

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

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

**Case No. 22179
Case No. 22180
Case No. 22382**

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

**Case No. 22313
Case No. 22314
Case No. 22315
Case No. 22316**

**DEVON'S RESPONSE TO CIMAREX'S BELATED MOTION TO VACATE THE
FEBRUARY 3, 2022, CONTESTED HEARING**

Devon Energy Production Company, L.P. ("Devon") objects to Cimarex's eleventh-hour motion to vacate the second Scheduling Order setting these matters for a hearing on February 3rd. Devon asks that the Division deny the motion and that the hearing proceed as scheduled. Cimarex offers four reasons to vacate this hearing, none of which support taking that type of action on the eve of the long-scheduled hearing.

The Parties Have Been In Good Faith Negotiations for over Six Months

First, Cimarex suggests the long-scheduled hearing should be vacated because the parties are in discussions that could resolve "some or all of the contested issues...." Motion at ¶1. Cimarex vaguely references negotiations with ConocoPhillips to acquire acreage in Section 12, where the competing plans overlap and where Cimarex has no working interests. However, the parties are and have been in good faith discussions since these competing development plans were

proposed in July and August of 2021. Despite continued efforts for the last six months, no agreement has been reached between Devon and Cimarex on the competing plans to develop Devon's acreage in the W/2 of Section 12. No acreage acquisition has come to fruition.

While discussions can and will continue, that does not support Cimarex's unilateral desire to suddenly vacate the long-scheduled hearing. Rather, experience has shown that the presentation of evidence on the competing development plans at a hearing can soften positions taken over months of negotiations to allow an agreement to be reached.

No Action is Required by the Division for the Overlapping Spacing Unit on the Acreage Owned by Devon and ConocoPhillips in the W/2 of Section 12

Second, Cimarex references the existence of the Resolver Federal Com 2H well (30-025-42170), which is dedicated to the E/2 W/2 of Section 12. This one-mile horizontal well is operated by COG Operating LLC and has been producing from the Avalon sands of the Bone Spring formation since 2017. Devon has placed its proposed Avalon wells in the W/2 of Section 12 at a sufficient distance to avoid any interference with this well. It also appears from the location of Cimarex's proposed Avalon wells in Section 12 that it has likewise attempted to avoid interference with the existing Resolver well. Thus, while the existence of this well "only very recently came to Cimarex's counsel's attention" (Motion at ¶ 12), that is not true for Devon's technical team and appears not to be the case for Cimarex's technical team.

Moreover, the only parties affected by the overlapping Bone Spring spacing units are Devon and ConocoPhillips, who each own 50% of the W/2 of Section 12. The horizontal well rules contemplate overlapping spacing units for reasons such as that which exist here and authorized them upon approval of the affected parties. ConocoPhillips has been fully apprised of Devon's Bone Spring development plan since August of 2021 and has expressed no objection to it. Accordingly, no action is required by the Division under NMAC 19.15.16.15.B(9).

Cimarex Has Been Fully Aware of the Bone Spring Wells Devon Proposed in the W/2 W/2 of Section 12 Since Cimarex Filed Competing Well Proposals, Appeared in the Devon Pooling Case for the W/2 W/2 Acreage, and Filed Competing Pooling Applications.

