

ORIGINAL

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

APPLICATION OF CIMAREX ENERGY CO.  
OF COLORADO FOR COMPULSORY POOLING,  
EDDY COUNTY, NEW MEXICO.

CASE NOS. 14770  
and 14771

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID K. BROOKS, Chief Examiner  
WILLIAM V. JONES, Technical Examiner

May 10, 2012

Santa Fe, New Mexico

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This matter came on for hearing before the  
New Mexico Oil Conservation Division, DAVID K. BROOKS,  
Chief Examiner, and WILLIAM V. JONES, Technical  
Examiner, on Thursday, May 10, 2012, at the New Mexico  
Energy, Minerals and Natural Resources Department, 1220  
South St. Francis Drive, Porter Hall, Room 201,  
Santa Fe, New Mexico.

REPORTED BY: Mary C. Hankins, CCR, RPR  
New Mexico CCR #20  
Paul Baca Professional Court Reporters  
500 4th Street, Northwest, Suite 105  
Albuquerque, New Mexico 87102

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APPEARANCES

FOR APPLICANT CIMAREX ENERGY COMPANY OF COLORADO:

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FOR YATES PETROLEUM CORPORATION, ABO PETROLEUM CORPORATION, AND MYCO INDUSTRIES, INC.:

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EXHIBITS MARKED OR FORMALLY IDENTIFIED

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1 (9:58 a.m.)

2 EXAMINER BROOKS: We're back on the record  
3 in Case Number 14770.

4 Mr. Bruce, you have no witnesses, correct?

5 MR. BRUCE: I have no witnesses.

6 EXAMINER BROOKS: You have no witnesses?

7 MR. FELDEWERT: Correct.

8 Mr. Examiner, the parties filed their  
9 prehearing statements in this case in January,  
10 expressing, on behalf of my clients, the objection to  
11 being pooled. Our presence in this case, the filing of  
12 our prehearing statements reflect opposition to the  
13 pooling application. You cannot present a case by  
14 affidavit if there is opposition to the pooling  
15 application, which is what we have here.

16 There are no witnesses here today to be  
17 presented by the Applicant that will afford us the  
18 opportunity to cross-examine and address the issues that  
19 are associated with the pooling application, which is  
20 why you can't do it by affidavit if there is any  
21 opposition to the pooling application.

22 So since we currently cannot present the  
23 case by affidavit, then it seems to me we're left with  
24 two options. Either we dismiss my clients from the  
25 pooling case so there would be, then, no opposition, and

1 they can move forward with their affidavit process; or  
2 we continue the case for two weeks and allow Cimarex,  
3 then, the opportunity to present a witness to address  
4 the opposition to their application.

5 EXAMINER BROOKS: There's a third option,  
6 and that would be that we dismiss the case and allow  
7 Mr. Bruce to refile when there is a breakdown in  
8 communications here. But I will let Mr. Bruce respond.

9 MR. BRUCE: Well, I think it's a little  
10 more complicated than that, Mr. Examiner.

11 COG and Cimarex had a large number of  
12 competing applications in this general area, Section --  
13 in this Section 1, adjoining Section 6, and up to the  
14 north in Section 31 in three different Townships.

15 In February, they reached a global  
16 settlement whereby COG would operate certain acreage and  
17 Cimarex would operate certain acreage. All competing  
18 pooling applications were withdrawn. There were  
19 competing applications in the cases that we're here for  
20 today, but since Cimarex will operate these cases --  
21 these -- it is agreed that Cimarex will operate these  
22 tracts that we're here for today.

23 As Mr. Feldewert said, under Division  
24 rules, pooling can be done by affidavit if there is no  
25 opposition, but there haven't been any prehearing

1 statements filed by COG, or Yates, Abo and Myco, and in  
2 the next case, or OXY Y-1, which have objected to the  
3 pooling. Yates, Abo, Myco simply filed an entry of  
4 appearance. They never filed a prehearing statement  
5 objecting to the pooling.

6 OXY Y-1 filed a prehearing statement,  
7 simply said it was an interested party. That's in the  
8 second case.

9 COG did file a prehearing statement last  
10 January, which stated that the Division would have to  
11 determine the competing development plans between COG  
12 and Cimarex. However, the parties themselves have  
13 decided to develop -- the development plans and have  
14 recited the competing development plans.

