

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

**IN THE MATTER OF THE HEARINGS CALLED
BY THE OIL CONSERVATION DIVISION FOR
THE PURPOSE OF CONSIDERING:**

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

Case No. 14,682

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RESPONSE IN OPPOSITION TO MOTION TO RE-OPEN

Cimarex Energy Co. ("Cimarex") submits this response in opposition to the motion to re-open these cases filed by COG Operating LLC ("COG"), and states.

1. Cimarex owns 62.5% of the working interest in the NW¼ of Section 32, Township 18 South, Range 26 East, N.M.P.M., and another 12.5% of the working interest has executed Cimarex's JOA in that acreage.

2. Cimarex proposes to (initially) drill vertical four wells in the quarter section. These wells are the subject of the above cases.

3. COG and a related entity (Concho Oil & Gas LLC) own 25% of the (unleased) mineral interest in the NW¼ of Section 32. Cimarex proposed the four wells to COG on April 8, 2011. See Exhibit 1 (the verified statement of the landman) submitted in each case.

4. After receiving no response from COG on its well proposals for 2-1/2 months, Cimarex filed the pooling applications and timely notified COG of the applications. **Exhibit A.** COG never filed an entry of appearance or objected to the applications before the hearings.

5. COG seeks to re-open the cases based on (i) mistake in not responding to the pooling applications, and (ii) an allegation that horizontal drilling is the better way to develop Section 32.

6. This is not a case where the applicant mailed notice to the wrong address, or where the pertinent personnel did not receive the notice of hearing. COG received notice and simply didn't respond. Unilateral mistake is not a reason to re-open these cases.

7. Likewise, the alleged superiority of horizontal drilling is without merit. COG has attached no data supporting its allegation of the need for horizontal drilling.¹ In any event, COG is free to propose and drill two laydown horizontal wells in the S½ of Section 32, where Cimarex owns no interest.² Cimarex does not want to participate in expensive horizontal wells which produce less reserves than vertical wells.

8. Finally, Cimarex will be prejudiced if the cases are re-opened. First, Cimarex has obtained and paid for a surface use agreement with the surface owner. **Exhibit B.** Second, these wells were scheduled for drilling in early September, and may have to be delayed if the cases are re-opened.

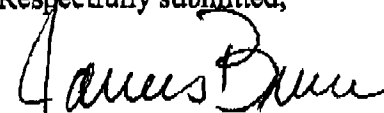
¹ In fact, Cimarex can show that its vertical drilling results in the Yeso are superior to horizontal drilling.

² Cimarex also owns 100% of the working interest in the NE¼ of Section 32, has permitted 4 vertical wells in that quarter section, and has constructed its first location.

9. COG has not shown any harm that will occur to it from denying its motion, and issuing orders in these cases. There must be finality in cases such as this where the applicant has followed all of the Division's requirements.

WHEREFORE, Cimarex requests that the motion to re-open be denied.

Respectfully submitted,



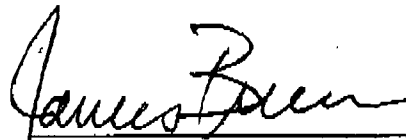
James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

Attorney for Cimarex Energy Co.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 27th day of July, 2011 by facsimile transmission:

Ocean Munds-Dry
Holland & Hart LLP
P.O. Box 2208
Santa Fe, New Mexico 87504
fax: (505) 982-6043



James Bruce

JAMES BRUCE
ATTORNEY AT LAW

POST OFFICE BOX 1056
SANTA FE, NEW MEXICO 87804

359 MONTEZUMA, NO. 213
SANTA FE, NEW MEXICO 87501

(505) 982-2043 (Phone)
(505) 660-6612 (Cell)
(505) 982-2151 (Fax)

jamesbruce@aol.com

June 16, 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

To: Persons on Exhibit A

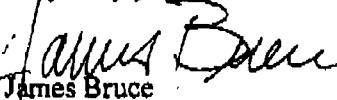
Ladies and gentlemen:

Enclosed are copies of four applications for compulsory pooling, filed with the New Mexico Oil Conservation Division by Cimarex Energy Co., regarding the NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 32, Township 18 South, Range 26 East, N.M.P.M., Eddy County, New Mexico.

