

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.

2012 APR 16 PM 1:17  
RECEIVED  
CASE NO. 14582  
ORDER NO. R-13357

**NEARBURG'S RESPONSE TO MOTION TO QUASH SUBPOENA**

Nearburg Exploration Company, L.L.C. ("Nearburg") submits this response to the motion filed by Cimarex Energy Company ("Cimarex") to quash the Subpoena Duces Tecum issued by the Division on April 15, 2012.

**Summary of Argument**

Under the Subpoena, Nearburg seeks the production of logs, data, reports, tests, analyses and samples obtained during the drilling and completion of the Lynch 23 Federal No. 2H Well, located in the E/2 E/2 of Section 23, Township 20 South, Range 34 East, N.M.P.M., in Lea County, New Mexico. This well was drilled and completed by Cimarex in August of 2011. Nearburg is an interest owner in this well and has paid, and continues to pay, for this well under the terms of pooling Order R-13357, entered by the Division in February 2011.

In its motion, Cimarex takes the position that Nearburg "forfeited" any right to the well information "by electing to go non-consent." Motion at p. 3 (bottom under "Critical Problem"). *See also* Motion at p. 11 ("it forfeited any right to obtain [well information] by refusing to participate in the drilling of the 2-H Well.") No authority exists for this proposition. Under pooling Order R-

13357, Nearburg simply relinquished its right to receive any revenue from this well until Cimarex recovers the costs incurred to drill and complete this well, and an additional 200% of those costs as a risk penalty. A party that chooses to go non-consent on a proposed well does not give up its property rights, nor does it give up in perpetuity its right to obtain the exploratory benefits from the well.

Moreover, the well costs that Nearburg has paid under the terms of pooling Order R-13357 include expenses for “Mud Logging” and “Open Hole Logging.” *See* Attachment 1, p. 3 at lines 13 and 14. These costs have now been fully recovered by Cimarex through retention of Nearburg’s share of the proceeds from this well under the terms of pooling Order R-13357. *See* Attachment 2 (Speer Affidavit). Nearburg has therefore paid its prorata share of the costs incurred to obtain the very information it seeks under the Subpoena. No authority exists to withhold this information from Nearburg under these circumstances. *Compare* Cimarex Exhibit E (Order R-13156) at ¶ (9) (concluding that SG Methane was not entitled to data on a previously drilled well “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.”)

### **Chronology of Events**

1. In February of 2011, the Division issued Order R-13357. This Order created a non-standard 160-acre spacing and proration unit comprised of the E/2 E/2 of Section 23, Township 20 South, Range 34 East, N.M.P.M., in Lea County, New Mexico for a proposed horizontal well in the Third Bone Spring reservoir: The Lynch 23 Federal Well No. 2H (“Lynch 2H”). This Order designated Cimarex operator of the unit and pooled Nearburg and other uncommitted interest owners in the E/2 E/2 spacing unit for this proposed well.

2. In August of 2011, Cimarex completed the Lynch 2H in the Third Bone Spring reservoir and commenced production from the well. *See* Cimarex Exhibit C (Well completion report for Lynch 2H).

3. In January of 2012, Cimarex provided Nearburg a statement of the actual well costs for the Lynch 2H “[p]ursuant to Item (11), Page 4 of Order R-13357.” *See* Attachment 1 hereto.<sup>1</sup> This itemized statement reflects charges for “Mud Logging” and “Open Hole Logging.” *Id.* at p. 3 (statement) at lines 13 and 14. Accordingly, the well costs to which Nearburg is subject to under pooling Order R-13357 include expenses for the very information Nearburg seeks under its Subpoena.

4. By letter dated February 17, 2012, Cimarex suggested that it is authorized by Division Order R-13357 to drill a second well, the Lynch 23 Federal Well No. 3H (“Lynch 3H”), to test the shallower *Second* Bone Spring reservoir. *See* Attachment 3. In its letter, Cimarex contends that Nearburg must make an election and submit payment of the anticipated well costs within 30 days and that Order R-13357 is the Operating Agreement for this proposed well.

5. On March 16, 2012, Nearburg received a Statement of Payout from Cimarex for the Lynch 2H covering the period from “inception Through December 2011.” *See* Attachment 2A to Speer Affidavit. This statement reflects that as of December 2011, all but \$790,759 of the original \$6,269,443 incurred to drill and complete the Lynch 2H have been recovered by Cimarex.

6. Based on the production revenues and costs reflected in the Statement of Payout for the period through December 2011, Cimarex should have recovered all of the costs for the Lynch 2H well in the first quarter of 2012. *See* Attachment 2 (Speer Affidavit)

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<sup>1</sup> This provision of Order R-13357 required Cimarex to submit the itemized schedule of actual well costs within 90 days following completion of the well. Since the well was completed in August, this itemized schedule should have been submitted no later than November of 2011. Cimarex has never explained why it waited 5 months to provide Nearburg with the itemized schedule of well costs.

