

**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 PURPOSES
OF CONSIDERING:**

CASE NO. 14480

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

CLOSING STATEMENT OF LYNX PETROLEUM CONSULTANTS, INC.

Lynx Petroleum Consultants, Inc. ("Lynx") submits this closing statement and states as follows:

In Case No. 14480, Cimarex Energy Co. of Colorado ("Cimarex") has applied to pool the E/2 W/2 of Section 21 to form a project area for its Penny Pincher Well No. 2H and to form a non-standard unit consisting of the E/2 W/2 of Section 21. Cimarex has already been granted a pooling order for its Penny Pincher No. 1H (Case No. 14418/Order No. 13228) because the Division determined that Cimarex's data was more convincing than the evidence presented by Lynx. Now, in Case No. 14480, the parties and the Division have the benefit of additional data that brings into serious question Cimarex's data and that makes it clear that Lynx's correlative rights will be violated if this application is granted. Lynx requests the application be dismissed.

There are two components to Cimarex's application: (1) to compulsory pool all interests in the proposed project area and (2) to form a non-standard spacing unit comprised of the project area.

Compulsory pooling is limited by statute only to single spacing units. Section 70-2-17 of the Oil and Gas Act provides:

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When two or more separately owned tracts of land are embraced **within a spacing or proration unit**, ... the owner or owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owner or owners have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit.”

However, Cimarex is seeking to pool for a project area which by its definition is not a single spacing unit. A “project area” is defined as “an area the operator designates on form C-102 that a spacing unit’s outer boundaries enclose, a combination of complete, contiguous spacing units or an approved secondary, tertiary or pressure maintenance project. NMAC 19.15.16.17(I). A “spacing unit” is defined as “the acreage assigned to a well under a well spacing order or rule.” NMAC 19.15.2.7(S)(9).

The Division has required an operator who seeks to pool for a project area to also apply for and obtain a non-standard spacing unit, as Cimarex did in this case. A project area, as in this case, is defined as “a combination of complete, contiguous spacing units” and therefore is not a non-standard spacing unit.¹ Rather, since it is combining complete spacing units, the application is more in the nature of unitization.

In fact, when compulsory pooling is combined with the creation of a non-standard spacing unit in one application, the result is statutory unitization. See N.M.S.A. 1978, § 70-7-1

¹ The case of *Rutter & Wilbanks Corp. v. OCC*, 87 N.M. 286, 532 P. 2d 582 (1975) is distinguishable from this case. In that case, R&W argued that the OCC did not properly create a “non-standard spacing and proration unit” and that it had no authority to create a non-standard spacing unit larger than 320-acre unit. In this case, Cimarex seeks to create a non-standard spacing unit by combining complete, contiguous spacing units for a horizontal well’s project area. This was undoubtedly not a problem the Court or the OCC considered in 1975 when the horizontal drilling technology had not advanced to where it is today. Even if the Division relies on this case as supportive, the R&W court recognized that the OCC’s powers and duties must first rest on the prevention of waste and the protection of correlative rights.

et seq. Pursuant to the Statutory Unitization Act, an applicant may unitize lands in order to increase the ultimate recovery from those lands. An applicant must show that the plan of unitization is “fair, reasonable and equitable.” *Id.* at § 70-7-5(D). The Division must then find that the participation formula is fair and reasonable. *Id.* at § 70-7-6(A)(6). If the Division determines that the formula “does not allocate unitized hydrocarbons in a fair, reasonable and equitable basis” the Division may make its own determination about the relative value of each tract and how production should be allocated. *Id.* at § 70-7-6(B). Thus, the parties have the opportunity to negotiate on how production from the unit is allocated and the Division has the opportunity to review the participation formula.

However, statutory unitization is not authorized for primary production. See e.g. N.M.S.A. 1978, § 70-7-6. Accordingly, there is no requirement that the applicant negotiate how production should be allocated or that the Division review the allocation formula and determine whether it is reasonable.

In a pooling case, the Division is required to determine whether the pooling application will prevent waste and protect correlative rights. N.M.S.A. 1978, § 70-2-17. Similarly, the Division is also required to find in its orders that each owner of property in a pool has “the opportunity to produce his just and equitable share of the oil or gas, or both, in the pool, being an amount, so far as can be practically determined, and so far as such can be practically obtained without waste, substantially in the proportion that the quantity of the recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool...” *Id.* at 70-2-17(A). Furthermore, all pooling orders “shall be upon such terms and conditions as are just and reasonable and will afford to the owner or owners of each tract or interest in the unit the

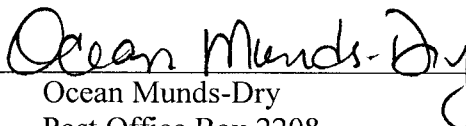
opportunity to recover or receive without unnecessary expense² his just and fair share of the oil or gas, or both.” *Id.* at § 70-2-17(C).

Lynx provided testimony and exhibits that show there are significant differences in the reservoir quality between the N/2 and S/2 of Section 21. See e.g. Lynx Exhibit No. 1. The neutron/density log from the drilling of the pilot hole for the Penny Pincher Well No. 1 shows that there is, at most, only 8 feet of productive sand present. Lynx Exhibit No. 3. In Case No. 14418, Cimarex testified and provided maps that showed they expected to encounter 75 feet of pay from each quarter-quarter section in the project area. Even Cimarex’s geologist and engineer now find that there is approximately 30 feet of pay for a change of approximately 45 feet of pay. The evidence now indicates that there are disparate interests in the proposed project area such that allocating on a straight acreage basis would be a violation of correlative rights by not allowing Lynx to receive its just and fair share of production.

In sum, when a project area is comprised of “a combination of complete contiguous spacing units,” compulsory pooling is not authorized because the combination of these spacing units is not the creation of a non-standard unit – it is unitization. If this application is granted, Lynx’s correlative rights will be violated because it will be deprived of its right to its just and fair share of production underneath those tracts in which it has an interest. Therefore this application must be denied.

Respectfully submitted,

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² Lynx proposed at the hearing that Cimarex could log one of its proposed wells and interpolate the net pay. This would not add any cost and would more fairly reflect pay thickness and quality. Cimarex then should be required to negotiate with Lynx for a more equitable allocation method. Lynx proposes that Cimarex’s application be denied so that they will be required to negotiate a fair and reasonable agreement with Lynx and the other interest owners Cimarex seeks to pool.

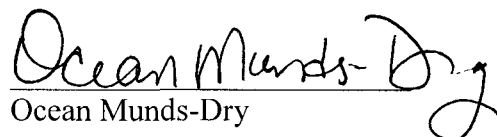
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CERTIFICATE OF SERVICE

I certify that on June 30, 2010 I served a copy of the foregoing document to the following
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