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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. 14097

APPLICATION OF ENCORE OPERATING, LP FOR
COMPULSORY POOLING, LEA COUNTY,
NEW MEXICO

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID K. BROOKS, Jr., Legal Examiner
TERRY WARNELL, Technical Examiner

April 17, 2008

Santa Fe, New Mexico

2008 MAY 1 AM 8 19
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This matter came for hearing before the New Mexico Oil
Conservation Division, DAVID K. BROOKS, Jr., Legal Examiner,
and TERRY WARNELL, Technical Examiner, on April 17, 2008, at
the New Mexico Energy, Minerals and Natural Resources
Department, 1220 South St. Francis Drive, Room 102, Santa Fe,
New Mexico.

REPORTED BY: JOYCE D. CALVERT, P-03
Paul Baca Court Reporters
500 Fourth Street, NW, Suite 105
Albuquerque, New Mexico 87102

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FOR THE APPLICANT:

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FOR CIMAREX ENERGY COMPANY:

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ATTORNEY AT LAW
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1 MR. BROOKS: Let's call Case No. 14114 -- I'm sorry.
2 I'm going to -- I'm going to skip that one for the
3 moment and call Case No. 14097. And the reason I'm going to
4 skip that is that Mr. Jones needs to participate in Case
5 No. 14114. At the appropriate time, we'll summon him down
6 here.

7 At this time, we'll call Case No. 14 -- I'm sorry.
8 Mr. Hall is not in the room. Okay.

9 At this time, we'll call Case No. 14097, the
10 Application of Encore Operating, LP for compulsory pooling,
11 Lea County, New Mexico.

12 Call for appearances.

13 MR. HALL: Mr. Examiner, Scott Hall, Montgomery &
14 Andrews Law Firm, Santa Fe, on behalf of the applicant. I have
15 one witness this morning.

16 MR. BRUCE: Jim Bruce of Santa Fe, representing the
17 Cimarex Energy Company. I have no witnesses.

18 MR. BROOKS: Will the witness state your name for the
19 record, please?

20 THE WITNESS: Zack B. Brittain.

21 MR. BROOKS: Thank you. You may be seated.

22 ZACK B. BRITTAIN

23 after having been first duly sworn under oath,

24 was questioned and testified as follows:

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DIRECT EXAMINATION

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BY MR. HALL:

Q. Mr. Brittain, where do you live, and by whom are you employed?

A. I live in North Richland Hills, Texas, and I'm employed by Encore Operating, LP.

Q. In what capacity?

A. As a senior landman.

Q. Have you previously testified before the Division and had your credentials established?

A. I have not.

Q. Would you please give the Hearing Examiner a brief summary of your educational background?

A. I'm a graduate student of Stephen F. Austin State University in Nacogdoches, Texas. I've been a petroleum landman for longer than I'd care to admit to, but since I'm under oath, since 1979.

I've worked for Cinergy Production Company, Sabine Corporation, and for 12 years as land manager of American Cometro in Fort Worth, Texas. I was also an independent landman for five years doing title and lease acquisition and due diligence and that sort of thing.

Since 2002, I've worked in Eddy and Lea Counties, New Mexico exclusively for Gruy Petroleum, Magnum Hunter Resources, and Cimarex Energy Company, and now Encore

1 Operating, LP, since July of '06.

2 I have drilled probably -- a conservative estimate,
3 since '02, probably 40 Morrow wells, just like the one we're
4 here talking about today. I've done well trades with all the
5 majors, most of the major independents and most of the
6 independents working southeastern New Mexico, Eddy and Lea
7 Counties.

8 And I believe I qualify as an expert in the matters
9 that we're going to talk about here today.

10 Q. Mr. Brittain, are you familiar with the lands and
11 well that are the subject of this --

12 A. I certainly am, yes, sir.

13 MR. HALL: At this point, Mr. Examiner, we offer
14 Mr. Brittain as an expert petroleum landman.

15 MR. BROOKS: So qualified.

16 Q. (By Mr. Hall): Briefly explain what Encore seeks
17 by its application.

18 A. Encore seeks an order pooling all the mineral
19 interest for the Atoka and Morrow Formations underlying the
20 east half of Section 28, 16 South, 34 East in Lea County,
21 New Mexico in order to form a standard 320-acre spacing and
22 proration unit dedicated to the Encore 28 State Com No. 1 well.

23 Q. Does Encore seek to be designated the operator of
24 the well?

25 A. Yes, they do.

1 Q. Let's look at Exhibit No. 1. Would you briefly
2 identify that for the Examiner?

3 A. Yes. It's just a plat that depicts the surface
4 and bottom hole location and identifies the tracts that are
5 subject to the east half drilling and spacing unit.