7. Following receipt of Cimarex's proposal to drill the Lynch 3H to test the Second Bone Spring reservoir, Nearburg requested that Cimarex provide the mud logs, open hole logs and other data obtained from the drilling of the Lynch 2H. When Cimarex refused, Nearburg caused the issuance of a Subpoena by the Division for this information. *See* Attachment 4.

### ARGUMENT

Having drilled the Lynch 2H in the Third Bone Spring reservoir, Cimarex now proposes to drill the Lynch 3H "to test" the shallower and discrete Second Bone Spring reservoir. *See* Attachment 3. As a result, the information obtained from the drilling of the Lynch 2H is relevant and necessary to evaluate Cimarex's proposal. As an interest owner contributing to the costs to drill the Lynch 2H well, Nearburg is entitled to receive and review the same mud logs, open hole logs, and other information from this well that Cimarex and other interest owners have in their possession.

Cimarex does not dispute that this information is relevant and necessary for a full and complete evaluation of the proposed Lynch 3H well, which Nearburg identified as the primary basis for the issuance of the Subpoena. *See* Attachment 4 at p. 2 (Purpose). Cimarex also does not appear to dispute that Nearburg would be entitled to the mud logs and other information obtained from the drilling of the Lynch 2H if Nearburg had "paid its share of the total well costs pursuant to a voluntary agreement." Motion at p. 2 (Objections).<sup>2</sup> Instead, Cimarex suggests that "Nearburg forfeited any right to obtain [the well information] by electing to go non-consent." Motion at p. 3 (bottom under "Critical Problem"). *See also* Motion at p. 11 ("it forfeited any right to obtain [well information] by refusing to participate in the drilling of the 2-H Well.") No authority exists for this proposition.

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<sup>2</sup> Indeed, the Affidavit of Mark Compton and Lee Catalano note that the information sought by Nearburg under the Subpoena is commonly shared with "the voluntary and paying parties to the Joint Operating Agreement for this wellbore." *See* Exhibit B to the Cimarex Motion at p. 2.

As reflected in *Nearburg v. Yates Petroleum Corporation*, a party that chooses to go non-consent on a proposed well does not give up its property rights, nor does it give up in perpetuity its right to obtain the exploratory benefits from the well. Instead, the cost of going non-consent is “to temporarily relinquish the specified amount of its interest in production in exchange for the consenting party bearing the risk of the operation.” 1997-NMCA-069, ¶17, 123 N.M. 526, 943 P.2d 560 (emphasis added). Under the terms of pooling Order R-13357, Nearburg -- as a non-consenting working interest owner -- has given up nothing more than its prorate share of “production” from the Lynch 2H until such time as (a) its proportionate share of the well costs have been recovered by Cimarex, and (b) an additional 200% above costs has been recovered from production by Cimarex. See Order R-13357 at Ordering ¶ (13). As recognized by New Mexico courts, this “risk penalty” is simply a “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.” *Nearburg*, 1997-NMCA-069 at ¶16 (emphasis added). See also NMSA 1978, § 70-2-17(C) (authorizing the withholding of “production” from the well until the owners drilling the well have been paid the amount due under the terms of the pooling order). Thus the fact that Nearburg chose to go “non-consent” in the Lynch 2H well does not authorize Cimarex to withhold from Nearburg the mud logs, open hole logs, formation tests, and other information obtained from the drilling of the well. Instead, all that Cimarex is authorized to withhold from the non-consenting working interest owners is a share of the production or the profits from the well for a period of time.

Similarly, Order R-13156 entered by the Division in Case No. 14331 (Exhibit E to the Cimarex motion) does not support Cimarex’s position that Nearburg “forfeited” its right to the well information by electing to go non-consent. Motion at p. 3. Instead, Order R-13156 simply concludes:

[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. Unlike the circumstances in the XTO-SG Methane dispute, Nearburg has paid its prorata share of the costs for the mud logs, open hole logs and other interpretative data obtained from the drilling of the Lynch 2H. *See* Attachment 2. All that remains to be obtained from Nearburg's share of the production from the well is the 200% risk penalty awarded to Cimarex under pooling Order R-13357. Since Nearburg has actually reimbursed Cimarex for its prorata share of the costs incurred in acquiring the information sought under the Subpoena, Order R-13156 recognizes that Nearburg is entitled to that well information.

Finally, there can be no dispute that the information sought by the Subpoena is relevant and necessary to evaluate Cimarex's proposal to complete a horizontal well in a shallower reservoir underlying the same surface area as the Lynch 2H. *See* Attachment 3. Indeed, the Affidavit of Mark Compton and Lee Catalano note that the information sought by Nearburg under the Subpoena is commonly shared with "the voluntary and paying parties to the Joint Operating Agreement for this wellbore." *See* Exhibit B to the Cimarex Motion at p. 2. Moreover, Division Rule 19.15.7.16 only allows similar logs and data to be kept from the general public for a period of no more than 90 days from the date of the well's completion, if such a request is made by the operator. No such request was made by Cimarex for the Lynch 2H, and the 90 day period following completion of the Lynch 2H has long since expired. As an interest owner that contributed to the costs in drilling this well under the terms of pooling Order R-14582, Nearburg is entitled to the mud logs, open hole logs and other interpretative data obtained by the drilling of the Lynch 2H.

