

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

**APPLICATION OF CIMAREX ENERGY CO.
FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO**

CASE NOS. 22313-22316

**APPLICATION OF DEVON ENERGY
PRODUCTION COMPANY, L.P.
FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO**

**CASE NOS. 22179-22180,
22182, AND 22382**

**CIMAREX ENERGY CO.'S MOTION TO VACATE THE FEBRUARY 3, 2022
HEARING, TO VACATE THE PREHEARING ORDER, AND FOR STATUS
CONFERENCE AND REQUEST FOR EXPEDITED DECISION**

Cimarex Energy Co. ("Cimarex") moves to vacate the February 3, 2022 hearing currently scheduled in the above-captioned cases, to vacate the current pre-hearing order, requests that the cases be set for a status conference on February 3, 2022, and given the filing deadlines for the February 3, 2022, respectfully requests an expedited decision on this motion. As grounds for this motion, Cimarex states as follows:

1. As described in more detail below, vacating the February 3, 2022 hearing and continuing these cases is warranted to allow all three parties in these cases, Cimarex, Devon Energy Company, L.P. ("Devon"), and ConocoPhillips to continue negotiations, which, if successful, would resolve some or all of the contested issues allowing for uncontested cases to proceed.
2. In its above captioned cases, Cimarex proposes two-mile laterals across the W/2 of Sections 1 and 12, Township 23 South, Range 32 East, Lea County, New Mexico.

3. In its above captioned cases, Devon proposes three-mile laterals across the W/2 of Sections 24, 13, and 12, Township 23 South, Range 32 East, Lea County, New Mexico.

4. The primary dispute in these cases relates to the overlap of development plans with respect to the W/2 of Section 12. ConocoPhillips and Devon each own 50% of the working interest in the W/2 of Section 12. Specifically, ConocoPhillips owns 100% of the SW/4 of Section 12 and Devon owns 100% of the NW/4 of Section 12.

5. Cimarex and ConocoPhillips are in negotiations, which, if successful, would result in Cimarex acquiring ConocoPhillips' acreage in the SW/4 of Section 12.

6. A continuance would allow Cimarex and ConocoPhillips additional time to work through the negotiations, which will lead to more certainty with respect to the Division hearing on these matters, and could make the hearings more efficient for at least two reasons.

7. First, if Cimarex acquires ConocoPhillips' interest in the SW/4 of Section 12, the ownership percentage of both Cimarex's and Devon's working interest in their respective proposed units will change. This current uncertainty weighs in favor of a continuance. Allowing Cimarex and ConocoPhillips additional time to conclude their negotiations will result in more certainty for the parties and the Division.

8. Second, if Cimarex acquires ConocoPhillips' interest, ConocoPhillips will no longer be a party, which will save time and expense and make the hearing more efficient.

9. A continuance is also warranted to allow Cimarex and Devon additional time to negotiate.

10. Cimarex has proposed to Devon that each party develop two-miles of the four-mile area; *i.e.*, Cimarex develop the W/2 of Sections 1 and 12 and Devon develop the W/2 of Sections 24 and 13. This plan is consistent with the fact that Cimarex currently operates wells in the E/2

of Sections 1 and 12. In addition, and recognizing this issue will be contested by Devon, in Cimarex's view, allowing the parties to each develop two-mile laterals across the four-mile acreage is the more efficient and effective way to develop the acreage because: it provides for the protection of correlative rights allowing each party the ability to develop their acreage through similarly sized spacing units through tested two-mile laterals.. Devon's plan would leave Cimarex with the ability to only develop one-mile laterals, at the expense of Devon drilling potentially under producing three-mile laterals.

11. Cimarex has also proposed various trades to Devon. While Devon purports to want to work with Cimarex, Devon has refused to agree to continue these cases in order to try and gain leverage in negotiations. A continuance is warranted to allow Devon and Cimarex to have truly meaningful, good faith negotiations, without a potentially unnecessary contested hearing date putting undue pressure on the negotiations.

12. A continuance is also warranted because it only very recently came to Cimarex's counsel's attention that ConocoPhillips currently operates the Resolver Fed Com 2H located in the E/2 W/2 of Section 12, which is a Bone Spring Well. Both Devon and Cimarex's development plans propose Bone Spring wells in the E/2W/2 of Section 12.

13. Given that the issue of overlapping spacing units only came to light in the past two days, further time is warranted to allow both parties to review the Division's requirements and, if necessary, undertake the necessary steps in Rule 19.15.16.15.B and Rule 19.15.15.12.B, including, as may be necessary, filing amended compulsory pooling applications to state expressly that the relevant applications are for an overlapping spacing units and seeking approval of the same.

