

**BEFORE THE BOARD OF OIL AND GAS CONSERVATION
OF THE STATE OF MONTANA**

IN THE MATTER OF THE APPLICATION OF
KRAKEN OIL & GAS LLC TO POOL ALL
INTERESTS IN THE PERMANENT SPACING UNIT
COMPRISED OF ALL OF SECTIONS 6 AND 7,
T25N-R59E, RICHLAND COUNTY, MONTANA,
FOR THE PRODUCTION OF OIL AND
ASSOCIATED NATURAL GAS FROM THE
BAKKEN/THREE FORKS FORMATION AND TO
AUTHORIZE THE RECOVERY OF NON-
CONSENT PENALTIES IN ACCORDANCE WITH
SECTION 82-11-202(2), M.C.A., WITH RESPECT
TO THE RKY CARDA 7-6 #2H, RKT CARDA 7-6
#3H, AND RKT CARDA 7-6 #4 WELLS.

Docket No. 77-2021

Order No. 74-2021

**APPLICATION FOR
REHEARING**

Pursuant to the provisions of Mont. Code Ann. § 82-11-143, Phoenix Capital Holdings, LLC (“Phoenix”), of 5601 S. Broadway, Ste. 240, Littleton, CO 80121, petitions the Board of Oil and Gas Conservation for a rehearing of the Application of Kraken Oil & Gas LLC (“Kraken”), Docket No. 77-2021, Order No. 74-2021. This petition is submitted for the following reasons.

1. Phoenix is a mineral interest holder in the properties encompassed by the permanent spacing unit at issue, and the wells subject to Kraken’s application.
2. Phoenix, or their counsel of record, were not provided actual notice of the hearing on this contested matter, in contravention of the provisions contained in ARM 1.3.212, as adopted by the Board of Oil and Gas Conservation in ARM 36.22.201 and 36.2.101. Phoenix is an interest holder in the spacing unit and Kraken had actual knowledge of Phoenix’s pending civil suit challenging Kraken’s presumption of non-participation, filed before Kraken’s present application.
3. Phoenix was not provided the opportunity to conduct discovery in this contested matter, in contravention of the provisions contained in ARM 1.3.217, as adopted by the Board of Oil and Gas Conservation in ARM 36.22.201 and 36.2.101. Phoenix is an interest holder in the spacing unit and Kraken had actual knowledge of Phoenix’s pending civil suit challenging Kraken’s presumption of non-participation.
4. Phoenix’s predecessor in interest did not receive “proper and sufficient notice,” that conforms to the provisions of § 82-11-202, MCA.
5. Kraken could not rely on a presumption of non-participation for any interest holder that was based on statutorily deficient notice that did not conform to the provisions of § 82-11-202(3)(a).

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6. Kraken could not offer, and the Board could not rely on hearsay evidence violating Montana's Rules of Evidence as applied by ARM 1.3.221 of a declaration of non-participation by Phoenix's predecessor in interest or their relatives.

7. Phoenix repeatedly asked Kraken for the opportunity to participate in the development of the subject wells before the application for pooling and recovery of non-consent penalties.

8. Kraken did not make a "good faith effort to acquire voluntary pooling of interests in the spacing unit as required by § 82-11-202(1)(b), Mont. Code Ann."

9. Kraken did not legally satisfy the requirements of § 82-11-101 for forced pooling and assessment of costs.

WHEREFORE, Phoenix requests the following relief:

1. That the Board grant rehearing of Docket No. 77-2021, Order No. 74-2021 to address the defects with the Board's decision and Order.

2. To schedule the rehearing for a time and date that provides Phoenix with the opportunity to conduct discovery in this contested matter, as provided in ARM 1.3.217.

3. For such other or additional relief as the Board may deem appropriate.

DATED this 29 day October, 2021.

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