

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

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

CASE NO. 14418

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MOTION TO DISMISS

Lynx Petroleum Consultants, Inc., Larry Scott and Marbob Energy Corporation (hereinafter collectively referred to as "Appellants") move the Oil Conservation Commission for an order dismissing the application of Cimarex Energy Corporation in the above-referenced case and in support of their motion state:

1. The W/2 W/2 of Section 21, Township 19 South, Range 31 East, NMPM, Eddy County, New Mexico contains four standard 40-acre, existing, complete, spacing units created pursuant to Division General Rule 19.15.15 NMAC. Cimarex has proposed to drill a horizontal well on a project area comprised of these four spacing units but does not own any interest in two of the spacing units (the W/2 SW/4 of Section 21) which it proposes to dedicate to the well. It therefore seeks a Division order combining these standard spacing units into a new 160-acre "non-standard oil spacing and proration unit" and then pooling the interests therein.

2. Cimarex's sole purpose for proposing a non-standard spacing unit is to enable it to force pool the interests of owners, like the Appellants, who have declined to participate in the proposed horizontal well because they believe the allocation of production on a straight acreage basis would impair their correlative rights by denying them their fair share of the reserves under their respective tracts.

3. Cimarex's application must be dismissed for what Cimarex seeks conflicts with the plain language of the Oil and Gas Act and the Statutory Unitization Act, violates the rules of the Oil Conservation Division and impairs the correlative rights of interest owners in the tracts that Cimarex desires to pool.

OIL CONSERVATION COMMISSION JURISDICTION

4. The Oil Conservation Commission is a creature of statute, expressly defined, limited and empowered by the laws creating it. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310,318, 373 P.2d 809, 814 (1962).

5. The Oil and Gas Act provides that the Commission “is empowered, and it is its duty, to prevent waste prohibited by this act and to protect correlative rights, as in this act provided.” N.M.S.A. 1978, § 70-2-11.A. The Commission has jurisdiction over matters related to the conservation of oil and gas in New Mexico, but the basis of its powers is founded on the duty to prevent waste and protect correlative rights.” *Continental*, at 393 P.2d 814.

6. Although technology has changed with the introduction of horizontal drilling, the basic statutory mandates to the Commission have not, and while the Division and Commission are trying to encourage horizontal drilling, they must do so in accordance with statute and rule.¹ The Commission cannot act in ways that conflict with the powers conferred upon it by the legislature nor ignore its jurisdictional mandate to protect correlative rights.

COMPULSORY POOLING

7. Compulsory pooling requires an exercise of the police power of the State to take an oil and gas interest from its owner and give it to another to drill and produce. It is a power conferred by the Oil and Gas Act. N.M.S.A. 1978, § 70-2-17.C. Because a pooling order affects constitutionally protected property rights, pooling authority is defined and limited by the Oil and Gas Act and the Commission’s pooling authority must be exercised within the limits imposed by statute.²

8. The plain language of the Oil and Gas Act authorizes compulsory pooling only “When two or more separately owned tracts of land are embraced within a spacing or proration unit, ...” N.M.S.A. 1978, § 70-2-17.C. This statutory language is clear and unambiguous and limits compulsory pooling to single spacing units. See, *Morningstar Water Users Ass’n v. N.M. Pub. Util. Comm’n* 120 N.M. 579, 583, 904 P.2d 28, 32 (1995).

¹ For example, pooling is only available under the alternate procedure that permits applications to be presented by affidavit where a spacing unit is not larger in size that provided in 19.15.15 NMAC or applicable special pool order. 19.15.4.12.A (1)(b) NMAC. Contrary to the express limitations of this rule, the Division, to encourage horizontal drilling, has been pooling non-standard units for horizontal well project areas where applications are presented by affidavit.

² N.M.S.A. 1978, § 70-2-17.C) provides in relevant part:

When two or more separately owned tracts of land are embraced within a 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.

“PROJECT AREA” v. “SPACING UNIT”

9. To achieve its goal, Cimarex confuses “spacing units” with “project areas” in a poorly-veiled attempt to avoid the statutory limitations on compulsory pooling.

10. A “spacing unit” is defined by Division Rules as “the acreage assigned to a well under a well spacing order or rule.” Historically, a spacing unit was established for a pool based on the acreage a vertical well in that pool was presumed to drain. See N.M.S.A. 1978, §70-2-17.B³. It was also assumed that there would be only one withdrawal point in a spacing unit.

11. A “non-standard spacing unit” is a spacing unit which deviates in acreage or conformation from the standard units established by the Division. *Rutter & Wilbanks Corp. v. Oil Conservation Comm’n*, 87 N.M. 286, 532 P.2d 582 (1975), See Kramer 7 Martin, Williams & Meyers, Manual of Oil and Gas Terms, §701 (2000). It is not a substitute for a spacing order or rule but, instead, it is an exception to such an order or rule.