6 Q. Now, let's look at the well location shown on the
7 plat. Is that --

8 A. There's a typo on there. That's a standard
9 location. It's 860 from the north line and 660 from the east
10 line of Section 28.

11 Q. And if you turn to the next page, is that
12 Encore's APD for their well?

13 A. It is, yes.

14 Q. And is the location correctly reflected on there?

15 A. Yes, it is correctly reflected there. Yes, sir.

16 Q. What's your primary objective for the well?

17 A. This is an Atoka Morrow test well.

18 Q. Okay. Let's turn to Exhibit 2. What does that
19 show?

20 A. Exhibit 2 is just a spreadsheet that I prepared
21 to break down the ownership by tract. And it relates to the
22 plat that's attached as Exhibit 1 and just shows the working
23 interest owners and their ownership by tract in the drilling
24 and spacing.

25 Q. How long has Encore had its interest in this

1 acreage?

2 A. Encore has owned the interest in this acreage
3 since April 16th of 2007. It was acquired form Marathon Oil
4 Company.

5 Q. All right. Let's -- how much does Encore control
6 today?

7 A. 37-and-a-half percent.

8 Q. In the entire --

9 A. In the entire drilling and spacing unit, yes.

10 Q. Let's talk about each of the interest owners and
11 their interests.

12 A. Encore owns a 25 percent working interest. Pure
13 Energy Group has 10.94 percent -- they farmed out to Encore.
14 And Chisos Limited owns 1.56 percent, and they are going to
15 participate.

16 Q. And the interest you are seeking approval here?

17 A. Edge Petroleum Exploration Company and Cimarex
18 Energy Company/Magnum Hunter Production, Inc. Magnum Hunter is
19 a wholly owned subsidiary of Cimarex Energy Company.

20 Q. To your knowledge, is Cimarex authorized to deal
21 on behalf of Magnum Hunter interests?

22 A. Yes, they were.

23 Q. How do you know that?

24 A. Well, I know that because I've dealt with them on
25 this well for over a year, and I used to be an employee of

1 Cimarex Energy Company.

2 Q. All right. Let's look at Exhibit 3,
3 Mr. Brittain. Is that a compilation of letters, e-mails and
4 communications to the interest owners to obtain their
5 participation in the well?

6 A. Exhibit 3 is the well proposals and the proof of
7 delivery. It was delivered to Cimarex Energy Company and Edge
8 Exploration Company. This is a standard well proposal, which
9 included an AFE, a proposal letter and a standard -- Encore
10 standard form of operating agreement.

11 Q. All right. Why don't you briefly summarize the
12 chronology of this for the Hearing Examiner.

13 A. Sure. I provided both of the un-joined working
14 interest parties, as I said, with the proposal letter, the AFE,
15 and the form of operating agreement on February the 5th to
16 Cimarex Energy Company. And I had a title bus and my drilling
17 opinion on the Edge portion. And their proposal went out a
18 little late. It was sent out on February the 14th.

19 I had several phone calls, conversations, with Edge,
20 helping me to apportion the titles between Pure, Chisos and
21 Edge. And at the time we determined what it was, we revised
22 our drilling title opinion accordingly.

23 MR. BROOKS: Okay. You're not saying there's any
24 defect in it, then?

25 THE WITNESS: Oh, no, sir. There was a defect in my

1 opinion, but we corrected it.

2 MR. BROOKS: Okay. You may continue.

3 THE WITNESS: Thank you.

4 A. And Casey Quast, the landman with Edge, was very
5 helpful in helping me apportion the title between the parties.
6 I had several phone conversations and e-mails back and forth
7 with him.

8 Originally, we had set this matter for hearing on
9 March 20th. We continued it to April 3rd to allow more time
10 for the parties to negotiate. On March 11th, I called Don
11 McClung, the landman with Cimarex and Casey Quast -- who, as I
12 said, was the landman with Edge -- and I left messages for
13 both. They called me back promptly.

14 Cimarex wanted to farmout their interest in the well,
15 and Edge wanted to be compulsory pooled. I was informed by
16 Edge that they had a data room open at the time for the sale of
17 their assets, and I think that was part of the reflection on
18 them wanting to be pooled. They were just hoping to be able to
19 let their predecessor make a decision in order to participate
20 in the well.

21 On the 17th -- March 17th and 18th, I called and left
22 messages to request Casey Quast with Edge. On the 24th of
23 March, I received a phone call from Casey, and he was going to
24 meet with his team again to try to determine exactly what Edge
25 wanted to do.

