ORIGINAL

BEFORE THE OIL & GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF THE APPLICATION OF INB LAND & CATTLE, LLC FOR AN ORDER POOLING ALL INTERESTS IN THE CODELL FORMATION IN ESTABLISHED DRILLING AND SPACING UNITS LOCATED IN THE WATTENBERG FIELD AREA, WELD COUNTY, COLORADO	CAUSE NO: 407 DOCKET NO:	RECEIVED APR 27 2009 COGCC

APPLICATION

COMES NOW, Robert L. McPeek for INB Land & Cattle, LLC (referred to herein as "Applicant"), and makes application to the Oil and Gas Conservation Commission of the State of Colorado ("COGCC"), for an order to enforce pooling of all non-consenting interests within the Codell Formation in the SW/4 of Section 10 in Township 2 South, Range 66 West, 6th P.M. and in the NW/4 of Section 10 in Township 2 South, Range 66 West, 6th P.M. (collectively, the "Application Land"), Weld County, Colorado. In support of its application, Applicant states and avers as follows:

1. That the Applicant owns certain mineral interests in the Application Lands described as the SW/4 and the S/2NW/4 of Section 10 in Township 2 South, Range 66 West, 6th P.M.
2. The Colorado State Court of Appeals stated that as a landowner, the Applicant is not precluded from applying to the COGCC for involuntary or voluntary pooling.
3. No payout statements required by any force pooled acreages have been supplied by the operator

DATED this 17th day of March, 2009.

Respectfully submitted:
INB Land & Cattle, LLC

By: Robert L McPeek

Robert L. McPeek
10584 Weld County Road 31
Ft Lupton, Colorado 80621
Telephone: 303-857-2882

Duplicate Sent To:
Anadarko Petroleum Co. Jeff Fiske, Attorney
1099 18th Street, #1200
Denver, Colorado 80202

April 12, 2009

To: Colorado Oil and Gas Conservation Commission

- The only party that I am aware of that is effected by the request for a hearing is:
  - Anadarko Petroleum
  - 1099 18th Street #1208
  - Denver, Colorado 80202

- This hearing request is being made after 2 prior attempts to be allowed to have a hearing concerning Anardarko (prior owner: Kerr McGee) producing in a 160 acre spacing unit, with my 120 acres unleased.

- Patricia Beaver, the hearing officer denied me the right to have a hearing of record to prevent my 120 acres from being drained. My attorney requested a hearing several years ago(please see attached documentation) and Ms Beaver refused to allow the request. My attorney, Robert Ray at the time, was told that it was a civil matter and I was forced to proceed to have court hearings, clear through to the Colorado Supreme Court. This cost me well over $200,000 in legal expenses. The end result was that the Colorado Supreme Court ruled that the Colorado Oil and Gas Conservation Commission was the entity that should have been the agency to have the jurisdiction over the pooling issue(please see attached documentation). This was something that I had attempted to do with Ms Beaver, years before and was denied. The legal costs that I was forced to pay would not have had to be paid, if Ms Beaver had allowed a hearing when the request was made years ago. She would not even put in writing the reasons why she would not allow me a hearing. I made a request to file for a hearing in October, 2008 and was again denied by Ms Beaver.

- Now that I have sustained such large legal costs and lost time concerning my correlative rights, I am still requesting a hearing to insure that the I am listed as an unleased mineral owner of the 120 acres of the 160 acre spacing unit, so that I can get all of the past payout statements that will allow me to participate in the well as the statute allows. The well has been producing for many, many years and should have reached payout several years ago, but without the right to gain this information, I have no standing to receive my rightful ownership of the production from the minerals that Anadarko are removing and producing.