Third, Cimarex does not suggest it lacked knowledge or actual notice of Devon's proposed Bone Spring wells to be located in the W/2 W/2 of Sections 12, 13 and 24 (the Sneaky Snake 24-12 Fed Com 13H, 15H and 16H wells). Cimarex offers no evidence of prejudice from the fact that Devon sent the August well proposal letter for these three wells only to ConocoPhillips, the working interest owner besides Devon in this acreage. Cimarex received the well proposal letters for the other three wells to be placed in the E/2 W/2 of Section 12, 13 and 24 since Cimarex owns a 40-acre tract comprised of the NE/4 NW/4 of Section 13. Cimarex admits that in early December, before the Division issued the second Prehearing Order, that Cimarex agreed to (a) the February 3rd hearing date, and (b) Devon dismissing the pooling applications seeking to create an E/2 W/2 Bone Spring spacing unit (former Case 22181) and a W/2 W/2 Bone Spring spacing unit (former Case 22182) in favor of a single W/2 Bone Spring spacing unit (Case 22382). See Attachment 1 (email confirming Cimarex agreed to proceed on February 3rd, did not oppose the Devon amendment, and noting Cimarex likewise desired to file an amended application). Nonetheless, Cimarex now seeks to vacate the agreed upon hearing date simply because Devon did not submit the August well proposal letter for the Sneaky Snake 24-12 Fed Com 13H, 15H and 16H Bone Spring W/2 W/2 wells to Cimarex before filing the amended application in December.

As the following timeline confirms, Cimarex does not allege lack of notice of these Bone Spring wells or prejudice from these events for good reason.

- In July and August of 2021, Devon sent well proposals to Cimarex to begin development of the Bone Spring and Wolfcamp formations under the W/2 of Sections 12, 13 and 24. Cimarex responded with competing well proposals in both formations,

including wells that directly competed with the Sneaky Snake 24-12 Fed Com 13H, 15H and 16H Bone Spring wells Devon planned for the W/2 W/2 of Sections 12, 13 and 24.

- Following discussions in July and August with Cimarex, Devon filed in September a pooling application under Case 22181 to create an E/2 W/2 Bone Spring spacing unit and listed the location of the well to be placed on that acreage. Devon filed a second pooling application under Case 22182 to create a W/2 W/2 Bone Spring spacing unit and listed the location of the wells to be placed on that acreage.
- Prior to the October 7th hearing, Cimarex appeared in all of Devon's pooling cases, including the Bone Spring application for the W/2 W/2 acreage where Cimarex did not have an interest, to request that the cases be set for a status conference.
- At the October status conference, Cimarex's counsel appeared and stated:

MS. BENNETT: We're in the process of preparing the competing applications and will be filing those in the very near term. So Mr. Feldewert is correct, those aren't yet -- they haven't yet been filed, but we are preparing the applications and we will be filing them in the near term. And so I would suggest that we consider setting the cases for a hearing in -- on the January 24th continuance docket *to allow the parties time to review each other's materials, and then have a hearing after the parties have attempted to review the applications that Cimarex will be filing, and the cases can be consolidated.*

Tr. 10/7/21 at p. 4. Eventually the Division settled on a December 2nd hearing date after confirming Cimarex would be prepared to proceed on that date and issued the first prehearing order in these matters. *Id.* at p. 8.

- The December 2nd hearing date was vacated at ConocoPhillips' request and the parties instead appeared for a status conference. At the December 2nd status conference, Devon noted that it had the proposed wells on a drilling schedule and desired a hearing in January or February. Cimarex raised concerns about a January hearing but noted

that it could proceed with the contested case in February. Tr. 12/2/2021 at p. 7. The Division thereafter issued a second Prehearing Order setting the contested cases for February 3rd after Cimarex confirmed it would be ready to proceed at that time. *See Attachment 1.*

- On December 6th, Devon informed all counsel of Devon's decision to dismiss the two applications creating separate W/2 W/2 and E/2 W/2 Bone Spring spacing units (Cases 22181-22182) and replace them with an application to create a consolidated W/2 Bone Spring unit filed under Case 22382. The new application listed the same proposed wells and locations formerly identified under Cases 22181-22182.
- On December 7th, Cimarex informed the Division that Cimarex approved adding Case 22382 to the February 3rd hearing and requested leave to amend its competing pooling application for the W/2 Bone Spring spacing unit to add an additional well.
- During the first week of December, the technical teams for Devon and Cimarex again discussed the competing development plans for the W/2 acreage. No concerns were raised about the absence of a well proposal letter for the Devon Bone Spring wells located in the W/2 W/2 acreage.
- On December 21st, Cimarex's counsel emailed Devon's counsel to ensure replacement Case 22382 would be moved from the January 6th docket the February 3rd hearing date. No concerns were raised about the absence of a well proposal letter for the Devon Bone Spring wells located in the W/2 W/2 acreage listed in that application.
- On December 27th, Cimarex filed its amended application for the W/2 Bone Spring spacing unit to add an additional well. In a cover email to the Division Examiner and

counsel, Cimarex confirmed the hearing on the consolidated cases would still proceed on February 3rd. *See* Attachment 1.