WHEREFORE, Nearburg requests that the Division issue an order requiring Cimarex to immediately produce the information sought under the Subpoena.

Respectfully submitted,

HOLLAND & HART LLP

By: 

Michael H. Feldewert

Adam G. Rankin

Post Office Box 2208

Santa Fe, New Mexico 87504-2208

Phone: (505) 988-4421

Facsimile: (505) 983-6043

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

### **CERTIFICATE OF SERVICE**

I hereby certify that on April 16, 2012, I served a copy of Nearburg's Response to Motion to

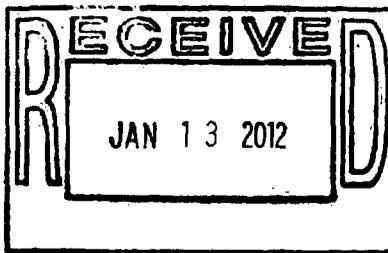
Quash Subpoena upon the following via Electronic Mail to:

W. Thomas Kellahin  
Kellahin & Kellahin  
706 Gonzales Road  
Santa Fe, New Mexico 87501  
[tkellahin@comcast.net](mailto:tkellahin@comcast.net)



Michael H. Feldewert

Cimarex Energy Co.  
600 N. Marienfeld St.  
Suite 600  
Midland, Texas 79701  
PHONE 432.571.7800



January 11, 2012

Nearburg Exploration Co., LLC, et al  
(See Attached List)

Via Certified Mail Return Receipt # 91 7108 2133 3938 9332 5965

Re: Cimarex Energy Co.  
Lynch 23 Federal No. 2  
Lea County, New Mexico

*YC: Duane  
Terry  
Bill  
Tim Spear  
Keith Williams  
Russell  
Carolyn  
Carol Smith*

To Whom It May Concern,

Pursuant to Item No. 11, Page 4 of Order No. R-13357, enclosed are the actual well costs of the above captioned well.

If there is anything further that you should require in regard to this matter, please do not hesitate to contact us. Thank you very much.

Regards,  
CIMAREX ENERGY CO.

A handwritten signature in black ink, appearing to read "Mike Wallace".

Mike Wallace  
Landman  
432.571.7873(direct)

Attachment  
1

Nearburg Exploration Co., LLC,  
Attn: Terry Grant  
3300 North "A" Street, Building 2, Suite 120  
Midland, Texas 79705-5421

**On behalf of itself and:**

1. Estate of Milton P. Kent
2. Estate of L.J. Reischman/LJR Resources Ltd. Co.
3. Necka Group 1983 Ltd.
4. Tritex Petroleum Co.
5. Anna A. Reischman
6. C.W. Paine Co.
7. LJS Resources, LLC
8. Burl L. Reynolds
9. Menpart Associates
10. Harold S. Myers Trust
11. Mark Nearburg
12. Joseph M. Giard
13. Jack B. Shook, Jr. Royalty Trust
14. LDH Holdings, LLC
15. Joe R. Wright/Wright Family Trust
16. Holsum, Inc.
17. Richard R. Finlay
18. Hideaway Partnership
19. Gretchen Nearburg
20. Fred M. Nelson Farms
21. Pamela B. Link and J.E. Ciezinski, Trustee U/W/O/ of Donald Blackmar



