

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

**APPLICATIONS OF CIMAREX ENERGY CO.
FOR A HORIZONTAL SPACING UNIT
AND COMPULSORY POOLING, LEA COUNTY, NEW MEXICO**

Case Nos. 23448 – 23455

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

Case Nos. 23594 – 23601

**APPLICATIONS OF READ & STEVENS, INC.
FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO**

Case Nos. 23508 – 23523

**MOTION TO AMEND THE PREHEARING ORDER, AS AMENDED,
AND CONTINUE THE HEARING TO CURE NOTICE**

Cimarex Energy Co., (“Cimarex”), through its undersigned attorneys, moves the New Mexico Oil Conservation Division (“Division”) to continue the special hearing scheduled for August 9-10, 2023, to a date that allows Cimarex sufficient time to cure certain notice issues recently discovered, and to amend the Prehearing Order, for the above-referenced cases, most recently issued as “Further Amended Pre-hearing Order,” dated July 20, 2023, accordingly. In support of its Motion, Cimarex submits the following:

1. Cimarex has in good faith made substantial efforts to inform, and provide foundation to, the Division that, it submits, is essential for hearing and evaluating the issues that constitute the size and magnitude of the above-referenced cases – in cost, waste, number of wells, amount of acreage, and correlative rights.

2. While finalizing its exhibits in preparation for the contested hearing, Cimarex discovered that it had inadvertently neglected to send letter notice to two working interest owners, and directly contacted opposing counsel to discuss the matter and see if there was a means of working around this oversight.

3. However, Cimarex further discovered that the pool name and pool code (Quail Ridge; Bone Spring pool [Code 50460]) it had been given for the Bone Spring was not the actual pool code to be used but was informed that it should use the Teas; Bone Spring, East (Code 96637).

4. In order to be more precise and accurate, Cimarex had described in its applications the unit it sought to pool with direct reference to the Quail Ridge pool and its code.

5. It was only during a final review of Cimarex's exhibits later this afternoon, July 31, 2023, that Cimarex realized that it had used the Quail Ridge pool designation both in its application and in the Division's required public notice, deficiencies which cannot be cured without the opportunity to amend the affected applications.

6. The Division lists and considers these types of oversights to be material changes/deficiencies that require correction, as the Division has as its stated policy that when such material oversights occur, the Division will deny the application, but the "applicant may refile" the application. *See* "Notice: Material Changes or Deficiencies in Applications Submitted to the OCD Engineering Bureau," dated effective June 11, 2020 ("OCD Notice Letter"), attached hereto as Exhibit A.

7. The Division has stated that its notice policy regarding deficiencies in applications applies in contested hearings, and if a deficient pooling application were dismissed because of a material oversight regarding notice, then "it will undoubtedly be with the option to refile in some form or another." *See* Tr. 27:6-11, in Case No. 21560, heard on May 6, 2021, a copy of which is

attached hereto as Exhibit B.

8. Cimarex respectfully requests that it be given time and leave to cure both the lack of notice to the two working interest owners and the notice issue involving the pool name and code, both material oversights because their “existence or nonexistence is of consequence to the public notice or substantive rules for the application.” *See* OCD Notice Letter.

9. Thus, given what is at stake in the above-referenced cases -- the potential magnitude of costs and burdens on the owners and lands, Cimarex submits that it would benefit the Division, the state, and the public to take the necessary time to ensure that all matters are in order for these cases before expending time and administrative resources to have them heard. For the foregoing reasons, Cimarex asks that this Motion be granted. Opposing counsel has been informed of this Motion and objects. Other counsel appearing in the cases have been informed by email.

Respectfully submitted,

ABADIE & SCHILL, PC

/s/ Darin C. Savage

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed with the New Mexico Oil Conservation Division and was served on counsel of record via electronic mail on July 31, 2023:

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Cabinet Secretary

Todd E. Leahy, JD, PhD
Deputy Secretary

Adrienne Sandoval, Director
Oil Conservation Division



NOTICE

MATERIAL CHANGES OR DEFICIENCIES IN APPLICATIONS SUBMITTED TO THE OCD ENGINEERING BUREAU

EFFECTIVE June 11, 2020

The OCD Engineering Bureau (OCD) gives notice that it intends to deny applications for which the applicant proposes a material change during the review process or when a material deficiency is identified during the administrative or technical review process. A change or deficiency is material if its existence or nonexistence is of consequence to the public notice or substantive rules for the application. If OCD denies an application, the applicant may refile through the fee portal.