- On January 17th, two weeks before the scheduled hearing, Cimarex requested additional information on the total vertical depth of Sneaky Snake wells in the W/2 W/2 acreage. Devon immediately sent Cimarex a copy of the well proposal letter that went to ConocoPhillips for the W/2 W/2 acreage Bone Spring wells.

At no time from September through January did Cimarex raise any concern about the absence of a well proposal letter directed to Cimarex for the Devon Bone Spring wells in the W/2 W/2 acreage. Given what has taken place since Cimarex appeared in the pooling case for the Sneaky Snake 24-12 Fed Com 13H, 15H and 16H Bone Spring wells in September, Cimarex cannot allege a lack of knowledge about these wells or any prejudice to warrant vacating the agreed upon February 3rd hearing.

The Shortened Lateral for the Sneaky Snake 12H well Provides no Justification to Vacate the Scheduled Hearing

Fourth, Cimarex suggests the February 3rd hearing must be vacated because the replacement pooling application for the W/2 Bone Spring spacing unit filed in Devon's Case 22382 identifies the proposed Sneaky Snake 12H well as a 3-mile lateral while the well proposal letter and AFE sent to Cimarex in August of 2021 identifies that well as a 2-mile lateral. This same circumstance existed in the initial Bone Spring pooling application filed in Case 22181.

The Sneaky Snake 12H well was proposed to Cimarex in August of 2021 as a 2-mile well in the Avalon interval of the Bone Spring formation to avoid the existing Resolver Federal Com 2H well (30-025-42170) completed in the Avalon interval underlying the E/2 W/2 of Section 12. That has been and continues to be Devon's development plan pending any concerns or insights raised by the affected parties. As noted by the timeline set forth above, this Bone Spring

development plan has been the topic of discussion since the wells were proposed in August of 2021. The fact that the pooling application lists the 12H well (one of six Bone Spring wells) as a longer lateral than proposed and discussed by the parties is not a defect requiring the February 3rd hearing to be vacated. Any questions about this well should have been raised long before now and can be addressed as needed at the hearing.

None of the Issues Raised By Cimarex Involve the Competing Wolfcamp Applications.

Finally, other than a desire to extend the discussion that have ongoing for over six months, none of the grounds raised by Cimarex to vacate the February 3rd hearing involve the competing Wolfcamp applications. Rather, all the issues raised by Cimarex involve the competing Bone Spring applications under Devon Case 22382 and Cimarex Cases 22215-16.

As noted at the status conferences leading to the setting of the February 3rd hearing, Devon has the proposed 3-mile Wolfcamp wells on a drilling schedule to develop Devon's acreage in Sections 12, 13 and 24. Given the lead time necessary to obtain a pooling order and the federal permitting, that drilling schedule will have to be vacated if none of these cases go to hearing on February 3rd.

WHEREFORE Devon requests that the Division deny this last-minute request by Cimarex to vacate the long-standing February 3rd hearing. In the alternative, Devon asks that the Division at least allow the hearing on the competing applications involving the Wolfcamp formation to proceed as scheduled.

Respectfully submitted,

HOLLAND & HART LLP



By: _____

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**ATTORNEYS FOR DEVON ENERGY PRODUCTION
COMPANY, L.P.**

CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2022, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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Attorneys for Cimarex Energy Co.