1 On the 27th, I received another phone call from
2 Casey. Edge said that they would deliver a 72 percent NRI to
3 Encore or they would go to compulsory pooling. I basically
4 advised Casey that Encore couldn't accept a 72 percent NRI, but
5 that I would talk to him again on or about April 1st.

6 On March 28th, I received a call from Don McClung
7 from Cimarex. Don was trying to finalize his trade with their
8 management. The attorney, in fact, for Cimarex was in Europe.
9 They were, in fact, going to have a problem getting a farmout
10 agreement signed. He said he would try to have the agreement
11 to me that afternoon. And I did receive it that day,
12 electronically.

13 On the 28th, I requested revisions to the agreement
14 and sent it back to him on April 2nd. On March 31st, Edge
15 advised me by e-mail they were going to be compulsory pooled.
16 And after that point, I had no further communication with Edge.

17 I continued the hearing until April 17th to allow
18 more time to finalize a trade with Cimarex. On April 14th, I
19 received an e-mail from Don McClung of Cimarex advising me that
20 they had to make some revisions to the agreement, and that the
21 attorney, in fact, for Cimarex, was out of the office until
22 late in the week and wouldn't return until after the 4/17
23 hearing date that we had today.

24 He asked if I could extend the hearing date again. I
25 was unable to do so, and on Tuesday, April 15th at about 3:30,

1 I received another form of farmout agreement from Don. He
2 asked that I review it and get it executed and returned to him
3 prior to the hearing today. I was unable to do so. I was
4 preparing exhibits for the hearing, travelling and so forth,
5 and I have not yet had a chance to fully review the agreement.

6 I have looked at it briefly. I compared it to the
7 one they sent me before. I am going to have some revisions,
8 requested revisions. As soon as I return to my office Friday
9 morning, I'll prepare those, and I will get them to Cimarex.

10 As I said, Cimarex gave me until the 17th to execute
11 the farmout. At this point, I don't know if that means the
12 farmout is not available to me after that date. I'm assuming
13 that it is, and I'm going to proceed accordingly.

14 And it is my intent with Cimarex that I will continue
15 to negotiate with them up until the order is issued, just as I
16 have. And if we can enter into a mutually acceptable format, I
17 will drop Cimarex from this matter.

18 Q. (By Mr. Hall): Okay. As of today, Mr. Brittain,
19 you have signed agreements to participate in the well from
20 neither Edge nor Cimarex; is that right?

21 A. No, I did not.

22 Q. All right. And if we look at the exhibits under
23 tab 5, is that a compilation of your e-mails and correspondence
24 to Cimarex?

25 A. It is. It is basically a compilation of some

1 e-mails I received and responded to. In there is Edge's
2 e-mails saying that they wanted to be compulsory pooled and
3 some letters where I extended the hearing date. There is also
4 a form -- the form of farmout agreement from Cimarex that I
5 negotiated prior to the one I received on the 17th -- I'm
6 sorry. The 15th.

7 Q. All right. If we look back at the Exhibit 3
8 compilations, your February 2008 well proposals, one of the
9 first documents under your transmittal letters, the AFE --

10 A. That's under Exhibit 4.

11 Q. Three.

12 A. It's under 4, but that's okay. I mean, there is
13 a copy under 4 as well. Yes. I have it. Okay.

14 Q. Well, referring to the one that was transmitted
15 to the interest owners by your February 5, 2008 well proposal
16 letter.

17 A. I understand.

18 Q. The date on that AFE is May 14th, 2007?

19 A. That's correct.

20 Q. Was this well proposed before?

21 A. It was. It was proposed to Cimarex after, I
22 would say, you know, from -- I don't remember exactly when --
23 from April to August of 2007, somewhere around in there.

24 Q. All right. What's the split date for your well?

25 A. It's July 18th of this year.

1 Q. Okay. In this proceeding, for the un-joined
2 interest Encore seeks to pool, are you asking the Division to
3 impose the 200 percent risk penalty?

4 A. Yes, sir, I am.

5 Q. In your opinion, Mr. Brittain, Encore made a
6 good-faith effort to obtain all of the participation in the
7 pooling?

8 A. Absolutely. I have negotiated responsibly,
9 fairly. I've communicated by phone, by electronic e-mails.
10 And I've made a very good-faith effort to secure their
11 participation or farmout of their interest in this well.