These matters are scheduled for hearing at 8:15 a.m. on Thursday, July 7, 2011, in Porter Hall at the Division's offices at 1220 South St. Francis Drive, Santa Fe, New Mexico 87505. You are not required to attend these hearings, but as a possible owner of an interest which may be affected by the applications, you may appear and present testimony. Failure to appear at that time and become a party of record will preclude you from contesting these matters at a later date.

A party appearing in a Division case is required by Division Rules to file a Pre-Hearing Statement no later than Thursday, June 30, 2011. This statement must be filed with the Division's Santa Fe office at the above address, and should include: The names of the party and its attorney; a concise statement of the case; the names of the witnesses the party will call to testify at the hearing; the approximate time the party will need to present its case; and identification of any procedural matters that need to be resolved prior to the hearing. The Pre-Hearing Statement must also be provided to the undersigned.

Very truly yours,


James Bruce

Attorney for Cimarex Energy Co.

EXHIBIT A

EXHIBIT A

COG Operating LLC
Concho Oil & Gas LLC
Suite 100
550 West Texas
Midland, Texas 79701

0469 2985 E000 041T 900L

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com.

OFFICIAL USE

Postage	\$ 11.28
Certified Fee	\$2.85
Return Receipt Fee (Endorsement Required)	\$2.30
Restricted Delivery Fee (Endorsement Required)	\$0.00
Total Postage & Fees	\$ 16.43

Postmark
 SANTA FE NEW MEXICO 8/18/2011

Sent To
 COG Operating LLC
 Concho Oil & Gas LLC
 Suite 100
 550 West Texas
 Midland, Texas 79701

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mail piece or on the front if space permits.

1. Article Addressed to:

COG Operating LLC
 Concho Oil & Gas LLC
 Suite 100
 550 West Texas
 Midland, Texas 79701

2. Article Number
 (Transfer from Service Label) 7008 1140 0003 5862 6940

COMPLETE THIS SECTION ON DELIVERY

3. Signature ☒ Agent ☐ Addressee

4. Received by (Printed Name) ☐ Date of Delivery

5. Is delivery address different from item 1? ☐ Yes ☐ No
 If YES, enter delivery address below:

6. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

7. Restricted Delivery? (Extra Fee) ☐ Yes

PS Form 3811, February 2004 Domestic Return Receipt 102695-02-M-1540

SURFACE USE AND COMPENSATION AGREEMENT

STATE OF NEW MEXICO §

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF EDDY §

§

Wanda Wilson, a widow, whose mailing address is 235 N. Lake Road, Artesia New Mexico 88210, and David Wilson and wife, Diana Wilson whose mailing address is 80 West Kincaid Ranch Road, Artesia, New Mexico 88210, hereinafter referred to collectively as "Grantor", hereby grants to Cimarex Energy Co., whose mailing address is 600 N. Marlenfeld Street, Suite 800, Midland, Texas 79701, hereinafter referred to as "Grantee", its successors and assigns, the right to ingress, egress, easement, rights of way and use of the following described tracts of land (the "Land") situated in Eddy County, New Mexico:

Township 18 South, Range 26 East, N.M.P.M.Section 29: E/2SW/4, W/2SE/4Section 32: N/2

Containing 480 acres of land, more or less, in total

In addition to the Land described above, this Agreement shall also cover, include and pertain to any other land owned by Grantor, regardless whether or not such land is specifically described herein.

In consideration of the terms, conditions and covenants hereinafter recited, the receipt and sufficiency of which are hereby acknowledged, it is agreed and understood that such consideration shall cover any such matters of ingress, egress, easement and rights of way necessary and any damages resultant from or associated with the drilling and completion of wells located on the Land.

Drill Site Locations:

1.) Grantee shall pay Grantor the cash sum of ~~Twenty Thousand (\$20,000)~~ Dollars ~~for~~ for each drill site location that Grantor constructs on the Land for the drilling of a new well or the re-entry of a plugged and abandoned well, including the drilling of saltwater disposal wells. This amount shall represent surface damages for the reasonable use of the surface of the Land for the drill site location, including, without limitation, the drill site and any drilling and production equipment located thereon, including, but not limited to, pumping units, production lines, flow lines and tank batteries.

2.) Grantee shall stockpile, adjacent to the drill site location, any topsoil taken during the construction of the drill site. Prior to the commencement of drilling operations, Grantee shall fence-off the entire drill site location with a fence capable of turning cattle. Each drill site location shall remain fenced-off for the duration of drilling operations.