12. Division rules define a “project area” for a horizontal well as follows:

“Project Area” means an area the operator designates on form C-102 that a spacing unit’s outer boundaries enclose, a combination of complete, contiguous spacing units or an approved secondary, tertiary or pressure maintenance project.” 19.15.16.7.I NMAC

13. When all parts of the Oil Conservation Division rules are read together, and all parts given effect, it is clear that a “project area” is not a “spacing unit.”

“POOLING” v. “UNITIZATION”

14. “Pooling” refers to the joining together of small tracts for the purpose of having sufficient acreage to form a spacing unit for the granting of a well permit under applicable spacing rules. Kramer and Martin, Williams & Meyers, *The Law of Pooling and Unitization*, §1.02, (2000). There are four such spacing units in the W/2 W/2 of this section.

15. “Unitization” refers to consolidation of mineral or leasehold interests covering all or part of a common source of supply to maximize production by efficiently draining the reservoir, utilizing the best engineering techniques that are economically feasible. *Id.*

³ A vertical well was presumed to drain an area around that well. Single well drainage areas have been the basis for well spacing rules and well location requirements. Kramer & Martin, Williams & Meyers, The Law of Pooling and Unitization, §5.03 (2009).

16. When separate, contiguous, complete spacing units are combined to explore for minerals, as proposed by Cimarex, minerals are consolidated in part of a common source of supply to maximize production by utilizing horizontal drilling – the best engineering technique economically feasible to drain these reserves. This is not compulsory pooling it is unitization.

17. Under New Mexico's statutory scheme, a the Division and Commission can only force a mineral interest into a production unit if it is in a single spacing unit created by spacing order or rule that is force pooled under the Oil and Gas Act or if it is statutorily unitized for enhanced recovery operations.⁴ Neither apply to the facts of this case.

18. Cimarex asks the Commission to expand its compulsory pooling authority to what amounts to statutory unitization for primary production in violation of the limitations of the Oil and Gas Act and the Statutory Unitization Act. N.M.S.A. 1978, §§ 70-7-1 to 70-7-21. It asks the Commission to do something it cannot do for, as stated by our Supreme Court in *Marbob v. Oil Conservation Comm'n*, 2009-NMSC-13, 46 N. M. 24, 206 P.3d 135 (2000), "any enhancements to the Commission's authority must come from the same legislative body that created the Commission in the first instance."

19. Before the Commission can combine and then compulsory pool four complete contiguous standard spacing units, it must obtain authorization from the legislature to do so. Until that time, the Commission is not empowered to enter the order sought by Cimarex and its application must be dismissed.

CORRELATIVE RIGHTS

20. With horizontal well "project areas" unitization is not only required by statute and rule, it is necessary to assure correlative rights are protected because unitization allocates the oil and gas produced and saved from each tract committed thereto based on a participation formula that is the result of negotiation and agreement between the parties.

21. By statutory definition, "correlative rights" affords each owner in a pool the opportunity to produce without waste its just and fair share of the

⁴ If a project area is comprised of a single spacing unit, it can be pooled. However, as in this case, where a project area is comprised of "a combination of complete contiguous spacing units," compulsory pooling is not available. To grant Cimarex's application, the Commission is asked to combine separate complete spacing units for the purpose of drilling an exploratory well. This is statutory unitization and statutory unitization is not allowed for primary production. See N.M.S.A. 1978, § 70-7-1.

production from the pool.⁵ One way for an owner to avail itself of this opportunity is to commit its interest to a unit and share the oil and gas produced and saved in accordance with the unit participation formula. The unit owners may agree to a straight acreage allocation. Whatever the participation formula may be, if the interest owner does not agree, it does not have to join the unit.

22. Under Cimarex's interpretation of the rules, the Division would violate the correlative rights of interest owners in the spacing units it is combining by forcing their mineral interests into a four spacing unit production unit and then allocating the production on a straight acreage basis without consideration of the relative value of each tract in violation of the limitations imposed by the compulsory pooling provisions of the Oil and Gas Act and its own rules governing horizontal drilling.

CONCLUSION

To grant Cimarex's application, the Commission must first create a non-standard spacing unit out of four standard 40-acre, existing, complete, spacing units created pursuant to the rules of the Oil Conservation Division and then compulsory pool the interests in these spacing units and allocate the production there from on a straight acreage basis. This would exceed the authority conferred on the Commission by the Legislature in the Oil and Gas Act and the Statutory Unitization Act and the application must therefore be dismissed.

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⁵ "Correlative rights" means the opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas or both in the pool, being an amount, so far as can be practicably determined and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas or both under the property bears to the total recoverable oil or gas or both in the pool and, for such purpose, to use his just and equitable share of the reservoir energy," N.M.S.A. 1978, § 70-2-33.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss was delivered by facsimile on April 7, 2010 to the following:

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