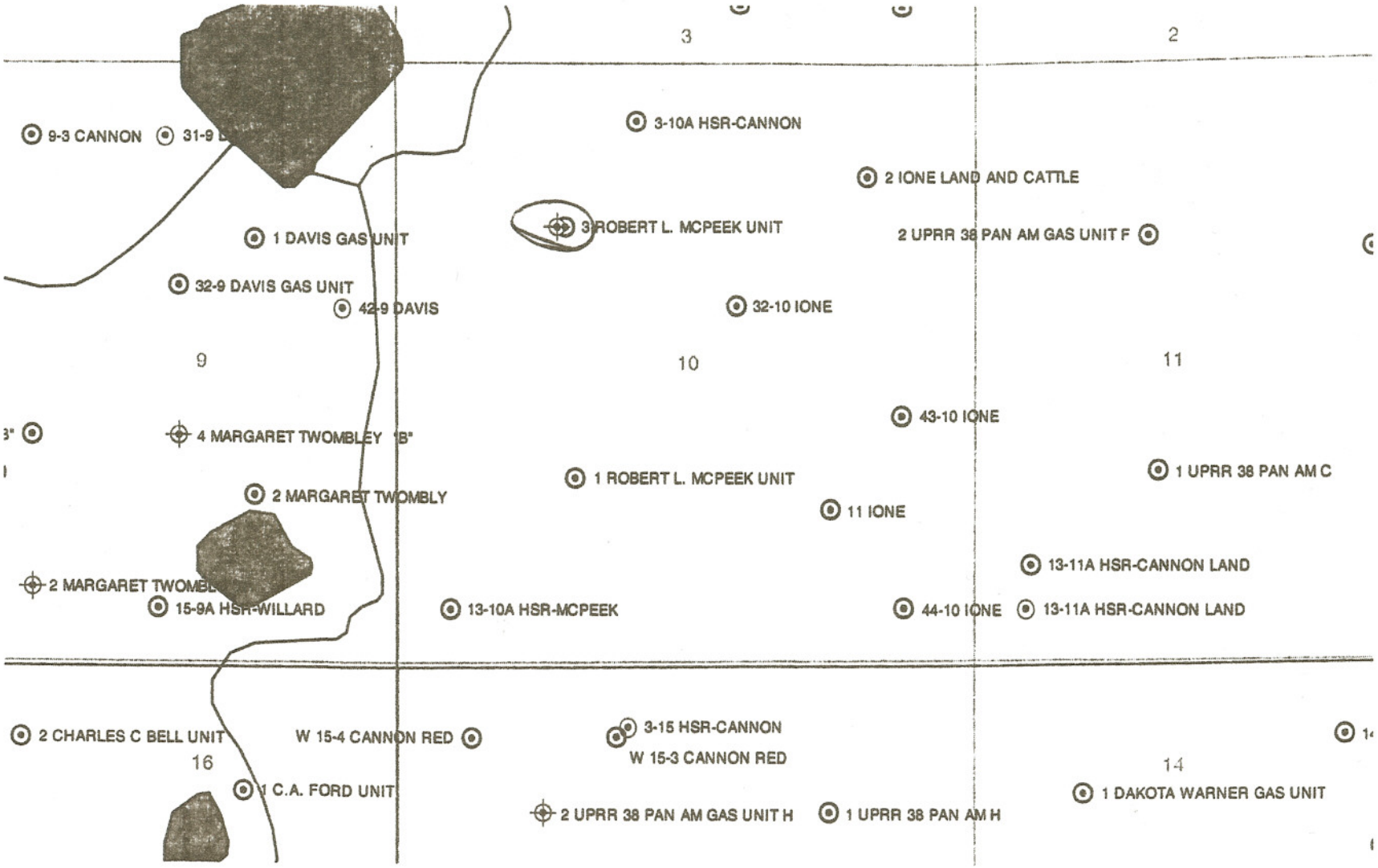
- I believe that Anadarko, who knew that my 120 acres were not leased, should have been required to file for a forced pooling hearing when they began to produce from the well and formation that are producing. This was never done and I was told by one of the permitting staff that should have been required at the time

that the permit was applied for. Not only did Anadarko(then Kerr McGee) not apply for a forced pooling hearing, I was denied the right several times to have a hearing concerning this issue.

- I appreciate the opportunity to present the facts to the Commission.

By: Robert L McPeek

Robert L. McPeek
10584 Weld County Road 31
Ft Lupton, Colorado 80621
Telephone: 303-857-2882



TOWNSHIP 2 NORTH, RANGE 66 WEST

January 13, 2009

Bill Ritter, Governor
State of Colorado
136 State Capitol
Denver, Colorado 80203-1792

Dear Governor Ritter:

I am writing this letter to make you aware of a situation concerning the Colorado Oil and Gas Conservation Commission(COGCC) and the ability to be granted a hearing for matters that are governed by the COGCC.

I own minerals in Weld County, Colorado. These minerals are unleased, but are included in a 160 acre spacing unit that requires the company, Kerr-McGee to pay all owners of minerals in the spacing unit. They have not paid me for the acres(120) that I own and which they do not have leased.

The actual problem that I am writing to you about concerns the ability for me to make a case in front of the COGCC concerning this issue. About 5 years ago, my then attorney, Robert E Ray of Greeley, Colorado contacted Trisha Beaver, the hearing officer, at the COGCC to set up a hearing for presenting my case to the COGCC. She refused to allow me a hearing and when asked to submit to me a written reason for denying a hearing, she also refused.

I was then forced to seek legal action through the court system through to the State of Colorado Supreme Court. The Courts concurred that the proper jurisdiction was the COGCC and I should have started there. This has cost me over a hundred thousand dollars to seek this kind of recourse, to no avail and I was back in the same position that I was 5 years ago. I must request a hearing at the COGCC. This I did officially by submitting a letter of request. Again, on December 17, 2008 Trisha Beaver denied me a hearing request to present my case to the Commission.

As of right now, my minerals are being depleted by the company from this spacing unit and I have been denied all possible courses of action in our state.

Please, could you have your staff look into this for me. I sure would appreciate it.

Sincerely,

Robert L McPeek

Robert L. McPeek
10584 Weld County Road 31
Fort Lupton, Colorado 80621
303-857-2882

ROBERT E. RAY
ATTORNEY AT LAW
1122 9TH STREET #202
GREELEY, COLORADO 80631
(970) 351-6083
FAX 356-1921

December 3, 2004 TELEFAX (303) 894 2100

Oil and Gas Commission
1120 Lincoln Street Suite 801
Denver, CO 80203

Re: Complaint Against Kerr-McGee Rocky Mountain Corporation

Sirs:

I have been asked by a representative of INB Land and Cattle LLC to contact you concerning a complaint that entity has against Kerr-McGee Rocky Mountain Corporation.

INB Land and Cattle LLC presently owns real property and mineral rights which were previously owned by Robert L. McPeek and Harleen K. McPeek. Robert L. McPeek is the primary owner of INB Land and Cattle LLC.

