

**STATE OF NEW MEXICO  
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES  
OIL CONSERVATION COMMISSION & DIVISION**

**APPLICATION OF CHISHOLM ENERGY  
OPERATING, LLC FOR A NON-STANDARD  
SPACING AND PRORATION UNIT AND  
COMPULSORY POOLING,  
EDDY COUNTY, NEW MEXICO.**

**CASE NO. 16027  
ORDER NO. R-14719**

**MOTION TO STAY ORDER NO. R-14719**

Cimarex Energy Co. (“Cimarex” or “Appellant”) hereby moves for an order staying Order No. R-14719, issued on June 8, 2018 in Case No. 16027. In support of this motion, Cimarex states as follows:

1. On February 20, 2018, Chisholm Energy Operating, LLC (“Chisholm”) applied to: (1) create a non-standard Wolfcamp spacing and proration unit covering 638.16 acres within the W/2 of Section 3 and the W/2 of Section 10, Township 24 South, Range 26 East, N.M.P.M., Eddy County, New Mexico; and (2) to pool uncommitted interests within this unit.

2. Cimarex owns significant working interests within the unit and is the operator under a pre-existing joint operating agreement, which governs development within the Wolfcamp formation in the W/2 of Section 10.

3. After the application was filed by Chisholm, Cimarex expressed several objections to Chisholm’s plan of the development.

4. In order to satisfy Cimarex’s objections prior to the Division hearing, Chisholm entered into a “deal in principle” with Cimarex. A hearing was then held by the

Division on April 5, 2018 and during this hearing Chisholm testified that it had entered into an agreement in principle with Cimarex to resolve Cimarex's objections. *See* Transcript, p. 12:16-23, attached as **Exhibit A**.

5. On June 8, 2018, the Division issued an order granting Chisholm's application. Cimarex appealed the issuance of the Division's order on June 29, 2018.

6. **On July 30, 2018**, Chisholm indicated to Cimarex that it would not honor or continue to negotiate the deal in principle agreed to by the parties prior to the Division hearing. Instead, Chisholm now seeks to treat Cimarex as a non-consenting party under the Order R-14719, subject to a 200% risk penalty. Contrary to the deal in principle reached by the parties to trade acreage, Chisholm has further offered to purchase Cimarex's interests at a price that is well-below market value. Such actions demonstrate a lack of good faith on Chisholm's part. *See* Chisholm Offers, attached as **Exhibit B**.

7. Cimarex seeks a stay of Order R-14719 to protect its correlative rights until this case is heard *de novo* by the Commission.

8. Cimarex has timely filed an appeal with the Commission and objects to Chisholm's development plans for the acreage as follows:

- a. Cimarex intends to show at hearing that Chisholm's completion plans for the wells will result in waste. The Oil and Gas Act, NMSA 1978, § 70-2-1, *et seq.*, expressly prohibits the creation of waste. Section 70-2-2 states "[t]he production or handling of crude petroleum oil or natural gas of any type or in any form . . . in such manner or under such conditions or in such amounts as to constitute or result in waste is each hereby prohibited." The statute explains that waste may occur underground by "the locating,

spacing, drilling, equipping, operating or producing, of any well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from any pool[.]” NMSA 1978, § 70-2-3.

- b. Cimarex further objects to the imposition of a 200% risk penalty under the pooling order for this matter. In this case, Chisholm has proposed to simultaneously drill and complete three (3) two-mile Wolfcamp wells within the proposed unit. Chisholm’s witnesses failed to indicate during the Division hearing that there was any risk associated with drilling these wells. Instead, testimony during the Division hearing confirmed that there are no geologic impediments to horizontal development and that each tract within the unit will contribute equally to the wells. *See* Transcript, pp. 24:14-29:23, attached as **Exhibit C**. Cimarex, therefore, requests that the imposition of a 200% risk penalty be stayed.

9. Cimarex further objects to Chisholm acting as operator for the W/2 of Section 10 because there is a pre-existing joint operating agreement that covers this acreage. Under this agreement, Cimarex is the operator. The New Mexico Constitution provides that the state cannot pass or enforce any law impairing the obligation of contracts. N.M. Const. art. II, § 19. As a result, the Oil and Gas Act cannot be interpreted by the agency in a manner that impairs existing rights and obligations under private agreements. Cimarex, therefore, asks that a stay be entered by the Director in order to protect Cimarex’s correlative rights as operator under the 1996 joint operating agreement until this matter can be determined on appeal.