Michael H. Feldewert

ATTACHMENT 1

Michael Feldewert

From: Deana M. Bennett <deana.bennett@modrall.com>
Sent: Monday, December 27, 2021 2:49 PM
To: Michael Feldewert; Munds-Dry, Ocean (LDZX); Earl E. DeBrine
Subject: RE: [EXTERNAL] Devon Replacement Case 22382 for Feb. 3 Hearing date (Devon v. Cimarex)
Attachments: Cimarex Amended Application Case No. 22313 (Coriander 1-12 Fed Com 12H, 16H, 18H, 25H, 27H, 28H, and 31H) (W4249797x7A92D).PDF

External Email

Attached please find the amended application I filed a bit ago through the OCD's e-portal.

Please let me know if you have questions.

Deana



Deana M. Bennett
Lawyer
Modrall Sperling | www.modrall.com
P.O. Box 2168 | Albuquerque, NM 87103-2168
500 4th St. NW, Ste. 1000 | Albuquerque, NM 87102
D: 505.848.1834 | O: 505.848.1800

From: Brancard, Bill, EMNRD <bill.brancard@state.nm.us>
Sent: Monday, December 20, 2021 3:45 PM
To: Deana M. Bennett <deana.bennett@modrall.com>; Salvidrez, Marlene, EMNRD <Marlene.Salvidrez@state.nm.us>; Michael Feldewert <MFeldewert@hollandhart.com>
Cc: Munds-Dry, Ocean (LDZX) <Ocean.Munds-Dry@conocophillips.com>; Earl E. DeBrine <edebrine@modrall.com>
Subject: RE: [EXTERNAL] Devon Replacement Case 22382 for Feb. 3 Hearing date (Devon v. Cimarex)

Whatever happened to the concept of the infill well? Seems like that could be the answer to your situation. File your motion and take your chances.

From: Deana M. Bennett <deana.bennett@modrall.com>
Sent: Monday, December 20, 2021 3:05 PM
To: Salvidrez, Marlene, EMNRD <Marlene.Salvidrez@state.nm.us>; Michael Feldewert <MFeldewert@hollandhart.com>; Brancard, Bill, EMNRD <bill.brancard@state.nm.us>
Cc: Munds-Dry, Ocean (LDZX) <Ocean.Munds-Dry@conocophillips.com>; Earl E. DeBrine <edebrine@modrall.com>
Subject: RE: [EXTERNAL] Devon Replacement Case 22382 for Feb. 3 Hearing date (Devon v. Cimarex)

Hello,

I hope you are all doing well! I am following up on the email chain below. In reviewing my to do list, I realized I hadn't followed up to close the loop on this.

Mr. Brancard, the question outstanding is whether I, on behalf of Cimarex, can submit a motion to correct an application I previously filed to add a well. As I indicated below, in one application, I inadvertently left out one well. If I am able to correct this by motion, as opposed to filing an amended application, I would include with the motion a revised application, and clarify in the motion that the application and the docket notice information that is distributed by OCD need to be corrected to add the missing well. Given that these cases aren't set until February 3, we have time to correct the docket notice information and still have 30 days availability on OCD's website. Conversely, if I need to file an amended application, just let me know that and I will get that done as soon as possible. If that is the Division's preferred route, the only question/request I have is whether I can keep the same case number for the amended application.

Thanks,

Deana



Deana M. Bennett

Lawyer

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From: Salvidrez, Marlene, EMNRD <Marlene.Salvidrez@state.nm.us>

Sent: Tuesday, December 7, 2021 2:52 PM

To: Deana M. Bennett <deana.bennett@modrall.com>; Michael Feldewert <MFeldewert@hollandhart.com>; Brancard, Bill, EMNRD <bill.brancard@state.nm.us>

Cc: Munds-Dry, Ocean (LDZX) <Ocean.Munds-Dry@conocophillips.com>; Earl E. DeBrine <edebrine@modrall.com>

Subject: RE: [EXTERNAL] Devon Replacement Case 22382 for Feb. 3 Hearing date (Devon v. Cimarex)

That is a major modification being it was noticed without that specific well.
I'll defer this question to Bill.

