

**BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO**

IN THE MATTER OF THE APPLICATION OF AZTEC
EXPLORATION, LLC REGARDING THE DISPOSITION
OF ORDER NO. 407-1899 REGARDING APPLICATION
OF NONCONSENTING PENALTIES UNDER THE
ORDER, LARIMER AND WELD COUNTIES,
COLORADO

CAUSE NO. 407

DOCKET NO.

TYPE: POOLING

Application for Hearing

Pursuant to Commission Rule 503(b)(10), Aztec Exploration, LLC ("Aztec"), by and through its attorneys, Davis Graham & Stubbs LLP, seeks relief from the Oil and Gas Conservation Commission of the State of Colorado ("Commission" or "COGCC") in matters related to the disposition of Order No. 407-1899, obtained by Great Western Operating Company, LLC ("Great Western") regarding application of the nonconsent penalties under the order.

Aztec is submitting this Application because Great Western seeks to subject Aztec to statutory cost recovery penalties even though Aztec is willing to pay its proportionate share of the costs for a certain mineral lease that it has obtained in the lands. The lease was obtained from an unleased mineral owner who was improperly noticed of the pooling application leading to Order No. 407-1899's approval and also did not receive a written offer to lease from Great Western as required by Commission Rules. As explained below, imposition of the cost recovery penalties on Aztec would be inconsistent with the statutory language, contrary to the purpose of statutory pooling, and inequitable under the circumstances.

Affected Interest

1. Aztec is a limited liability company duly authorized to conduct business in the State of Colorado.

2. Aztec has acquired and currently owns certain leasehold interests in the in the following lands:

Township 6 North, Range 68 West, 6th P.M.

Section 24: E $\frac{1}{2}$ NE $\frac{1}{4}$ lying South of the bank of the Cache La Poudre River, W $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$

Containing 353.00 acres, more or less. Larimer County, Colorado.

A portion of these lands are within the Application Lands covered by the Order 407-1899.

3. Great Western has not acknowledged Aztec's leasehold ownership or provided Aztec with the opportunity to participate in the well operations for which it is

entitled. Aztec is directly and adversely affected by such conduct and by the operation of Order 407-1899 and its leasehold interest are entitled to legal protection under the Oil and Gas Act, C.R.S. § 34-60-101 *et seq* ("Act").

Background and Procedural History

1. On December 1, 2016, Great Western's filed an application ("Pooling Application") for an order to pool all interests in an approximate 1,715.781-acre drilling and spacing unit established for the below-described lands ("Application Lands"), for the development and operation of the Niobrara and Codell Formations, and to subject any nonconsenting interests to the cost recovery provisions of §34-60-116(7), C.R.S., for the drilling of the Raindance FC 23-232HNX Well, Raindance FC 23-232HN Well, Raindance FC 23-249HN Well, Raindance FC 23-272HC Well, Raindance FC 23-289HNX Well, Raindance FC 23-289HN Well, Raindance FC 23-312HN Well, Raindance FC 23-312HC Well, Raindance FC 23-329HNX Well, Raindance FC 23-352HN Well, Raindance FC 23-369HN Well, Raindance FC 23-369HC Well, Raindance FC 23-392HNX Well, Raindance FC 26-009HN Well, Raindance FC 26-032HN Well, Raindance FC 26-032HC Well, Raindance FC 26-049HN Well, Raindance FC 26-072HNX Well, Raindance FC 26-089HC Well, Raindance FC 26-089HN Well, Raindance FC 26-112HN Well, Raindance FC 26-112HNX Well, Raindance FC 26-129HC Well, Raindance FC 26-152HN Well, and the Raindance FC 26-169HN Well ("Raindance Wells"):

Township 6 North, Range 67 West, 6th P.M.

Section 19: S $\frac{1}{2}$
Section 20: W $\frac{1}{2}$ SW $\frac{1}{4}$
Section 29: W $\frac{1}{2}$ NW $\frac{1}{4}$
Section 30: N $\frac{1}{2}$

Weld County, Colorado

Township 6 North, Range 68 West, 6th P.M.

Section 23: SE $\frac{1}{4}$
Section 24: S $\frac{1}{2}$
Section 25: N $\frac{1}{2}$
Section 26: NE $\frac{1}{4}$

Larimer County, Colorado

2. On March 20, 2017, the Commission entered order 407-1899 which approved the Pooling Application.

General Allegations

1. This dispute concerns the interests of to the Ruth and Harold Schmidt Revocable Trust (dated February 3, 2011) ("Schmidt Trust"). At the time the Pooling Application was submitted, the Schmidt Trust was an unleased owner in the tracts to be pooled. The Schmidt Trust has since leased its interest to Aztec.

2. The Commission requires that an applicant, here Great Western, demonstrate that it has served the application on all person's owning an interest in the mineral estate of the tracts to be pooled "by mailing a copy thereof, first-class postage prepaid, **to the last known mailing address** of the person to be served, or by personal delivery." Rule 503.e. (emphasis added).