15 COG, in fact, has gone to hearing on a  
16 couple of its force pooling proposals, I think, in this  
17 Section 1, certainly in adjoining Section 6, without any  
18 interference by Cimarex. Cimarex hasn't objected.

19 Moreover, COG has never filed a subsequent  
20 prehearing statement, say, last Thursday objecting to  
21 the poolings, so I assumed there would be no objection.

22 If I could have -- if the parties had filed  
23 objections, I would have brought a landman who, frankly,  
24 couldn't give more info than is in these piles of  
25 affidavits that I've got right now.

1 Fact of the matter is, these wells were  
2 proposed first back in August of 2011. Cimarex simply  
3 wants to get the wells drilled. The parties are  
4 negotiating, but, nonetheless, these matters are sitting  
5 out there. These applications themselves were filed in  
6 November -- or December, I believe, and November of  
7 2011.

8 Therefore, without any advance notice of  
9 objection, I prepared the affidavits. I'm ready to  
10 present them today. I would request to present the  
11 cases with the proviso, as I mentioned before, that no  
12 order be issued for at least two weeks so that -- to  
13 allow more time for the parties to negotiate, and  
14 Mr. Feldewert and I could report back to you at that  
15 time.

16 I think it's unfair at this late date, not  
17 knowing of opposition and because of that  
18 three-continuance rule, to dismiss the cases.

19 EXAMINER BROOKS: Mr. Feldewert, do you  
20 want to say anything further?

21 MR. FELDEWERT: Mr. Examiner, I think it's  
22 clear that the parties did file -- both parties, Cimarex  
23 and the affected parties, filed their prehearing  
24 statements in January objecting to being pooled under  
25 the pooling applications. Neither Cimarex nor the

1 affected parties have filed any updated prehearing  
2 statements. There is no need to do that because the  
3 objection is on file.

4 Secondly, we're here today because we  
5 object to the pooling application.

6 Third, if they had a witness here today, we  
7 would be able to cross-examine that witness and, I  
8 suggest to you -- represent to you, we could bring out  
9 from that witness the fact that the parties have told  
10 Cimarex that they object to being pooled, and they're,  
11 rather, in the process of reaching a voluntary  
12 agreement.

13 So we have a circumstance where there is an  
14 objection to the application. In that circumstance, we  
15 cannot present the case by affidavit.

16 We do not have -- we do not have any  
17 objection to continuing the matter for two weeks. That  
18 is certainly, we believe, an option, but we cannot go  
19 forward today with a pooling application by affidavit.

20 EXAMINER BROOKS: Well, I am going to allow  
21 Mr. Bruce to proceed to present his affidavits, and we  
22 will leave the matter of the effect of the presentation  
23 on the merits.

24 You may proceed, Mr. Bruce.

25 MR. BRUCE: Mr. Examiner, I have handed you

1 two exhibits. Exhibit 1 is the Verified Statement of  
2 Hilary Coder, the landman for Cimarex Energy Company.

3 In this case, maybe the easiest thing to do  
4 would be to turn back maybe three or four pages to the  
5 land plat.

6 Cimarex Energy seeks to force pool four  
7 Yeso well units for vertical wells to be drilled  
8 collectively in the east half of the southwest and the  
9 west half of the southeast corner of Section 1, Township  
10 19 South, Range 25 East. That is a single-foot track  
11 with common ownership.

12 The wells involved are set forth in the  
13 affidavit. There's one well on each 40. The parties  
14 being pooled and their interests are set forth. There's  
15 approximately 11 percent of the interest that is subject  
16 to pooling.

17 There is a lot of correspondence in here.  
18 Frankly, I don't think you need to go through too much  
19 of it. They are proposal letters to all the parties  
20 being pooled. They were first proposed in August of  
21 2011. They were re-proposed in March, after the  
22 settlement.

23 As Mr. Feldewert said, the parties have  
24 been in discussions, and we hope they reach a voluntary  
25 agreement, but Cimarex would like to get its wells



1 drilled.