Please find enclosed the following:

1. Letter with documents attached which I sent to Kerr-McGee Rocky Mountain Corporation on January 20, 2004.
2. Letter I received back with documents attached from an attorney for Kerr-McGee dated February 11, 2004.
3. Letter my client received dated March 16, 2004, from a landman for Kerr-McGee.

It is my client's belief that Kerr-McGee is presently wrongfully producing oil and gas from the Codell/Niobrara formation, since Kerr-McGee does not have title to the mineral rights for 160 acres as required.

Would you please review this matter and let me know whether or not my client is correct in its assessment of the situation.

Sincerely,

ROBERT E. RAY
RER:kg
Enclosures
cc: Ann E. Lane, Staff Counsel, Kerr-McGee Rocky Mountain Corporation
Christopher Chrisman, Attorney at Law
client

ROBERT E. RAY
ATTORNEY AT LAW
1122 9TH STREET #202
GREELEY, COLORADO 80631
(970) 351-6083
FAX 356-1921 1408

PLEASE NOTE OUR NEW ADDRESS:
909 11th Avenue
Greeley, CO 80631

April 4, 2005 TELEFAX (303) 894 2109

Oil and Gas Commission
Attention: Trisha Beaver
1120 Lincoln Street Suite 801
Denver, CO 80203

Re: Complaint Against Kerr-McGee Rocky Mountain Corporation

Ms. Beaver:

On December 3, 2004, I sent you a letter along with documents concerning claims I believe my clients have in connection with Kerr-McGee Rocky Mountain Corporation. You responded to that letter by a telephone call indicating to me that you did not believe the McPeeks had any claims which would be handled by the Oil and Gas Commission. To say the least, I am puzzled by that after doing further research.

It is my understanding there is a requirement that an operator have a lease of 160 acres in order to drill and produce a Codell well. In the facts I have sent you, it is very clear that Kerr-McGee does not have a lease of 160 acres in connection with two separate drilling units.

From my review of C.R.S. 34-60-116, it appears to me that it is incumbent upon the Oil and Gas Commission to conduct a hearing and enter an order pooling the interests of my clients and Kerr-McGee.

If you will review your own records, you will find that Kerr-McGee has treated both units in question as though there were a pooling agreement, since it has been paying out royalty interests based on the 160 acre drilling unit. However, Kerr-McGee has been keeping all of the non-royalty revenue, which I believe it is not entitled to do.

Would you please review this matter and get back to me at your earliest convenience.

Sincerely,

Robert E Ray

ROBERT E. RAY
RER:kg
cc: Ann E. Lane, Staff Counsel, Kerr-McGee Rocky Mountain Corporation
Christopher Chrisman, Attorney at Law
client

COLORADO COURT OF APPEALS

Court of Appeals No.: 07CA0722
Weld County District Court No. 05CV1572
Honorable Roger A. Klein, Judge

INB Land & Cattle, LLC, a Colorado limited liability company,

Plaintiff-Appellant,

v.

Kerr-McGee Rocky Mountain Corporation, a Delaware corporation,

Defendant-Appellee.

JUDGMENT AFFIRMED

Division III
Opinion by: JUDGE CASEBOLT
Russel and J. Jones, JJ., concur

Announced: June 12, 2008

Dufford, Waldeck, Milburn & Krohn, L.L.P., Nathan A. Keever, William S. DeFord, Grand Junction, Colorado, for Plaintiff-Appellant

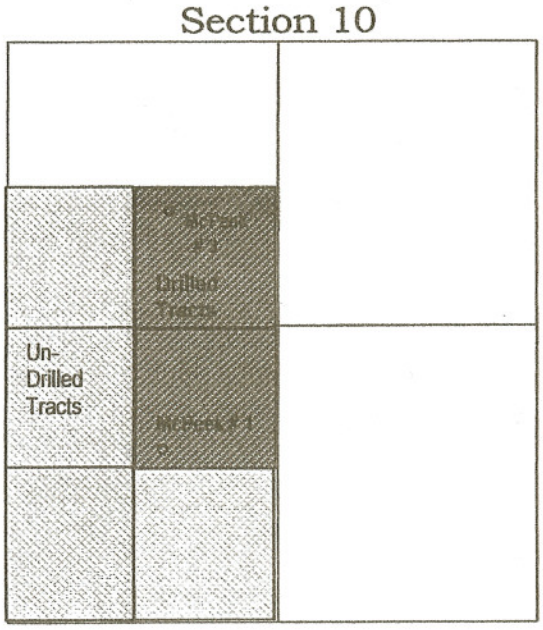
Davis, Graham & Stubbs, LLP, Gale T. Miller, Michael J. Gallagher, Erin McAlpin Eiselein, Denver, Colorado, for Defendant-Appellee

In this oil and gas case involving claims of mineral trespass, conversion, and civil theft, plaintiff, INB Land & Cattle LLC, appeals the summary judgment in favor of defendant, Kerr-McGee Rocky Mountain Corporation. We affirm.

In 1970, the parties' predecessors in interest entered into an oil and gas lease that gave Kerr-McGee's predecessor the right to develop and market all minerals underlying INB's land (working or operating interest), in exchange for a one-eighth royalty from the minerals sold (royalty interest). The lease covered the south half of the northwest quarter and all the southwest quarter of Section 10, Township 2 North, Range 66 West of the 6th Principal Meridian, totaling 240 acres.

