

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

**APPLICATION OF CIMAREX ENERGY  
COMPANY OF COLORADO FOR APPROVAL  
OF A WATER DISPOSAL WELL,  
EDDY COUNTY, NEW MEXICO**

**CASE NO. 14752  
ORDER R-13494**

**CIMAREX RESPONSE TO  
NEARBURG'S MOTION TO STAY  
DIVISION ORDER R-13494**

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Cimarex Energy Company of Colorado "Cimarex", by its attorneys, Kellahin & Kellahin, and Modrall, Sperling, Roehl, Harris & Sisk, P.A., requests that the Division deny Nearburg Producing Company LLC's ("Nearburg") Motion to Stay Division Order R-13494.

**NEARBURG'S MOTION COMES TOO LATE**

Because Nearburg failed to timely file its motion to stay, it should be denied. A stay at this late hour not only would dramatically alter the *status quo* rather than preserve it, but it also would result in significant and unnecessary harm to Cimarex.

For no apparent reason, Nearburg waited 18 days after filing its motion for leave to file an appeal of the Division's December 21, 2011 Order R-13494. By that time, Cimarex already had completed the permitted work on the Secrest SWD well, spending in excess of \$1.5 million, and on April 11, 2012 Cimarex started injecting in reliance upon both the finality of the Division's order and Nearburg's silence. The Secrest SWD currently receives 5400 barrels of water per day and serves twelve oil wells producing from the Yeso formation. *See Locator Status Map as of 4.11.2012 attached to Jesse Parkison's affidavit as Exhibit "A-1."*

Nearburg has a history of delay and inaction. It failed to present any evidence at the hearing on October 27, 2011. It failed to check the Divisions' docket, case file or wells file which showed that the Order had been entered and that Cimarex was proceeding diligently with the work authorized by that order. And once it filed a motion attempting to file an untimely appeal, it waited 18 days before filing the present motion to stay the Division's Order. Had Nearburg acted sooner, there may have been an opportunity to preserve the status quo ante but that time has passed. As a result of Nearburg's inaction, the harm that would result to Cimarex by a stay would be severe. Nearburg's inaction coupled with the resulting harm that would befall Cimarex prevents the granting of the extraordinary equitable relief sought by Nearburg. *See Locator Status Map as of 10.27.2011 attached to Jesse Parkison's Affidavit, Exhibit "A-2"*

#### WHAT IS REQUIRED OF NEARBURG

Nearburg has failed to satisfy the requirements set forth Division's rules for seeking the stay of the Division's Order R-13494 to prohibit injection:

##### 19.15.4.23 HEARING BEFORE COMMISSION AND STAYS OF DIVISION ORDERS:

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B. Stays of division or commission orders. A party requesting a stay of a division or commission order shall file a motion with the commission clerk and serve copies of the motion upon the other parties who appeared in the case, as Subsection A of 19.15.4.10 NMAC provides. The party shall attach a proposed stay order to the motion. The director may grant a stay pursuant to a motion for stay or upon the director's own initiative, after according parties who have appeared in the case notice and an opportunity to respond, if the stay is necessary to prevent waste, protect correlative rights, protect public health or the environment or *prevent gross negative consequences to an affected party*. A director's order staying a commission order shall be effective only until the commission acts on the motion for stay. (emphasis added).

Nearburg has also failed to satisfy the requirements under New Mexico law for seeking a stay of an order pending appeal. In *Tenneco Oil Company v. New Mexico Water Quality Control Commission et al*, 105 NM 708 (N.M. Ct 1986) *superseded by statute on other grounds, Amend Ground Water Quality Stds. Contained in 20.6.2 NMAC*

*N.M. Mining Ass'n v. N.M. Water Quality Control Comm'n*, 141 N.M. 41, 43 (N.M. Ct. App. 2006)<sup>1</sup>, the New Mexico Court of Appeals adopted a test to determine whether or not the stay of an administrative order should be granted. *Id.* Under the Tenneco test, the following factors are considered: (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting a stay.<sup>1</sup> *Id.* at 710, 736 P.2d at 988. Notably, this test is essentially identical to the standard for a preliminary injunction. *See LaBalbo v. Hymes*, 115 N.M. 314, 318, 850 P.2d 1017,1021 (Ct. App. 1993).<sup>2</sup> Consideration of these factors requires the denial of the Motion to Stay.

