

**STATE OF NEW MEXICO
ENERGY, MINERAL AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION**

**IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION FOR THE PURPOSE
OF CONSIDERING:**

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

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CASE NO. 14418

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

CASE NO. 14480

**CIMAREX ENERGY CO.'S PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

As directed by the Commission Chair at the November 4, 2010 hearing in these consolidated cases, applicant Cimarex Energy Co. ("Cimarex") submits its Proposed Findings of Fact and Conclusions of Law.

PROPOSED FINDINGS OF FACT

A. Case No. 14418 (Penny Pincher Federal Com No. 1 well)

1. Cimarex's application requests (i) approval of a non-standard 160-acre oil spacing and proration unit ("unit" or "project area") comprised of the W/2 W/2 of Section 21, Township 19 South, Range 31 East, NMPM in Eddy County, (ii) the pooling of all uncommitted interests in the NW/4 NW/4 of Section 21 from the surface to the base of the Bone Spring formation, (iii) the pooling of all uncommitted interests in the W/2 W/2 of Section 21 from 2,500 feet subsurface

to the base of the Bone Spring formation, (iv) the designation of Cimarex Energy Co. of Colorado as the operator of the proposed horizontal well and the unit, (v) the approval of operating charges and supervision costs of \$7,000 per month during drilling and \$700 per month after completion, as adjusted pursuant to the COPAS accounting procedure, and (vi) approval of a 200% charge for the risk involved in drilling and completing the well. *See Application.*

2. During the February 4, 2010 Examiner hearing on Cimarex's application, Cimarex withdrew the request in its application for the pooling of all uncommitted interests in the NW/4 NW/4 of Section 21 from the surface to the base of the Bone Spring formation.

3. There are no unresolved title issues with respect to the project area.

4. Cimarex has drilled and completed 24 horizontal wells in the Bone Spring formation in southeastern New Mexico.

5. Prior to proposing a horizontal well in the project area, Cimarex determined that, based on its experience in drilling those horizontal wells and its evaluation of production from wells offset to the project area, the 2nd Bone Spring Sandstone would be productive throughout the target interval and that a north-to-south orientation for a horizontal well would be the most productive. *See Cimarex Case No. 14418 Hearing Exhibit ("Ex.") Numbers ("Nos.") 8 and 9.*

6. In determining the productive interval, Cimarex employed a 10% density cutoff, a conservative density cutoff that Cimarex had used for its successful horizontal wells in the Bone Spring formation. *See Cimarex Ex. Nos. 10 and 11.*

7. The reserves are substantially homogeneous in each quarter-quarter section of the proposed project area. *See Cimarex Ex. No. 14.*

8. The Oil Conservation Division ("Division") has issued final orders approving Cimarex's substantially similar applications for non-standard 160-acre oil spacing and proration

units in the W/2 E/2 and E/2 E/2 of Section 21 and the compulsory pooling of the uncommitted mineral interests within the units. *See Order No. R-13288 and Order No. 13289.*

9. The Division-approved units in the W/2 E/2 and the E/2 E/2 of Section 21 are dedicated to horizontal wells that Cimarex will drill in the 2nd Bone Spring Sandstone, both of which will have a north-to-south orientation. *See Order No. 13288 and Order No. 13289.*

10. Prior to proposing the horizontal well in the W/2 W/2 of Section 21, Cimarex indentified all mineral interests in the project area and sent a proposal letter, along with a proposed Joint Operating Agreement (“JOA”) and an AFE, to each of the interest owners by certified mail. *Cimarex Ex. Nos. 2, 3, and 4.*

11. There are no unlocated interest owners within the project area.

12. Cimarex made a good faith effort to obtain the interest owners’ voluntary joinder in the proposed horizontal well. *See Cimarex Ex. No. 5.*

13. After receiving Cimarex’s proposal letter, none of the mineral interest owners committed to the proposed horizontal well.

14. Cimarex then filed its application, and personally notified each of the mineral interest owners, by certified mail, of the filing of the application and the scheduled Examiner hearing on its application. *Cimarex Ex. No. 5.*

15. Cimarex also identified all offset operators and interest owners and sent each of them a certified letter informing them of the filing of Cimarex’s application and the scheduled Examiner hearing. *Cimarex Ex. Nos. 6 and 7.*

16. An Examiner hearing on Cimarex’s application was conducted on February 4, 2010.

17. On March 18, 2010, the Division Acting Director entered Order No. R-13228, which granted all of the relief that Cimarex requested in its application. *See Order No. R-13228.*

18. Cimarex then commenced drilling the vertical portion of the Penny Pincer Federal Com No. 1 well in order to meet a March 31, 2010 deadline in its farm-out agreement with Devon Energy Production Company.