# Cimarex Energy Co.

## Review of Costs

A/E Code: 250204  
 RR Date: 07/30/2011  
 Print Date: 1/11/2012

Well Name: LYNCH 23 FEDERAL 2

TD: 15,446

Spud Date: 06/13/2011

Turned Over To Prod Date: 09/10/2011

Superintendent: Dee Smith

Sub Ledger Description	BCP Code	A/E BCP Cost	Field BCP Cost	Field Variance To A/E Over/Under	% Difference	Involved BCP Cost	Involved Variance To A/E Over/Under	% Difference	Involved Variance To Field Over/Under	% Difference	ACP Code	A/E ACP Cost	Field ACP Cost	Field Variance To A/E Over/Under	% Difference	Involved ACP Cost	Involved Variance To A/E Over/Under	% Difference	Involved Variance To Field Over/Under	% Difference
Fluents & Location Preparation / Restoration	DICC.100	50,000	61,185	10,185	20.37%	71,997	21,997	43.99%	11,812	19.83%	DICC.100	3,000	1,500	-1,500	-50.00%	29,793	17,793	593.11%	19,293	1,293.23%
Damages	DICC.105	5,000	5,000	0	0.00%	1,500	-3,500	-70.00%	-3,500	-70.00%	DICC.105	0	0	0	0.00%	0	0	0.00%	0	0.00%
Mud/Fluids Disposal Charges	DICC.355	50,000	91,000	41,000	82.00%	83,717	43,717	87.43%	2,717	2.99%	DICC.235	75,000	35,820	-39,180	-52.24%	87,194	-17,810	-23.75%	21,364	59.64%
Day Rate	DICC.115	652,000	621,622	-30,378	-4.66%	626,472	-25,528	-3.92%	4,650	0.78%	DICC.120	84,000	59,734	-24,266	-28.89%	44,851	-19,549	-23.00%	-15,283	-25.59%
Misc Prep Cost (Mouse Hole, Rat Hole, Pads, Pile Clusters, Misc.)	DICC.120	5,000	14,614	9,614	192.28%	13,214	8,214	164.28%	-1,400	-8.58%	DICC.120	0	0	0	0.00%	0	0	0.00%	0	0.00%
Bits	DICC.125	100,000	112,500	12,500	12.50%	147,806	47,806	47.81%	35,306	31.88%	DICC.125	1,000	0	-1,000	-100.00%	0	-1,000	-100.00%	0	0.00%
Fuel	DICC.135	137,000	156,505	19,505	14.24%	130,597	-6,403	-4.67%	-25,907	-18.55%	DICC.135	1,000	0	-1,000	-100.00%	6,452	7,452	745.22%	8,452	0.00%
Water 009 / Completion Fluids 109	DICC.140	33,250	47,319	14,069	42.31%	0	-33,250	-100.00%	-47,319	-100.00%	DICC.140	133,750	100,797	-32,953	-24.64%	135,479	-8,274	-6.18%	24,679	24.48%
Mud & Additives	DICC.145	67,500	101,606	34,106	50.53%	148,493	80,993	119.99%	46,897	46.15%	DICC.145	0	0	0	0.00%	0	0	0.00%	0	0.00%
Surface Rentals	DICC.150	43,000	27,055	-15,945	-37.08%	25,511	-17,489	-40.67%	-1,544	-3.79%	DICC.140	111,000	284,933	173,933	156.70%	298,443	187,443	168.91%	13,661	4.78%
Dowhole Rentals	DICC.155	119,000	201,905	86,905	75.57%	125,064	10,064	8.77%	-78,821	-38.06%	DICC.148	11,000	5,100	-5,900	-53.64%	8,387	-1,413	-12.85%	4,427	55.70%
DSTS, Formation Tests	DICC.160	0	0	0	0.00%	0	0	0.00%	0	0.00%	DICC.160	0	0	0	0.00%	0	0	0.00%	0	0.00%
Mud Logging	DICC.170	39,000	26,862	-12,138	-31.12%	32,635	-6,365	-16.32%	3,773	13.07%	DICC.160	0	0	0	0.00%	0	0	0.00%	0	0.00%
Open Hole Logging	DICC.180	18,000	22,108	4,108	22.82%	22,854	4,854	26.97%	748	3.97%	DICC.160	0	0	0	0.00%	0	0	0.00%	0	0.00%
Cementing, thru Intermediate Casing	DICC.190	40,000	150,164	110,164	275.41%	150,556	110,556	276.39%	392	0.26%	DICC.155	25,000	118,359	93,359	373.43%	95,438	70,434	281.74%	-22,924	-19.37%
Tubular Inspections	DICC.195	5,000	2,716	-2,284	-45.72%	7,198	2,198	43.92%	4,479	164.91%	DICC.160	3,000	7,435	4,435	147.84%	1,947	6,490	216.33%	-2,488	-33.47%
Casing Crews	DICC.195	26,000	19,247	-6,753	-25.97%	30,189	4,189	16.11%	10,942	56.85%	DICC.165	18,000	17,094	-904	-5.02%	27,899	11,899	74.50%	10,899	60.55%
Extra labor, Welding, etc.	DICC.200	12,000	18,741	6,741	56.17%	4,189	-7,811	-65.09%	-14,543	-77.80%	DICC.170	5,000	25,455	20,455	409.09%	17,191	12,191	243.82%	-8,294	-32.58%
Trucking	DICC.205	25,000	20,387	-4,613	-18.45%	24,892	-108	-0.43%	4,525	22.22%	DICC.175	4,000	30,434	26,434	660.85%	31,219	37,219	930.41%	10,762	35.43%
Supervisors	DICC.210	69,000	83,000	14,000	20.30%	75,600	6,600	9.57%	12,600	20.01%	DICC.180	17,000	34,000	17,000	100.00%	47,181	30,181	177.54%	13,181	38.77%
Trailer, Camp & Catering	DICC.280	22,000	28,792	6,792	30.87%	22,197	197	0.90%	-4,585	-17.12%	DICC.255	4,000	1,180	-2,820	-70.50%	16,131	12,131	303.29%	14,851	1,287.08%
Other misc expenses	DICC.220	2,000	1,151	-849	-42.45%	2,834	834	41.70%	1,682	146.12%	DICC.190	7,000	19,175	12,175	173.93%	20,724	13,724	196.06%	1,549	8.08%