3. The purpose of pooling and imposing nonconsent penalties, as proposed in the Pooling Application, is to encourage participation in well operations through the consolidation of mineral interests and to provide for the sharing of the risks and benefits of oil and gas development. See Bruce M. Kramer & Patrick H. Martin, *The Law of Pooling and Unitization*, 3rd Edition § 3.02 (2016). To that end, the Act and Commission Rules establish the following framework for participation and pooling:

- a. "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." C.R.S. § 34-60-116(6).
- b. Additionally, each pooling order entered by the Commission "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." *Id.*
- c. "No order pooling an unleased nonconsenting mineral owner shall be entered by the commission . . . until the commission shall have received evidence that such unleased mineral owner shall have been tendered a reasonable offer to lease . . . at the time application for such order is made and that such unleased mineral owner shall have been **furnished in writing** such owner's share of the estimated drilling and completion cost of the well . . ." *Id.* at § 34-60-116(7)(d) (emphasis added).
- d. "An unleased owner shall be deemed a nonconsenting owner if, after at least 35 days' **written notice**, the unleased owner has failed or refused a reasonable offer to lease." Rule 530.c. (emphasis added).
- e. "An owner shall be deemed a nonconsenting owner in the area to be pooled if, after at least 35 days' **written notice** of [certain well and drilling cost information], the owner does not elect in writing to consent to participate in the cost of the well concerning which the pooling order is sought." Rule 530.b. (emphasis added).

4. Paragraph 10 of the Pooling Application certified that Great Western served the Pooling Application upon all person's owning an interest in the mineral estate of the tracts to be pooled. Additionally, testimony and exhibits submitted pursuant to Rule 511 in support of the Pooling Application filed by Great Western similarly certified that all owners received notice of the Spacing Application and any unleased owners received an offer to lease.

5. Exhibit 2 of Great Western's Rule 511 Testimony filed in support of the Pooling Application indicate that Great Western provided notice of the application and a lease offer to the Schmidt Trust at the following address:

RUTH AND HAROLD SCHMIDT
REVOCABLE TRUST
(DATED FEBRUARY 3, 2011)
4621 E. COUNTY ROAD 40
FORT COLLINS, CO 80525

6. The address for the Schmidt Trust Great Western relied upon was neither the current address nor last known address of record for the trust. Further, such information was of record in Larimer County and should have reasonably been obtained by Great Western.

7. The current and last known address of record for the Schmidt Trust was 1010 Walnut St., Windsor, CO 80550, as referenced in a Memorandum of Oil and Gas Lease between the Schmidt Trust and Synergy Resources Corporation, recorded on September 30, 2013, at Reception No. 20130074411, of the records of Larimer County, Colorado ("Synergy Lease") which includes lands within the Application Lands to the Pooling Application and Order 407-1899. The Synergy Lease is attached and incorporated herein as Exhibit A.

8. The Synergy Lease was properly recorded providing notice of the Schmidt Trust's current address and would have been included in any title review of the Application Lands. Since Great Western failed to serve the Schmidt Trust at its last known address of record or provide it with a written offer to lease or well elections as required by the Act and Commission Rules, the interests of the Schmidt Trust cannot be deemed nonconsenting under Order 407-1899.

9. On or about September 12, 2017, the Schmidt Trust accepted a lease offered by Aztec which is recorded at Reception No. 20170074744 of the records of Larimer County. Therefore, the right to consent to the operations proposed by Great Western has been assumed by Aztec. As a result, Aztec, as the lessee, is entitled to Rule 530.b. elections for its proportionate share of the costs for the Raindance Wells.

10. Aztec intends to pay its proportionate share of the costs and risk of drilling the Raindance Wells.

11. At the time of this filing, Great Western has not acknowledged Aztec's leasehold ownership or delivered election letters to Aztec providing it with the opportunity to participate in the Raindance Wells operations by paying its proportionate share of the costs for such wells. As a result, Great Western is prohibiting Aztec the opportunity to recover or receive its just and equitable share of the resource from the Raindance Wells and violating Aztec's correlative rights. Aztec is filing this Application to protect its acquired leasehold interest and to ensure such interest are not subject to

the nonconsent penalty provisions of Order 407-1899 given Great Western's procedural defects in obtaining the order.

12. Aztec certifies that within seven days of filing, it will serve a copy of the Application upon all persons entitled to notice pursuant to Rule 503.e.

Relief Requested

Based on the foregoing, Aztec respectfully requests the following relief:

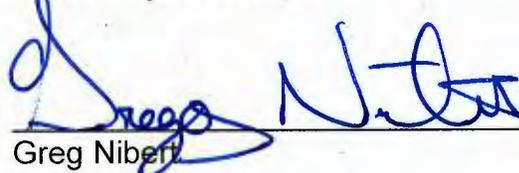
1. That the Commission deny the imposition of statutory cost recovery penalties against Aztec with respect to the interests of the Schmidt Trust provided that Aztec is given the opportunity to participate in the Raindance Wells operations by paying its proportionate share of the costs for such wells based upon Aztec's acquired leasehold interest; and

2. That the Commission grant any additional relief that it deems just and proper in this matter.

DATED this 30th day of November 2017.

Respectfully submitted:

Aztec Exploration, LLC



Greg Nibert
Dave Neslin
Davis Graham & Stubbs LLP
Attorneys for Aztec
1550 Seventeenth Street, Suite 500
Denver, Colorado 80202

Aztec's Address:

Aztec Exploration, LLC
ATTN: Josh Witter
P.O. Box 621925
Littleton, CO 80162

VERIFICATION

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

Joshua Witter, of lawful age, being first duly sworn upon oath, deposes and says that he is a Managing Member for Aztec Exploration, LLC and that he has read the foregoing Application and that the matters therein contained are true to the best of his knowledge, information and belief.

AZTEC EXPLORATION, LLC



Joshua Witter – Managing Member

Subscribed and sworn to before me this 30 day of November, 2017.

Witness my hand and official seal.

My commission expires: 7/1/2020

KELLY MATTESON
NOTARY PUBLIC - STATE OF COLORADO
Notary Identification #20164025069
My Commission Expires 7/1/2020

Notary Public (Signed): Kelly Matteson

Notary Public