19. Cimarex risked losing its interest in the project area if it failed to meet the deadline.

20. When Cimarex filed its application, it did not have any interest in the S/2 of the proposed project area. *See Order No. R-13228.*

21. Following the issuance of Order No. 13228, Cimarex obtained interests totaling 52.5% of the interests in the S/2 of the project area by taking assignments from Marbob Energy Corporation (“Marbob”) and EGL Resources and entering into a JOA with Seven Rivers, Inc. and a JOA with CTV O&G NM, LLC, Thru Line O&G NM, LLC, Keystone O&G NM, LLC, Goliad O&G NM, LLC, and WD O&G NM, LLC.

22. On April 7, 2010, Lynx Petroleum Consultants, Inc. (“Lynx”), Larry Scott, and Marbob jointly filed a motion requesting a stay of Order No. R-13228. *See Motion to Stay Order No. R-13228.*

23. After the Acting Division Director informed its counsel that the motion to stay had been denied, Cimarex commenced the completion of the Penny Pincer Fed Com No. 1 horizontal well.

24. Cimarex began reporting production from the completed well in August 2010. *See Cimarex Ex. No. 17.*

25. The completed well is located entirely in an orthodox location. *See Cimarex Ex. No. 13.*

26. The production data from the Penny Pincher Federal Com No. 1 well demonstrate that there is net pay along the entire length of the lateral. *See Cimarex Ex. No. 14.*

27. The production data further demonstrate that the reserves in the project area exceed Cimarex's initial estimates. *See Cimarex Ex. Nos. 16 and 18.*

28. Cimarex Energy Co. of Colorado is a wholly-owned subsidiary of Cimarex.

29. Cimarex's proposed operating charges of \$7,000 a month and supervision costs of \$700 a month are identical to charges and costs that the Division has approved for similar Cimarex horizontal wells in the Bone Spring formation, including the approved reasonable charges for supervision (combined fixed rates) for the horizontal wells to be drilled in the W/2 E/2 and E/2 E/2 of Section 21. *See Order No. R-13288 and Order No. R-13289.*

30. The drilling and completion of the well in each quarter-quarter section, as proposed by Larry Scott during the Examiner hearing, would have taken an additional year and would have added approximately \$1 million to the cost of the well.

31. On August 30, 2010, the Commission entered an order consolidating Case Nos. 14418 and 14480 and setting the cases for hearing. *See Order No. 13228-D.*

32. The Commission held a hearing in the consolidated cases on November 4, 2010. Cimarex appeared through counsel and presented testimony by landman Mark Compton, geologist Lee Catalano, and petroleum engineer Michael Swain. Lynx appeared through counsel and presented testimony by Larry Scott on behalf of Lynx, and other interest owners in opposition to Cimarex's application.

B. Case No. 14480 (Penny Pincher Federal Com No. 2 well)

33. Cimarex's application requests (i) approval of a standard 40 acre unit in the NE/4 NW/4 of Section 21, Township 19 South, Range 31 East, NMPM, in Eddy County, (ii) approval of a non-standard 160-acre oil spacing and proration unit ("unit" or "project area") comprised of the E/2 W/2 of Section 21, (iii) the pooling of all uncommitted mineral interest owners in the E/2 W/2 of Section 21, from 2,500 feet subsurface to the base of the Bone Spring formation, (iv) the designation of Cimarex Energy Co. of Colorado as the operator of the proposed horizontal well and the proposed unit, (v) approval of actual operating charges and supervisions costs of \$7,000 per month during drilling and \$700 per month after completion, as adjusted pursuant to the COPAS accounting procedure, and (vi) approval of a 200% charge for the risk involved in drilling and completing the well. *See Application.*

34. There are no unresolved title issues with respect to the project area.

35. Cimarex has interests in each quarter-quarter section of the project area.

36. Cimarex proposes to dedicate the unit to the Penny Pincher Federal Com No. 2 well, which Cimarex will drill in an orthodox location, with a surface location 330 feet from the North line and 1,980 feet from the West line of Section 21, and a terminus, or bottom hole location, which will be 330 feet from the South line and 1,980 feet from the West line of Section 21. *See Cimarex Case No. 14480 Hearing Exhibit ("Ex.") Number ("No.") 1.*

37. Cimarex has drilled and completed 24 horizontal wells in the Bone Spring formation in southeastern New Mexico.

38. Prior to proposing a horizontal well, Cimarex determined that, based on its experience in drilling those horizontal wells and its evaluation of production from wells offset to the project area, the 2nd Bone Spring Sandstone would be productive throughout the target

interval and that a north-to-south orientation for a horizontal well would be the most productive.