2.1) If the well is a producer, Grantee shall redistribute the topsoil over any portion of the drill site location that Grantee will not continue to use for its operations; however, Grantee shall be entitled to use as much of the Land as is reasonable and prudent for the performance of its operations. Grantee shall reseed the reclaimed portion of the drill site location with ten (10) times the recommended seeding quantity of five pure live seed (5 PLS) pounds per acre of Sidepate Grama seed. Grantee shall maintain a fence capable of turning cattle around the perimeter of the portion of the drill site location that Grantee will continue to use for its operations. Fences shall be built with a hog-wire-type material and shall have two strands of barbwire at the top. Grantee shall brace fences with four (4) corner posts and shall install a swinging gate at the entrance to each well site location.

EXHIBIT B

2.2) If the well is a dry hole, Grantee shall remove the caliche pad and redistribute the topsoil over the drill site location and restore the surface of the Land as near as is reasonably possible to its condition prior to drilling operations, which shall include reseeded the entire drill site location with ten (10) times the recommended seeding quantity of five pure live seed (5 PLS) pounds per acre of Sideoats Grama seed.

Freshwater Pit Stations:

3.) Grantee shall pay Grantor the cash sum of [REDACTED] Dollars [REDACTED] for each freshwater pit station that Grantee constructs on the Land. This amount shall represent surface damages for constructing, erecting, installing, operating, maintaining, inspecting, using, replacing, repairing, moving on and removing from the Land a freshwater pit station and any equipment needed to operate same, including structures of whatever kind, machinery, engines, pumps, equipment, appliances, facilities, meters, pipes, lines, regulators, fittings, valves and any other structure as may be necessary to operate a freshwater pit station. Grantee shall consult with Grantor as to the location of the freshwater pit station prior to staking and surveying same.

4.) Grantee shall stockpile, adjacent to the location of the freshwater pit station, all soil that has been excavated during the digging of the pit, and shall line the pit with material of sufficient thickness to prevent the escape of water on or into the Land. Upon written request of Grantor, Grantee shall fence-off the entire location, including the pit, areas where caliche has been laid, roads built around the pit, tank batteries and any equipment that has been placed on the location of the pit station. Within six (6) months after Grantee no longer uses the freshwater pit station, Grantee shall remove all structures and equipment associated with same and level the surface of the Land, and restore the surface of the Land as near as reasonably possible to its condition prior to construction of the freshwater pit station, which shall include reseeded the location of the freshwater pit station with ten (10) times the recommended seeding quantity of five pure live seed (5 PLS) pounds per acre of Sideoats Grama seed.

Saltwater Injection Wells:

5.) Grantee shall pay Grantor the cash sum of [REDACTED] cents [REDACTED] per barrel for disposing of oil field produced water from wells not located on the Land. Grantee shall not be required to pay or compensate Grantor for disposing of oil field produced water from its wells located on the Land.

New Road Construction:

6.) Grantee shall pay Grantor the cash sum of [REDACTED] Dollars [REDACTED] per rod for any new road constructed by Grantee on the Land. New roads constructed by Grantee shall not exceed twenty feet (20') in width. Grantee will be responsible for maintaining new roads and shall not allow its vehicles to enlarge the margin of said roads. Grantee shall consult with Grantor as to the placement and route of any such road before construction is underway; however, Grantor shall be reasonable in its location. Grantee shall have the right to use any existing road located on the Land but must obtain Grantor's permission before utilizing same. If necessary, Grantee shall upgrade any existing road in need of repair before utilizing same. Grantee shall not be required to pay Grantor for its use of any existing roads.

7.) If any fence located on the Land is cut as a result of Grantee constructing a new road, Grantee shall properly brace same before cutting and, upon written request of Grantor, shall install and maintain a cattle guard across the cut section of fence with a pipe gate capable of being locked.

8.) When Grantee no longer uses a road, or portion thereof, to access its wells located on the Land, Grantee shall, upon written request of Grantor, remove the materials utilized to construct the road and restore the surface of the Land as near as reasonably possible to its condition prior to the construction of same, which shall

including reseeded the reclaimed portion of the road with ten (10) times the recommended seeding quantity of five pure live seed (5 PLS) pounds per acre of Sideoats Grama seed.