### **NEARBURG HAS FAILED ON ALL COUNTS**

#### **(a) Nearburg is not likely to prevail.**

Nearburg has not shown and cannot show that it is likely to succeed on the merits in a *de novo* hearing before the Commission. *Tenneco Oil*, 105 N.M. at 710, 736 P.2d at 988; *LaBalbo v. Hymes*, 115 N.M. at 318, 850 P.2d at 1021. Nearburg's purported claim of harm caused by injection is a moving target that has changed since the Division hearing: First, Nearburg objected because it thought the injection interval might pose a

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<sup>1</sup> This test was first articulated in *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir.1958), and it has been widely used for evaluating motions to grant preliminary injunctions or to stay court and administrative orders. *See Segal v. Goodman*, 115 N.M. 349, 356 n. 5, 851 P.2d 471 (1993); *see also Ohio ex rel. Celebrezze v. NRC*, 812 F.2d 288, 290 (6th Cir.1987); *Arthur Guinness & Sons v. Sterling Publishing Co.*, 732 F.2d 1095, 1099 (2d Cir.1984); *Dataphase Sys., Inc. v. CL Sys., Inc.*, 640 F.2d 109, 113 (8th Cir.1981) (en banc); *Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C.Cir.1977); *Associated Sec. Corp. v. SEC*, 283 F.2d 773, 774-75 (10th Cir.1960).

<sup>2</sup> Similarly, in determining whether injunctive relief should issue, courts in New Mexico may consider a number of factors and should balance the equities and hardships where required. *See Cunningham v. Gross*, 102 N.M. 723, 725, 699 P.2d 1075, 1077 (1985). Factors which courts generally have considered include the following: (1) the character of the interest to be protected, (2) the relative adequacy to the plaintiff of injunction in comparison with other remedies, (3) the delay, if any, in bringing suit, (4) the misconduct of the plaintiff, if any, (5) the interest of third persons, (6) the practicability of granting and enforcing the order or judgment, and (7) the relative hardship likely to result to the defendant if an injunction is granted and to the plaintiff if it is denied. *Id.*; *see also Insure New Mexico, LLC v. McGonigle*, 2000-NMCA-018, ¶ 6, 128 N.M. 611, 995 P.2d 1053

threat to its overlying acreage position and Yeso mineral ownership.<sup>3</sup> Now, Nearburg is claiming its deeper correlative rights might be in jeopardy because of drilling complication.<sup>4</sup>

Nearburg currently claims that it has identified prospective production from Morrow formation within the NE/4 of Sec 7. Unfortunately for Nearburg, that is not possible. Two dry holes in this tract have proven the Morrow within the NE/4 of Section 7 to now be non-productive. *See Affidavit of David Percy of Cimarex, Item #10 attached as Exhibit "B;" Affidavit of Jesse Parkison, Item # 3 attached as Exhibit "A;" and Affidavit of Kay Havenor attached as Exhibit "C."*

**(b) Nearburg Has Failed to Make a Threshold Showing of Irreparable Harm.**

Irreparable harm is injury for which there is no adequate remedy at law. *See State v. City of Sunland Park*, 2000-NMCA-044, ¶ 19, 3 P.3d 128. "The mere fact that an administrative regulation or order may cause injury or inconvenience to applicant is insufficient to warrant suspension of an agency regulation by the granting of a stay." *Tenneco* 105 N.M. at 710, 736 P.2d at 988. Instead, Nearburg must make a threshold showing that it will be irreparably injured. *Id.* Nearburg's speculation is not a demonstration of "irreparable harm." By its own conduct, Nearburg has already demonstrated there will be no harm and the actions of other operators in the area have confirmed the absence of harm. *See Affidavit of David Percy of Cimarex, attached as Exhibit "B" and Affidavit of Jesse Parkison, attached as Exhibit "A"*

Furthermore, Nearburg has unreasonably waited 18 days after first filing its motion asking for leave to pursue a late appeal before seeking a stay of the Division's order. This delay indicates a less-than-urgent need for injunctive relief. *See GTE Corp. v. Williams*, 731 F.2d 676, 678-79 (10th Cir. 1984); *see also Kingsford Products Co. v. Kingsfords, Inc.*, 674 F. Supp. 1428, 1431 (D. Kan. 1987) ("The plaintiff has waited nearly 8 months before seeking any relief. Delay of this nature undercuts the sense of urgency that ordinarily accompanies a motion for preliminary relief and suggests there is, in fact, no irreparable injury.").