12 Q. All right. Now, let's turn to Exhibit 4,
13 that AFE.

14 A. Okay.

15 Q. And if you would review that with the Hearing
16 Examiner --

17 A. Yes, sir.

18 Q. -- and state the dry hole complete well costs.

19 A. The dry hole costs is \$2,656,500. The completion
20 cost is \$1,865,000. The total well cost is \$4,521,500.

21 This is a fairly deep Atoka-Morrow test, 13,500 feet.
22 It's also an Atoka-Morrow dual completion well. There is
23 \$450,000 in the AFE for stimulation of those two, the Atoka and
24 Morrow zones, and we may or may not need to frac both of those
25 zones. Sometimes you can just perforate them and acidize them,

1 and they'll come in just fine. Sometimes you have to frac them
2 both. But those costs are reflected in the AFE.

3 MR. BROOKS: Okay.

4 Q. (By Mr. Hall): And in your view, does the AFE --
5 well, let me ask you this: Is Encore proposing the same AFE
6 that it proposed a year ago?

7 A. Yes, the same AFE, right.

8 Q. Sticking to those costs?

9 A. Yes, we are.

10 Q. And in your view, do these AFE figures represent
11 the outside worst case for --

12 A. They do. I feel that the costs are pretty much
13 in line, given the high-cost environment that we're operating
14 in today. Considering the total depth of the well and that the
15 fact that it's due at completion, I feel they're fairly
16 represented. Some operators will have a lower AFE cost, but
17 they won't reflect all of their completion costs on their AFEs,
18 and I feel that this properly reflects the cost of drilling to
19 complete the well.

20 Q. What drilling and producing overhead rates does
21 Encore seek?

22 A. \$6,500 a month for a producing well rate and \$650
23 a month for a producing well rate.

24 Q. Are those rates reasonable?

25 A. Those rates are very reasonable. They're

1 probably a little low, by today's standards.

2 Q. Is Encore asking that the order that results from
3 the hearing provide that the drilling and producing rates be
4 adjustable in accordance with --

5 A. Yes, we do.

6 Q. In your opinion, Mr. Brittain, will granting
7 Encore's application be in the interests of conservation,
8 prevention and waste protection?

9 A. Yes, it will.

10 Q. And were Exhibits 1 through 5 prepared by you or
11 under your direction?

12 A. They were prepared by me and at my direction.

13 MR. HALL: That concludes our direct of the witness,
14 Mr. Examiner. Let me also tender our Notice of Affidavit,
15 Exhibit 6. We move the admission of Exhibits 1 through 6.

16 MR. BROOKS: Okay. Did you get return receipts back
17 from these people?

18 MR. HALL: I have to look at my own affidavit. We
19 did. And I can provide you with the originals of those,
20 Mr. Examiner.

21 MR. BROOKS: I see you've got a return receipt from
22 Pure here. And you've got a return receipt from Cimarex. And
23 you've got one from Chisos and one from Edge. Okay.

24 1 through 6 are admitted.

25 I'm sorry, Mr. Bruce. Are there any objections?

1 MR. BRUCE: No objections.

2 MR. BROOKS: 1 through 6 are admitted. Anything
3 further, Mr. Bruce?

4 CROSS EXAMINATION

5 BY MR. BRUCE:

6 Q. Just a few questions, Mr. Brittain. The well, as
7 you said, was first proposed in what -- mid 2007 --

8 A. Yes, sir.

9 Q. -- at some point? What was -- I can't remember.
10 Was a pooling application filed?

11 A. There was a pooling application filed. At the
12 time, our drilling schedule was running amok, and we tried to
13 get the well ready to drill. Cimarex didn't want to
14 participate; they wanted to farmout. They provided me with a
15 farmout agreement, which I responded to with requested
16 revisions. I thought we had agreed on the terms. It was -- of
17 course, then, I will say that when they provided me with the
18 farmout, it was subject to final management approval of
19 Cimarex. I felt like we had reached an agreement, and I
20 cancelled the pooling hearing. And for some reason, the
21 executed farmout was never received.

22 We again realigned our drilling schedule. This
23 28 No. 1 fell back in the schedule, and I just left it there.
24 Because I have to work from the front to the back, and now it
25 has worked its way back to the front again.

1 Q. And again -- and you know this from experience --
2 the actually working interest is owned by Magnum Hunter --

3 A. I do know that, yeah.

4 Q. -- and that's really -- in essence, they hold
5 interest, but all the management is done by Cimarex; is that
6 correct?

7 A. That's correct. As I said, Magnum Hunter is a
8 wholly owned subsidiary of Cimarex Energy Company. I think
9 everybody -- most companies that work either Southeastern
10 New Mexico or the Permian on the Texas side know that Magnum
11 Hunter is Cimarex and Cimarex is Magnum Hunter.