Underlying the land are several mineral formations. Proceeding from the surface downward, they are the Niobrara, Codell, and J-Sand. Kerr-McGee's predecessor drilled two wells to the J-Sand formation -- the McPeek #1, located in the forty-acre northeast quarter of the southwest quarter, and the McPeek #3, located in the forty-acre southeast quarter of the northwest quarter (together, the Drilled Tracts). The wells produced marketable

hydrocarbons. In the parties' various agreements described hereafter, the remaining 160 acres of Section 10 owned by INB was referred to as the Undrilled Tracts.



In 1997, the parties entered into Partial Release and Segregation Agreements (Segregation Agreements), which reassigned the working and royalty interests in Section 10. Kerr-McGee's predecessor assigned the working interest in the Undrilled Tracts relating to the Codell and Niobrara formations to INB's predecessor. It retained the working interest in all formations on the Drilled Tracts and the working interest in the J-Sand formation on the Undrilled Tracts. By segregating the tracts, INB regained the working interest and the corresponding right to become an operator

(or to lease that interest to another party), and to drill and produce oil and gas from the Codell and Niobrara formations on the Undrilled Tracts.

Thereafter, Kerr-McGee's predecessor "recompleted" McPeek #1 and #3 to obtain production from the Codell formation. "Recompletion" means redrilling the same well bore to reach a new reservoir. It then began pumping from the Codell formation and has continued to pay INB a one-eighth royalty share from that production.

Contending that Kerr-McGee was effectively draining its wholly-owned minerals in the Codell formation from underneath the Undrilled Tracts, INB commenced this action seeking damages and injunctive and declaratory relief. Kerr-McGee answered and counterclaimed for declaratory judgment with respect to the rights and obligations of the parties under the Segregation Agreements. Kerr-McGee also moved to dismiss INB's claims and sought summary judgment on both parties' claims for declaratory relief.

The trial court granted Kerr-McGee's motion and entered summary judgment in its favor on the claims for declaratory judgment. This appeal followed.

I.

INB asserts that the trial court erred in granting summary judgment because the order did not reach the merits of its claim for declaratory relief. Specifically, INB contends that it did not seek to obtain a share of the working interest in the Drilled Tracts but, instead, sought a declaration that Kerr-McGee is wrongfully extracting minerals because Kerr-McGee has failed to pool all mineral interests or to apportion revenues it has obtained by draining minerals from the Undrilled Tracts. We perceive no error.

We review a summary judgment de novo. Summary judgment is proper only upon a showing that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. C.R.C.P. 56(c); *Kauntz v. HCA-Healthone, LLC*, 174 P.3d 813, 816 (Colo. App. 2007).

The trial court ruled that INB had no right to participate as a working interest owner in the production of minerals from the *Drilled Tracts*. We agree that this ruling did not specifically address INB's claim that Kerr-McGee unlawfully is appropriating its minerals from underneath the *Undrilled Tracts*. Even so, however, the trial court also specifically held that the "rule of capture"

applied such that INB could not, as a matter of law, recover damages or obtain injunctive or declaratory relief to prevent the draining of INB's minerals from the Undrilled Tracts. Because resolution of the issues in this case thus turns, in major part, upon whether the rule of capture applies as between the parties, we first review that doctrine of law.

Under the rule of capture, a lessee under an oil and gas lease acquires title to the oil and gas that it produces from drilled wells, even though part of the minerals have migrated from adjoining lands. 1 Howard R. Williams & Charles J. Meyers, *Oil and Gas Law* § 204.4 (2004). Under the rule,

> a landowner could drill for oil or gas on its land wherever and with as many wells as the landowner thought appropriate. If oil or gas were found, the landowner would not be liable to adjacent landowners whose lands were also drained, even if the producing well were drilled next to the adjoining landowner's boundary. Moreover, the producing landowner would be entitled to produce as much oil or gas as possible, even though the ultimate recovery of oil or gas from the reservoir was diminished. Thus, under the law of capture, a landowner incurred no liability for causing oil or gas to migrate across property boundaries and was not required to compensate adjoining landowners for draining oil and gas from their lands.

Cowling v. Bd. of Oil, Gas & Mining, 830 P.2d 220, 224 (Utah 1991) (citing *Thompson v. Consol. Gas Utils. Corp.*, 300 U.S. 55, 68 (1937)).

The rule of capture applies in all jurisdictions until modified by state law. 1 Williams & Meyers, § 204.4. Colorado has recognized the common law rule of capture. *Moshiek v. Lininger*, 130 Colo. 266, 271, 274 P.2d 965, 968 (1954). When the rule applies, the only protection that an owner has against loss of oil and gas to neighboring owners because of migration is the right to drill offset wells that would interrupt the flow of oil and gas being drawn to the neighboring wells. *See* 1 Bruce M. Kramer & Patrick H. Martin, *The Law of Pooling and Unitization* § 2.01 (2004); 1B Phillip D. Barber, *Colo. Methods of Practice* § 14.3 (2004). Thus, because a mineral owner generally has the right to drill offset wells, the rule of capture essentially precludes claims of improper drainage against a neighboring well operator.

However, as both parties here agree, when production practices are regulated by a state administrative agency charged with the prevention of waste and the protection of mineral owners' rights, the rule of capture may be modified and limited by

appropriate regulation. *See* 1 Williams & Meyers, § 204.4; Barber, § 14.7 (rule applies in the absence of pooling or spacing); *Cowling*, 830 P.2d at 224-25 (Utah Oil and Gas Conservation Act modified rule of capture and authorized state board to regulate development and production of oil and gas for the purpose of preventing waste and protecting correlative rights; Act establishes a regulatory scheme that protects correlative rights while also continuing the law of capture to a limited extent).

