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 CIMAREX ENERGY CO. OF COLORADO TO REINSTATE INJECTION AUTHORITY, EDDY COUNTY, NEW MEXICO. **Case No. 14994**

BRIEF OF CIMAREX ENERGY CO. OF COLORADO

Cimarex Energy Co. of Colorado ("Cimarex") submits this brief in support of the proposed order it has filed in this case.

A. FACTS.

The facts in this case are fully set forth in Cimarex's proposed order filed herewith. As a result, Cimarex only notes the following matters:

1. Division Administrative Order SWD-380, dated October 27, 1989, approved the administrative application of Mallon Oil Company ("Mallon") to inject produced water into the Amoco Fed. Well No. 1 at depths of 4022-4208 feet subsurface. Cimarex is a successor operator of the Amoco Fed. Well No. 1.

2. Written notice of Mallon's administrative injection application was not mailed to the then surface owner. In August 2012 Ross Ranch filed an application in Case 14888 to revoke SWD-380. By Order No. R-13699, dated April 17, 2013, the Division rescinded Administrative Order SWD-380 as to Ross Ranch, without prejudice to the right of Cimarex to file an application to reinstate injection authority for the Amoco Fed. Well No. 1.

3. Cimarex applied in Case 14994 for an order reinstating the injection authority for the Amoco Fed. Well No. 1 (API No. 30-015-24666), located in the NE¼SE¼ of Section 27, Township 26 South, Range 29 East, N.M.P.M., effective as of October 27, 1989.

B. ARGUMENT.

1. Reinstatement of Injection Authority. As noted in Cimarex's proposed order, the only evidence presented at hearing shows that the injection application satisfies all Division requirements pertaining to injection wells. Therefore, the application is proper, and should be granted.

2. Retroactivity. Cimarex has requested that the reinstatement of injection authority for the Amoco Fed. Well No. 1 be made effective as of October 27, 1989, the date SWD-380 was issued. Retroactive reinstatement is proper for the following reasons:

(a) There is a presumption that a judicial decision operates retroactively. *Beavers v. Johnson Controls World Services, Inc.*, 118 N.M. 391, 398 (1994).

(b) An adjudicatory decision by the Division, as in this case, is quasi-judicial. *Uhden v. Oil Conservation Commission*, 112 N.M. 528 (1991).

(c) Order No. R-13699, rescinding SWD-380, was retroactive in effect, based on the Division's interpretation of *Johnson v. Oil Conservation Commission*, 1999-NMSC-021.

(d) The Division commonly makes its adjudicatory orders retroactive. *Order No. R-13656-A (Application of Devon Energy Production Company, L.P. for Pool Expansion and Special Pool Rules).*

(e) Notice to surface owners and offset operators of an injection application is necessary so that an interest owner may present technical objections if injection will harm the surface estate or offsetting production. When SWD-380 was issued, no offset

operator objected to the application. Likewise, no offset operator objected to the application in this case. More significantly, even after 24 years Ross Ranch could present no evidence that its interests have been harmed by injection into the Amoco Fed. Well No. 1.

(f) Magnum Hunter Production, Inc. ("Magnum Hunter") and Cimarex, the successor operators of the Amoco Fed. Well No. 1, had no knowledge of the notice defect in Mallon's application, and they are innocent parties. Water was injected into the Amoco Fed. Well No. 1 without any problem for 23 years. If reinstatement is not retroactive, the successor operators may suffer harm and damages for an act for which they were not responsible.

Based on the foregoing, re-instatement should be retroactive.

3. Bureau of Land Management. The BLM submitted a letter to the Division objecting to the use of calculated tops of cement in wells offsetting the Amoco Fed. Well No. 1. However, the BLM did not present any evidence, nor did it reference any federal regulation that forbids use of calculated tops of cement. As noted in Cimarex's proposed order, the Division is the agency that regulates injection per agreement with the Environmental Protection Agency. Moreover, the BLM approved injection into the Amoco Fed. Well No. 1 in October 1989. That approval has never been rescinded, nor has the BLM ever issued a notice of violation regarding operation of the Amoco Fed. Well No. 1. Therefore, the BLM's objection must be ignored.[1]

4. Surface Owners Protection Act. Ross Ranch at hearing raised the lack of an agreement with Cimarex under the Surface Owners Protection Act, NMSA 1978 §§70-12-1 *et*

[1] Ross Ranch, in its pre-hearing statement, asserted that Cimarex did not comply with BLM Onshore Order No. 7 and "The Gold Book" regarding surface use. Significantly, the BLM in its letter never raised those issues.

seq., as a reason not to approve Cimarex's application. However, as noted by the Examiners at hearing, that issue is for the District Court, not the Division.

5. Waste and Correlative Rights. It is elemental that the Division must prevent waste and protect correlative rights. NMSA 1978 §§70-2-1 *et seq.* As demonstrated by the evidence cited in Cimarex's proposed order, waste will occur if injection authority is not re-instated due to premature abandonment of producing wells. In addition, if relief is not retroactive, the correlative rights of innocent parties (Magnum Hunter and Cimarex) will be adversely affected by exposing them to potential enforcement actions by the Division.

WHEREFORE, Cimarex Energy Co. of Colorado requests that injection authority for the Amoco Fed. Well No. 1 be granted effective October 27, 1989.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this _____ day of November, 2013 by e-mail and U.S. Mail:

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