14. Devon may counter that Cimarex's overlapping spacing unit argument elevates form over function. But his argument overlooks the mandatory nature of Rule 19.15.16.15 and Rule 19.15.15.12, which must be complied with.

15. A continuance is also warranted because Devon has not met one of the prerequisites for pooling prior to filing the application in Case No. 22382, having failed to propose three of the wells at issue to Cimarex prior to filing the compulsory pooling application on December 2, 2021.¹ This is significant because Case No. 22382 created a single 960-acre unit covering the entire W/2 of Sections 24, 13, and 12, containing six wells. Case No. 22382 replaced two cases, a W/2W/2 case and an E/2W/2 case, each with three wells. Cimarex does not have interests in the W/2W/2 and so was never proposed the three wells originally included in the W/2W/2 case. Cimarex does have a 40-acre tract in the E/2W/2 of Section 13 and so was proposed the three wells in the original E/2W/2 cases. When Devon filed Case No. 22382, Cimarex became subject to the larger 960-acre unit by virtue of its interest in the E/2W/2 of Section 13. Despite seeking to pool Cimarex into this larger unit and into three additional wells, Devon never proposed these wells or the larger unit to Cimarex.

16. Devon's likely response to this is that Cimarex had actual notice of the 960-acre unit by virtue of Devon's filing of the pooling application in December 2021 or that Cimarex agreed to have Case No. 22382 added to the hearing docket for these cases. Both of Devon's likely responses fail.

17. First, it is undisputed that Devon did not propose the 960-acre unit and the six wells to Cimarex prior to filing its pooling application, which runs counter to the Division's long-

¹ Although Devon filed the application on December 2, 2021. Devon provided the case number to the other parties and the Division on Monday December 6, 2021.

standing orders that set out the requirement for good faith negotiations before invoking the Division's extraordinary power of compulsory pooling under NMSA 1978, § 70-2-12 by filing a pooling application:

At least thirty days prior to filing a compulsory pooling application, in the absence of extenuating circumstances, an applicant should send to locatable parties it intends to ask the Division to pool a well proposal identifying the proposed depth and location and target formation, together with a proposed Authorization for Expenditures (AFE) for the well....”

Order No. R-13165. If all a party had to do was notify a party of the filing of a compulsory pooling application, the Division's standard, would be rendered meaningless. Devon had an obligation to send Cimarex a proposal for the 960-acre unit and all six wells to Cimarex prior to filing the pooling application.

18. Second, Cimarex's agreement that Case No. 22382 could be added to the docket for the contested cases simply cannot be read to waive any objections to the subject matter of the application—rather it was a merely a logistical detail to which Cimarex agreed to.

19. Any agreement by Cimarex to have Devon's new application in Case No. 22382 be heard with the other pending cases did not relieve Devon if its obligation to propose the wells to Cimarex to enable Cimarex to evaluate the proposed well locations, targets, and costs, as well as the potential impact on Cimarex's W/2W/2 acreage, given that Devon seeks to pool Cimarex into those wells.

20. After Case No. 22382 was filed, Cimarex began reviewing materials to prepare for the hearing, having to now focus on three additional wells and the potential impact of the larger unit. Because Devon never proposed the wells to Cimarex, Cimarex had no information on well locations, potential costs of the wells, or any other information regarding the three new wells to which it could be subject under the pooling order.

21. Cimarex had to track that information down itself to begin preparing for the hearing.

22. It was not until January 17, 2022, more than a month after Devon filed Case No. 22382, that Devon sent Cimarex an informational letter to update the surface hole and bottom hole location of one of the W/2W/2 wells. That letter included the proposal letter that was sent to ConocoPhillips, but did not attempt to propose the wells to Cimarex or otherwise correct Devon's deficiency in failing to propose those wells to Cimarex.

23. Because Devon never proposed the expanded unit and wells at issue in Case No. 22382 to Cimarex, Cimarex has a basis to request dismissal. Rather than doing so, however, Cimarex simply requests additional time for the parties to work through their discussions.

24. Given the deadline to file pre-hearing statements and exhibits is this Thursday, January 27, 2022, *Cimarex respectfully requests an expedited decision on this Motion.*

25. Counsel for Cimarex contacted counsel for Devon and ConocoPhillips regarding their position on this Motion. ConocoPhillips does not oppose the motion. Devon opposes the motion.

For the foregoing reasons, Cimarex respectfully requests that the February 3, 2022 hearing date be vacated along with the related pre-hearing order, and the cases be set for a status conference on February 3, 2022.

Respectfully submitted,

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

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CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2022, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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