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<sup>3</sup> See Nearburg's pre-hearing statement, dated 10.19.2011, in Case 14752.

<sup>4</sup> See Nearburg's motion for a stay, dated 4.12.2012 in Case 14752.

Additionally, the purpose of a stay authorized by Rule 19.15.4.23 is similar to that of a preliminary injunction, to preserve the *status quo* existing when the order is entered pending resolution of an appeal by the Commission. See *Insure N.M., LLC v. McGonigle*, 2000-NMCA-18, ¶10, 128 N.M. 611 (“The object of the preliminary injunction is to preserve the status quo pending the litigation of the merits.”); see also *Rio Arriba County Bd. of Educ. v. Martinez*, 74 N.M. 674, 677, 397 P.2d 471 (1964). The *status quo* has been defined as “[t]he last peaceable uncontested status existing between the parties before the dispute developed.” *Beltronics USA, Inc. v. Midwest Inventory Distrib., LLC*, 562 F.3d 1067, 1071 (10th Cir. 2009). However, the issuance of a stay in this matter will not restore the parties to the *status quo* that existed before this controversy began, because in this case the status quo has long since been altered. In Cimarex’s Secrest SWD well, Nearburg wants to “stay” action that has already taken place. See *Affidavit of Jesse Parkison attached as Exhibit “A.”* Additionally, if it appears that “Plaintiffs did not seek to maintain the status quo pending a determination on the merits, but sought to use the preliminary injunction as a vehicle to affect the remedies sought in the complaint,” a motion for preliminary injunction should be denied. *Broadnax v. U.S. Parole Comm’n*, 116 F.3d 489, 1997 WL 346042, at \*1 (10<sup>th</sup> Cir. June 24, 1997).

Moreover, Nearburg’s foot-noted citation to an undated stay order in consolidated cases 14538 and 14497 is not helpful. Those cases involved competing cases for the use of the same wellbore: one to test the Morrow (Arrington-by compulsory pooling) and one to test the Cisco/Canyon (Marshall & Winston by change of operator). The Division Director stayed the order and thereby clearly maintained the “status quo” such that neither could re-complete the wellbore. Here, the well has already been recompleted and injection begun and those intervening equities prevent restoration of the *status quo* that existed when the Division issued its order and require the denial of Nearburg’s motion to stay.

**(c) There will be substantial harm to Cimarex.**

Under the *Tenneco* test, the Division must consider the prospect that others will be harmed if the stay is granted. *Tenneco Oil*, 105 N.M. at 710, 736 P.2d at 988.

Similarly, in determining whether to grant injunctive relief, courts “balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.” *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531 (1987). Other operators in the area are already doing what Nearburg now wants to prevent Cimarex from doing, injecting produced water into the Canyon interval of the Pennsylvanian formation. In this case, the granting of the requested stay in this case will result in substantial financial harm to Cimarex. *See Affidavit of Jesse Parkison, including Locator Status Maps, attached as Exhibit “A”*

**(d) A stay will not prevent gross negative consequences to Cimarex**

Nearburg must also demonstrate that issuance of the stay is not adverse to the public interest. *Tenneco Oil*, 105 N.M. at 710, 736 P.2d at 988. “The public interest may, of course, have many faces--favoring at once both the rapid expansion of utilities and the prevention of wasteful and repetitive proceedings at the taxpayers' or consumers' expense . . . .” *Virginia Petroleum Jobbers Asso. v. Federal Power Com.*, 259 F.2d 921, 925 (D.C. Cir. 1958). Nearburg offers no evidence that Cimarex's SWD disposal well, which was authorized by the Division after a full evidentiary hearing, will cause any harm to anyone. To the contrary, all that has been demonstrated is that Nearburg's claims are speculative and that Cimarex will be harmed and recoverable reserves will be wasted. *See Affidavit of Jesse Parkison attached as Exhibit “A”*

**NEARBURG HAS WAIVED ITS RIGHT TO A DENOVO HEARING  
AND TO A STAY OF ORDER R-13494**

Nearburg was neglectful, both in its attempt to seek a *de novo* hearing and in filing its motion for a Stay. On December 21, 2011, the Division entered Order R-13494 in Case 14752 granting Cimarex's application for approval of a salt water disposal wellbore “SWD” for its Secrest Well No. 1 (API #30-015-22321). At the Examiner's hearing held on October 27, 2011, Nearburg failed to present any evidence or technical

witnesses to support its objection. Inexplicably, Nearburg claims it first learned about this order on March 20, 2012 yet waited until April 13, 2012 to file its motion to stay its effectiveness.