The Colorado General Assembly has adopted such legislation in the Colorado Oil and Gas Conservation Act, sections 34-60-101 to -129, C.R.S. 2007. Two means of regulation under the Act are spacing and pooling orders. The creation of spacing units, also known as drilling units, establishes parcels of land of approximately uniform size throughout an oil or gas field, on each of which only a single well may be drilled. *See* § 34-60-116(1), (6), C.R.S. 2007 (Commission has power to establish drilling and spacing units); § 34-60-116(3), C.R.S. 2007 (only one well may be drilled within the unit); § 34-60-116(5), C.R.S. 2007 (the operation of any well drilled in violation of an order fixing drilling units is prohibited); Barber, § 14.6.

Pooling occurs when various parcels or interests are combined for purposes of mineral extraction so that costs and revenues are apportioned among the interest holders. § 34-60-116(6) ("When two or more separately owned tracts are embraced within a drilling unit, or when there are separately owned interests in all or a part of the drilling unit, then persons owning such interests may pool their interests for the development and operation of the drilling unit"). Pooling may be voluntary or involuntary. *Id.*

Pooling does not, by itself, affect the number of wells that can be drilled. Instead, "[p]ooling orders are based on each landowner's fractional share of surface ownership in a drilling unit. A pooling order must, therefore, be based on the existence of a drilling unit." *Cowling*, 830 P.2d at 226 (statutory citation omitted) (also citing 6 Williams & Meyers, § 905.2).

Here, the trial court ruled that Kerr-McGee was not wrongfully extracting minerals from the Undrilled Tracts because the rule of capture applies. Inferentially, therefore, INB's only remedy would be to drill an offset well to itself capture its minerals and prevent the migration of those minerals to Kerr-McGee's wells. However,

whether INB has the right to drill an offset well may be regulated by spacing or pooling orders in effect with regard to Section 10.

The parties acknowledge that a spacing order is in effect. However, the parties disagree on whether a spacing order alone may be sufficient to modify the common law rule of capture. INB contends that a spacing order alone is enough to modify the rule of capture and that Order 407-66, discussed below, does so. Kerr-McGee contends that a spacing order alone is never enough to modify the rule of capture and that both a pooling order and a spacing order are required.

We need not resolve that dispute, nor does the existence of that dispute preclude summary judgment, because we will assume, without deciding, that a spacing order, standing alone, may modify the rule of capture. We therefore examine what the spacing order in effect here provides.

Spacing for the Codell formation in Section 10 was originally established in 1983 when the Commission issued Order 407-1. The order establishes eighty-acre drilling units, but leaves the operator with the option of drilling another well on the undrilled forty-acre tract if the eighty-acre unit is not sufficient to drain the formation.

In 1991, the Commission issued Order 407-66 in response to an application filed by four operators who sought permission for wells they had drilled to the J-Sand formation to be recompleted to the Codell and Niobrara formations and to allow the commingling of production from the three different formations. The Order provides, in pertinent part:

> FINDINGS
>
> The Commission finds as follows:
>
> . . . .
>
> 4. In Order No. 407-1, the Commission established 80-acre drilling and spacing units for the production of oil and/or gas and associated hydrocarbons from the Codell formation. In Order Nos. 407-10 and 407-13, the Commission . . . include[d] production from the Niobrara formation and . . . allow[ed] the downhole commingling of production from the Codell and Niobrara formations.
>
> 5. In Cause No. 232, the Commission established 320-acre drilling and spacing units for the production of gas from the "J" Sand . . . with one well allowed for each unit. . . . [T]he Commission issued order No. 232-20 which allowed a second well to be drilled on each 320-acre unit.
>
> . . . .
>
> 9. [A]dditional rules [should] be established for the protection of correlative rights and procedures to process recompletion, commingled and dual completion requests.
>
> ORDER

> NOW, THEREFORE, IT IS ORDERED that the following rules and regulations shall apply hereafter to a well or wells drilled, completed or recompleted in the Codell and/or Niobrara formations, where the production is commingled or dually completed with the "J" sand formations underlying the Codell-Niobrara Spaced Area described herein below:
>
> . . . .
>
> Rule 3. The location of all wells drilled to the "J" Sandstone formation underlying areas subject to Cause No. 407 and at a legal location . . . shall be automatically approved, without hearing, as a legal location for production from the Codell or Niobrara formations, provided the following conditions are met:
>
> a. The size of the voluntary unit for production from the Codell and/or Niobrara formations is either (i) 160-acres or (ii) the same size as the unit for production from the "J" Sand formation, with the unit for the Codell and/or Niobrara formations not less than that prescribed by Cause No. 407.

Relying on Rule 3, INB contends that Order 407-66 sets the spacing for the Codell formation at 160 acres. Therefore, it contends, the rule of capture is modified as to its property because it cannot drill an offset well upon any of the Undrilled Tracts. Kerr-McGee contends that Order 407-66 does not affect the forty-acre spacing allowed by Order 407-1 and, therefore, INB may drill offset wells on the Undrilled Tracts. For a number of reasons, we agree with Kerr-McGee.