10. If Chisholm is allowed to form a non-standard spacing unit including the W/2 of Section 10 and allocate production on a straight acreage basis, Cimarex will be denied its just and equitable share of oil and gas and its contractual rights will be unduly impaired. N.M.S.A. 1978, § 70-2-17; *see* Order R-1328-F, ¶¶ 11, 13.

11. To protect correlative rights and to prevent gross negative consequences to Cimarex, Appellant requests the Director grant this Motion to Stay until such time and the Commission has reviewed, deliberated and issued its order in a *de novo* hearing.

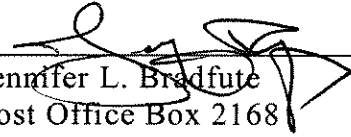
12. If a stay is not entered, Cimarex will effectively be denied its statutory right to an appeal *de novo*.

13. Counsel for Cimarex has contacted counsel for Chisholm to see if Chisholm would voluntarily withhold from commencing wells under the order, but has not received a response.

WHEREFORE, Cimarex requests that the Division Director stay Division Order No. R-14719.

Respectfully submitted,

**MODRALL, SPERLING, ROEHL, HARRIS  
& SISK, P.A.**


By:   
Jennifer L. Bradfute  
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Telephone: 505.848.1800

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served on counsel of record by electronic mail on July 31, 2018.

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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:

APPLICATION OF CHISHOLM ENERGY  
OPERATING, LLC FOR A NONSTANDARD  
SPACING AND PRORATION UNIT AND  
COMPULSORY POOLING, EDDY COUNTY,  
NEW MEXICO.

CASE NO. 16027

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

April 5, 2018

Santa Fe, New Mexico

BEFORE: WILLIAM V. JONES, CHIEF EXAMINER  
PHILLIP GOETZE, TECHNICAL EXAMINER  
LEONARD LOWE, TECHNICAL EXAMINER  
DAVID K. BROOKS, LEGAL EXAMINER

This matter came on for hearing before the  
New Mexico Oil Conservation Division, William V. Jones,  
Chief Examiner, Phillip Goetze and Leonard Lowe,  
Technical Examiners, and David K. Brooks, Legal  
Examiner, on Thursday, April 5, 2018, at the New Mexico  
Energy, Minerals and Natural Resources Department,  
Wendell Chino Building, 1220 South St. Francis Drive,  
Porter Hall, Room 102, Santa Fe, New Mexico.

REPORTED BY: Mary C. Hankins, CCR, RPR  
New Mexico CCR #20  
Paul Baca Professional Court Reporters  
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(505) 843-9241

PAUL BACA  
500 FOURTH STREET N

EXHIBIT

A

CURT REPORTERS  
ALBUQUERQUE, NM 87102

1 EXAMINER JONES: Any objection?

2 MS. BRADFUTE: No objection.

3 EXAMINER JONES: Exhibits 1 through 4 are  
4 admitted.

5 (Chisholm Energy Operating, LLC Exhibit  
6 Numbers 1 through 4 are offered and  
7 admitted into evidence.)

8 MR. FELDEWERT: That concludes my  
9 examination of this witness.

10 CROSS-EXAMINATION

11 BY MS. BRADFUTE:

12 Q. Good afternoon.

13 A. Hello.

14 Q. How are you?

15 A. Doing well.

16 Q. You testified earlier that you've been in  
17 negotiations with Cimarex Energy Company. Do those  
18 negotiations include entering into an assignment for  
19 part of Cimarex's interest and then a term assignment  
20 for the remaining portion of Cimarex's interest?

21 A. That's correct. That's been discussed. We  
22 don't have -- it's not a formalized agreement but an  
23 agreement in principle.

24 Q. Okay. Great.

25 And are you aware of the fact that there

**From:** Davis Armour <darmour@chisholmenergy.com>

**Sent:** Monday, July 30, 2018 2:02 PM

**To:** Caitlin Pierce <cpierce@cimarex.com>

**Subject:** [External] Black River area offer

Caitlin,

Thank you for your time on the phone the other day. As we discussed, Cimarex is currently deemed to be non-consent in the Black River 3-10 Federal Com 4H, due to the fact that a timely election was not made within the prescribed 30 day period allocated under the well proposal, pursuant to NMOCD Order No. R-14719.