The time in which to file an application for a hearing de novo is strictly limited by Division's Rule 19.15.4.23. There are no exceptions. This rule is mandatory. Rule 19.15.4.23 is clear and unambiguous, within 30 days from the date the division issues the order the party files a written application for de novo hearing with the commission clerk. Nearburg could have and should have filed for a stay concurrently with its March 26, 2012 motion for leave to file a denovo application. Had it done so, Cimarex would have at least been able to avoid some of harm caused by Nearburg's inaction.

With the exception of one irrelevant OCD case that was foot-noted, Nearburg cites no cases in support of its position.

#### **NEARBURG DOES NOT CARE**

Nearburg no longer cares about exploration for Morrow production within the area of Cimarex's Secrest disposal well. Since drilling two Morrow "dry holes" in 1978 and 1988, Nearburg has sold or released approximately 1,920 acres of rights in the Morrow formation including Township 19 South, Range 26 East parts of Sections 4, 5, 6, 8, and 18. Nearburg's claimed opposition is now based upon something even Nearburg does not believe. *See Affidavit of David B. Percy attached as Item #11 of Exhibit "B"*

#### **CONCLUSION**

It seems clear that Nearburg is using whatever reason will be heard to slow the process of Cimarex's injection. Cimarex requests that the Division Director deny Nearburg's Motion for a Stay.

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Attorneys for Cimarex Energy Company

CERTIFICATE OF SERVICE

I certify that on April 17, 2012, I served a copy of the foregoing documents by:

☐ US Mail, postage prepaid  
☒ Hand Delivery  
☐ Facsimile  
☐ Email

to the following:

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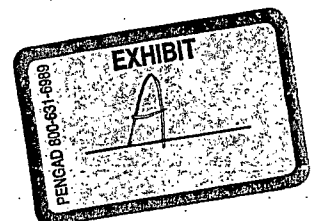
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COUNTY OF MIDLAND )

### AFFIDAVIT

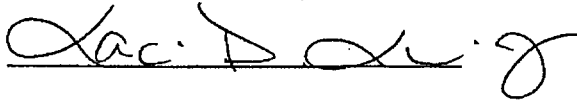
- (1) My name is Jesse Parkison. I am a Petroleum Engineer for Cimarex Energy Company in the Midland, Texas office. I am familiar with the lands and the Secrest et al No. 1 Well which are the subject of Cimarex Energy Company's Application in Case No. 14752 and am otherwise competent to testify to the matters set forth herein.
- (2) Cimarex Energy Company has converted the Secrest et al No. 1 well into a salt water disposal well. The well in the NE/4 of section 7, T19S R26E was drilled and abandoned by Dorchester Exploration. The facilities are almost completed. We estimate from field construction reports that we have spent over \$1,508,000 to date. The well is injecting produced water from our Yeso producing wells at a rate of 5400 barrels of water per day and the injection pressure is a vacuum.
- (3) The Morrow formation is not likely productive in the NE4 of section 7, T19S R26E. The Secrest et al No. 1 was drilled, logged, and DST'd across the Morrow in December 1977 at which point Dorchester Exploration Inc. determined the well was not capable of producing commercial quantities of oil or gas. The well was drilled and abandoned. Chi Operating Inc. more recently tested the Morrow on December 27, 2005 in the Bermuda No. 1 well at 660' FNL & 660' FEL of section 7 T19S R26E and the well never produced.
- (4) The disposal interval is the Pennsylvanian Canyon formation, which is a porous carbonate zone that has been establish in the near area as non-productive and as an effective disposal zone. In addition to the Secrest et al. No. 1, there are four active injectors and one proposed injector in this same formation within a 2.5 mile radius. The Pennsylvanian Canyon formation is an under-pressured reservoir relative to hydrostatic and is capable of injecting fluid on a vacuum. There is no abnormal pressure being added to the formation, and therefore would not likely cause drilling issues on future deep wells.
- (5) The Secrest et al No. 1 is intended to dispose of produced water from the Yeso formation from Cimarex Energy Company's nearby leases. The ability to dispose of produced water will significantly lower the operating cost of the producing wells and will lead to a larger amount of economically recoverable reserves. In the alternative, without this disposal well, the Yeso wells will reach their economic limits sooner and thus recoverable hydrocarbons will be left in the reservoir thereby causing waste.



