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September 24, 2014

VIA E-MAIL AND U.S. MAIL
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Florene Davidson
Oil Conservation Division
New Mexico Department of Energy, Minerals and Natural Resources
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Re: Amended Application of Cimarex, Case No. 15188

Dear Ms. Davidson:

Enclosed is the original Post-Hearing Brief of Cimarex Energy Company of Colorado which was e-mailed to you for filing today. I am also sending you a copy of Cimarex's proposed Order in Word format which is attached to the Brief.

Thank you for your assistance. Please contact me if you have any questions.

Sincerely,


Earl E. DeBrine, Jr.

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Enclosures

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

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**AMENDED APPLICATION OF CIMAREX
ENERGY COMPANY FOR GAS SPACING
AND PRORATION UNIT, COMPULSORY
POOLING AND TWO NON-STANDARD
LOCATIONS, EDDY COUNTY, NEW MEXICO.**

CASE NO. 15188

CIMAREX'S POST-HEARING BRIEF

Cimarex Energy Company of Colorado ("Cimarex"), submits this Post-Hearing Brief in support of its form of order submitted to the Division and in opposition of the order presented by CL&F Resources, LP ("CL&F"). Cimarex's proposed order is attached hereto as Exhibit "A."

**I. THE DIVISION SHOULD REJECT CL&F'S PROPOSED FINDINGS
REQUIRING THAT CIMAREX COMMENCE DRILLING THE WELL
ON OR BEFORE NOVEMBER 7, 2014 AND COMPLETE IT WITHIN 120
DAYS THEREAFTER.**

CL&F chose not to present any evidence in support of its request that the Division depart from its long-standard practice of providing for a one year period for an operator to drill a well in a spacing unit established by compulsory pooling order of the Division. Although the compulsory pooling statute, NMSA 1978, §70-2-17 requires that orders affecting pooling be on terms that are reasonable and just, requiring a November 7, 2014 spud date based on the assertions of counsel for a 10.25% owner in the proposed unit is unreasonable and unjust.

CL&F Resources presented no evidence at the September 18, 2014 hearing to support its request. Although there was evidence that one of the two leases in the proposed spacing unit has a current expiration date of December 31, 2014, there was no evidence that: (1) action could not be taken to suspend or extend the lease expiration date; or (2) that CL&F, which owns a minority working interest in that lease, was ready willing or able to file much less secure approval from the BLM for its own as yet unfiled APD and commence drilling a well before December 31 2014..

New Mexico law is well established that “[t]he mere assertions and arguments of counsel are not evidence.” *Muse v. Muse*, 2009-NMCA-003, ¶ 51, 145 N.M. 451, 465, 200 P.3d 104. Accordingly, there is no record evidence for the Division to depart from its long-held administrative practice to provide a one-year time period in a pooling order for the drilling of a well before the Division’s order will lapse. *See Fasken v. Oil Conservation Comm’n*, 87 N.M. 292, 294, 532 P.2d 588, 590 (1975) (Commission must enter findings which have substantial support in the record. Where Commission presented no evidence at the hearing to support its decision, reviewing court is left with theories and “difficulty with them is that they emanate from the lips and pens of counsel and are not bolstered by the expertise of the Commission to which we give special weight and credence.”); *Bass Enters. Prod. Co. v. Mosaic Potash Carlsbad Inc.*, 2010 NMCA 65, ¶ 28, 148 N.M. 516, 238 P.3d 885 (upholding ruling by the Commission where opposing party presented no evidence to support its position).

If the Division were to include a requirement that Cimarex commence drilling the well by November 7, 2014, it would also be interfering with the BLM’s jurisdiction over the administration of the federal leases and the Communitization Agreement for the proposed spacing unit. The Communitization Agreement requires no accelerated date for the commencement of drilling of the well. The Mineral Leasing Act and BLM regulations only require the drilling of a well over the lease expiration date, not two months before as requested by CL&F. *See* 30 U.S.C. § 226(e) (“Any lease issued under this section for land on which, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for two years and so long thereafter as oil or gas is produced in paying quantities.”) Requiring an earlier date than the one specified in the Act and leases will create a jurisdictional conflict and unnecessary administrative delay which could cause the lease to expire since Cimarex will not only have to come back before the Division (in compliance with the Division rules for notice and hearing) if it encounters problems complying with the November 7 deadline, but would also need to subsequently obtain BLM approval of any action taken by the Division. Therefore, requiring a November 7th date for commencement of drilling will only serve to decrease the likelihood that a producing well will be commenced before the current lease expiration date.

