

**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:**

**ORDER NO. R-13165**

**APPLICATION OF CIMAREX ENERGY CO.  
FOR A NON-STANDARD SPACING UNIT  
AND COMPULSORY POOLING, CHAVES  
COUNTY, NEW MEXICO.**

**CASE NO. 14368**

**APPLICATION OF CIMAREX ENERGY CO.  
FOR A NON-STANDARD SPACING UNIT  
AND COMPULSORY POOLING, CHAVES  
COUNTY, NEW MEXICO.**

**CASE NO. 14369**

**APPLICATION OF CIMAREX ENERGY CO.  
FOR A NON-STANDARD SPACING UNIT  
AND COMPULSORY POOLING, CHAVES  
COUNTY, NEW MEXICO.**

**CASE NO. 14370**

**APPLICATION OF CIMAREX ENERGY CO.  
FOR A NON-STANDARD SPACING UNIT  
AND COMPULSORY POOLING, CHAVES  
COUNTY, NEW MEXICO.**

**CASE NO. 14372**

**ORDER OF THE DIVISION**

**BY THE DIVISION:**

This case came on for hearing on various parties' Motions to Dismiss at 8:15 a.m. on September 3, 2009, at Santa Fe, New Mexico, before Examiner Terry Warnell.

NOW, on this 15<sup>th</sup> day of September, 2009, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

**FINDS THAT:**

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

(2) Because all of the Motions to Dismiss present the same issue, a consolidated hearing was held on these motions, and one order is being issued ruling on the motions in all of the cases. However, the cases remain separate and will be heard separately unless the Division subsequently determines otherwise.

(3) Fuel Products, Inc., Pear Resources and Hyde Oil and Gas Corporation, respondents in Cases 14368, 14369 and 14370, and MeTex Supply Company, a respondent in Case No. 14372, (herein collectively called Movants) filed motions to dismiss the application in these cases. Movants contend that no valid well proposals have been submitted for their consideration because: (a) the well proposals do not contain specific footage locations; (b) the applicant did not furnish a proposed form of joint operating agreement with its well proposal; and (c) the proposals in the separate cases, collectively, constitute a multi-well drilling program, and applicant's correspondence indicates uncertainty as to whether it will actually drill all of the proposed wells.

(4) With respect to the omission of a proposed form of joint operating agreement, Movants cite Division Order No. R-13155 in which the Division dismissed a compulsory pooling application and ordered that a well proposal including a proposed form of joint operating agreement be furnished prior to re-filing.

(5) Because past Division practice has not been entirely consistent, and because some language in Order No. R-13155 was not intended to apply to all cases, the Division takes this opportunity to clarify the requirements that it will ordinarily apply in compulsory pooling cases as follows:

(a) At least thirty days prior to filing a compulsory pooling application, in the absence of extenuating circumstances, an applicant should send to locatable parties it intends to ask the Division to pool a well proposal identifying the proposed depth and location and target formation, together with a proposed Authorization for Expenditures (AFE) for the well. The proposal should specify the footages from section lines of the intended location, and, in the case of a directional well, of the intended point of penetration and bottomhole location. The Division understands these requirements to be comparable to the proposal requirements included in forms operating agreements generally used in the industry.

(b) Although exact footage locations for the proposed well should be specified in the well proposal, the exact footage locations need not necessarily be

specified in the application filed with the Division or in formal notices of hearing. These documents (the application and formal hearing notices) establish the Division's jurisdiction, and, if an exact location for the well is specified in such documents, any modification may require new notices and a further hearing. There may be perfectly legitimate reasons for varying the well location at the hearing, such as federal or private surface owner requirements. If a more generalized location is specified in the application and legal notices, and it becomes necessary to change the location prior to the hearing, reasons for such variation can be explained at the hearing and approved by the Division in its order, without the necessity of further proceedings.

(c) A proposed form of joint operating agreement should not be required in every case but should be furnished with reasonable promptness if requested.

(d) The issue of compliance with the more subjective requirement the Division has customarily recognized for good faith negotiation is better examined in these cases, and in most cases, at the compulsory pooling hearing, based upon a full evidentiary record, rather than upon a preliminary motion to dismiss.

(6) In these cases, unlike Cases 14365 and 14366, which were the subject of Order No. R-13155, Movants have received well proposals and AFEs though these proposals were deficient in not identifying the footage locations of the wells. These cases have been re-set for hearing on a date more than thirty days from the date of this Order to allow applicant to furnish Movants with a more specific proposal and with other documents Movants have requested and to afford the parties time for further negotiations. Accordingly the Division concludes that it is not necessary to dismiss these cases and require that they be re-filed in order for the applicant to proceed. If additional time proves necessary for good faith negotiations, Movants may request a further continuance.

**IT IS THEREFORE ORDERED THAT:**

(1) Movants Motions to Dismiss are hereby overruled. As announced at the motion hearing, these cases are continued until October 15, 2009.

(2) Applicant will furnish Movants with documents complying with Finding Paragraphs 5(b) and (c) at least 30 days prior to the hearings.

(3) The issue of whether or not adequate good faith negotiation has occurred may be further considered at the hearings.

(4) Jurisdiction of these cases is retained for the entry of such further orders as the Division may deem necessary.

*Cases 14368, 14369, 14370 and 14372*

*Order No. R-13165*

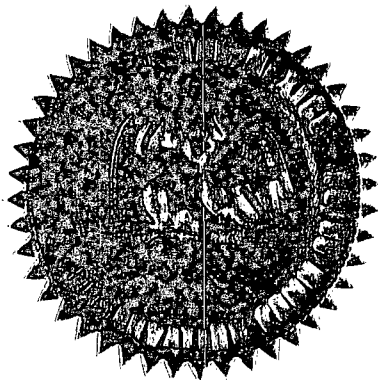
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DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION



MARK E. FESMIRE, P.E.  
Director



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