- (6) In addition to the two dry Morrow wells in section 7, T19N R26E, Nearburg Producing Company completed the Liggett Com No. 1 well in 1978 in the Morrow formation and produced 413mmcf & 361bo until becoming uneconomic. The Liggett Com No. 1 was plugged and abandoned in 1988. This well is 2640' from the Secrest et al No. 1. Also, Nearburg Producing Company completed the Glass '7E' No. 1 well in 1988 in the Morrow formation and produced 914mmcf & 416bo until becoming uneconomic. The Glass '7E' No. 1 was plugged and abandoned in 2002. This well is 2952' from the Secrest et al No. 1.
- (7) Nearburg Producing Company does not have any proposed Morrow locations on public record within 5 miles of the Secrest et al No. 1.
- (8) Production wells have been drilled through porous injection zones and waterfloods for many years. This motion might result in the only acceptable injection zones to be below the deepest producing interval.
- (9) Nearburg Producing Company objected at the division hearing claiming the injection interval might pose a threat to their overlying acreage position and Yeso mineral ownership. Nearburg is now claiming their deeper correlative rights below the injection interval might be in jeopardy because of drilling complications

  
Jesse Parkison

SUBSCRIBED AND SWORN before me on the 16<sup>th</sup> day of April 2012 by Jesse Parkison.

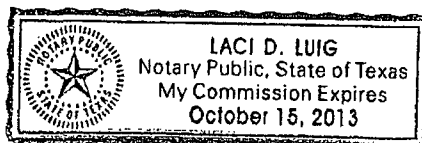


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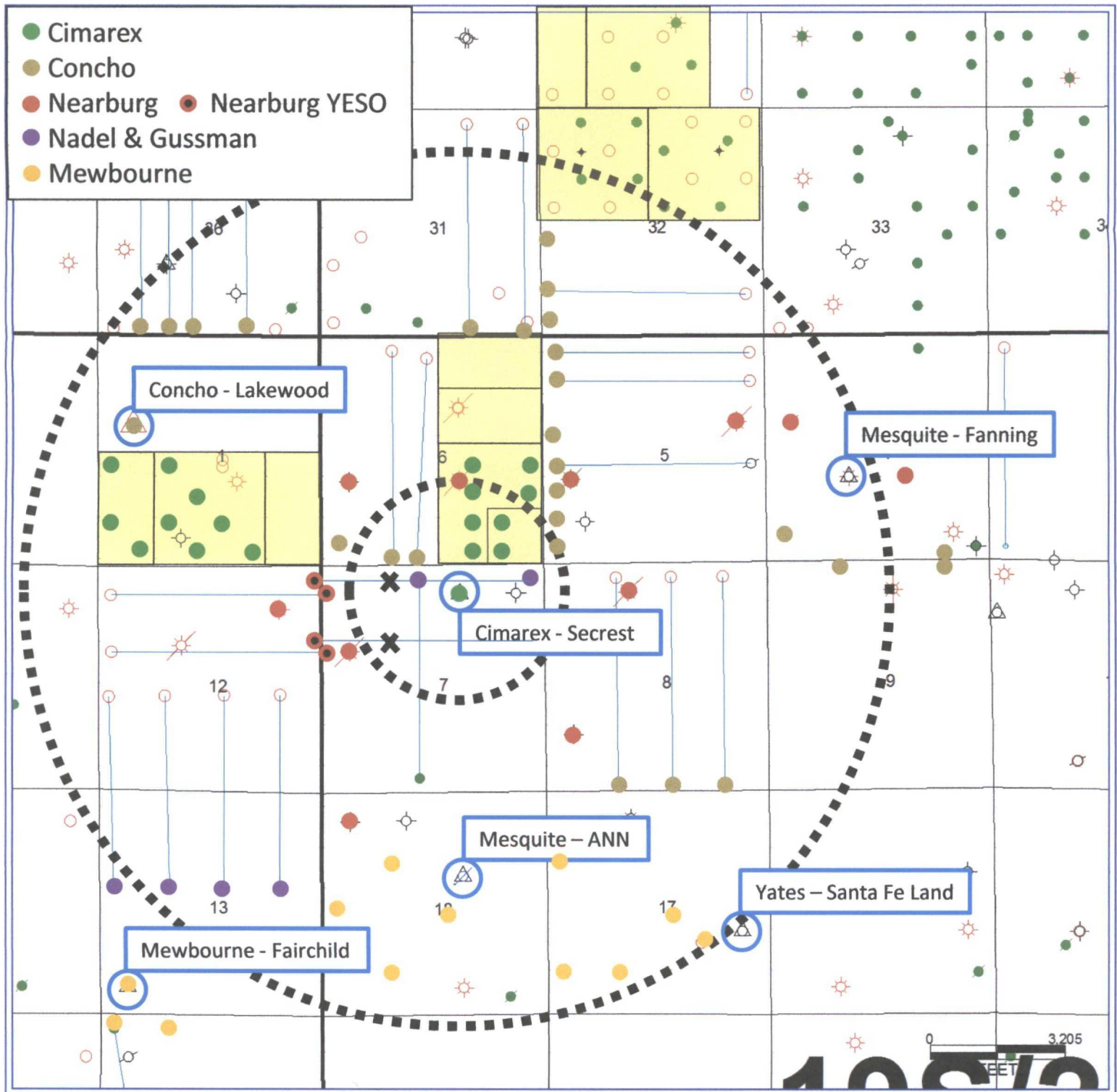
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# All Layers April Snapshot