The vast majority of the working interest owners in the proposed unit (83.16%) have agreed to the terms of a joint operating agreement and communitization agreement which do not require an accelerated date for the commencement of drilling the well. Moreover, under those agreements, the operator is afforded the discretion needed to timely drill a well subject to conditions beyond its reasonable control like the weather. Indeed, the recent unprecedented rainfall from the aftermath of hurricane Odile has essentially shut down oil and gas operations in Eddy County, where the proposed well is located. See <http://krqe.com/2014/09/22/flooding-continues-to-hit-southern-new-mexico/>.

Under the compulsory pooling statute, when the owners in a pool have agreed on plan for the development or operation of such pool which has the effect of preventing waste and is fair to the royalty owners in such pool, "*then such plan shall be adopted by the division with respect to such pool.*" NMSA 1978, §70-2-17 (emphasis added) Including an accelerated November 7, 2014 date for the commencement of drilling and 120 days thereafter for completion of the well would allow for tyranny of a 10.25% minority owner in the proposed unit who did not bother to present any evidence in support of its request to dictate the terms date for the commencement of drilling.

CONCLUSION

The Division should avoid CL&F's invitation for legal error and decline to enter finding paragraph (5) and ordering paragraphs (5) and (6) in its proposed form of order.

Respectfully submitted,

**MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.**

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Certificate of Service

I hereby certify that a true and correct copy of this Post-Hearing Brief was emailed on 9/24/14 to:

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Earl E. DeBriffe, Jr.

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

CASE NO. 15188

ORDER NO. R-_____

**AMENDED APPLICATION OF CIMAREX ENERGY COMPANY FOR A GAS
SPACING AND PRORATION UNIT, COMPULSORY POOLING AND NON-
STANDARD LOCATION, EDDY COUNTY, NEW MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on September 18, 2014, at Santa Fe, New Mexico, before Examiner Richard I. Ezeanyim.

NOW, on this ____ day of September, 2014, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

- (1) Due public notice has been given, and the Division has jurisdiction of this case and of the subject matter.
- (2) The applicant, Cimarex Energy Company of Colorado ("Cimarex" or "Applicant"), seeks an order of a standard 320-acre, more or less, gas spacing and proration unit in the Wolfcamp formation, comprised of the W/2 of Section 14, Township 25 South, Range 28 East, NMPM, Eddy County, New Mexico. Applicant further seeks an order pooling all uncommitted interests in the unit.
- (3) The above-described unit (the "Unit") is to be dedicated to applicants' Riverbend 14 Fed. Com No. 2H ("the proposed well"); (API No. 30-015-41589) a horizontal well to be drilled from a surface location 75 feet from the North line and 1980 feet from the West line to a bottom hole location 330 feet from the South line and 1980 feet from the West line to a depth sufficient to test the Wolfcamp formation. The completed interval of the proposed well in the Wolfcamp formation will be unorthodox.
- (4) The proposed well is a wildcat Wolfcamp gas well governed by NMAC 19.15.15.10(B) (pool code 97949). These special rules require 320 acre spacing units; and (2) wells to be located 660 feet from the outer boundary

EXHIBIT A

of the quarter section. Applicant seeks an unorthodox location in order to allow a producing area that is 330 feet from the project area boundary.