First, the application before the Commission when it entered Order 407-66 simply requested the Commission to allow wells that had already been drilled to the J-Sand formation to be recompleted to the Codell and Niobrara formations and to allow commingling of production from all three formations. The application did not deal with new wells that would be drilled only to the Codell and Niobrara formations.

Second, the Commission findings recite portions of its Order 407-1 that established the eighty-acre (and discretionary forty-acre) drilling and spacing units for the Codell and Niobrara formations. The findings do not in any way indicate an intention to change that spacing.

Third, the Commission found that it should establish additional procedures to process recompletion, commingled, and dual completion requests, but that finding does not relate to any new wells.

Fourth, the Commission stated that Rule 3 would apply to wells drilled, completed, or recompleted in the Codell and Niobrara formations where the production is commingled or dually completed with the J-Sand formation. A new well drilled only to the Codell or

Niobrara formation would not commingle production from the J-Sand formation.

Finally, the Rule's use of a 160-acre voluntary unit for production does not relate to new wells that would be drilled only to the Codell or Niobrara formation.

INB points, however, to the Segregation Agreements signed by the parties' predecessors, which state, in pertinent part, that "by Order No. 407 et seq., the [Commission] provides and allows for one hundred and sixty (160) acre drilling and spacing units for the Codell and Niobrara formations from [Section 10]." However, we construe that language to refer to the J-Sand drilling and spacing unit, which was referenced by the Commission in Finding 5 quoted above. Finding 5 references two wells being allowed in a 320-acre unit for the J-Sand; hence, Finding 5 establishes the 160-acre spacing for wells in that formation. Thus, the Segregation Agreements do not refer, by this language, to any potential new well.

We therefore hold that the spacing for the Codell and Niobrara formations on the property involved here is a minimum of forty acres. The existence of forty-acre spacing allows INB to employ the

remedy of offset drilling. Thus, the rule of capture is modified only to that extent. Hence, because INB has four forty-acre parcels on which it can drill offset wells, it cannot successfully assert a claim against Kerr-McGee for mineral trespass, conversion, or theft.

To the extent that INB may assert that forty-acre spacing does not allow it to drill enough offset wells to prevent migration of its minerals to Kerr-McGee's wells, we note that it has very specific administrative remedies available through the Oil and Gas Commission.

First, section 34-60-116(4), C.R.S. 2007, states that the Commission, "upon application, notice, and hearing, may decrease or increase the size of the drilling units or permit additional wells to be drilled within the established units in order to . . . protect correlative rights." Thus, INB may submit an application to the Commission for a reduction of the spacing unit. According to the statute, INB may also simply apply to drill additional wells.

Second, section 34-60-116(6) states:

> When two or more separately owned tracts are embraced within a drilling unit, or when there are separately owned interests in all or a part of the drilling unit, then persons owning such interests may pool their interests for the development and

> operation of the drilling unit. In the absence of voluntary pooling, the commission, upon the application of any interested person, may enter an order pooling all interests in the drilling unit for the development and operation thereof. Each such pooling order shall be made after notice and hearing and shall be upon terms and conditions that are just and reasonable, and that afford to the owner of each tract or interest in the drilling unit the opportunity to recover or receive, without unnecessary expense, his just and equitable share.

Thus, INB may submit an application to the Commission for an involuntary or voluntary pooling order, the practical effect of which would be to apportion revenues and expenses from the two existing wells between INB and Kerr-McGee. Contrary to INB's assertion, we do not perceive that it is precluded, as a landowner, from making this application. The statute notes that "any interested person" may seek voluntary or involuntary pooling. § 34-60-116(6). While that term is not specifically defined, it clearly encompasses mineral interest owners.

We note Kerr-McGee's contention that the Segregation Agreements specifically preclude pooling; however, whether a private agreement may override a state regulation is a matter that the Commission could better address, at least initially.

Finally, Order 407-66, Rule 4 provides:

> If an applicant wishes to produce oil, gas or associated hydrocarbons from the Codell or Niobrara formations and the well is not located at a legal location under these rules or under Cause No. 407, the applicant shall file with the Commission waivers or consents signed by the owners toward whom the well is located . . . agreeing that the well may be located where the applicant proposes to drill the well. If written waivers or consents are not obtained from all of said owners, then the applicant shall give written notice of the proposed operation by certified mail to said owners. If an owner of the well is also the owner of a lease toward which the well is located, then the applicant must also obtain a waiver or consent or give written notice by certified mail to the mineral interest owner subject to such lease . . . . [I]f no written objections are filed within 30 days after notice is received, the Director is authorized to approve the proposed location as an exception location without a hearing. If a written objection is filed, or upon motion of the applicant or the Director, the application shall be heard in accordance with the rules of the Commission.

Thus, INB may file for a waiver or an exception with the Commission to drill a new well to the Codell or Niobrara formations.

In sum, we conclude that the trial court did not err in determining that the rule of capture applied such that INB could not, as a matter of law, recover damages or obtain injunctive or declaratory relief to prevent the draining of INB's minerals from the Undrilled Tracts. For these reasons, we affirm the summary judgment in favor of Kerr-McGee.

II.

In light of our determination of the rule of capture issue, we need not address the parties' remaining contentions.

The judgment is affirmed.

JUDGE RUSSEL and JUDGE J. JONES concur.