As you are aware, Chisholm and Cimarex were previously unable to reach a mutually acceptable form of agreement for a Term Assignment, prior to the expiration of said election period under the Order. During our call, you expressed an interest in revisiting the negotiations for a possible Term Assignment and trade. After visiting with the Chisholm management, they have agreed to extend an offer on the following terms and conditions:

- Term Assignment with an Effective date 6/8/18
- The term will be for **2 years** from the Execution Date of the assignment
- Consideration of \$2,500 per net acre for 92.60938 net acres
- Chisholm will earn all right, title and interest from the surface to 100 feet below the base of the producing formation
- Warranty of title, by through and under the Assignor
- Cimarex will deliver not less than a 78% NRI, on an 8/8ths basis
- Closing will occur on or before August 13<sup>th</sup>, 2018
- Lands Covered – W2 Section 10, T24S-26E - all right title and interest

In addition to the foregoing, Cimarex agrees to trading acreage on the following basis:

- Effective date 6/7/18
- 32 net acre assignment from Cimarex to Chisholm in W2 Section 10, T24S-R26E (all depths)
- 32 net acre assignment from Chisholm to Cimarex in the E2 of Section 3, T24S-R26EB (all depths)

The aforementioned terms are valid until Friday, August 3<sup>rd</sup>, 2018 at 5:00pm CST, and will expire at such time, unless we have received an affirmative response from Cimarex.

Thank you,

Davis Armour, CPL  
Senior Landman





1 before this Division as an expert in petroleum geology?

2 A. Yes, I have.

3 Q. And are you familiar with the application filed  
4 in this case?

5 A. Yes, I am.

6 Q. And have you conducted a study of the geologic  
7 formation underlying the lands that are the subject of  
8 this hearing?

9 A. I have done that. Yes.

10 MR. FELDEWERT: I would retender  
11 Mr. Roth as an expert witness in petroleum geology.

12 MS. BRADFUTE: No objection.

13 EXAMINER JONES: He is so qualified.

14 Q. (BY MR. FELDEWERT) Mr. Roth, what is the target  
15 for these three proposed wells?

16 A. The Wolfcamp.

17 Q. And have you prepared a structure map and cross  
18 section for this targeted formation?

19 A. Yes, I have.

20 Q. If I turn to what's been marked as Exhibit  
21 Number 5, is this the structure map that you have  
22 created?

23 A. Yes. That is the structure map that I made.

24 Q. Before you go into the structure, would you  
25 please explain to us all the lines and whatnot you show

EXHIBIT

C

1     **on here?**

2           A.    The heavy black lines are the actual physical  
3    structure -- the subsurface structure of the Wolfcamp  
4    Formation.  The red line that you see with the blue box  
5    to the right is the proposed unit that we're seeking.  
6    The blue box on the left side of the map designates the  
7    surface locations for the 2, 3 and 4H Black River units  
8    that we propose to drill.  And there are light blue  
9    lines extending from that surface location, the proposed  
10   lateral positions of those two wells.

11           There are several laterals to the north in  
12   Section 34.  Those are about mile-and-a-half laterals  
13   drilled from the section up above there by Marathon.  
14   The one with the green circle around it is actually  
15   completed in the same formation that we're drilling for.  
16   The large green numbers, 371, designate the EUR from  
17   that well for that formation, 371,000 barrels of oil  
18   from the Wolfcamp Formation, the proposed target for our  
19   area down to the south.

20           **Q.    Now, if I look at the intervals here, are they**  
21   **25 foot?**

22           A.    Yes.  That's a structure map at a 25-foot  
23   contour interval.

24           **Q.    Okay.  And what do you observe with respect to**  
25   **the structure of this area?**

1       A.   Generally, the structure strikes in a  
2   northwest-southeast direction, and then it is dipping in  
3   a northeast direction.