- (5) Applicant appeared at the hearing through counsel and presented land, geologic and engineering evidence to the effect that:
- a. Notice of the proposed Unit was provided to all working interest owners in the Proposed Unit and all parties affected by the unorthodox location within the Wolfcamp formation by certified mail, return receipt requested and by publication;
 - b. Applicant has successfully drilled several horizontal wells in the area and the Wolfcamp formation in this area is suitable for development by horizontal drilling;
 - c. the proposed orientation of the horizontal well north to south is appropriate for the proposed Unit;
 - d. the proposed Unit is comprised of two federal oil and gas leases and, therefore requires a Communitization Agreement to produce from the Unit.
 - e. 83.16% of the working interest owners have ratified or joined the proposed Communitization Agreement and have also entered into a joint operating agreement for the proposed Unit;
 - f. the Communitization agreement cannot be approved by the United States Bureau of Land Management ("BLM") until all working interest owners have ratified or otherwise approved the Communitization agreement or made subject to the agreement through a compulsory pooling order;
 - g. all quarter-quarter sections to be included in the Unit are expected to be productive in the Wolfcamp formation, so that the Unit as requested will not impair correlative rights; and
 - h. the unorthodox location for well will not impair correlative rights.
- (6) Read & Stevens, Inc., Carolyn Beall, Betty Read Yong, Diamond Star Prod., Co., LLC and CL&F Resources, LP, appeared through counsel at the hearing but did not present any evidence and do no object to the granting of the Application.

- (7) CL&F owns a 10.25% interest in the proposed Unit through a federal oil lease which expires on December 31, 2014. Cimarex does not own an interest in this lease. Counsel for CL&F Resources, LP requested that any compulsory pooling order entered by the Division include a requirement that the well be spudded by November 7, 2014.
- (8) No other party appeared at the hearing, or otherwise opposed the granting of this application.

The Division concludes that:

- (9) Approval of the proposed unit will enable Applicant to drill a horizontal well that will effectively produce the reserves underlying the Unit, thereby preventing waste, and will not impair correlative rights.
- (10) Two separately owned tracts are included within the Unit, and/or there are royalty interests and/or undivided interests in oil and gas minerals in one or more tracts included in the Unit that are separately owned.
- (11) Applicant is an owner of an oil and gas working interest within the Unit. Applicant has the right to drill and proposes to drill the proposed well to a common source of supply within the Unit.
- (12) Applicant has made a good faith effort to seek voluntary agreement to pool interests but there are interest owners in the Unit that have not agreed to pool their interests.
- (13) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford to the owner of each interest in the Unit the opportunity to recover or receive without unnecessary expense its just and fair share of hydrocarbons, this application should be approved by pooling all uncommitted interests, whatever they may be, in the oil and gas within the Unit.
- (14) Applicant should be designated the operator of the proposed well and the Unit.
- (15) Any pooled working interest owner who does not pay its share of estimated well costs should have withheld from productions its share of reasonable well costs, plus an additional 200% thereof as a reasonable charge for the risk involved in drilling the well.
- (16) Reasonable charges for supervision (combined fixed rates) should be fixed at \$7,000 per month while drilling and \$700 per month while producing,

provided that these rates should be adjusted annually pursuant to Section III.1.A.3 of the COPAS form titled "*Accounting Procedure-Joint Operations.*"

- (17) CL&F's request that the Division require that the operator of the Unit commence drilling the proposed well on or before November 7, 2014 and complete the well within a 120 days after commencement is unnecessary unwarranted. Such requirements could create a jurisdiction conflict between the BLM and Division concerning the date for commencement of drilling and completion of the well and no evidence was presented by CL&F that it or another operator could secure approval of an APD by the BLM before the expiration date of the lease or that an extension or suspension of the lease expiration date could be obtained from the BLM.

IT IS THEREFORE ORDERED THAT:

- (1) A standard 320-acre, more or less, gas spacing and proration unit (the "Unit") is hereby established for the Wolfcamp formation, consisting of the W/2 of Section 14, Township 25 South, Range 28 East, NMPM, in Eddy County, New Mexico.
- (2) Pursuant to the application of Cimarex Energy Company of Colorado, all uncommitted interests, whatever they may be, in the oil and gas in the Wolfcamp formation underlying the Unit, are hereby pooled.
- (3) The Unit shall be dedicated to the Applicant's Riverbend 14 Fed. Com. No. 2H well (**API No. 30-015-41589**), a horizontal well to be drilled from a surface location 75 feet from the North line and 1980 feet from the West line to a bottom hole location 330 feet from the South line and 1980 feet from the West line to a depth sufficient to test the Wolfcamp formation. The completed interval of the proposed well in the Wolfcamp formation will be unorthodox.
- (4) The operator of the Unit shall use reasonable efforts to commence drilling the proposed well on or before December 31, 2014, and shall thereafter continue drilling the proposed well with due diligence to test the Wolfcamp formation.
- (5) In the event the operator does not commence drilling the proposed well on or before December 31, 2015, Ordering Paragraphs (1) and (2) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause demonstrated by satisfactory evidence.

- (6) Upon final plugging and abandonment of the proposed well and any other well drilled on the Unit pursuant to Division Rule 19.15.13.9 NMAC, the pooled Unit created by this order shall terminate, unless this order has been amended to authorize further operations.
- (7) Cimarex Energy Company of Colorado (OGRID 162683) is hereby designated the operator of the proposed well and the Unit.
- (8) After pooling, uncommitted working interest owners are referred to as pooled working interest owners. ("Pooled working interest owners" are owners of working interests in the Unit, including unleased mineral interests, who are not parties to an operating agreement governing such Unit.) After the effective date of this order, the operator shall furnish the Division and each known pooled working interest owner in the Unit an itemized schedule of estimated costs of drilling, completing and equipping the proposed well to be drilled ("well costs").
- (9) Within 30 days from the date the schedule of estimated well costs is furnished, any pooled working interest owner shall have the right to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production as hereinafter provided, and any such owner who pays its share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges. Pooled working interest owners who elect not to pay their share of estimated well costs as provided in this paragraph shall thereafter be referred to as "non-consenting working interest owners."
- (10) The operator shall furnish the Division and each known pooled working interest owner (including non-consenting working interest owners) an itemized schedule of actual well costs within 90 days following completion of the proposed well. If no objection to the actual well costs is received by the Division, and the Division has not objected, within 45 days following receipt of the schedule, the actual well costs shall be deemed to be reasonable well costs. If there is an objection to actual well costs within the 45-day period, the Division will determine reasonable well costs after public notice and hearing.
- (11) Within 60 days following determination of reasonable well costs, any pooled working interest owner who has paid its share of estimated costs in advance as provided above shall pay to the operator its share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator the amount, if any, that the estimated well costs it has paid exceed its share of reasonable well costs.

- (12) The operator is hereby authorized to withhold the following costs and charges from production:
 - a. the proportionate share of reasonable well costs attributable to each non-consenting working interest owner; and
 - b. as a charge for the risk involved in drilling the proposed well 200% of the above costs.
- (13) The operator shall distribute the costs and charges withheld from production, proportionately, to the parties who advanced the well costs.
- (14) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$7,000 per month while drilling and \$700 per month while producing, provided that these rates shall be adjusted annually pursuant to Section III.1.A.3 of the COPAS form titled "*Accounting Procedure-Joint Operations*." The operator is authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required from operating the well, not in excess of what are reasonable, attributable to pooled working interest owners.
- (15) Except as provided in Paragraphs (12) and (14) above, all proceeds from production from the proposed well that are not disbursed for any reason shall be held for the account of the person or persons entitled thereto pursuant to the Oil and Gas Proceeds Payment Act (NMSA Sections 70-10-1 through 70-10-6, as amended). If not disbursed, such proceeds shall be turned over to the appropriate authority as and when required by the Uniform Unclaimed Property Act (NMSA 1978 Sections 7-8A-1 through 70-8A-28, as amended).
- (16) Any unleased mineral interests shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under this order. Any well costs or charges that are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests or overriding royalty interest.
- (17) Should all the parties to this compulsory pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

- (18) The operator of the well and the Unit shall notify the Division in writing of the subsequent voluntary agreement of all parties subject to the compulsory pooling provisions of this order.
- (19) This order is subject to approval of compulsory pooling of federal lands by the United States Bureau of Land Management.
- (20) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

JAMI BAILEY
DIRECTOR