ORIGINAL

OIL AND GAS LEASE

THIS OIL AND GAS LEASE ("Lease") is effective the _____ day of _____, 2009, between INB Land and Cattle, LLC, a Colorado limited liability company, and Robert L. McPeek (together "Lessor"), whose address is 10584 County Road 31, Fort Lupton, Colorado 80621 ("Lessor"), and Anadarko Petroleum Corporation, whose address is P.O. Box 1330, Houston, Texas 77251 ("Lessee").

GRANT

Lessor, for and in consideration of $10.00 cash in hand paid, the receipt of which is hereby acknowledged, and the covenants and agreements hereinafter contained, has granted, demised, leased and let, and by these presents does grant, demise, lease and let exclusively unto the said Lessee, with the exclusive right for the purpose of drilling, mining, exploring by geophysical and other methods, and operating for and producing therefrom oil and all gas of whatsoever nature or kind, and any and all substances produced in association therewith from coal-bearing formations, the land situated in Weld County, Colorado (the "Leased Premises"), legally described as:

all unleased formations in

Township 2 North, Range 66 West, 6th P.M.
Section 10: SW/4NW/4, W/2SW/4, SE/4SW/4

Containing 160 acres, more or less.

TERMS

1. This lease shall remain in force for a term of five (5) years ("Primary Term") from the date in the introductory paragraph and as long thereafter as oil or gas is produced from the Leased Premises or acreage pooled therewith, or drilling operations are continued as described herein. If, at the expiration of the Primary Term, oil or gas is not being produced on the Leased Premises or acreage pooled therewith, but Lessee is then engaged in drilling or reworking operations, then this Lease shall continue in force as long as operations are being continuously prosecuted on the Leased Premises or acreage pooled therewith. Operations shall be considered to be continuously prosecuted if not more than ninety (90) days have elapsed between the completion or abandonment of one well and the beginning of operations for the drilling of a subsequent well. If, after discovery of oil or gas on the Leased Premises or acreage pooled therewith, production should cease for any reason after the Primary Term, this Lease shall not terminate if Lessee commences additional drilling or reworking operations within ninety (90) days from the date of cessation of production or from the date of completion of a dry hole. If oil or

gas is discovered and produced as a result of such operations at or after the expiration of the Primary Term, this Lease shall continue in force so long as oil or gas is produced from the Leased Premises or acreage pooled therewith.

2. Notwithstanding the provisions in Paragraph 1, Lessee agrees to drill and complete one well in the SE/4SW/4 of Section 10 prior to January 1, 2010. Lessee agrees to drill and complete one well in the SW/4Sw/4 of Section 10 prior to January 1, 2011. Lessee agrees to drill and complete two (2) additional wells, one of which to be drilled and completed prior to January 1, 2012, and the other of which is to be drilled and completed prior to January 1, 2013, in the two remaining 40-acre tracts covered by this Lease (the NW/4SW/4 and the SW/4NW/4 of section 10). If Lessee fails to drill and complete any of the four (4) wells prior to January 1 of the applicable year, then the Lease shall terminate as to each of the 40-acre tracts to which Lessee has not then drilled a well. Lessee may, however, drill and compete any of the four (4) wells prior to the required completion date. In addition, to the circumstances set forth in Paragraph 15, a change in permit regulations that results in extended time to obtain a drilling permit and Lessee's inability to obtain a drilling rig, despite Lessee's good faith efforts, shall be considered causes beyond the control of Lessee and shall extend Lessee's time for performance to the next year, provided that Lessee pays to Lessor an additional bonus payment of $50.00 per acre on or before May 1 of the year in which Lessee claims an extension of the time for performance.

3. Where gas from any well on the Leased Premises or acreage pooled therewith capable of producing gas is not sold or used, Lessee may pay or tender as royalty to Lessor $10.00 per month per net royalty acre retained hereunder, such payment or tender to be made on or before the anniversary date of this Lease next ensuing after the expiration of ninety (90) days from the date such well is shut-in and thereafter on or before the anniversary date of this Lease during the period such well is shut-in. If such payment or tender is made, it will be considered that gas is being produced within the meaning of this Lease.

4. This is a "Paid-Up Lease." In consideration of the cash down payment. Lessor agrees that Lessee shall not be obligated, except as provided in this Lease, to commence or continue any operations during the Primary Term. Lessee may at any time or times during or after the Primary Term surrender this Lease, as to all or any portion of the Leased Premises and as to any strata or stratum, by delivering to Lessor or by filing for record a release or releases, and be relieved of all obligation thereafter accruing as to the acreage surrendered.

5. In consideration of the rights granted to Lessee in this Lease, Lessee covenants and agrees to account for and pay Lessor for gas and oil of

whatsoever nature or kind (with all of its constituents) produced and sold, or used off the Leased Premises, or used in the manufacture of products or power, 22.5% of the actual amount received by the Lessee from the sale of the oil and gas or product produced, without deductions except severance taxes, ad valorem taxes, and any other tax required by law to be deducted by Lessee. The royalty will be paid ten percent (10%) to INB Land & Cattle LLC and twelve and one-half percent (12.5%) to Robert L. McPeek. Lessee shall use commercially reasonable efforts to dispose of all oil and gas or product produced from the Leased Premises at the best available regularly obtainable prices. Upon reasonable notice to Lessee, but not more than once per year, Lessor shall have the right to audit the books and records at Lessee's disposal or control pertaining to production, price obtained, deductions and/or the calculation of royalties under this Lease. If discrepancies that benefit Lessee are found as a result of any audit, Lessee shall immediately pay Lessor such discrepancy with interest at the rate of 8% per annum. If such discrepancy exceeds 10% of the amount paid to Lessor over the audit period, Lessee shall immediately reimburse Lessor for costs and expenses incurred by Lessor for such audit.