2 Attached are, as required, AFEs for each of  
3 the wells. These are vertical wells, and the well costs  
4 are all pretty similar. The well costs are stated to be  
5 fair and reasonable, and Cimarex would request, of  
6 course, a 200-percent risk charge, if the parties don't  
7 reach voluntary agreement. We would hope that they do.  
8 The overhead rates requested are \$4,500 per month and  
9 \$450 per month for a producing well. We think these  
10 rates are fair and reasonable, and actually they're  
11 lower than rates I've seen in quite some time.

12 Exhibit 2 is the affidavit of the notice.  
13 All pertinent parties received actual notice of the  
14 application.

15 Again, as with the next case, I would  
16 request that the matter be taken under advisement with  
17 the stipulation that no action be taken on this  
18 application for at least two weeks, and then in two  
19 weeks, I would request that Mr. -- permission for  
20 Mr. Feldewert and myself to report back to the Division  
21 as to the status of the negotiations between the  
22 parties.

23 EXAMINER BROOKS: Okay.

24 MR. BRUCE: And I would move the admission  
25 of Exhibits 1 and 2.

1 EXAMINER BROOKS: Mr. Feldewert?

2 MR. FELDEWERT: I guess -- well, I would  
3 object to the admission of the affidavit on the basis  
4 I've already stated.

5 I'd also point out that I do not have a  
6 witness to cross-examine here today, as we've already  
7 discussed, to address the issues such as the status of  
8 the negotiations and the good-faith efforts to reach an  
9 agreement that's reasonable and necessary of their  
10 proposed costs, among other issues.

11 EXAMINER BROOKS: Okay. Exhibits 1 and 2  
12 will be admitted, and Case Number 14770 will be taken  
13 under advisement, with the understanding that there's a  
14 possibility that next time it may be dismissed if its  
15 presentation would require the presence of a witness and  
16 no witness was presented. Okay?

17 (Cimarex Exhibit Numbers 1 and 2 were  
18 offered and admitted into evidence.)

19 (The hearing concluded, 10:10 a.m.)

20 EXAMINER BROOKS: At this time, call Case  
21 Number 14771, the Application of Cimarex Energy Company  
22 of Colorado for compulsory pooling, Eddy County, New  
23 Mexico.

24 Call for appearances.

25 MR. BRUCE: Mr. Examiner, Jim Bruce of

1 Santa Fe, representing the Applicant, submitting by  
2 affidavit.

3 MR. FELDEWERT: Mr. Examiner, Michael  
4 Feldewert, Santa Fe office of the law firm of  
5 Holland & Hart, appearing, first, on behalf of COG  
6 Operating, LLC and then, secondly, on behalf of Yates  
7 Petroleum Corporation, Abo Petroleum Corporation and  
8 Myco Industries, Inc.

9 We have a motion, Mr. Examiner, that was  
10 already presented in Case Number 14770, that is premised  
11 on the desire here by Cimarex to present its pooling  
12 application by affidavit. The parties are in opposition  
13 to the application. We do not believe that this case is  
14 subject to pooling by affidavit for the reasons that are  
15 to be set forth in Case Number 14770, and I'd ask that  
16 that particular -- ask that that transcript be  
17 incorporated into this case for purposes so I don't have  
18 to repeat our argument.

19 EXAMINER BROOKS: Okay. We will note your  
20 objection, and it will be incorporated by reference.

21 MR. FELDEWERT: Thank you.

22 EXAMINER BROOKS: You may proceed,  
23 Mr. Bruce.

24 MR. BRUCE: Mr. Examiner, I've submitted to  
25 you Exhibits 1 and 2.

1                   Exhibit 1 is a Verified Statement of  
2   Cimarex's landman, Hilary Coder. Again, if you turn  
3   back to attachment A to the exhibit, you see that in  
4   this case Cimarex seeks to force pool 240-acre well  
5   units, collectively, covering the west half, southwest  
6   corner of Section 1, Township 19 South, Range 25 East.  
7   It is a single fee tract with common ownership.

