

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 NOS: 22754 - 22756

APPLICATIONS OF CIMAREX ENERGY CO.,
FOR A HORIZONTAL SPACING UNIT AND
COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS
EXAMINER HEARING
MAY 19, 2022
SANTA FE, NEW MEXICO

This matter came on for virtual hearing before
the New Mexico Oil Conservation Division, HEARING OFFICER
WILLIAM BRANCARD and TECHNICAL EXAMINER LEONARD LOWE on
Thursday, May 19, 2022, through the Webex Platform.

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A P P E A R A N C E S

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1 HEARING EXAMINER BRANCARD: Okay. I think we are
2 on Items 37, 38 and 39 here. I think we are done, at least
3 for now, with the status conferences. And we have a
4 continued case here, this is 22754, 22755, 22756, Cimarex
5 Energy.

6 MR. SAVAGE: Mr. Examiner, Darin Savage with
7 Abadie & Schill appearing on behalf of Cimarex Energy
8 Company.

9 HEARING EXAMINER BRANCARD: Entry of appearance
10 for EGL.

11 MR. PADILLA: Mr. Examiner, Ernest L. Padilla for
12 EGL Resources Inc. We don't have a -- we are just
13 preserving appellate rights.

14 HEARING EXAMINER BRANCARD: Thank you. And I
15 have an entry from MRC Permian.

16 MR. FELDEWERT: Good morning, Mr. Examiner.
17 Michael Feldewert with the Santa Fe office of Holland &
18 Hart.

19 HEARING EXAMINER BRANCARD: Do you have any
20 objection to this moving forward by affidavit?

21 MR. FELDEWERT: We do not.

22 HEARING EXAMINER BRANCARD: Any other entries for
23 Case 22754, 755, 756?

24 (No audible response.)

25 HEARING EXAMINER BRANCARD: Mr. Savage, this was

1 continued for notice hearing, but you have changed the
2 location of your spacing.

3 MR. SAVAGE: Mr. Examiner, this is a continuation
4 of these cases, yes. We have clarified what we originally
5 asserted in the, in the formation and the severances, the
6 severance being the First and Second Bone Spring to the base
7 of the Second, and then from the top of the Third Bone
8 Spring to the base of the Third Bone Spring. Those were our
9 original intentions. That's what we described in the
10 application -- that's what we described at the hearing, and
11 we are hoping that we can, with the clarification submitted
12 in Exhibit 1 and Exhibit 2, will provide sufficient
13 clarification to move forward with these.

14 HEARING EXAMINER BRANCARD: Okay. Can you
15 describe for the record what the change is?

16 MR. SAVAGE: Yes. So according to Mr. Coffman's
17 affidavit, he, he correctly described the general
18 description of the formation from the top of the Third Bone
19 Spring to the base, and then the First and Second Bone
20 Springs.

21 However, he had a severance describing a clerical
22 error, the severance at the base of the Second Bone Spring
23 being 2527. It should have been 10,290 feet. I believe the
24 spacing, based on the inaccurate fee descriptions would have
25 been something like 241 feet. With the clarification, there

1 is sufficient spacing of 478 feet for operations between the
2 top and the base of the Third Bone Spring.

3 Again, as we mentioned, the notice requirements
4 in 19.15.4.9 discuss reasonable identification. The
5 adjudication, we believe that describing the top and base of
6 the formation of the severances provides that reasonable
7 description. We apologize for the clerical error on that.
8 We ask that the Division accept the correction.

9 HEARING EXAMINER BRANCARD: Okay. Mr. Padilla,
10 any questions?

11 MR. PADILLA: No, no.

12 HEARING EXAMINER BRANCARD: Mr. Feldewert?

13 MR. FELDEWERT: I'm trying to -- so, Mr. Savage,
14 if I look at the landman's affidavit, Paragraph 5 --

15 MR. SAVAGE: Yes, sir.

16 MR. FELDEWERT: About halfway down, he says that
17 there is sufficient spacing of 478 feet for operations
18 between the top and base of the Third Bone Spring Sand.

19 MR. SAVAGE: That is the information that he
20 provided in that and I believe that corresponds to the
21 geologist's affidavit that we provided for clarification.

22 MR. FELDEWERT: The target is the Third Bone
23 Spring?

24 MR. SAVAGE: In this one particular case, yes.

25 MR. FELDEWERT: He is saying the target interval

1 is now 478 feet. Is that what I'm getting out of this.

2 MR. SAVAGE: That's what -- we asked for
3 clarification on this and that's the number that he
4 provided. That's comparison to 241, the OCD raised the
5 question about the tightness of the previous numbers. I
6 believe the spacing was 241 feet when he did the
7 calculations, and that was based on, on a clerical error on
8 the, where the Second, the base of the Second Bone Spring
9 ends.

10 MR. FELDEWERT: So this would be what the pooling
11 order would use to describe the unit from the pooled
12 interval; right? It would be 10,290 feet to something?

13 MR. SAVAGE: Yeah, and that something is listed
14 in the original testimony. I believe it's -- I don't
15 recall exactly, it's somewhere around 10,700 and something
16 feet.

17 MR. FELDEWERT: Okay. All right. Thank you.

18 HEARING EXAMINER BRANCARD: Mr. Lowe, any
19 questions?

20 TECHNICAL EXAMINER LOWE: Yes. Hi, good morning,
21 Mr. Savage. Looking at your -- these cases, there are
22 three cases combined together we are hearing right now
23 currently; right?

24 MR. SAVAGE: That is correct, Mr. Lowe.

25 TECHNICAL EXAMINER LOWE: Are they all seeking

1 the Bone Spring.

2 MR. SAVAGE: They are all within the Bone Spring,
3 First and Second Bone Spring and then the Third Bone Spring.

4 TECHNICAL EXAMINER LOWE: So the different cases
5 are seeking different Bone Springs then?

6 MR. SAVAGE: That is correct.

7 TECHNICAL EXAMINER LOWE: Okay. And the
8 application for these cases is titled -- I'm just curious to
9 know why -- it's Titled Horizontal Spacing Unit and
10 Compulsory Pooling. What does Cimarex mean by the
11 horizontal spacing unit? I'm just curious.

12 MR. SAVAGE: Well, you know, that's an
13 interesting question, Mr. Lowe, because, you know, as we
14 understand, you can do a spacing unit by a -- through the
15 request of a permit or you can request it as part the
16 pooling application.

17 And as I understand, these permits have not been
18 submitted and the API numbers acquired at this time, so as a
19 precaution, we request a horizontal spacing unit as part of
20 the pooling application. I have noticed in some of the
21 applications submitted by various operators, they will --
22 the language such as hor -- to the -- requesting a
23 horizontal spacing unit to the extent that it's necessary,
24 that, to me that creates some ambiguity. I believe the OCD
25 has discretion to acknowledge horizontal spacing units at

1 the time of the pooling application, or it's already been
2 established by the permit and you can just ask for a
3 pooling, compulsory pooling.

4 TECHNICAL EXAMINER LOWE: So basically you're --
5 I'm sorry, I still don't understand it. I suspect all the
6 wells that come into the OCD for any purpose whatever they
7 come in is all requested as horizontal spacing unit of some
8 sort.

9 In this case, the way it's titled and the hearing
10 order, it just kind of seemed -- for me, it seemed a
11 little -- what is, what do they want, because usually in
12 that case, in a sense of, I guess, reference to that is I
13 will kind of see as a non-standard, non-standard spacing
14 unit request, I guess. I guess I'm just trying to clarify
15 for my side.

16 MR. SAVAGE: Mr. Lowe, these are standard spacing
17 units based on the standard unit. And let me pull up the --
18 let me find it and I will take a look at the application.

19 TECHNICAL EXAMINER LOWE: I'm looking at the
20 C-102 for the Number 2 well, and it looks standard. I don't
21 know the title of it, that's --

22 MR. SAVAGE: We are not asking for a
23 non-standard, we are just asking for a horizontal spacing
24 unit and compulsory, compulsory pooling. In the first
25 paragraph we discuss establishing the standard 320 acre

1 spacing and proration unit and then asking that the
2 uncommitted mineral interests under the -- within that unit
3 be, be pooled.

4 TECHNICAL EXAMINER LOWE: Okay. And my
5 understanding of the case that's being presented here, there
6 was a change made. Is the change information that was
7 submitted for these cases this explicit, or is it hidden in
8 a bunch of documents that were submitted. It just makes, I
9 mean, for whoever is writing this up, it would be a little
10 easier to distinguish what changes were submitted now than
11 what was submitted initially. I'm just --

12 MR. SAVAGE: Yes. For clarification, the
13 Exhibit 1 and Exhibit 2, that would be the landman
14 affidavit, supplemental affidavit, and the geologist
15 supplemental affidavit, those provide the clarification on
16 that -- that would provide the corrected information that I
17 believe the order should follow.

18 The application and the original testimony did
19 have the clerical error in there. I would ask the Division
20 to not utilize that. If the Division needs additional
21 information, there is a question after review of the
22 supplemental affidavit, we would be more than glad to
23 provide that to make sure that we get the correct
24 information in the order.

25 TECHNICAL EXAMINER LOWE: Okay. Well, those are

1 all my questions. Thank you, Mr. Savage.

2 MR. SAVAGE: Thank you.

3 HEARING EXAMINER BRANCARD: Thank you. Mr.
4 Savage, while we appreciate the clarification, I think you
5 have a major problem here. That is that this 10,527 top of
6 the Bone Spring which was in your original application,
7 that, that description is in the notice that went out; it's
8 not just in the landman's affidavit. So therefore the
9 notice is incorrect by 200 some odd feet.

10 So I don't see how you can go forward with this
11 without filing a new application or get approval of the
12 original and file an amended application -- amendment to
13 the -- to whatever you want. So that's, I think that's the
14 dilemma here. We have a real significant notice
15 discrepancy.

16 MR. SAVAGE: Yes, Mr. Examiner, I was hoping that
17 the language -- the notice letter, if I remember correctly,
18 you know, provides the general description of the, of the
19 application, and the application attached is the -- where
20 the clerical error occurred.

21 I believe that we were hoping that the language
22 of 19.15.4.9 Page 6, a reasonable identification of the
23 adjudication subject matter that would (inaudible) if the
24 Division grants the application, we feel that if there was a
25 concern by the parties who received notice, the concern

1 would have been on the narrower description of the formation
2 of the 241 feet, and if there was any objection, it would
3 have been to that.

4 There was no objection. We do believe that
5 the -- if they did not object to that, there would be no
6 objection to the larger spacing. I understand that the
7 numbers are listed, but, Mr. Examiner, also the description
8 of the demarcation of the top of the Third Bone Spring and
9 bottom of the Third Bone Spring, whatever those be
10 designated as, those are specifically listed as
11 demarcations.

12 I believe that the parties who received notice
13 would have understood that the First and Second Bone Spring,
14 there is one formation and all of the Third Bone Spring
15 would have been the other formation. I believe, in good
16 faith, those were described. It's unfortunate that we had
17 some miscalculations in that.

18 But since no parties objected, and even the
19 parties that made appearances, we feel that in good faith
20 there is an opportunity to move forward on this without the
21 dismissal. That would be a decision for the Division.

22 HEARING EXAMINER BRANCARD: The problem is, is
23 that the notice that went out that was published for these
24 cases does not say, "Top of the Bone Spring to the bottom of
25 the Bone Spring." It says 10,527 to the bottom.

1 MR. SAVAGE: Understood, Mr. Examiner.

2 HEARING EXAMINER BRANCARD: So I mean, that was
3 your choice about how to describe it.

4 MR. SAVAGE: You are correct. That is a good
5 lesson right there.

6 HEARING EXAMINER BRANCARD: If it had just been
7 in the landman affidavit or something, we might have been
8 able to, to deal with that, but at this point we can't
9 because this is in the published notice.

10 MR. SAVAGE: Understood on that.

11 HEARING EXAMINER BRANCARD: So I will leave it up
12 to you whether you want -- you can file a pleading
13 afterwards either to withdraw this application and file a
14 new one or to go forward with the original application and
15 immediately file an amendment.

16 MR. SAVAGE: Okay. Thank you, Mr. Examiner. I
17 will discuss with the client on how they want to proceed on
18 that.

19 HEARING EXAMINER BRANCARD: Are there any other
20 comments then on Cases 22754, 22755, 22756?

21 (No audible response.)

22 HEARING EXAMINER BRANCARD: All right. And these
23 cases will be taken under advisement, either subject to a
24 dismissal or however the applicant wishes to move forward.

25 MR. SAVAGE: Mr. Examiner, one more point, could

1 I ask for admission of Exhibit 1 and Exhibit 2 into the
2 record as we decide how to proceed on this?

3 HEARING EXAMINER BRANCARD: Certainly, thank you.

4 Are there any objections to the exhibits?

5 MR. FELDEWERT: No, sir.

6 MR. PADILLA: No, sir.

7 HEARING EXAMINER BRANCARD: Hearing none, your
8 exhibits will be admitted into the record. Thank you very
9 much.

10 (Taken under advisement.)

11 (Exhibits admitted.)

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1 STATE OF NEW MEXICO

2 COUNTY OF BERNALILLO

3 REPORTER'S CERTIFICATE

4 I do hereby certify that I reported the
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