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 NO. 14802
ORDER NO. R-13554

APPLICATION OF CIMAREX ENERGY COMPANY FOR APPROVAL OF A NON-STANDARD OIL SPACING AND PRORATION UNIT AND COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on March 29, 2012, at Santa Fe, New Mexico, before Examiners William V. Jones and David K. Brooks.

NOW, on this 18th day of May, 2012, the Division Director, having considered the testimony, the record and the recommendations of the Examiners,

FINDS THAT:

(1) Due notice has been given, and the Division has jurisdiction of the subject matter of this case.

(2) Cimarex Energy Company ("Applicant"), seeks approval of a non-standard 640-acre oil spacing and proration unit and project area ("the Unit") in the Bone Spring formation (Salt Lake-Bone Spring Pool [Pool Code 53560]) consisting of all of Section 26, Township 20 South, Range 32 East, NMPM, in Lea County, New Mexico. Applicant further seeks an order pooling all uncommitted interests in the Unit.

(3) The Unit is to be dedicated to the following four proposed wells ("the proposed wells"):

(a) Applicant's Snoddy Well No. 20H (API No. 30-025-40947), a horizontal well to be drilled from a standard surface location 811 feet from the

North line and 644 feet from the East line (Unit A) of Section 26 to a standard terminus, or bottomhole location, 660 feet from the North line and 330 feet from the West line (Unit D) of Section 26;

(b) Applicant's Snoddy Well No. 21H (API not yet assigned), a horizontal well to be drilled from a standard surface location 797 feet from the North line and 596 feet from the East line (Unit A) of Section 26 to a standard terminus, or bottomhole location, 2310 feet from the South line and 330 feet from the West line (Unit L) of Section 26;

(c) Applicant's Snoddy Well No. 22H, a horizontal well to be drilled from a standard surface location 768 feet from the North line and 555 feet from the East line (Unit A) of Section 26 to a standard terminus, or bottomhole location, 330 feet from the South line and 1980 feet from the West line (Unit M) of Section 26; and

(d) Applicant's Snoddy Well No. 23H, a horizontal well to be drilled from a standard surface location 727 feet from the North line and 526 feet from the East line (Unit A) of Section 26 to a standard terminus, or bottomhole location, 330 feet from the South line and 526 feet from the East line (Unit P) of Section 26.

(4) Applicant appeared at the hearing through counsel and presented land and geologic testimony. Fasken Oil and Ranch Interests, Ltd., an owner of an interest in an offsetting section, appeared through counsel and cross-examined Applicant's witnesses, but did not oppose the Application.

(5) Applicant presented testimony that this proposed unit is located in a potash mining area recognized as such by the United States Bureau of Land Management, and drilling of four horizontal wells from a common surface pad in the NE/4 NE/4 of Section 26, where an existing wellbore is located, will minimize interference with potash development. Applicant's land witness further testified that the entire section is included in a single federal lease. The only owner who has not agreed to join in Applicant's proposed plan of development owns a 15% leasehold interest in the South half only of the Section.

(6) Applicant proposed to develop this section by drilling four horizontal wells, as described in Finding Paragraph (3). Applicant did not present any evidence that this proposed unit could be efficiently and economically drained and developed by one well.

Discussion:

(7) The Division is confronted in this case with important issues concerning the extent of its compulsory pooling authority.

(8) As the New Mexico Supreme Court has frequently held, the Division has only those powers conferred upon it by statute. *Continental Oil Co. v. OCC*, 70 N.M. 310, 318, 373 P.2d 809, 817 (1962); *Marbob Energy Corp. v. OCC*, 2009-NMSC-013, ¶23.

(9) The Division's compulsory pooling power is conferred by NMSA 1978 Section 70-2-17, which reads, in pertinent part, as follows:

> A. The division may establish a proration unit for each pool, such being the area that can be efficiently and economically drained and developed by one well . . . .
>
> B. When two or more separately owned tracts of land are embraced within a spacing or proration unit, or where there are owners of royalty interests or undivided interests in oil and gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit, the owner or owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owner or owners have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit.