Thank you,

Marlene Salvidrez

Oil Conservation Division

Energy, Minerals and Natural Resources Department

(505) 469-5527



From: Deana M. Bennett <deana.bennett@modrall.com>

Sent: Tuesday, December 7, 2021 2:46 PM

To: Michael Feldewert <MFeldewert@hollandhart.com>; Brancard, Bill, EMNRD <bill.brancard@state.nm.us>; Salvidrez, Marlene, EMNRD <Marlene.Salvidrez@state.nm.us>

Cc: Munds-Dry, Ocean (LDZX) <Ocean.Munds-Dry@conocophillips.com>; Earl E. DeBrine <edebrine@modrall.com>

Subject: RE: [EXTERNAL] Devon Replacement Case 22382 for Feb. 3 Hearing date (Devon v. Cimarex)

Hello,

Cimarex is ok with the prehearing order listing the Devon cases (22179, 22180 and 22382) and the Cimarex cases 22313-22316.

We also have to make a minor modification to one application. When I prepared the application for Case Number 22313, I inadvertently left out the 31H well (the application includes the other 6 proposed Bone Spring wells). The application is correct in all other respects. My hope is that I could submit a motion allowing me to amend that application to include the 31H well, such that we can keep the same case number for that application and also because the application is correct in all other respects. I assume the parties would be ok with that approach but please let me know. Of course, Mr. Brancard and Ms. Salvidrez, please let me know if that approach works for you.

Thanks

Deana



Deana M. Bennett
Lawyer
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From: Michael Feldewert <MFeldewert@hollandhart.com>
Sent: Monday, December 6, 2021 10:36 AM
To: Brancard, Bill, EMNRD <bill.brancard@state.nm.us>; Deana M. Bennett <deana.bennett@modrall.com>; Salvidrez, Marlene, EMNRD <Marlene.Salvidrez@state.nm.us>
Cc: Munds-Dry, Ocean (LDZX) <Ocean.Munds-Dry@conocophillips.com>; Earl E. DeBrine <edebrine@modrall.com>
Subject: RE: [EXTERNAL] Devon Replacement Case 22382 for Feb. 3 Hearing date (Devon v. Cimarex)

Thanks for catching that type. The remaining Devon Cases are 22179, 22180 and 22382. Sorry for the confusion.

From: Brancard, Bill, EMNRD <bill.brancard@state.nm.us>
Sent: Monday, December 6, 2021 10:32 AM
To: Michael Feldewert <MFeldewert@hollandhart.com>; Deana M. Bennett <deana.bennett@modrall.com>; Salvidrez, Marlene, EMNRD <Marlene.Salvidrez@state.nm.us>
Cc: Munds-Dry, Ocean (LDZX) <Ocean.Munds-Dry@conocophillips.com>; Earl E. DeBrine <edebrine@modrall.com>
Subject: RE: [EXTERNAL] Devon Replacement Case 22382 for Feb. 3 Hearing date (Devon v. Cimarex)

External Email

Mr. Feldewert,

I am confused. Would the new PHO actually cover Devon Cases 22179, 22180 (Wolfcamp) and 22382 (Bone Springs)?

Bill Brancard
Hearings Bureau Chief
NM Energy, Minerals & Natural Resources Dep't
1220 South St. Francis Drive

Santa Fe, NM 87505
505.412.0317 cell
Bill.brancard@state.nm.us

From: Michael Feldewert <MFeldewert@hollandhart.com>
Sent: Monday, December 6, 2021 10:12 AM
To: Brancard, Bill, EMNRD <bill.brancard@state.nm.us>; Deana M. Bennett <deana.bennett@modrall.com>; Salvidrez, Marlene, EMNRD <Marlene.Salvidrez@state.nm.us>
Cc: Munds-Dry, Ocean (LDZX) <Ocean.Munds-Dry@conocophillips.com>; Earl E. DeBrine <edebrine@modrall.com>
Subject: [EXTERNAL] Devon Replacement Case 22382 for Feb. 3 Hearing date (Devon v. Cimarex)

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Mr. Brancard and Ms. Bennett: Case No. 22382 has been assigned to the application we filed on Friday and replaces Devon Cases 22181 & 22182. We will be fling a notice of dismissal for these two cases today. Accordingly, the prehearing order only needs to list Devon Cases 22180, 22181 and 22382 (Sneaky Snake wells) along with the competing Cimarex Cases 22313-22316 (Coriander wells).