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- Nadel & Gussman drilled the **Long Branch #2H** in Unit B, Section 7.
- ✕ Nearburg voluntarily withdrew proposed wells: **Glass '7' D-A** and **Glass '7' E-H**
- Concho proposes **Lakewood #1 SWD** in Penn Canyon formation
- Cimarex re-enters and converts **Secrest et al #1** to SWD
- Cimarex drills 8 new producers (Section 32 & 29), and is currently fracking 8 more
- Approximately 53 additional wells permitted



# All Layers October Snapshot



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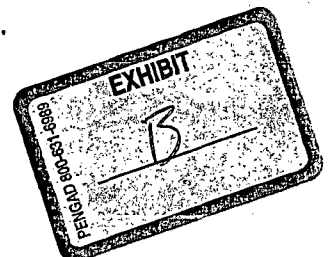
STATE OF TEXAS )

) SS

COUNTY OF MIDLAND )

### AFFIDAVIT

- (1) My name is David B. Percy, and I am a Senior Geologist at Cimarex Energy Co. in Midland, TX. I am familiar with the geology and lands around Cimarex's Secrest SWD #1 and Cimarex Energy's application in Case No. 14752, and am competent to testify in matters set forth herein.
- (2) Cimarex has sought and has secured approval to dispose of produced water through the Cimarex (formerly Dorchester) Secrest SWD #1, located in NE/4 Sec 7, T19S R26E, Eddy Co, NM. Cimarex owns oil and gas leases producing from the Yeso Formation in the area, and requires this SWD to avoid economic waste in the cited Yeso producers.
- (3) Attached is a map showing the broad extent of the high-porosity Canyon dolomite near the Secrest well.
- (4) I recognize the 9000' Morrow Formation has been productive in the area. But Morrow and all other formations were found non-productive in the Secrest wellbore in spot B, and in the Chi Bermuda #1 in spot A, both of which are in NE/4 Sec 7.
- (5) The approved disposal zone is the Canyon Formation at 7780-8038 (as amended by OCD letter dated March 6, 2012). The zone was DST'd in 1977 and recovered 4415' black salty sulfur water with ISIP of 3068 # and FSIP of 3050#, and appears under-pressured. Normal 0.47 psi/ft salt-water gradient would suggest a normally-pressured formation at 7780' should have BHP of 3656#. The current Canyon zone is a lost-circulation hazard, and not an over-pressured zone.
- (6) Continued Injection on a vacuum of 1.1 gm/cc (0.47 psi/ft) waters from the Yeso results in an ultimate BHP of 3656 psi or less, or normal hydrostatic pressure. Even if approved surface pressure of 1556 psi is applied, any additional bottom-hole pressure will be distributed within a high-porosity Canyon Dolomite that extends for many miles in each direction (see map cited in item 3). This infers that formation fill-up and corresponding over-pressuring is unattainable.
- (7) Cimarex's geological investigations indicate the Canyon is a widespread high-porosity and high-permeability formation devoid of hydrocarbon potential in this area. The "tank" for disposal is so large that other operators drilling in the area will not have any drilling problems penetrating the zone, as long as normal drilling precautions are observed.
- (8) Cimarex has made substantial investment in good faith to reenter the Secrest wellbore and build facilities that are now injecting water at approximately 5400 bwpd on a vacuum.