4       Q.   Do you observe any faults or pinch-outs or  
5   other geologic impediments to the horizontal wells?

6       A.   I do not see anything like that.  No.

7       Q.   Now, I see a designation, A to A prime, on  
8   here?

9       A.   Yes.  That dark blue line from A to A prime  
10   represents the two wells, structural cross section that  
11   I've made for this --

12      Q.   Why did you choose those three wells?

13      A.   I think those three wells in particular fall  
14   along and very near the three paths for the laterals  
15   that we're choosing to drill, and I think that they  
16   define the reservoir very nicely through that area.

17      Q.   Did you have good logs?

18      A.   Yes.

19      Q.   If I then turn to what's been marked as  
20   Chisholm Exhibit Number 6, is this the structural cross  
21   section that corresponds with the A to A prime on  
22   Exhibit 5?

23      A.   Yes, it is.

24      Q.   And have you identified on here the formations  
25   that you depict?

1       A.   Yes, I have. Starting at the top of the  
2   section, the 3rd Bone Spring Sandstone -- that's the top  
3   of the 3rd Bone Spring Sandstone -- down the 3rd Bone  
4   Spring Lower Sandstone. The heavy green line with the  
5   large Wolfcamp, that's the structural formation that I  
6   mapped on. Then the WC, that stands for Wolfcamp A.  
7   That's the top of that interval. And then the WCA is  
8   the top of the target interval. Then the WCA base is  
9   the base of the target that we're proposing to drill our  
10  laterals in. Then finally the top of the Wolfcamp B.

11       **Q.   So the yellow band there that we see there,**  
12 **that little yellow line saying "Target Interval," is it**  
13 **is the red line or the yellow line that is the target**  
14 **interval?**

15       A.   The yellow area will be the area that we will  
16  target for our laterals.

17       **Q.   Okay. All right. What do you observe about**  
18 **the continuity of that targeted zone as you go across**  
19 **the proposed nonstandard unit?**

20       A.   I think that the reservoir or the target is  
21  very continuous across that area.

22       **Q.   Is this an area, in your opinion, that can be**  
23 **efficiently and economically developed by horizontal**  
24 **wells?**

25       A.   Yes, I believe it is.

1           Q.   And in your opinion, will each of the 320-acre  
2           units, on average, contribute more or less equally to  
3           the production from the well?

4           A.   Yes, I think they would.

5           Q.   In your opinion, is the granting of this  
6           application in the best interest of conservation, the  
7           prevention of waste and the protection of correlative  
8           rights?

9           A.   I think it is, yes.

10          Q.   Were Chisholm Exhibits 5 through 6 prepared by  
11          you or compiled under your direction and supervision?

12          A.   Yes, they were.

13                   MR. FELDEWERT:  Mr. Examiner, I'd move the  
14          admission into evidence of Chisholm Exhibits 5 and 6.

15                   MS. BRADFUTE:  No objection.

16                   EXAMINER JONES:  Exhibits 5 and 6 are  
17          admitted.

18                   (Chisholm Energy Operating, Inc. Exhibit  
19          Numbers 5 and 6 are offered and admitted  
20          into evidence.)

21                   MR. FELDEWERT:  That concludes my  
22          examination of this witness.

23                   MS. BRADFUTE:  I have no questions.

24                   EXAMINER GOETZE:  Mr. Goetze has no  
25          questions.  Thank you.

1 EXAMINER LOWE: I have no questions.

2 EXAMINER BROOKS: I have no questions.

3 Well, this is a different witness.

4 EXAMINER JONES: Yeah.

5 EXAMINER BROOKS: I have no questions of  
6 the geologist. I don't understand geologists.

7 EXAMINER JONES: I don't either. That's  
8 why I ask questions.

9 CROSS-EXAMINATION

10 BY EXAMINER JONES:

11 Q. You've got some kind of a little -- is that a  
12 mound in the middle?

13 A. It's a structural nose on the top of the  
14 Wolfcamp. Actually, there are Strawn reefs in this  
15 area --

16 Q. Oh.

17 A. -- and they do carry that structure up to this  
18 level. So it's structure, but there is no faulting or  
19 anything.

20 Q. Kind of overlaying?

21 A. Exactly. Yes.

22 Q. That's all our questions. Thanks very much.  
23 Appreciate it.

24 MR. FELDEWERT: Mr. Examiner, I'd ask this  
25 matter be continued to the May 3rd docket so we can