Thank you for your attention to these matters.

From: Brancard, Bill, EMNRD <bill.brancard@state.nm.us>
Sent: Friday, December 3, 2021 12:26 PM
To: Michael Feldewert <MFeldewert@hollandhart.com>; Deana M. Bennett <deana.bennett@modrall.com>; Salvidrez, Marlene, EMNRD <Marlene.Salvidrez@state.nm.us>
Cc: Munds-Dry, Ocean (LDZX) <Ocean.Munds-Dry@conocophillips.com>; Earl E. DeBrine <edebrine@modrall.com>
Subject: RE: [EXTERNAL] Hearing date for Devon/Cimarex cases: February 3 works for Cimarex

External Email

Thank you. Looking forward to it.

From: Michael Feldewert <MFeldewert@hollandhart.com>
Sent: Friday, December 3, 2021 10:39 AM
To: Brancard, Bill, EMNRD <bill.brancard@state.nm.us>; Deana M. Bennett <deana.bennett@modrall.com>; Salvidrez, Marlene, EMNRD <Marlene.Salvidrez@state.nm.us>
Cc: Munds-Dry, Ocean (LDZX) <Ocean.Munds-Dry@conocophillips.com>; Earl E. DeBrine <edebrine@modrall.com>
Subject: [EXTERNAL] Hearing date for Devon/Cimarex cases: February 3 works for Cimarex

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Mr. Brancard: Devon has filed an application to replace two of the four applications on file. I should have the case number today and will forward that to you for the prehearing order.

From: Brancard, Bill, EMNRD <bill.brancard@state.nm.us>
Sent: Friday, December 3, 2021 10:38 AM
To: Deana M. Bennett <deana.bennett@modrall.com>; Salvidrez, Marlene, EMNRD <Marlene.Salvidrez@state.nm.us>
Cc: Michael Feldewert <MFeldewert@hollandhart.com>; Munds-Dry, Ocean (LDZX) <[4](mailto:Ocean.Munds-</p></div>
<div data-bbox=)

Dry@conocophillips.com; Earl E. DeBrine <edebrine@modrall.com>

Subject: RE: [EXTERNAL] Hearing date for Devon/Cimarex cases: February 3 works for Cimarex

External Email

Thank you. We will proceed with a hearing date of February 3.

Bill Brancard
Hearings Bureau Chief
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From: Deana M. Bennett <deana.bennett@modrall.com>

Sent: Thursday, December 2, 2021 9:19 AM

To: Brancard, Bill, EMNRD <bill.brancard@state.nm.us>; Salvidrez, Marlene, EMNRD <Marlene.Salvidrez@state.nm.us>

Cc: Michael Feldewert <MFeldewert@hollandhart.com>; Munds-Dry, Ocean (LDZX) <Ocean.Munds-Dry@conocophillips.com>; Earl E. DeBrine <edebrine@modrall.com>

Subject: [EXTERNAL] Hearing date for Devon/Cimarex cases: February 3 works for Cimarex

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EXTERNAL EMAIL: Please do not click any links or open any attachments unless you trust the sender and are expecting this message and know the content is safe.

Hello,

I conferred with Cimarex and February 3 works for Cimarex. As I mentioned at the hearing, I had checked three other hearing dates with Cimarex before today's status conference, and those all worked for Cimarex. January 6, however, is a date that does not work for them. I appreciate the Division's willingness to offer two dates to the parties and again February 3 works for Cimarex.

Thanks very much.

Deana