

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

**IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION COMMISSION FOR
THE PURPOSE OF CONSIDERING:**

Case No. 14418

**APPLICATION OF CIMAREX ENERGY CO. FOR
A NON-STANDARD OIL SPACING AND PRORATION
UNIT FOR COMPULSORY POOLING, EDDY
COUNTY, NEW MEXICO.**

**CIMAREX ENERGY CO.'S
RESPONSE IN OPPOSITION TO MOTION TO DISMISS**

Applicant Cimarex Energy Co. ("Cimarex") submits this response in opposition to the Motion to Dismiss ("Motion") filed by Lynx Petroleum Consultants, Inc., Larry Scott, and Marbob Energy Corporation (collectively "Lynx").

PROCEDURAL BACKGROUND

On February 4, 2010, an Examiner hearing was conducted on Cimarex's application for (i) approval of a non-standard 160-acre oil spacing and proration unit ("Unit") for oil production in the Bone Spring formation consisting of the W/2 W/2 of Section 21, Township 19 South, Range 31 East in Eddy County and (ii) compulsory pooling of all uncommitted interests in the W/2 W/2 of Section 21. The proposed Unit is to be dedicated to Cimarex's Penny Pincher Federal Com No. 1 horizontal well ("Penny Pincher No. 1 well").

Prior to the Examiner hearing, Lynx did not move to dismiss Cimarex's application on the grounds that the application fails to state a claim upon which relief can be granted. Instead, Lynx appeared at the hearing and made an evidentiary presentation in opposition to Cimarex's

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application. On March 18, 2010, the Division Director issued Order No. R-13228, which grants all of the relief requested by Cimarex in its application.

ARGUMENT

Lynx's request that the Commission dismiss Cimarex's application is untimely and unsupported. As a matter of New Mexico law, a complaint (or, in this instance, an application) may be dismissed pursuant to Rule 1-012(B)(6) only if the complaint fails to state a claim upon which relief may be granted. *See Rule 1-012(B)(6) NMRA; New Mexico Public Schools Ins. Authority v. Arthur J. Gallagher & Co., 2008-NMSC-067, ¶ 11, 145 N.M. 316, 320* (emphasizing that a Rule 1-012(B)(6) motion is only proper when the plaintiff can neither recover nor obtain relief). Thus, Lynx cannot prevail on its Motion unless it establishes that Cimarex's application conclusively fails to state a claim upon which the Commission may grant relief. Lynx falls woefully short of this required showing.

Initially, Cimarex is constrained to point out that Lynx's motion is untimely. Under Rule 1-012(B), the Motion should have been filed prior to the Examiner hearing. *See Rule 1-012(B) NMRA*. Lynx availed itself of the Division's jurisdiction and made an evidentiary showing at the hearing without testing the legal sufficiency of Cimarex's application prior to the hearing. *See id.* Only after it received an adverse ruling did Lynx seek the dismissal of Cimarex's application.

The timeliness of Lynx's Motion aside, even a cursory review of the Motion reveals that Lynx does not even attempt to demonstrate that, as a matter of law, the Commission may not grant the relief requested by Cimarex in its application. The Motion is simply a legal discourse addressing how Lynx *believes* the Oil and Gas Act and the Division's regulations *should be interpreted*. Lynx may not like the manner in which the Division has construed and applied the

applicable statutory and regulatory provisions, but it is unable to establish that the Commission is precluded, as a matter of law, from approving Cimarex's application pursuant to those provisions.

Lynx's discourse on how the provisions should be construed and applied does not accurately reflect the underlying factual circumstances or recognize Lynx's evidentiary burden to establish that its correlative rights may be violated. Contrary to the assertion in the Motion that Cimarex does not own a legal interest in the W/2 SW/4 of Section 21, Cimarex now has an ownership interest in the W/2 SW/4 (in fact, that ownership interest encompasses the entire S/2 of Section 21). **See Motion at 1.** Since Order No. R-13228 was issued, five previously uncommitted interest owners in the W/2 SW/4 of Section 21 (CTV O&G NM, LLC, Thru Line O&G NM, LLC, Keystone O&G NM, LLC, Goliad O&G NM, LLC, and WD O&G NM, LLC), which collectively own 40% of the legal interests in the W/2 SW/4, have entered into a Joint Operative Agreement with Cimarex for purposes of the development of the Penny Pincher No. 1 well. Lynx's assertion that its correlative rights will be violated is unavailing for purposes of its Motion, as Lynx will have an opportunity to present evidence to the Commission – as it did, unsuccessfully, at the Examiner hearing – regarding the potential production in the W/2 SW/4 of Section 21. Neither of these issues, however, has any bearing on the pivotal issue presented by Lynx's Motion, ie., whether Cimarex's application states a claim upon which relief may be granted.

The Commission is not in a position to dismiss Cimarex's application based on Lynx's self-serving and misguided interpretation of the applicable statutory and regulatory provisions. To the contrary, the Commission is obligated to construe and apply the plain and unambiguous language in those provisions to determine whether it may grant the relief requested in Cimarex's

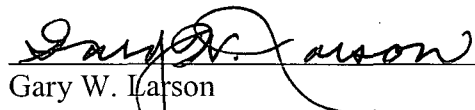
application. *See Marbob Energy Corp. v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, ¶7, 146 N.M. 24, 28. The Motion does not cite a single appellate decision, Division order, or Commission order that might indicate to the Commission that it is precluded from granting the relief requested by Cimarex. Moreover, the Motion fails to recognize that the Division has previously approved non-standard spacing and proration units, and compulsory pooled all uncommitted interests in those units, for the more than 100 other horizontal wells that Cimarex has completed in New Mexico during the past two years.

CONCLUSION

Lynx's Motion provides no basis for the Commission to conclude that Cimarex's application fails to state a claim upon which relief may be granted. Consequently, Cimarex submits that the Motion should be denied.

Respectfully submitted,

HINKLE, HENSLEY, SHANOR &
MARTIN, LLP



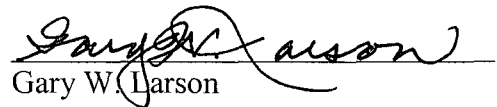
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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of April, 2010 a copy of the foregoing *Cimarex Energy Company's Response in Opposition to Motion to Dismiss* was sent via email and U.S. mail to:

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