there is an objection to actual well costs within the 45-day period, the Division will determine reasonable well costs after public notice and hearing.

(11) Within 60 days following determination of reasonable well costs, any pooled working interest owner who has paid its share of estimated costs in advance as provided above shall pay to the operator its share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator the amount, if any, that the estimated well costs it has paid exceed its share of reasonable well costs.

(12) The operator is hereby authorized to withhold the following costs and charges from production:

- (a) the proportionate share of reasonable well costs attributable to each non-consenting working interest owner; and

- (b) as a charge for the risk involved in drilling the well,
200% of the above costs.

(13) The operator shall distribute the costs and charges withheld from production, proportionately, to the parties who advanced the well costs.

(14) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$4,100.00 per month while drilling and \$410.00 per month while producing, provided that these rates shall be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations*." The operator is authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to pooled working interest owners.

(15) Except as provided in Ordering Paragraphs (11) and (13) above, all proceeds from production from the well that are not disbursed for any reason shall be placed in escrow in Eddy County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership. The operator shall notify the Division of the name and address of the escrow agent within 30 days from the date of first deposit with the escrow agent.

(16) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under this order. Any well costs or charges that are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(17) Should all the parties to this compulsory pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(18) The operator of the well and Unit shall notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

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

Case No. 13487

Order No. R-12356

Page 7

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



STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

A handwritten signature in black ink, appearing to read "Mark E. Fesmire".

MARK E. FESMIRE, PE
Director