8                   EXAMINER BROOKS: Now, this is the same  
9   section involved in the previous --

10                  MR. BRUCE: It is the same section.

11                  And for your information, Mr. Examiner, in  
12   the settlement I mentioned, Cimarex operates the south  
13   half; COG operates the north half, and you'll recall  
14   there was a -- there was a compulsory pooling contested  
15   case over in the east -- in Section 6. Part of the  
16   agreement is, Cimarex operates the east half of Section  
17   6, and COG operates the west half of Section 6.

18                  EXAMINER BROOKS: I didn't know  
19   specifically where they were. I knew there were a  
20   number of compulsory pooling cases in this general area.

21                  MR. BRUCE: In this case, Cimarex seeks to  
22   force pool for its Montana 1 Well Number 1 in the  
23   northwest/southwest, and the Montana 1 Well Number 3 in  
24   the southwest/southwest.

25                  The second page of the exhibit shows the

1 interest of the parties. In this case, there is an  
2 additional owner. OXY Y-1 Company owns a small  
3 interest. Collectively, they own about -- a little over  
4 18 percent of the well unit.

5 Again, the correspondence, the well  
6 proposals and AFEs for the well are attached as Exhibits  
7 B and C.

8 Again, these wells were proposed first in  
9 August of 2011 and were re-proposed after the global  
10 settlement. The well costs are in the \$2.5 million  
11 range, which is stated to be fair and reasonable. The  
12 overhead rates, again, are \$4,500 per month for a  
13 drilling well and \$450 a month for a producing well.  
14 Applicant does request a 200-percent risk charge.

15 And Exhibit 2 is simply the Affidavit of  
16 Notice.

17 There were a couple of extra people  
18 notified of this application, but all of the parties  
19 being pooled today did receive actual notice of this  
20 application.

21 And with that, I'd move the admission of  
22 Exhibits 1 and 2.

23 MR. FELDEWERT: Mr. Examiner, I would  
24 object to the admission of Exhibit Number 1 on the  
25 grounds that this is not a case that is properly

1 presented as by affidavit. We do not have an  
2 opportunity to cross-examine any witness on behalf of  
3 the applicant to address issues status of discussions  
4 good-faith efforts to reach reasonableness of their  
5 costs. The request for this penalty associates. So  
6 we'd object to the introduction of Exhibit Number 1.

7 We have no objection to the introduction of  
8 Exhibit Number 2.

9 EXAMINER BROOKS: Okay. Exhibit Number --  
10 the objection will be overruled. Exhibits 1 and 2 will  
11 be admitted.

12 (Cimarex Exhibit Number 1 and 2 were  
13 offered and admitted into evidence.)

14 EXAMINER BROOKS: And if there is nothing  
15 further, Case Number 14771 will be taken under  
16 advisement under the same conditions as Case Number  
17 14770. That is to say that no order will be issued for  
18 at least two weeks, and the parties will report to the  
19 -- to the Division if and when a settlement is reached,  
20 and the issue of a motion to dismiss by the Respondents  
21 will be considered in connection with the merits.

22 MR. BRUCE: Thank you.

23 (The hearing concluded, 10:15 a.m.)

24 I do hereby certify that the foregoing is  
25 a complete record of the proceedings in  
the Examiner hearing of Case No. 14770/71  
heard by me on 5-10-2012

*David K. Brooks*  
Examiner

Oil Conservation Division

1 STATE OF NEW MEXICO  
2 COUNTY OF BERNALILLO

3

4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, New Mexico Certified  
6 Court Reporter No. 20, and Registered Professional  
7 Reporter, do hereby certify that I reported the  
8 foregoing proceedings in stenographic shorthand and that  
9 the foregoing pages are a true and correct transcript of  
10 those proceedings that were reduced to printed form by  
11 me to the best of my ability.

12 I FURTHER CERTIFY that the Reporter's  
13 Record of the proceedings truly and accurately reflects  
14 the exhibits, if any, offered by the respective parties.

15 I FURTHER CERTIFY that I am neither  
16 employed by nor related to any of the parties or  
17 attorneys in this case and that I have no interest in  
18 the final disposition of this case.

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MARY C. HANKINS, CCR, RPR  
Paul Baca Professional Court Reporters  
New Mexico CCR No. 20  
Date of CCR Expiration: 12/31/2012