Overhead	DICC.225	14,000	14,000	0	0.00%	10,523	-3,477	-24.84%	-3,477	-24.84%	DICC.195	3,000	0	-3,000	-100.00%	3,861	861	28.71%	3,861	0.00%
Remedial Cementing	DICC.230	0	0	0	0.00%	0	0	0.00%	0	0.00%	DICC.215	0	0	0	0.00%	0	0	0.00%	0	0.00%
Mobilize & Demobilize	DICC.240	110,000	80,568	-29,432	-26.76%	93,638	-16,362	-14.87%	13,071	18.22%	DICC.210	0	0	0	0.00%	0	0	0.00%	0	0.00%
Directional Drilling	DICC.245	192,000	219,594	27,594	14.37%	217,392	25,392	13.23%	-2,202	-1.09%	DICC.230	0	0	0	0.00%	0	0	0.00%	0	0.00%
Dock, Dispatcher, Crane	DICC.250	0	0	0	0.00%	0	0	0.00%	0	0.00%	DICC.230	0	0	0	0.00%	0	0	0.00%	0	0.00%
Machinery/Air Transportation	DICC.275	0	0	0	0.00%	0	0	0.00%	0	0.00%	DICC.250	0	0	0	0.00%	0	0	0.00%	0	0.00%
Boiler Control Equipment/Services	DICC.280	53,200	46,332	-6,868	-12.91%	33,347	-19,853	-37.32%	-12,975	-28.01%	DICC.210	0	0	0	0.00%	0	0	0.00%	0	0.00%
Well Control-Equip/Services	DICC.285	35,000	30,835	-4,165	-11.90%	39,218	4,218	12.05%	8,353	27.19%	DICC.240	11,000	12,407	1,407	12.79%	59,249	49,249	447.71%	47,841	385.60%
Fishing & Sidetrack Services	DICC.270	0	0	0	0.00%	0	0	0.00%	0	0.00%	DICC.245	0	0	0	0.00%	0	0	0.00%	0	0.00%
Completion Rig	DICC.290	0	0	0	0.00%	0	0	0.00%	0	0.00%	DICC.215	44,000	23,977	-20,023	-45.51%	32,886	-11,142	-25.32%	8,881	37.04%
Coil Tubing	DICC.295	0	0	0	0.00%	0	0	0.00%	0	0.00%	DICC.260	36,000	148,432	110,432	308.75%	149,977	113,977	316.60%	3,545	2.42%
Completion Logging, Perforating	DICC.300	0	0	0	0.00%	0	0	0.00%	0	0.00%	DICC.200	135,000	79,027	-55,973	-41.46%	79,027	-55,973	-41.46%	0	0.00%
Stimulation	DICC.305	0	0	0	0.00%	0	0	0.00%	0	0.00%	DICC.210	1,100,000	1,305,228	205,228	18.66%	1,483,590	383,590	34.87%	178,353	13.66%
Legal/Regulatory/Casualty	DICC.300	13,000	13,000	0	0.00%	18,633	5,633	43.33%	5,633	43.33%	DICC.290	0	0	0	0.00%	2,387	2,387	0.00%	2,387	0.00%
Well Control Insurance	DICC.285	8,000	8,000	0	0.00%	0	-8,000	-100.00%	-8,000	-100.00%	DICC.220	90,000	114,377	24,377	27.09%	0	-90,000	-100.00%	-114,377	-100.00%
Contingency	DICC.435	97,000	110,138	13,138	13.54%	0	-97,000	-100.00%	-110,138	-100.00%	DICC.110	10,000	0	-10,000	-100.00%	23,574	13,574	135.74%	23,574	0.00%
Construction For Well Equipment	DICC.435	0	0	0	0.00%	0	0	0.00%	0	0.00%	DICC.110	100,000	117,100	17,100	17.10%	44,316	-55,684	-55.88%	-72,784	-82.16%
Construction For Lease Equipment	DICC.435	0	0	0	0.00%	0	0	0.00%	0	0.00%	DICC.265	0	0	0	0.00%	0	0	0.00%	0	0.00%
Construction For Sales P/L	DICC.435	0	0	0	0.00%	0	0	0.00%	0	0.00%	DICC.265	0	0	0	0.00%	0	0	0.00%	0	0.00%
<b>Intangible</b>		<b>2,035,859</b>	<b>2,312,997</b>	<b>276,997</b>	<b>13.60%</b>	<b>2,170,308</b>	<b>134,350</b>	<b>6.66%</b>	<b>-142,607</b>	<b>-6.57%</b>		<b>2,099,750</b>	<b>2,539,621</b>	<b>539,871</b>	<b>25.71%</b>	<b>2,714,880</b>	<b>705,030</b>	<b>35.89%</b>	<b>178,359</b>	<b>6.90%</b>
Drive Pipe	DWEB.150	0	0	0	0.00%	0	0	0.00%	0	0.00%	DWEB.150	0	0	0	0.00%	0	0	0.00%	0	0.00%
Conductor Pipe	DWEB.130	0	0	0	0.00%	0	0	0.00%	0	0.00%	DWEB.130	0	0	0	0.00%	0	0	0.00%	0	0.00%
Water String	DWEB.150	0	0	0	0.00%	0	0	0.00%	0	0.00%	DWEB.150	0	0	0	0.00%	0	0	0.00%	0	0.00%
Surface Casing	DWEB.140	15,000	89,749	74,749	498.33%	86,003	71,003	473.35%	-3,746	-4.17%	DWEB.140	0	0	0	0.00%	0	0	0.00%	0	0.00%
Intermediate Casing	DWEB.145	204,000	257,279	53,279	26.12%	278,263	74,263	36.40%	20,984	8.16%	DWEB.145	0	0	0	0.00%	0	0	0.00%	0	0.00%
Production Casing Or Liner	DWEB.145	0	0	0	0.00%	0	0	0.00%	0	0.00%	DWEB.100	432,656	335,865	-96,791	-22.37%	341,231	-91,425	-21.13%	5,346	1.59%
Tubing	DWEB.145	0	0	0	0.00%	0	0	0.00%	0	0.00%	DWEB.105	77,000	71,000	-6,000	-7.79%	82,003	5,003	6.50%	11,033	15.54%
N/C Well Equipment	DWEB.115	13,000	13,000	0	0.00%	11,908	-1,092	-8.40%	-1,092	-8.40%	DWEB.115	7,500	0	-7,500	-100.00%	172,473	164,973	2,169.86%	172,473	0.00%
Wellhead, Tree, Chokes	DWEB.100	0	0	0	0.00%	0	0	0.00%	0	0.00%	DWEB.120	13,000	13,000	0	0.00%	11,061	85.09%	11,061	85.09%	
Liner Hanger, Isolation Packer	DWEB.100	0	0	0	0.00%	0	0	0.00%	0	0.00%	DWEB.125	0	0	0	0.00%	0	0	0.00%	0	0.00%
Packer, Nipples	DWEB.100	0	0	0	0.00%	0	0	0.00%	0											

