

Davidson, Florene, EMNRD

From: Tom Kellahin [tkellahin@comcast.net]
Sent: Tuesday, March 27, 2012 12:39 PM
To: Davidson, Florene, EMNRD
Cc: J. Scott Hall; Brooks, David K., EMNRD; Jim Bruce; Jesse Parkison
Subject: NMOCD Case 14752
Attachments: Cimarex Response-Case 14752.pdf

Dear Florene,

Yesterday at 4:48 pm, I received by email Mr. Hall's motion for leave to file a de novo application for Nearburg. Please find attached for filing my Response for Cimarex setting forth its objections.

Regards,

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

**APPLICATION OF CIMAREX ENERGY
COMPANY OF COLORADO FOR APPROVAL
OF A WATER DISPOSAL WELL,
EDDY COUNTY, NEW MEXICO**

CASE NO. 14752

**CIMAREX RESPONSE TO
NEARBURG'S MOTION FOR LEAVE TO FILE AN
APPLICATION FOR HEARING DE NOVO**

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Cimarex Energy Company of Colorado "Cimarex", by its attorneys, Kellahin & Kellahin, requests that the Division deny Nearburg Producing Company LLC "Nearburg" motion for leave to file an application for hearing de novo and in support state:

Nearburg has failed to timely file an application for a hearing de novo and now asks the Division to excuse that failure and allow it to file its application some sixty-six days late. The issue here is the apparent negligent failure by Nearburg to timely file a de novo application.

On December 21, 2011, the Division entered Order R-13494 in Case 14752 granting Cimarex's application for approval of a salt water disposal wellbore "SWD" for its Secrest Well No. 1 (API #30-015-22321).

Nearburg wants to blame the Division for Nearburg's failure to stay engaged with the processing of this case. Nearburg's delay is not the fault of the Division. Nearburg was neglectful. Inexplicably, Nearburg claims it first learned about this order on March 20, 2011. Cimarex's application was originally filed about August 23, 2011 as an administrative application. Because of an objection filed by Nearburg, the application was set for an examiner's hearing on October 27, 2011. Just prior to that hearing, Mr. Jim Bruce representing Cimarex was forced to obtain substitute counsel. Then at the October 27, 2011 hearing, Nearburg failed to present any evidence or geological or engineering witnesses to support its objection.

The time in which to file an application for a hearing de novo is strictly limited by Division's Rule 19.15.4.23. There are no exceptions. This rule is mandatory. Rule 19.15.4.23 is clear and unambiguous; within 30 days from the date the division issues the order the party files a written application for de novo hearing with the commission clerk. This rule is not linked to Rule 19.15.4.24. Nearburg attempts to place responsibility for its failure upon the Division by arguing that the Division is some how at fault. Rule 19.15.4.23 does not provide 30-days after sending or receiving the order for filing the denovo application. Rule 23 is not an "actual notice rule" meaning that rule 23 is not linked to rule 24.

Nearburg's two wells are plugged Morrow gas wells not within the ½ radius of Secrest SWD well: (a) Nearburg's Liggot Com #1 is exactly 2640 feet from the Secrest SWD well and (b) Nearburg's Glass #1 is 2967 feet from the Secrest SWD well. At the Examiner's hearing, counsel for Nearburg attempted to describe for Examiner Ezeanyim what Nearburg's concerns were but left it to the Examiner to speculate about the producing hydrocarbons from the Canyon formation without presenting a technical expert witness. See Transcript at pages 33-35.

Having failed to present any evidence before the Division's Examiner, Nearburg now claims that it needs a de novo hearing to prove that Cimarex's SWD well will harm Nearburg. At this point, Cimarex questions whether Nearburg has any "standing" to complain.

Nearburg does not explain why it did not exercise due care by monitoring for the issuance of an order in a case it now claims to have such a great interest. Both Nearburg and its counsel are experience participants and frequently appear before the Division. Order R-13494 was issued on December 21, 2011 and available on the OCD webpage the following week. All Nearburg needed to do was to go on-line to the OCD website and type in the case number and the order is the first document shown on the on-line screen for that case.

Nearburg asks the Division Director to excuse Nearburg's failure to exercise ordinary care as a "technicality". A timely application for a de novo hearing is more than a mere "technicality." There are numerous reasons for a timely "appeal" of an Examiner's order. A final-order rule such as Rule 23, promotes overall efficiency of the

Division administrative system, it prevents delay caused by spurious objections. In reliance upon this Order, Cimarex has substantially completed the approved re-entry of the Secret SWD and will commence injection within the next weeks. Based upon this Division order, Cimarex has expended approximately \$1,214,000.

Nearburg cites no cases in support of its position. Counsel for Cimarex is continuing to research this issue but has not yet found any case law directly on point.

Cimarex requests that the Division Director deny Nearburg's motion.

Respectfully submitted,

KELLAHIN & KELLAHIN

By: 

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CERTIFICATE OF SERVICE

I certify that on March 27, 2012, I served a copy of the foregoing documents by:

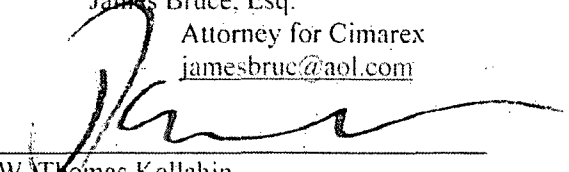
- ☐ US Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Facsimile
- ☒ Email

to the following:

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W. Thomas Kellahin

Cimarex's Response to Motion for Leave
NMOCD Case 14752