Pipelines:

8.) Grantee shall pay Grantor the cash sum of [REDACTED] Dollars [REDACTED] per rod for any permanent pipeline, eight inches (8") or larger in diameter, that Grantee installs on the Land. Any such permanent pipeline installed by Grantee on the Land shall be buried below ordinary plow depth or twenty-three inches (23"), whichever is the shallower depth.

10.) Grantee shall not be required to pay or compensate Grantor for temporary lines, including, but not limited to, production lines, flow lines and water lines that are smaller than eight inches (8") in diameter. Grantee shall not be required to bury temporary lines. Grantee shall place all temporary lines directly adjacent to and alongside of roads.

Power Lines:

11.) Grantee shall pay Grantor the cash sum of [REDACTED] Dollars [REDACTED] per hole for each hole drilled or dug on the Land for the installation of electrical poles used to support power lines. Power lines shall be installed as close to roads as reasonably possible without interfering with Grantee's operations.

Purchased Materials:

12.) Grantee has the option to purchase sand and topsoil owned by Grantor for the construction, modification or remediation of drill site locations and access roads located on the Land at a rate of [REDACTED] Dollars [REDACTED] per cubic yard.

13.) Grantee has the option to purchase fresh water produced from Grantor's water well for its drilling and completion operations at a rate of [REDACTED] Cents [REDACTED] per barrel, provided that Grantor's water well is capable of producing the quantity and quality of freshwater required by Grantee for its operations. Grantee must obtain Grantor's permission before using any existing water well located on the Land. Grantee shall furnish all equipment needed to operate and accurately meter the water well and shall be responsible for obtaining all necessary permits from the governmental agency having jurisdiction over same. Grantee shall be entitled to recoup from its water use, on a basis of [REDACTED] Cents [REDACTED] per barrel, the costs incurred by Grantee to drill, equip and run water lines from the well before being required to purchase water from Grantor. The terms of this paragraph shall also apply to any new water well drilled by Grantee on the Land. Grantor shall have the right to takeover for its own personal use any water well that is no longer being used by Grantee. In the event Grantor should choose to take over a water well, Grantee shall assist in filing any paperwork required by the governmental agency having jurisdiction over same to evidence Grantor's use and ownership of any such well. Grantor shall be solely responsible for any such well upon taking over same.

Equipment Removal and Restoration:

14.) If any well located on the Land is plugged and abandoned, Grantee shall, within six (6) months thereof, remove any and all equipment used directly or indirectly by Grantee as it pertains to the abandoned well and shall thereafter restore the site as near as reasonably possible to its original condition.

Indemnification:

15.) Grantee shall be solely responsible and liable for any harm or injuries caused to persons or property as a result of Grantee's operations, and shall indemnify and hold

Grantor and their trustees, officers, employees and agents harmless from and against any and all claims, charges, assessments, damages, expenses, fines or penalties incurred in defense of Grantor as a result of Grantee's operations; provided, however that nothing herein shall be construed to require or obligate Grantee to indemnify Grantor against, or hold Grantor harmless from Grantor's own negligent acts or omissions. Further, Grantee shall indemnify and save Grantor and his trustees, officers, employees and agents harmless from any and all damages, cleanup expenses, fines, or penalties, resulting from a fire or any violation of, or non-compliance with, applicable local, state, or federal laws and regulations resulting from Grantee's operations.

Grantee's Rights:

18.) Notwithstanding anything herein contained to the contrary, this Agreement is made without prejudice as to the rights of Grantee pursuant to any existing Oil, Gas and Mineral Lease or other agreement covering the Land and nothing herein shall be construed to lessen or alter Grantee's rights under any such Oil, Gas and Mineral Lease or agreement.

THIS AGREEMENT shall be binding on the party's successors, assigns, agents and representatives. Grantee's agents and/or independent contractors who enter onto the Land shall comply with the terms and conditions set forth herein. The covenants hereunder shall be performable in Eddy County, New Mexico.

IN WITNESS WHEREOF, this Agreement is executed the 30th day of June, 2011.

Grantors:

Wanda Wilson

Wanda Wilson
By: Wanda Wilson

David Wilson

David Wilson
By: David Wilson

Diana Wilson

Diana Wilson
By: Diana Wilson

Grantee:

Cimarex Energy Co.

Roger Alexander
By: Roger Alexander, Attorney-in-Fact