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

**APPLICATION OF CIMAREX ENERGY  
COMPANY 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**

**AFFIDAVIT OF TIM SPEER**

STATE OF TEXAS            )  
  ) ss.  
COUNTY OF MIDLAND )

I, Tim Speer, have been first duly sworn on oath states as follows:

1. My name is Tim Speer and I reside in Midland, Texas. I am employed by Nearburg Producing Company ("Nearburg") as reservoir engineer and have been so employed by Nearburg since May 2008.
2. According to records filed with the New Mexico Oil Conservation Division, the Lynch 23 Fed Com No. 2H well was completed by Cimarex Energy Company in August of 2011 and has been producing oil and associated gas since that time.
3. On March 16, 2012, Nearburg received a Statement of Payout from Cimarex for the Lynch 23 Fed Com # 2H well for the period that Cimarex describes as "inception Through December 2011." See Attachment 2A. This statement reflects that as of December 2011, all but \$790,759 of the original \$6,269,443 in well costs have been recovered by Cimarex.
4. Based on the production revenues and costs reflected in the Statement of Payout for the period through December 2011, Cimarex should have recovered all of the well costs in the first quarter of 2012.

FURTHER AFFIANT SAYETH NOT.



SUBSCRIBED AND SWORN before me on this 12th day of April, 2012.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
7/15/2015



Attachment

**Cimarex Energy Company**  
**15 East 5th St.**  
**Tulsa, OK 74103**

MAR 1 10 2011

Forced Pool

**Statement of Payout**  
**For Inception Through: Dec 2011**

Property Name:	Lynch 23 Federal 2	Well Operator:	Cimarex Energy of Co
Prospect Name:	Quail Ridge	County, State:	Lea, NM
Location:	Sec 22-20S-34E		