12 Q. And again, it's not your intent to cease
13 negotiations with Cimarex just because --

14 A. No, sir. As I have told Cimarex, I will continue
15 to negotiate with them in good faith, along the lines of the
16 previous two farmout agreements that I thought we had agreed
17 to. And as soon as I can get an executed farmout from them, I
18 will drop them from this proceeding prior to the issuance of
19 the order.

20 Q. And just a couple of general interest questions:
21 The Edge Petroleum interest is already burdened with the
22 75 percent --

23 A. It is burdened with the 75 already. Yes, it is.

24 Q. And so --

25 A. They don't have much to reserve.

1 Q. And that's why they asked for a 72?

2 A. That's why they asked for a 72.

3 Q. And you weren't willing to go --

4 A. I couldn't do that, no, sir.

5 Q. The other question is just one of general
6 interest: Your proposed farmout to Cimarex references the Edge
7 Petroleum Kemnitz 28 State Well No. 1 --

8 A. Right.

9 Q. -- in the southwest northeast of Section 28.

10 A. That's true.

11 Q. What is the status of that well?

12 A. That well has been plugged.

13 Q. Did it ever produce?

14 A. It might have produced some. But our geologic
15 groups feels like that was not the proper location for the
16 well, and it needs to be moved up to the north and to the east
17 to capture those sands.

18 Q. When was that well drilled and then plugged,
19 roughly?

20 A. A couple of years ago.

21 Q. Okay.

22 A. Something like that. I don't know exactly. I
23 don't remember.

24 Q. Thank you, Mr. Brittain.

25 A. Yes, sir.

1 MR. BRUCE: I have nothing further, Mr. Examiner.

2 EXAMINATION

3 BY MR. BROOKS:

4 Q. Mr. Brittain, you're asking only for a 320-acre
5 unit?

6 A. Yes, sir.

7 Q. You're not asking for any units for --

8 A. No, sir. There's -- up in the northeast corner
9 of Section 28, some of these lands comprise -- were comprised
10 in the Wolfcamp unit, so we don't feel there's any Wolfcamp
11 potential. There's not much strong production in that area.
12 And consequently, we're looking at the Atoka and the Morrow.

13 Q. Okay. I don't suppose there's any reason why
14 with Edge and Cimarex you will be holding their interest in
15 suspense in this well?

16 A. No, sir.

17 Q. So there's no need for the Division to require
18 that you establish an escrow account.

19 A. I'll be happy to -- after we establish
20 production, I'll pay them promptly. I promise you.

21 MR. BROOKS: I think that's all I have. Terry?

22 MR. WARNELL: Nothing from me.

23 MR. HALL: Mr. Examiner, to the extent we ask for
24 pooling from the surface to the base of the Morrow, I think we
25 can dismiss that portion except for the 320, so we can focus

1 more on other areas.

2 MR. BROOKS: Okay. Terry?

3 MR. WARNELL: No, nothing.

4 MR. BROOKS: Okay. Very good. If there's nothing
5 further, Case No. 14097 will be taken under advisement.

6 [Hearing concluded.]

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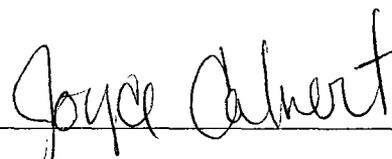
I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. 14097
record by me on April 17 2008
David K. Brooks Examiner
Oil Conservation Division

REPORTER'S CERTIFICATE

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I, JOYCE D. CALVERT, Provisional Court Reporter for the State of New Mexico, do hereby certify that I reported the foregoing proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings and was reduced to printed form under my direct supervision.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case and that I have no interest in the final disposition of this proceeding.



JOYCE D. CALVERT
New Mexico P-03
License Expires: 7/31/08

1 STATE OF NEW MEXICO)
2 COUNTY OF BERNALILLO)

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I, JOYCE D. CALVERT, a New Mexico Provisional Reporter, working under the direction and direct supervision of Paul Baca, New Mexico CCR License Number 112, hereby certify that I reported the attached proceedings; that pages numbered 1-21 inclusive, are a true and correct transcript of my stenographic notes. On the date I reported these proceedings, I was the holder of Provisional License Number P-03.

Dated at Albuquerque, New Mexico, 17th day of April, 2008.



Joyce D. Calvert
Provisional License #P-03
License Expires: 7/31/08



Paul Baca, RPR
Certified Court Reporter #112
License Expires: 12/31/08