

**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:**

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

**CASE NO. 14582  
ORDER NO. R-13357**

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**NEARBURG'S REQUEST TO RECONSIDER ORAL RULING  
QUASHING IN PART THE SUBPOENA**

Nearburg Exploration Company, L.L.C. ("Nearburg") hereby requests that the Division reconsider its oral ruling at the April 18th prehearing conference to quash in part the Subpoena Duces Tecum issued by the Division on April 5, 2012 ("the Subpoena"). In support of this request, Nearburg states:

1. Following a review of the briefs and oral argument at the April 18th prehearing conference, the Division announced that it would issue an order quashing the portion of the Subpoena requesting mud logs and other interpretive data not required to be filed with the Division or other governmental agencies, but that it would require Cimarex to produce to Nearburg all data and information filed with the Division or other governmental agencies. As grounds for its decision, the Division stated that Nearburg had not sufficiently reimbursed Cimarex for the costs incurred to drill the Lynch 23 Federal No. 2H Well (API # 30-025-40123) to be legally entitled to review the mud logs. Having made that determination, the Division further noted that no showing had been made that the mud logs were necessary to prepare for any upcoming hearing.

2. It is undisputed that the well has paid out and that therefore, by retention of its share of production, Nearburg has paid a prorate share of the costs incurred to obtain the mud logs and other data it seeks under the Subpoena. *See* Attachments 1 and 2 to Nearburg's Response to Motion to Quash Subpoena. Accordingly, Nearburg has met the standard articulated by the Division in Order R-13156 entered August 12, 2009, in Case No. 14331:

Accordingly, the Division concludes that a co-tenant does not have a right to compel disclosure of information regarding the jointly owned property acquired by the efforts of another co-tenant, when it has not reimbursed, or offered to reimburse, the other co-tenant for a prorata share of the costs the other co-tenant incurred in acquiring the information.

*See* Exhibit E to Cimarex Motion (Order No. R-13156) at ¶ 9.

3. All that remains to be paid by Nearburg is a portion of the 200% risk penalty awarded by the Division under Order R-13357. New Mexico courts have recognized that this 200% "risk penalty" is the one and only "reward" provided to a consenting party for taking the risk of drilling a well, and noted that this "reward" is limited to the "profits incurred by a non-consenting party for avoiding it." *Nearburg*, 1997-NMCA-069 at ¶16 (emphasis added). Nothing in the law of co-tenancy or the pooling statute authorizes Cimarex to withhold from Nearburg the mud logs and other data obtained from drilling the well once a non-consenting party like Nearburg has fully reimbursed Cimarex "for a prorata share of the costs the other co-tenant incurred in acquiring the information." *See* Order No. R-13156 at ¶ 9. *See also* NMSA 1978, § 70-2-17(C) (authorizing only the withholding "solely out of production" of the costs to drill and a charge for risk not to exceed two hundred percent).

4. The Division is therefore acting inconsistent with prior orders, acting outside its statutory authority, acting contrary to the law of co-tenancy, and infringing upon Nearburg's constitutionally protected rights by suggesting it must not only pay "the other co-tenant for a prorata share of the costs the other co-tenant incurred in acquiring the information" (Order R- R-13156 at ¶

9) but also an additional 200% before it is legally entitled to review the mud logs customarily provided to “the voluntary and paying parties to the Joint Operating Agreement for this wellbore.” *See* Cimarex Ex. B at p. 2 (Affidavit of Mark Compton and Lee Catalano).

5. Since Nearburg is a co-tenant and has actually reimbursed Cimarex for the costs incurred to acquire the mud logs, there is no requirement to demonstrate a need for this information in preparation for a hearing. Order R- R-13156 correctly reflects that under the law of co-tenancy, once a co-tenant has reimbursed or offered to reimburse the other co-tenant for acquiring the information, the reimbursing co-tenant has a legal right to the exploratory information on the jointly owned property. *See* Order R- R-13156 at ¶ 9.

6. Finally, to the extent the Division remains of the opinion that Nearburg’s legal right to review the mud logs does not arise until it has paid the cost to acquire these mud logs plus an additional 200%, then Nearburg hereby serves notice that it is willing to submit that additional amount to Cimarex. The data from the mud logs reflected on the statement of costs submitted to Nearburg (*see* Attachment 1 to Nearburg’s Response to Motion to Quash) is unquestionably relevant and important to Cimarex’s proposal to drill a “test well” in the Second Bone Spring reservoir. *See* Attachment 3 to Nearburg’s Response to Motion to Quash. This information is commonly made available to other co-tenants in this property. *See* Cimarex Ex. B at p. 2 (Affidavit of Mark Compton and Lee Catalano). Nearburg should not – and cannot - be treated differently simply because it chose to go non-consent in the drilling of the Lynch 2H well.

WHEREFORE, Nearburg requests that the Division reconsider its oral ruling at the April 18th prehearing conference and issue an order requiring Cimarex to immediately produce the mud logs sought under the Subpoena. If required by the Division, Nearburg is willing to submit to Cimarex the amount of the 200% risk penalty associated with obtaining these mud logs.

Respectfully submitted,

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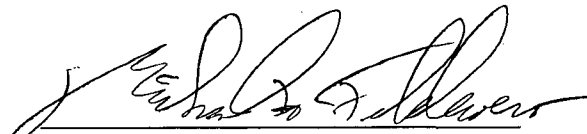
**ATTORNEYS FOR  
NEARBURG EXPLORATION COMPANY, L.L.C.**

### **CERTIFICATE OF SERVICE**

I hereby certify that on April 19, 2012, I served a copy of Nearburg's Request to Reconsider

Oral Ruling Quashing in Part the Subpoena upon the following via Electronic Mail to:

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Michael H. Feldewert