See Cimarex Ex. Nos. 8 and 9.

39. In determining the productive interval, Cimarex employed a 10% density cutoff, a conservative cutoff that Cimarex had used for its successful horizontal wells in the Bone Spring formation. *See Cimarex Ex. Nos. 10 and 11.*

40. Cimarex determined that the reserves are substantially homogeneous in each quarter-quarter section of the proposed project area.

41. The Division previously approved Cimarex's applications for non-standard 160-acre oil spacing and proration units in the W/2 E/2 and E/2 E/2 of Section 21 and the compulsory pooling of the uncommitted mineral interests within the units. *See Order No. R-13288 and Order No. 13289.*

42. The Division-approved units in the W/2 E/2 and the E/2 E/2 of Section 21 are dedicated to horizontal wells that Cimarex will drill in the 2nd Bone Spring Sandstone, both of which will have a north-to-south orientation. *See Order No. 13288 and Order No. 13289.*

43. Prior to filing its application, Cimarex indentified all mineral interest owners in the proposed project area and sent a proposal letter, a proposed JOA, and an AFE to each of the mineral interest owners by certified mail. *See Cimarex Ex. Nos. 2, 3, and 4.*

44. There are no unlocated interest owners within the project area.

45. Cimarex made a good faith effort to obtain the interest owners' voluntary joinder in the proposed horizontal well.

46. After receiving Cimarex's well proposal, none of the interest owners committed to the well.

47. Cimarex then filed its application with the Division and sent personal, written notice by certified mail to each of the mineral interest owners of the filing of the application and the scheduled Examiner hearing on its application. *See Cimarex Ex. No. 5.*

48. Cimarex also identified all offset operators and interest owners and sent each of them personal, written notice by certified mail of the filing of the application and the scheduled Examiner hearing. *See Cimarex Ex. Nos. 6 and 7.*

49. An Examiner hearing on Cimarex's application was conducted on June 10, 2010.

50. On August 30, 2010, the Commission entered an order consolidating Case Nos. 14480 and 14418 and setting a hearing on the cases. *See Order No. 13228-D.*

51. At the Commission hearing held on November 4, 2010, Cimarex appeared through counsel and presented testimony by Messrs. Compton, Catalano, and Swain. Lynx appeared through counsel and presented testimony by Mr. Scott on behalf of Lynx and several other interest owners in opposition to Cimarex's application.

52. The production data from Cimarex's completed horizontal well in the W/2 W/2 of Section 21 indicate that there is net pay along the entire length of the lateral in the 2nd Bone Spring Sandstone in the E/2 W/2 of Section 21. *See Cimarex Ex. No. 12.*

53. Cimarex Energy Co. of Colorado is a wholly-owned subsidiary of Cimarex Energy Co.

54. Cimarex's proposed operating charges of \$7,000 a month and supervision costs of \$700 a month are the same as the charges and costs that the Division has approved for similar Cimarex horizontal wells, including the approved reasonable charge for supervision (combined fixed rates) for the horizontal wells to be drilled in the W/2 E/2 and the E/2 E/2 of Section 21. *See Order No. R-13288 and Order No. 13289.*

PROPOSED CONCLUSIONS OF LAW

1. Due public notice has been given, and the Commission has jurisdiction over these consolidated cases and the subject matter of the cases.

2. Lynx proposed a well in the S/2 of Section 21 several years ago, but its APD expired more than two years ago. Lynx never drilled the well, and it currently has no plans to drill a vertical or horizontal well in the S/2 of Section 21.

3. There are no unlocated interest owners in the units proposed by Cimarex, and there is no evidence of any title disputes.

4. Cimarex holds oil and gas working interests in each quarter-quarter section of the two proposed units.

5. The geological and engineering analyses presented by Cimarex demonstrate that the north-to-south orientation of the completed and proposed horizontal wells is and will be more productive than would horizontal wells with an east-to-west orientation.

6. NMSA 1978, § 70-2-17 mandates that production from compulsory pooled units must be allocated by the Commission on an acreage basis.

7. The Commission has no authority to require that a horizontal well be completed and tested in each quarter-quarter section of a 160-acre non-standard spacing and proration unit and to use the test results to allocate production from the unit.

