

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

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

Case Nos. 21764 and 21765

**CIMAREX ENERGY CO.'S RESPONSE TO THE MOTION
TO DISMISS FILED BY EOG RESOURCES, INC.**

Cimarex Energy Co. (“Cimarex”) after review and consideration of the Motion to Dismiss filed by EOG Resources, Inc. (“EOG”) acknowledges the concerns expressed by EOG. The applications in the above-referenced cases were filed with the Oil Conservation Division (“Division”) under adverse time constraints in response to the application in Case No. 21629 filed by Colgate Operating, LLC (“Colgate”); the manner in which Colgate conducted its pooling hearing before the Division caused prejudice to Cimarex and threatened harm to its correlative rights, and the Oil Conservation Commission (“Commission”) is currently reviewing the status of those proceedings in order to make a decision regarding their propriety and the possibility of a *de novo* hearing. Cimarex disagrees with the claims EOG made against it in its Motion to Dismiss, but Cimarex does not oppose the dismissal of the above-referenced cases on other grounds, stated as follows.

Division Order No. R-13165 provides, in Paragraph (5)(a), that an applicant should send a well proposal, with surface locations and depths, “[a]t least thirty days prior to filing a compulsory pooling application, *in the absence of extenuating circumstances.*” (emphasis added). It has been a long-standing practice before the Division to consider that a situation involving competing applications constitutes extenuating circumstances which can allow for a degree of flexibility in the well proposals. The notices sent to all parties clearly stated that the

two applications in the above-referenced cases were applications competing with Case No. 21629. Furthermore, Cimarex maintains that the facts of the extenuating circumstances, now before the Commission, which address the need for filing the competing applications, are particularly egregious.

Colgate placed Cimarex in a position that required prompt action and response. Cimarex had no intention of jeopardizing any party's right to good-faith negotiations, and as early as March 25, 2021, Cimarex initiated of its own accord its request that the April 8, 2021, hearing date be changed to a status conference in order to provide sufficient time to accommodate ongoing negotiations with the parties and the Commission's review. *See Exhibit A (Email to the OCD)*. Furthermore, during negotiations, Cimarex provided updates to well proposals as new information became available, such as, the revised depth of the wells, and continued to update parties during ongoing negotiations as additional information was consolidated. *See Exhibit B (Example emails to parties)*.

Since the hearing scheduled for April 8, 2021 was changed to a status conference, a fact that EOG should have been aware of, EOG could have expressed its concerns at the status conference and requested that dates for the hearing be set to provide ample time for negotiations, which Cimarex would have agreed to and which would have satisfied the stated purpose of EOG's Motion to Dismiss; but for whatever reason, EOG desires a dismissal instead of the current opportunity available for further negotiations. EOG's request does create additional filing costs as a burden on Cimarex if the Commission grants a *de novo* hearing, but to accommodate EOG's expressed concerns, Cimarex accepts such costs and respectfully requests that Case Nos. 21764 and 21765 be dismissed. Cimarex wants to ensure there is no question that it has made every effort to ascertain and provide to the parties with a greater degree of certainty all the well information necessary to alleviate any concern that the obligation of good-faith

negotiations will be upheld prior to the cases being heard, should the Commission or the Division at the appropriate time grant a hearing.

Now that the Commission has received all the pleadings, including the final briefs, on the question of whether Cimarex should be granted a *de novo* hearing, Cimarex will leave it to the wisdom of the Commission how to proceed with Cimarex's competing applications. Cimarex is confident that upon close review of its competing development plan, EOG and other parties will find that it provides better production potential, and better protection of correlative rights and prevention of waste, than Colgate's existing plan, which Cimarex submits was improperly obtained.

Respectfully Submitted,

ABADIE & SCHILL, PC

/s/ Darin C. Savage

Darin C. Savage

William E. Zimsky
Andrew D. Schill
214 McKenzie Street
Santa Fe, New Mexico 87501
Telephone: 970.385.4401
Facsimile: 970.385.4901
darin@abadieschill.com
andrew@abadieschill.com
bill@abadieschill.com

Attorneys for Cimarex Energy Co.

From: Salvidrez, Marlene, EMNRD Marlene.Salvidrez@state.nm.us
Subject: RE: Request for status conference
Date: March 25, 2021 at 2:54 PM
To: Darin Savage darin@abadieschill.com
Cc: Ernest Padilla padillalawnm@outlook.com, Bill Zimsky bill@abadieschill.com



Good afternoon,

These two cases will be noted as a status conference on the April 8th docket.

Thank you.

Marlene Salvidrez

Oil Conservation Division
Energy, Minerals and Natural Resources Department
(505) 469-5527



From: Darin Savage <darin@abadieschill.com>
Sent: Thursday, March 25, 2021 2:17 PM
To: Salvidrez, Marlene, EMNRD <Marlene.Salvidrez@state.nm.us>
Cc: Ernest Padilla <padillalawnm@outlook.com>; Bill Zimsky <bill@abadieschill.com>
Subject: [EXT] Request for status conference

Marlene,

I am writing to request a status conference for Cimarex's applications in Case Nos. 21764 and 21765. These are competing cases, and a number of issues related to these cases are currently being addressed by the OCC. I have discussed this request with Counsel for Colgate, and he does not object to the request. He plans to make an entry of appearance in the cases shortly. Please let us know if you need any additional information.