Payout Tracked At Working Interest	100%	Net Revenue Interest	77.000%
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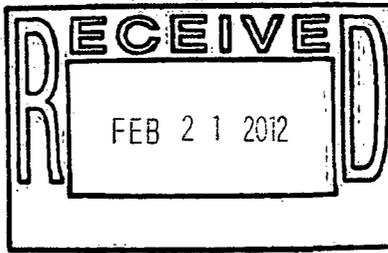
Revenue			
Gas	\$648,426.52		
Less: Taxes	(\$56,050.26)		
Other Deductions	<u>(\$44,444.72)</u>		
<b>Total Gas Revenue</b>		<b>\$547,931.54</b>	
Oil	\$5,386,407.15		
Less: Taxes	<u>(\$455,654.49)</u>		
<b>Total Oil Revenue</b>		<b>\$4,930,752.66</b>	
<b>Total Revenue</b>			<u><b>\$5,478,684.20</b></u>
Costs			
Intangible Drilling	\$2,170,300.14	Penalty 3.00	\$6,510,900.42
Intangible Completion	\$2,645,877.34	3.00	\$7,937,632.02
Well Equipment	\$1,019,151.06	3.00	\$3,057,453.18
Lease Equipment	\$366,713.38	3.00	\$1,100,140.14
Operating Expenses	<u>\$67,401.38</u>	3.00	<u>\$202,204.14</u>
<b>Total Cost</b>	<b>\$6,269,443.30</b>		<u><b>\$18,808,329.90</b></u>
<b>Balance to Recover</b>	<b>\$ 790,759.10</b>		<u><u><b>\$13,329,645.70</b></u></u>

For further information regarding data on this report please contact Sandy Neff at 918-560-7044 or sneff@cimarex.com

ALL BALANCES ARE SUBJECT TO FINAL AUDIT

**Attachment**  
**2A**

Cimarex Energy Co.  
600 N. Marienfeld St.  
Suite 600  
Midland, Texas 79701  
PHONE 432.571.7800



February 17, 2012

Nearburg Exploration Company, L.L.C.  
Attn: Russell Wickman  
3300 North "A" Street  
Building 2, Suite 120  
Midland, Texas 79705-5421

**Certified Mail-Return Receipt Requested No. 91 7108 2133 3938.9332 6597**

Re: Proposal to Drill  
Lynch 23 Federal #3H Well  
E/2 E/2, Sec.23-T20S-R34E  
Lea County, New Mexico

Dear Sir/Madam:

Cimarex Energy Co. hereby proposes the Lynch 23 Federal #3H Well under the NMOCD Order No. 13357 at a legal location in E/2 E/2, Sec. 23-T20S-R34E, Lea County, New Mexico.

The intended surface hole location for the well is approximately 305 feet FNL and 560 feet FEL and the intended bottom hole location is approximately 330 feet FSL, 660 feet FEL. The well is proposed to be drilled vertically to a depth of approximately 10,500 feet to test the Bone Spring formation and laterally in a southerly direction within the formation to the referenced bottom hole location. Total measured depth of the well is proposed to be approximately 14,975 feet from surface to terminus.

It should be understood that compliance with topography or cultural or environmental concerns, among others, might require modification of Cimarex's intended procedure. Cimarex will advise you of any such modifications.

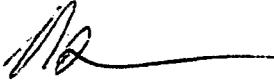
Enclosed, in duplicate, is (i) our detailed AFE reflecting estimated costs associated with this proposal, and; (ii) one (1) copy of the NMOCD Order No. 13357, which will serve as our Operating Agreement to govern the operations of the Lynch 23 Federal No. 3H Well. If you intend to participate, please approve and return one (1) original of the enclosed AFE, along with the contact information to receive your well data, to the undersigned within thirty (30) days of receipt of this proposal. If you elect to purchase your own well control insurance, you must provide a certificate of such insurance to Cimarex prior to commencement of drilling operations; otherwise, you will be covered by insurance procured by Cimarex and will be responsible for your share of the cost.

**Attachment**

**3**

Please call the undersigned with any questions or comments.

Respectfully,

A handwritten signature in black ink, appearing to be 'M Wallace', followed by a horizontal line extending to the right.

Mike Wallace

Landman

Phone: (432) 571-7873

Cell: (432) 301-0467

[mwallace@cimarex.com](mailto:mwallace@cimarex.com)

Well Proposal  
February 17, 2012

**ELECTION TO PARTICIPATE  
Lynch 23 Federal No. 3H Well  
E/2 E/2, Sec. 23-T20S-R34E, Lea Co., NM**

\_\_\_\_\_ Elects **TO** participate in the proposed Lynch 23 Federal No. 3H Well.

\_\_\_\_\_ Elects **NOT** to participate in the proposed Lynch 23 Federal No. 3H Well.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

If your election above is TO participate in the proposed Lynch 23 Federal No. 3H Well, then:

\_\_\_\_\_ Elects **TO** be covered by well control insurance procured by Cimarex Energy Co.

\_\_\_\_\_ Elects **NOT** to be covered by well control insurance procured by Cimarex Energy Co. and agrees to provide Cimarex Energy Co. with a certificate of insurance prior to commencement of drilling operations or be deemed to have elected to be covered by well control insurance procured by Cimarex Energy Co.