8. Approval of the proposed units would enable Cimarex to drill horizontal wells that efficiently produce the reserves underlying the proposed units, thereby preventing waste, and would not impair correlative rights.

9. Two or more separately owned tracts are embraced within the proposed units, and/or there are royalty interests and/or undivided interests in oil and gas minerals in one or more tracts included in the units that are separately owned.

10. As the owner of oil and gas working interests within both of the proposed units, Cimarex has the right to drill horizontal wells to common sources of supply within the units.

11. There are interest owners in the proposed units that have not agreed to pool their interests.

12. To avoid drilling unnecessary wells, protect correlative rights, prevent waste, and afford to the owner of each interest in the units the opportunity to recover or receive without unnecessary expense his or its just and fair share of the hydrocarbons, Cimarex's applications should be approved by pooling all uncommitted interests, whatever they may be, in the oil and gas within the proposed units.

13. Cimarex Energy Co. of Colorado should be designated as the operator of the two horizontal wells and as the operator of the proposed units.

14. A non-standard 160-acre oil spacing and proration unit should be established in the Bone Spring formation consisting of the W/2 W/2 of Section 21, Township 19 South, Range 31 East, NMPM, in Eddy County, New Mexico.

15. The unit (the W/2 W/2 of Section 21) should be dedicated to the Penny Pincher Federal Com No. 1 well, a completed horizontal well that Cimarex drilled from a standard location 660 feet from the North line and 990 feet from the West line (Unit D) of Section 21, and continued South horizontally in the Bone Spring formation to a standard terminus, or bottom hole location, which is 300 feet from the South line and 330 feet from the West line (Unit M) of Section 21.

16. Any pooled interest owner who did not pay his or its share of the estimated well costs for the Penny Pincher Federal Com No. 1 well should have withheld from production his or its share of the reasonable well costs, plus an additional 200% thereof as a reasonable charge for the risk involved in drilling the well.

17. A non-standard 160-acre oil spacing and proration unit should be established in the Bone Spring formation consisting of the E/2 W/2 of Section 21, Township 19 South, Range 31 East, NMPM, in Eddy County, New Mexico.

18. The unit (the E/2 W/2 of Section 21) should be dedicated to the Penny Pincher Federal Com No. 2 well, a horizontal well to be drilled from a standard location 330 feet from the North line and 1,980 feet from the West line (Unit C) of Section 21. The well will penetrate the Bone Spring formation at a standard oil well location 330 feet from the North line and 1,980 feet from the West line (Unit C), and continue South horizontally in the Bone Spring formation to a standard terminus, or bottom hole location, which will be 330 feet from the South line and 1,980 feet from the West line (Unit N) of Section 21.

19. Any pooled working interest owner who does not pay his or its share of the estimated well costs for the Penny Pincher Federal Com No. 2H well should have withheld from production his or its share of the reasonable costs, plus an additional 200% thereof as a reasonable charge for the risk involved in drilling the well.

20. Reasonable charges for supervision (combined fixed rates) should be fixed at \$7,000 per month during drilling and \$700 per month while the wells are producing, provided that these rates should be adjusted annually pursuant to Section III.1.A.3 of the COPAS form titled "*Accounting Procedure – Joint Operations*".

21. Cimarex Energy Co. of Colorado (OGRID 162683) should be designated as the operator of the horizontal wells and as the operator of the proposed units.

22. Cimarex Energy Co. of Colorado should commence drilling the Penny Pincher Federal Com No. 2 well on or before November 30, 2011, and should thereafter continue drilling the well with due diligence to test the Bone Spring formation.

23. There are interest owners in the proposed units who have not agreed to pool their interests.

24. The pooling of all uncommitted interests, whatever they may be, in the oil and gas within the proposed units would avoid the drilling of unnecessary wells, protect correlative rights, prevent waste, and afford to the owner of each interest in the units the opportunity to recover or receive without unnecessary expense his or its just and fair share of hydrocarbons.

25. All uncommitted interests, whatever they may be, in the oil and gas in the Bone Spring formation underlying the units should be pooled.

26. Within thirty days from the date Cimarex furnishes the schedule of estimated well costs for the Penny Pincher Federal Com No. 2 well, each pooled working interest owner should have the right to pay his or its share of the estimated well costs in lieu of paying his or its reasonable well costs out of production, and any such interest owner who pays his or its share of the estimated well costs should remain liable for operating costs but should not be liable for the 200% risk charge.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of November, 2010, I sent a true and correct copy of the foregoing *Cimarex Energy Co.'s. Proposed Findings of Fact and Conclusions of Law* via email to:

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