(10) Section 70-2-17.A defines a "proration unit" as quoted above. However, no New Mexico statute defines "spacing unit." Division Rule 19.15.2.7.S(9) NMAC defines a "spacing unit" as "the area allocated to a well under a well spacing order or rule[,]" a definition that is not particularly helpful in construing the Division's compulsory pooling authority.

(11) In *Rutter & Wilbanks Corp. v. OCC*, 87 N.M. 286, 532 P.2d 582, the New Mexico Supreme Court said that a spacing unit was not necessarily the same thing as a proration unit, and that the Commission had power to establish, and to compulsory pool, a non-standard spacing unit in a pool without first establishing proration units for the pool. The Court in *Rutter & Wilbanks* did not address any issue of whether or not each of the non-standard spacing units therein established could have been efficiently and economically developed by a single well.

(12) The absence of a statutory definition of "spacing unit" and the acknowledged power of the Division to establish non-standard spacing units provides a basis for an argument that the Division's power to compel consolidation of oil and gas interests is virtually unlimited.

(13) The Division concludes, however, that Section 70-2-17 (providing for compulsory pooling) and Section 70-2-18 (recognizing the Division's power to establish

non-standard spacing units) should be construed with reference to the industry-accepted distinction between the concepts of "pooling" and "unitization." Professors Williams and Meyers explain this distinction in their landmark treatise, as follows:

> Although the terms "pooling" and "unitization" are frequently used interchangeably, more properly "pooling" means the bringing together of small tracts sufficient for granting a well permit under applicable spacing rules whereas "unitization," . . . means the joint operation of all or some part of a producing reservoir. 6 H. Williams and C. Meyers, *Oil and Gas Law*, § 901, at 1-2.

(14) Reading the definition of "proration unit" in Section 70-2-17.A together with the stipulation in Section 70-2-17.B that the Division "shall *pool* all or any part of such lands [constituting a spacing or proration unit] (emphasis added)," the Division concludes that the Legislature's intent was to vest the Division with compulsory pooling authority, but not compulsory unitization authority, as those terms are understood in the industry.

(15) The Division further concludes that what is sought here (consolidation of interests in an area comprising 16 standard spacing units to facilitate a plan to develop that area with four wells) constitutes unitization rather than pooling, and is beyond the Division's authority to compel.

(16) The Division notes that the issues addressed in this Order would not arise in connection with an application to approve an existing standard spacing unit because the proper size and configuration of the spacing unit, having been established by a previous final Commission or Division order, would not be an issue that could be raised in such a case.

(17) In a prior proceeding before the Commission, the question was discussed whether the Division would have authority to establish and compulsory pool a non-standard spacing unit that could practically and economically be developed by one horizontal lateral, but which had already been partially developed by one or more existing vertical wells. This case does not present that factual scenario, and nothing in this Order should be construed as establishing a precedent applicable to such cases.

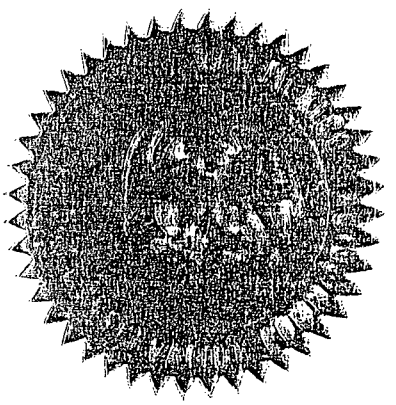
IT IS THEREFORE ORDERED THAT:

(1) The Application of Cimarex Energy Company to establish a non-standard 640-acre oil spacing unit comprising all of Section 26, Township 20 South, Range 32 East, NMPM, in Lea County, New Mexico, is hereby denied.

(2) This denial is without prejudice to the right of Applicant to seek establishment of non-standard spacing units and compulsory pooling for project areas complying with Division Rule 19.15.16.7.L NMAC for particular wells it may choose to drill within the above-described section.

(3) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



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STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

JAMI BAILEY
Director