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2011 OCT -6 P 4:34

October 6, 2011

Ms. Florene Davidson  
NM Oil Conservation Division  
1220 S. St. Francis Drive  
Santa Fe, NM 87505

**Hand Delivered**

**Re: NMOCD Case No. 14741: Application of Cimarex Energy Co. of Colorado  
for a Non-Standard Spacing and Proration Unit and Compulsory Pooling,  
Eddy County, NM**

Dear Ms. Davidson:

On behalf of Nearburg Producing Company, enclosed for filing is an original and one copy of a Pre-hearing Statement in the above case.

Thank you.

Very truly yours,

Karen Williams  
Assistant to J. Scott Hall

JSH:kw  
Enclosure

cc via e-mail:  
W. Thomas Kellahin

316876

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

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APPLICATION OF CIMAREX ENERGY CO. OF  
COLORADO FOR A NON-STANDARD SPACING  
AND PRORATION UNIT AND COMPULSORY  
POOLING, EDDY COUNTY, NM

CASE NO. 14741

PRE-HEARING STATEMENT

Nearburg Producing Company ("Nearburg") provides this Pre-Hearing Statement as required by the rules of the Division.

APPEARANCES

APPLICANT

Cimarex Energy Co. of Colorado

APPLICANT'S ATTORNEY

W. Thomas Kellahin, Esq.  
Kellahin & Kellahin  
706 Gonzales Road  
Santa Fe, NM 87501-87444  
(505) 216-2780

OPPOSING PARTY

Nearburg Producing Company  
3300 North "A" Street  
Building 2, Suite 120  
Midland, TX 79705

OPPOSING PARTY'S ATTORNEY

J. Scott Hall  
Montgomery & Andrews  
P.O. Box 2307  
Santa Fe, NM 87504-2307  
(505) 982-3873

STATEMENT OF THE CASE

OPPONENT

The Applicant, Cimarex Energy Co. of Colorado, ("Cimarex"), seeks the designation of a non-standard unit and the compulsory pooling of unjoined interests in the Bone Spring formation underlying the E/2 W/2 of Section 32, T-18-S, R-31-E, NMPM in Eddy County for its West

Shugart 32 State Com Well No. 2-H. In addition to being designated operator of the proposed well, Cimarex also seeks the imposition of a 200% risk-penalty against interest owners who elect not to participate in the well.

Nearburg is the owner of significant working interests in the lands that are the subject of the Cimarex Application. Nearburg has previously indicated its intent to challenge the Cimarex request for a 200% risk penalty pursuant to Division Rule 19.15.13.8. In order to do so, Nearburg requested the Division to issue to Cimarex a subpoena duce tecum seeking the production of well information from an adjacent well, the West Shugart 32 State Com No. 1-H. The subpoena is attached as Exhibit "A", attached. Rather than comply with the Division's subpoena, Cimarex has withheld all documents from production and has filed a Motion To Quash. Nearburg is preparing a response to the Cimarex Motion To Quash and is attempting to obtain Cimarex's cooperation in resolving the dispute over the documents and information. However, until Cimarex complies with the Division's subpoena and provides the documents and information requested, Nearburg is prevented from preparing for the hearing. Until the dispute over Cimarex's non-compliance with its discovery obligations is resolved, this Application cannot proceed to hearing.

Nearburg also contends that Cimarex may not invoke the Division's compulsory pooling powers for the reason that the lands and interests involved are subject to a pre-existing joint operating agreement. Although the applicability of the operating agreement is known to Cimarex, it has disregarded the terms and provisions of the agreement.

Nearburg previously informed Cimarex that its land witness, geologist and engineering witness had a pre-existing scheduling conflict that prevents their attendance at the October 13, 2011 examiner hearing. Nearburg requested that Cimarex agree to voluntarily continue the

hearing and then filed a Motion To Continue on September 30, 2011, but Cimarex has not responded.

**PROPOSED EVIDENCE**

APPLICANT

<u>WITNESSES</u>	<u>EST. TIME</u>	<u>EXHIBITS</u>
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OPPONENT

<u>WITNESSES</u>	<u>EST. TIME</u>	<u>EXHIBITS</u>
Russell Wickman, Landman	30 min.	6
Tim Speer, Petroleum Engineer	30 min.	6
Bill Elton, Geologist	30 min.	6

**PROCEDURAL MATTERS**

1. September 29, 2011 Cimarex Motion To Quash Subpoena Duces Tecum. Nearburg is preparing its Response to the Cimarex motion. Until this motion is resolved and Cimarex has timely complied with its obligation to produce the documents, information and materials identified in the Division’s subpoena, a hearing on the Application is not possible.

2. September 30, 2011 Nearburg Motion To Continue. As Cimarex has been previously informed, Nearburg’s landman, petroleum engineer and geologist witnesses have a scheduling conflict due to previously scheduled meeting in Houston on October 13<sup>th</sup> and cannot attend the hearing in Santa Fe. Cimarex has not responded to this motion.

3. Nearburg may file a motion to dismiss Cimarex’s Application.

MONTGOMERY & ANDREWS, P.A.

By: J. Scott Hall  
J. Scott Hall, Esq.  
Post Office Box 2307  
Santa Fe, New Mexico 87504  
(505) 982-3873  
Attorneys for Nearburg Producing Company

**Certificate of Service**

I hereby certify that on October 6, 2011, a true and correct copy of the foregoing was delivered to the following parties by electronic mail:

W. Thomas Kellahin, Esq.  
Kellahin & Kellahin  
706 Gonzales Road  
Santa Fe, NM 87501  
tkellahin@comcast.net

J. Scott Hall  
J. Scott Hall

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