

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

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

CASE No. 14582
Order No. R-13357

CIMAREX ENERGY CO. OF COLORADO'S RESPONSE TO
NEARBURG PRODUCING COMPANY'S REQUEST TO RECONSIDER

NEARBURG HAS NO HAS NO RIGHT TO RECEIVE
ANY CONFIDENTIAL
WELL DATA UNTIL 300% OF THE WELL COSTS
ARE RECOVERED BY CIMAREX

Nearburg's request makes the same argument that was rejected by the Examiner at the hearing and was rejected by the New Mexico Court of Appeals—that it is somehow entitled to renege on its decision not to participate in the cost of drilling a well and be treated as though it did not forfeit rights available to participating owners who share not only in the costs of drilling but the *risk* of drilling the well. The Court of Appeals (and Nearburg) clearly recognized that the non-consent penalty is not just a monetary "penalty" but provides for a relinquishment of property rights until the operator recovers the nonconsent risk charge:

Nearburg characterizes the non-consent penalty as a limitation on profits which Yates would incur as a cost of avoiding the risk of drilling a dry or non-productive well. The consenting parties bear the entire cost and risk of the operation. ... If a non-consenting party, without sharing in the risk, were entitled to share equally in the proceeds, most operating companies would not be willing to undertake a drilling operation. **We agree with Nearburg's characterization that "the non-consent penalty is the agreed-upon reward to [a consenting party] for taking the risk and the agreed-upon delay or limitation of profits incurred by [a non-consenting party] for avoiding it." ...The parties have agreed to reward risk-taking which benefits mutual interests by temporarily reallocating interests in production until the party electing to assume the risk has received an agreed-upon return on its investment.**

Cimarex's Response to Nearburg's attempt
to re-argue Division's oral ruling to quash the subpoena

Nearburg v. Yates Petroleum Corp., 1997 NMCA 69, ¶ 31, 123 N.M. 526, 943 P.2d 560 (emphasis added). For Nearburg to cite its own case for the proposition that the risk penalty is the “one and only reward” is misleading and spurious. Nearburg’s motion cites no authority for the proposition that a non-consenting party’s interest partially reverts once drilling costs are recovered even though the 200% risk charge remains to be recovered. Nearburg was given the opportunity to share in the costs of drilling the well and the concomitant rights of a participating owner. Nearburg voluntarily decided to forfeit those rights and it would be manifestly unfair to allow it access to Cimarex’s confidential well data so that it can decide whether to make an election concerning a proposed infill well.

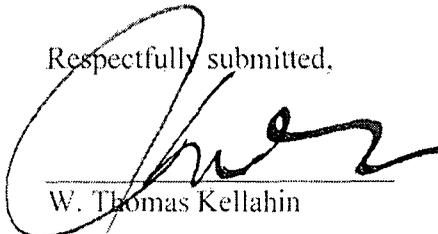
**NEARBURG CAN HAVE PUBLIC DATA
BUT CIMAREX IS NOT REQUIRED TO PRODUCE IT**

It is Cimarex’s recollection that Nearburg was entitled to such data that Cimarex had made public by having filed it with the Division. In doing so, Cimarex did not understand that it had to do Nearburg’s homework and to now copy and send to Nearburg data that Nearburg can find for itself. As an accommodation to Nearburg, has made available those logs submitted with its completion report and provided information to show Nearubrg how to find the current public data concerning the well’s production. Cimarex has no obligation or duty to search public records for Nearburg. Cimarex requests that the Division clarify what it had intended for Cimarex to do.

CONCLUSION

Neither the Division’s rules, past precedent, Order No. R-13357 nor the law of co-tenancy provides a nonparticipating owner in a compulsory spacing unit with the right to obtain undisputedly confidential well data during the period it elected to relinquish its rights in the property. Accordingly, Nearburg’s request to reconsider must be denied and the Division’s ruling Quashing the Subpoena in its entirety should remain unchanged.

Respectfully submitted,



W. Thomas Kellahin

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing pleading was transmitted by email this 23rd day of April 2012 as follows:

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