- (9) The average gas production from four Morrow completions within 1 mile of the NE/4 Sec 7 is 648 MMCF, with the best of these having made 913 MMCF. There are also seven Morrow-depth dry holes within ½ mile, 4 other uneconomic non-Morrow gas wells, and one poor Penn/Glorieta oil well. Morrow statistics for this 6.25 square-mile area reveal the success rate for making some Morrow gas is 25%, and the chances of making a 1 BCF well are zero out of 16 attempts. These numbers strongly suggest the geological certainty of drilling a new paying-quantities Morrow gas well in the immediate area is extremely low, and that Nearburg, with no locations staked in the area, would have little value to place on remaining Morrow reserves in NE/4 Sec 7.
- (10) Drilling through shallow zones that have been under waterflood or water disposal is common practice, and is not a technical issue. Nearburg has no technical basis for complaining that any zone beneath the Canyon Formation would be difficult for drilling.
- (11) An inspection of the Midland Map for Eastern Eddy County dated Jan 31, 2012, reveals that in the 9-section area in and around Sec 7, T 19S R26E, Nearburg has drilled at least 5 Morrow depth wells, drilled in 1984-1997, where they have relinquished most or all of the 320 acres that they once held. These boreholes are in spots 5H, 6L, 8L, 18D (19S/26E), and 13M (19S/25E). The total acreage Nearburg apparently released is approximately 1520 acres; these lands are now held by other more aggressive operators. From the Midland Map that Nearburg provided, they do not show themselves holding any new leases with expiration dates, indicating they are not actively acquiring new acreage. Only one of these five wells ever had a second well drilled on its 320 acres. These facts demonstrate that Nearburg is not actively involved in acquiring leases or in current Morrow drilling in the area, and would be very unlikely to actually drill a third Morrow test in NE/4 Sec 7.

David B. Pearcy

David B. Pearcy

SUBSCRIBED AND SWORN before me on the 17<sup>th</sup> day of April, 2012 by David B. Pearcy

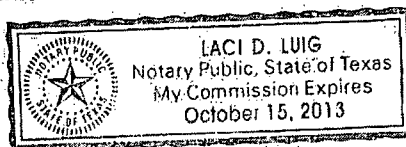
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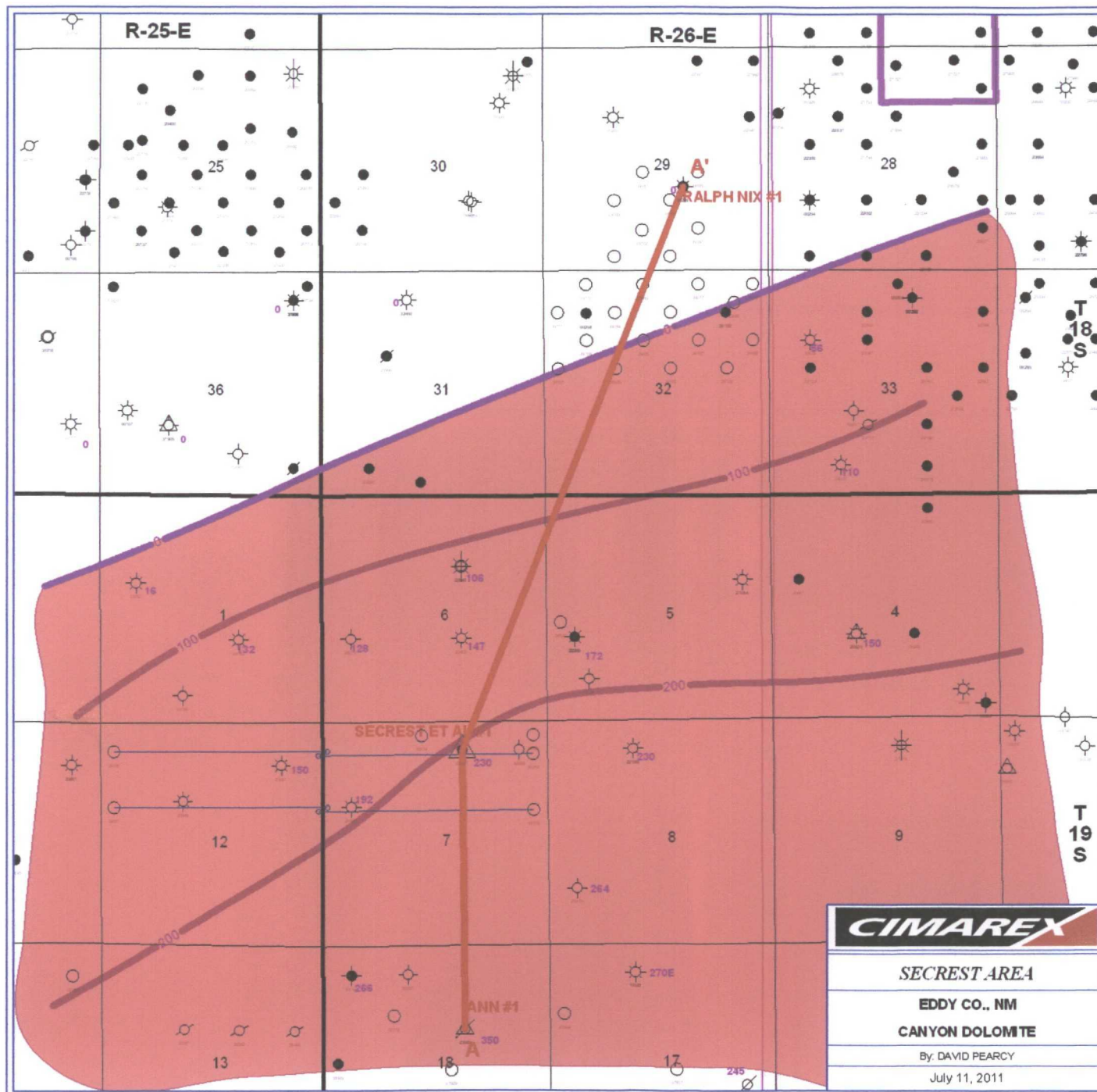
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MESQUITE SWD INCORPORATED