6. Upon the commencement of the drilling or reworking of any well, Lessee shall be obligated to conduct such drilling or reworking with reasonable diligence and in accordance with good operating practices in the oil and gas producing industry in a bona fide and serious effort to produce oil and/or gas.

7. Lessee shall comply with the surface use agreement (the "Surface Use Agreement") executed contemporaneously with Lease.

8. Subject to any contrary provisions in the Surface Use Agreement, in order to maximize development of all oil and gas or product produced from the Leased Premises. Lessee covenants and agrees as follows:

    a. If oil and/or gas in paying quantities is discovered on the Leased Premises, Lessee shall drill such additional wells and conduct such drilling, deepening, and producing operations as a prudent lessee and/or operator would do under the same or similar circumstances.

    b. Lessee shall at all times operate the well(s) and any appurtenances with good field practices.

9. Lessee shall fully defend, protect, indemnify and hold harmless Lessor and their agents, heirs, successors and assigns from and against each and every claim, demand, action, cause of action or lawsuit and any liability, cost, expense, damage or loss (including environmental), including attorney fees and court costs, that may be asserted against Lessor or Lessee by any third party, including Lessee's employees and agents, arising from or on account of any operations, acts or omissions of Lessee under this Lease.

10. If Lessor owns less than the entire and undivided fee simple estate in the Leased Premises, then the royalties described in the Lease shall be paid to Lessor only in the proportion that Lessor's interest bears to the whole and undivided fee.

11. The rights of Lessor and Lessee under this Lease may be assigned in whole or part. No change in ownership of Lessor's interest (by assignment or otherwise) shall be binding on Lessee until Lessee has been furnished with notice, consisting of copies of recorded instruments or documents or other information necessary to establish a complete chain of record title from Lessor, and then only with respect to payments thereafter made.

12. Lessee may pool the leasehold estate and/or the mineral estate covered by this Lease only with other leasehold estates and mineral estates in the 640 acre pool comprising Section 10 of Township 2 North, Range 66 West, 6th P.M., Weld County, Colorado; provided, however, that the terms and conditions of any pooling agreement shall be subject to the terms and conditions of the Lease, unless otherwise approved by Lessor in Lessor's sole and absolute discretion.

13. Except as specifically provided in Paragraph 12, Lessee may not pool or unitize the leasehold estate and/or the mineral estate covered by this Lease in any way without Lessor's express written consent, which consent may be denied in Lessor's sole and absolute discretion. In the event Lessor agrees to such pooling or unitization, the parties shall enter into a written agreement memorializing the terms of the arrangement.

14. When operations or production are delayed or interrupted by fire, storm, flood, war, rebellion, insurrection, riot, strike or as a result of any cause reasonably beyond the control of Lessee, the time such delay or interruption shall not be counted against the remaining life of this Lease, and this Lease shall be extended by the length of such delay or interruption and ninety (90) days thereafter; provided, however, that in no event shall any such force majeure extend this Lease or delay Lessee's obligations under this Lease for more than a total of twenty-four (24) months. Force majeure will not include the Lessee's inability to acquire financing.

15. Lessor makes no warranties of any nature concerning the Leased Premises or Lessor's mineral rights, title or interest, if any, therein. In the event of a whole or partial failure of any such rights, title or interest, Lessor shall not be liable for any damages caused to Lessee, Lessee having the relied upon its determination of title prior to the execution of this Lease. Further, Lessor shall not be required to return any payments previously paid by Lessee resulting from any error or defect in Lessor's rights, title or interest.

16. Lessee shall have the right at any time to redeem for Lessor, by payment, any mortgages, taxes or other liens on the Leased Premises in the event of default of payment by Lessor, in which case Lessee shall be subrogated to the rights of the holder of such mortgage, tax or lien. Lessor, and Lessor's heirs, successors and assigns, surrender and release all right of dower and homestead in the Leased Premises, insofar as such right of dower and homestead in any way affects the purposes of this Lease.

17. Should any one or more of the parties named as Lessor fail to execute this Lease, it shall nevertheless be binding upon all such parties that do execute it as Lessor. The word "Lessor" as used in this Lease, shall mean any one or more or all of the parties that execute this Lease as Lessor. All the provisions of this Lease shall be binding on the heirs, successors and assigns of Lessor and Lessee.

18. This Lease and the rights of the parties under it shall be governed by and interpreted in accordance with the laws of the State of Colorado, by the District Court of Weld County, Colorado. In the event of a dispute involving or related to any term or condition of this Lease, the non-breaching party shall be entitled to recover its reasonable costs and attorney fees, including post-judgment collection costs, in addition to actual damages.

19. This Lease contains the sole and entire agreement and understanding of the parties with respect to its entire subject matter. All prior discussions, negotiations, commitments and understandings relating to the subjects of this Lease are merged into it. In the vent of any conflict between the terms of this Lease and the terms of the Surface Use Agreement, the terms of the Surface Use Agreement shall control.

LESSOR:
INB LAND & CATTLE LLC

LESSEE:
ANADARKO PETROLEUM CORP

_____
Robert L McPeek, Manager

_____
Robert L McPeek, Individually

State of Colorado)
)
County of _____)