OCD provides the following non-exclusive list of common material changes and deficiencies:

- **Compulsory Pooling**
 - Change to horizontal spacing unit
 - Change to financial evidence, including expenditures or risk charge
 - Failure to completely and accurately notice as required by 19.15.4.12 NMAC
- **Authorization to Inject**
 - Change to surface or bottom-hole location that results in a new “affected person” as defined in 19.15.2.7(A)(8) NMAC. [Note: If the change of location does not result in a new “affected person”, the applicant must re-notice the application to all previously identified “affected persons.”].
 - Change to injection interval
 - Failure to completely and accurately provide notice as required by 19.15.26.8(C) NMAC
- **Non-Standard Location**
 - Change to first or last take point resulting in increased encroachment
 - Failure to completely and accurately provide notice as required by 19.15.4.12 NMAC for hearings and 19.15.15.13 NMAC for administrative applications

Notice – Material Changes or Deficiencies in Applications

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- **Downhole Commingling**
 - Change or addition of pool
 - Changes to allocation method made by the applicant
 - Failure to completely and accurately provide notice as required by 19.15.12.11(C) NMAC

- **Surface Commingling**
 - Change or addition of lease
 - Change or addition of pool
 - Change to allocation method made by the applicant
 - Failure to completely and accurately provide notice as required by 19.15.12.10(C)(4) NMAC

- **Off-Lease Storage and Measurement**
 - Change or addition of lease
 - Change or addition of pool
 - Change to location of storage facility or measurement configuration
 - Failure to completely and accurately provide notice as required by 19.15.23.9(A)(5) NMAC

- **OCD Hearing Applications**
 - Change of Operator Name
 - Change in Operator OGRID Number

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:

CASE NOS: 21530, 21630

APPLICATION OF MATADOR PRODUCTION COMPANY
FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO

CASE NOS: 21560, 21747

APPLICATION OF FLAT CREEK RESOURCES LLC
FOR A HORIZONTAL SPACING AND PRORATION UNIT
AND COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS
EXAMINER HEARING
MAY 6, 2021
SANTA FE, NEW MEXICO

This matter came on for virtual hearing before
the New Mexico Oil Conservation Division, HEARING OFFICER
WILLIAM BRANCARD and TECHNICAL EXAMINER LEONARD LOWE on
Thursday, May 6, 2021, through the Webex Platform.

Reported by: Irene Delgado, NMCCR 253
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1 better examined in cases of compulsory pooling based on the
2 full evidentiary record rather than a preliminary motion to
3 dismiss. We think we should proceed and get everything on
4 the record and then let the OCD decide about the motion.
5 Thank you.

6 HEARING EXAMINER BRANCARD: Okay, you know, just
7 as I was thinking about it, **if the Division decides, if the**
8 **director decides to dismiss Case 21560, it will undoubtedly**
9 **be with the option to refile it in some form or another.** So
10 it's not like it's going to end that portion of the case.
11 So I don't know if that affects anybody's thoughts here,
12 but --

13 MR. RANKIN: Mr. Examiner, this is Adam Rankin
14 for Matador. I think that's a fair point, and I think,
15 given the competing issues here, I think the Division,
16 director may want to consider whether or not that motion
17 ultimately becomes moot based on the presentation of the
18 competing well plans and development.

19 So you know, obviously we would leave that to the
20 Division's discretion, but it may ultimately become a moot
21 point based on the competing well factors for development in
22 competing pooling cases.

23 HEARING EXAMINER BRANCARD: I don't know if you
24 have anything else to say, Mr. Savage.

25 MR. SAVAGE: Just that we would like to proceed