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DORCHESTER EXPL INC

SECRET ET AL #1  
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CHI OPERATING INCORPORATED

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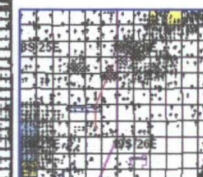
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<b>CIMAREX</b>
SECRET AREA
CROSS SECTION A-A'
DATUM (-4000)

A'



STATE OF NEW MEXICO )  
 ) ss  
COUNTY OF CHAVES )

**AFFIDAVIT**

1. My name is Kay Havenor. I am an independent Consulting Geologist residing in Roswell, New Mexico. I am familiar with the lands and the Secrest et al. No. 1 which are the subject Cimarex Energy Company's Application in Case No. 14752 and am otherwise competent to testify to the matters set forth herein.
2. Cimarex sought and obtained authorization to dispose of produced water through the Cimarex Energy Company of Colorado Secrest et al No. 1, API: 30-015-22321 located in Section 7, Township 19 South, Range 26 East, NMPM.
3. Nearburg Producing Company filed a Motion to Stay Order No. R-13494 to abstain Cimarex from further disposal of produced water into the Secrest et al well. The motion contained statements indicating Nearburg may be adversely affected in an attempt to drill wells into the Morrow formation on its Section 7 oil and gas leases.
4. Nearburg stated a likelihood of their drilling a Morrow well in the NE/4 of Section 7. The subject SWD was drilled in NE/4 of Section 7 and drill stem tested the Morrow formation from 9,050' - 9,224'. The test had gas to the surface throughout the test but the pressure was too small to measure. The test recovered 568' of mud and 4,000' of salt water. There has been no known oil or gas completed or reported in the top of Cisco through Upper Morrow in this area.
5. Nearburg also express concerns for the drilling of new wells as to water flows and mud problems resulting from the injection of water into the Secrest's disposal zone. The Cisco/Canyon formation in this greater area are noted for taking disposal water on vacuum or low injection pressure. The Seacrest has been accepting water on vacuum.

Kay Havenor  
Kay Havenor, PhD, Geologist  
Registered Profession Geologist TX and AZ

SUBSCRIBED AND SWORN before me on the 13<sup>th</sup> day of April, 2012

[Signature]  
NOTARY PUBLIC

My Commission expires:

