

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION
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IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION DIVISION FOR
THE PURPOSE OF CONSIDERING:

Case No. 14558
Order No. R-7900-C
De Novo

APPLICATION OF MARBOB ENERGY CORPORATION
(NOW COG OPERATING LLC) FOR VERTICAL
EXPANSION OF THE BURCH-KEELY UNIT,
EDDY COUNTY, NEW MEXICO

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

Case No. 14,577
Order No. R-10,067-B
De Novo

APPLICATION OF COG OPERATING, LLC FOR
VERTICAL EXPANSION OF THE GRAYBURG-
JACKSON (SEVEN RIVERS-QUEEN-GRAYBURG-
SAN ANDRES) POOL TO CORRESPOND WITH
THE UNITIZED FORMATION OF THE BURCH
KEELY UNIT, EDDY COUNTY, NEW MEXICO

COG RESPONSE TO A MOTION FOR A CONTINUANCE
FILED BY CIMAREX AND MAGNUM HUNTER AND
COG REQUESTS THAT CIMAREX AND MAGNUM NOT BE ALLOWED
TO PARTICIPATE OR TO CALL WITNESSES AND PRESENT EVIDENCE

COG Operating LLC (COG) opposes the motion of Cimarex Energy Co. of Colorado
(Cimarex) and Magnum Hunter Production, Inc. (Magnum) to continue these cases. In support
of its position COG states as follows:

1. Cimarex and Magnum have not complied with the OCD Rules regarding motions for continuance. Rule 19.15.4.13.C, NMAC 12/01/08, provides a specific deadline of 48 hours before the hearing:

C. Motions for continuance. Parties shall file and serve motions for continuance no later than 48 hours prior to time the hearing is set to begin, unless the reasons for requesting a continuance arise after the deadline, in which case the party shall file the motion as expeditiously as possible after becoming aware of the need for a continuance.

The hearing is set for 9 a.m. Thursday, July 28, 2011. The deadline, then, would be at 9 a.m. on July 26, 2011. At 10:24 on July 26, counsel for Cimarex and Magnum indicated he would be filing the motion. See Exhibits A and B, copies of emails sent to other counsel in the case showing the time it was sent. He attached to his email an unsigned Amended Entry of Appearance and an unsigned Motion for a Continuance without the attachment and said he “will be filing this....” Clearly he had not filed by 10:24 a.m. In fact the filed Motion for a Continuance was time stamped after 1 p.m. on July 26, 2011, though the Commission Clerk recalls counsel bringing in the papers shortly before noon, but not waiting for them to be stamped.

2. The rule set forth above allows for a party to request a continuance after the deadline if the reasons for the continuance arise after deadline. That is not the situation here.

3. Counsel for Cimarex and Magnum attempts to justify the late filing by claiming personnel of the two companies only recently became aware of the cases. He does not provide a day or a time. Apparently Cimarex was aware of the cases at least by July 21, 2011, because counsel entered an appearance on behalf of Cimarex that day. That certainly is substantially before the July 26, 2011, 9 a.m. filing deadline for a motion for a continuance.

Additionally, the Affidavit of Matthew G. Hyde, Senior Vice President of COG, indicates a Cimarex manager spoke to him about the cases nearly six months ago. Counsel's broad conclusions about his clients not learning about the cases until recently cannot prevail over the factual presentation of the Affidavit. If counsel had presented factual information by way of documents or affidavits there would at least be something for the Oil Conservation Division Director or the Oil Conservation Commission to consider. Instead Cimarex and Magnum provide no facts and there is no credible justification for filing after the deadline in the rule. The Motion for the Continuance should be denied.

4. Cimarex and Magnum will not be harmed by dismissing or denying the continuance. They are already represented in this case by ConocoPhillips Company (Conoco). In pleadings filed in April, 2011, in both of the cases consolidated for hearing, Conoco represented that it was participating for itself and for the non-operating owners of the Grayburg Deep Unit. Both Cimarex and Magnum appear to claim some sort of interest in the Grayburg Deep Unit as justification for their entry into these cases. No explanation is given as to why their interests are different from Conoco or why they need representation in the case other than through Conoco, the unit operator. Because they are already represented in this case there is no justification to "bend" the rules for them to the detriment of the parties to the case who have been preparing, and will continue to prepare, for the case pursuant to OCD Rules.

5. Cimarex and Magnum also assert that another pending case impacting the Grayburg Jackson Pool is a reason for delaying this hearing. A quick review of Case No. 14673 indicates it addresses the top of the Grayburg Jackson Pool rather than the depth limit of the bottom of the pool which is the subject of this case. If the Commission had been in place earlier

it is likely this case would have been resolved before a case impacting the top of the pool was filed.

6. Cimarex and Magnum also claim they need time to prepare witnesses for the hearing. That claim presupposes that they will be allowed to call witnesses. They have not filed a pre-hearing statement, as required by OCD rules, so there is no reason to expect that they will be allowed to present witnesses or exhibits. The Commission may exclude witnesses and exhibits not identified in compliance with OCD Rule 19.15.4.13.B.(2) and COG requests that the Commission do that. The purpose of these rules is to prevent the last minute tactics such as those being attempted by Cimarex and Magnum.

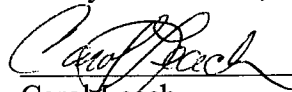
7. Finally, Cimarex and Magnum did not participate in the hearing before the Division Examiners. Neither party could have requested a de novo hearing before the Commission, because they were not parties to the original case. Conoco, who participated in the original case, did request such a hearing as the operator of the Grayburg Deep Unit on behalf of others in the Unit pursuant to OCD Rule 19.15.4.23, NMAC 12/1/08. That rule does not state that others may participate in the de novo hearing before the Commission when they did not participate in the Division level hearing. Apparently Cimarex and Magnum are claiming they were entitled to notice in the Division level case, but they do not cite a rule that indicates they should have had notice. Instead, they assert that Cimarex misplaced the notice and that, perhaps, it did not go to the correct Cimarex entity. Since it is not clear that notice to them was required because they have not asserted a statute, rule or order to support their claim, it is far more likely that they should have sought to enter the cases before the Commission by requesting to intervene in the cases. OCD Rule 19.15.4.11, NMAC 12/1/08, provides a deadline for a notice of intervention and Cimarex and Magnum ignored it, too. It should have been the day before the

date for pre-hearing statements. What the Director or the Commission has in front of them is a request for a continuance by two companies who have missed every applicable deadline in OCD Rules and should not now be allowed to participate in this case as a reward for their non-compliance.

COG requests that the Motion for a Continuance be denied. In addition COG requests that neither Cimarex nor Magnum be allowed to participate in the hearing. Their last minute entry into a case is a practice allowed in the Division level cases. It should not be allowed in a de novo hearing, which is an appeal process, and is governed by OCD Rules designed to prohibit the ambush attempted here. In the alternative, if they are allowed to participate "out of time" despite established OCD Rules, COG requests that they not be allowed to present witnesses or offer exhibits in the hearing.

Respectfully submitted this 27th day of July, 2011.

Beatty & Wozniak, P.C.



Carol Leach

Beatty & Wozniak, P.C.

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Santa Fe, New Mexico 87505-2626

Telephone (505) 983-8545


Facsimile (505) 983-8547

cleach@bwenergylaw.com

ATTORNEYS FOR COG OPERATING LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of July, 2011, I sent notice of this filing to counsel of record in this proceeding.



Carol Leach

Leach, Carol

From: jamesbruc@aol.com
Sent: Tuesday, July 26, 2011 10:24 AM
To: Leach, Carol; mcampbell@campbelltriallaw.com
Subject: Burch-Keely

Attachments: cimarex-eoa--burch keely.docx; cimarex-motion for continuance--burch keely.docx

Attached are (i) an amended entry of appearance, and (ii) a motion for continuance I will be filing this morning. Exhibit A to the motion is a printout of OCD files showing Cimarex of Colorado as an operator in the Grayburg Deep Unit.

Jim

EXHIBIT "A"

7/27/2011

Leach, Carol

From: Michael Campbell [mcampbell@campbelltriallaw.com]
Sent: Tuesday, July 26, 2011 1:33 PM
To: jamesbruc@aol.com; Leach, Carol
Subject: RE: Burch-Keely

Jim – Re your continuance motion, COP would like to proceed with the hearing; they're flying in tomorrow and we're all rigged up. Michael

Michael Campbell

Campbell Trial Law, LLC
110 N. Guadalupe Street, Suite 6
Santa Fe, NM 87501

Phone: 505-820-9959 Mobile: 505-819-1698 Fax: 505-820-1926
Email: mcampbell@campbelltriallaw.com
Website: www.campbelltriallaw.com

CONFIDENTIALITY NOTICE: This message is confidential and may be privileged. If you believe that this email has been sent to you in error, please reply to the sender that you received the message in error; then please delete this e-mail. Thank you.

From: jamesbruc@aol.com [mailto:jamesbruc@aol.com]
Sent: Tuesday, July 26, 2011 10:24 AM
To: cleach@bwenergylaw.com; mcampbell@campbelltriallaw.com
Subject: Burch-Keely

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Jim

EXHIBIT "B"

7/27/2011

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KEELY UNIT, EDDY COUNTY, NEW MEXICO

AFFIDAVIT OF MATTHEW G. HYDE

STATE OF TEXAS)
) ss.
COUNTY OF MIDLAND)

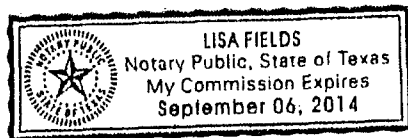
MATTHEW G. HYDE, Senior Vice President -- Exploration and Land, for COG
Operating LLC (COG), being first duly sworn, upon oath, states as follows:

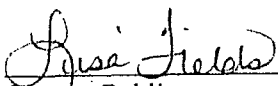
AFFIDAVIT

1. In my position as Senior Vice President for Exploration and Land I frequently speak with representatives of other companies regarding issues we have in common.
2. In early 2011 I spoke with Roger Alexander, Regional Manager – Permian Basin for Cimarex Energy Co. I distinctly remember Mr. Alexander calling to express his wish that COG and ConocoPhillips Company would work out their disagreement regarding the Burch Keely Unit and the Grayburg Jackson Pool. I recall that this discussion took place before the Division level orders were issued.
3. I have attempted to determine the date of this conversation and have located two dates noted by my assistant regarding communications with Mr. Alexander. Those dates are January 21, 2011, and February 8, 2011. I am confident that the discussion described above regarding the Burch Keely Unit and Grayburg Jackson Pool cases disputed by Conoco took place in early 2011.


Matthew G. Hyde

SUBSCRIBED AND SWORN to before me on July 26, 2011.




Notary Public

My Commission Expires: 9-6-2014