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 NO. 14582  
ORDER NO. R-13357

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

RECEIVED OOD  
2012 APR -5 A 11:23

SUBPOENA DUCES TECUM

TO: Cimarex Energy Company  
c/o Thomas Kellahin  
Kellahin & Kellahin  
706 Gonzales Road  
Santa Fe, New Mexico 87501

Pursuant to N.M.S.A. 1978, § 70-2-8 and 19.15.4.16 NMAC of the New Mexico Oil Conservation Divisions and Commission Rules of Procedure, you are hereby ORDERED to appear by 9:00 a.m., on Tuesday, April 10, 2012, at the offices of the Oil Conservation Division, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87504, to produce and make available to Nearburg Producing Company for copying, the documents and items specified in attached Exhibit A.

This subpoena is issued on application of Nearburg Producing Company through their attorney, Michael H. Feldewert, Holland & Hart LLP, Post Office Box 2208, Santa Fe, New Mexico 87504.

Dated this 5<sup>th</sup> day of April, 2012. @ 11:22 a.m.

NEW MEXICO OIL CONSERVATION COMMISSION

BY:

Mabille Afferdt

TITLE:

Assistant General Counsel

Attachment

4

**EXHIBIT A**  
**TO SUBPOENA DUCES TECUM**  
**TO CIMAREX ENERGY COMPANY**  
**IN NEW MEXICO OIL CONSERVATION COMMISSION**  
**CASE NO. 14582**

**PURPOSE:** This subpoena seeks information on a well in the E/2 E/2 of Section 23 in which Nearburg Producing Company is an interest owner for the purpose of evaluating a subsequent well proposal submitted by Cimarex Energy Company for this same area, and for the purpose of preparing for hearing on Nearburg's motions filed with the New Mexico Oil Conservation Commission in Case No. 14582. Cimarex has voluntarily provided some information on this well to Nearburg at its offices in Midland, Texas, but has refused to provide the mud logs and other pertinent well information in their possession. This information is readily available to Cimarex and can be produced in short order.

**PRODUCE THE FOLLOWING DOCUMENTS** as they relate to Cimarex Energy Company's Lynch 23 Federal No. 2H Well drilled in the E/2 E/2 of Section 23, Township 20 South, Range 34 East, N.M.P.M., in Lea County, New Mexico:

1. All logs generated during or after the drilling of the above-referenced well, including but not limited to mud logs (daily and final), LWD logs, FMIs, all field prints of all logs run in the well, final composite prints of all logs run in the well, and any logs conducted but not provided to the State Land Office and/or the New Mexico Oil Conservation Division;
2. Copies of all survey plats, permit to drill, and other regulatory forms, letters, and correspondence filed with any governmental agencies;
3. Copies of all reports, including but not limited to daily drilling reports, directional drilling, and mud logger reports for the above-referenced well;
4. Copies of daily production reports from the date of first production for the above-referenced well and any offsetting or nearby wells completed in the Bone Spring formation operated by Cimarex;
5. Copies of the drilling and completion procedures used for the above-referenced well;
6. Copies of initial and final drill stem tests, any core and/or sidewall core analyses, sample analyses, BHP tests, formation fluid analysis, or test reports on the above-referenced well;
7. Copies of any frac treating reports and daily reports for all completion work for the above-referenced well;
8. Well samples for the above-referenced well; and
9. Any other data, reports, analysis or samples relating to the drilling and completion of the above-referenced well provided to any regulatory agency not otherwise specified above relating to the above-referenced well.

## INSTRUCTIONS

This Subpoena Duces Tecum seeks all information available to you or in your possession, custody or control from any source, wherever situated, including but not limited to information from any files, records, computers documents, employees, former employees, consultants, counsel and former counsel. It is directed to each person to whom such information is a matter of personal knowledge.

When used herein, "you" or "your" refers to the persons and entity to whom this Subpoena Duces Tecum is addressed to including all of his or its attorneys, officers, agents, consultants, employees, directors, representatives, officials, departments, divisions, subdivisions, subsidiaries, or predecessors in interest.

The term "document" as used herein means every writing and record of every type and description in the possession, your custody or control, whether prepared by you or otherwise, which is in your possession or control or known by you to exist, including but not limited to all drafts, papers, books, writings, records, letters, photographs, computer disks, tangible things, correspondence, communications, telegrams, cables, telex messages, memoranda, notes, notations, work papers, transcripts, minutes, reports and recordings of telephone or other conversations or of interviews, conferences, or meetings. It also includes diary entries, affidavits, statements, summaries, opinions, reports, studies, analyses, evaluations, contracts, agreements, jottings, agenda, bulletins, notices, announcements, plans, specifications, sketches, instructions charts, manuals, brochures, publications, schedules, price lists, client lists, journals, statistical records, desk calendars, appointment books, lists, tabulations sound recordings, computer printouts, books of accounts, checks, accounting records, vouchers, and invoices reflecting business operations, financial statements, and any notice or drafts relating to the foregoing, without regard to whether marked confidential or proprietary. It also includes duplicate copies if the original is unavailable or if the duplicate is different in any way, including marginal notations, from the original.