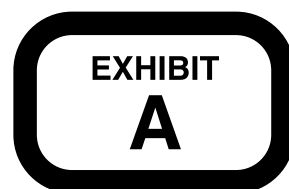
Thank you,

Darin

DARIN SAVAGE

Abadie | Schill P.C.

214 McKenzie Street, Santa Fe, New Mexico 87501



From: Salvidrez, Marlene, EMNRD Marlene.Salvidrez@state.nm.us 
Subject: RE: Request for status conference
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Thank you,

Darin

DARIN SAVAGE

Abadie | Schill P.C.

214 McKenzie Street, Santa Fe, New Mexico 87501

Demonstrations of ongoing good-faith negotiations made by Cimarex with assurances regarding JOAs

From: Riley Morris <rmorris@cimarex.com>
Sent: Tuesday, April 6, 2021 12:15 PM
To: Kevin Klein <kklein@armstrongenergycorp.com>
Subject: RE: [External] Crest 2-1-6 wells

Kevin,
Sorry for the delayed response. I was out of the office last week. The hearing notices were sent being we are competing for operatorship with Colgate in Sections 2 and 3. Are you aware or party to that Order? It's for the Meridian 3 Fed State Com 131H well.

There is a status conference for the Crest wells this Thursday. We are working to obtain a de novo hearing for the Colgate case and our Crest proposal; we will know if the de novo hearing will be granted on 4/15. There are a lot of moving pieces to these competing proposals.

I can 100% assure you that we have no intention to pool interest owners without giving the option to join the JOA or divest their interest. I apologize if the notices caught you by surprise, we didn't want it to come off that way.

I'm working from the house this week. Feel free to call me on my cell if you'd like to talk anything over. 936-241-2200.

Thank you,
Riley

From: Kevin Klein <kklein@armstrongenergycorp.com>
Sent: Tuesday, April 6, 2021 12:08 PM
To: Riley Morris <rmorris@cimarex.com>
Subject: [External] Crest 2-1-6 wells

WARNING: This email originated from outside of Cimarex Energy. Do not click links or open attachments unless you recognize the sender, are expecting the content and know it is safe.

Riley can you please give me a call or email regarding the captioned wells? When we spoke it sounded like you were just starting to get the ducks lined up on these and now we have hearing notices.

I've left a couple voicemail messages.

Thanks,

Kevin Klein
Land Manager

EXHIBIT
B

Armstrong Energy Corporation
PO Box 1973
Roswell, NM 88202-1973
575-625-2222
575-623-2999 Ext. 312
575-622-2512 Fax
kklein@aecn.com

From: Riley Morris
Sent: Friday, March 26, 2021 10:57 AM
To: 'Beverly Rekdahl' <Brekdahl@henryresources.com>
Subject: RE: Challenger Crude Ltd - Approved AFEs #26821020 & #26821021 for Crest 2-1-6 State Fed Com #1H & #2H Proposals to Drill

Yes ma'am, no problem.

From: Beverly Rekdahl <Brekdahl@henryresources.com>
Sent: Friday, March 26, 2021 10:26 AM
To: Riley Morris <rmorris@cimarex.com>
Subject: [External] RE: Challenger Crude Ltd - Approved AFEs #26821020 & #26821021 for Crest 2-1-6 State Fed Com #1H & #2H Proposals to Drill

Thank you, Riley.

Beverly Rekdahl
Land Department
Phone: 432.694.3000 Ext 209
Email: BRekdahl@henryresources.com
Web: www.henryresources.com
3525 Andrews Highway, Midland, TX 79703

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From: Riley Morris <rmorris@cimarex.com>
Sent: Friday, March 26, 2021 8:41 AM
To: Beverly Rekdahl <Brekdahl@henryresources.com>
Subject: RE: Challenger Crude Ltd - Approved AFEs #26821020 & #26821021 for Crest 2-1-6 State Fed Com #1H & #2H Proposals to Drill

Beverly,

We have applied for pooling, but have yet to have our hearing or obtain an Order. Once we receive an Order, we will re-propose the well under said Order (if we haven't come to terms on a JOA).

There's no immediate concern that you will be pooled. I'll make sure you all are aware of the steps we are taking to get the well drilled so you aren't surprised.

Thank you,
Riley

From: Beverly Rekdahl <BRekdahl@henryresources.com>

Sent: Friday, March 26, 2021 8:26 AM

To: Riley Morris <rmorris@cimarex.com>

Subject: [External] RE: Challenger Crude Ltd - Approved AFEs #26821020 & #26821021 for Crest 2-1-6 State Fed Com #1H & #2H Proposals to Drill

Riley,

Henry has received a letter regarding an application of Cimarex Energy Co. for horizontal spacing and compulsory pooling.

We would like to confirm with you that since we elected to participate in the AFEs for the Crest 2-1-6 State Fed Com #1H and #2H wells, Henry Resources is not subject to the compulsory pooling.

Thank you,

Beverly Rekdahl

Land Department

Phone: 432.694.3000 Ext 209

Email: BRekdahl@henryresources.com

Web: www.henryresources.com

3525 Andrews Highway, Midland, TX 79703

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