

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

**IN THE MATTER OF CIMAREX ENERGY COMPANY OF COLORADO,**

**Respondent.**

**BTA OIL PRODUCERS, LLC,**

**Affected Party.**

**SETTLEMENT AGREEMENT**

Pursuant to the New Mexico Oil and Gas Act, NMSA (1978), §§ 70-2-1 through 70-2-38, as amended ("Act"), and the rules promulgated under the Act, the Director of the Oil Conservation Division ("Division" or "OCD"), Cimarex Energy Company of Colorado ("Cimarex"), and BTA Oil Producers, LLC ("BTA") (the "parties") enter into this Settlement Agreement ("Agreement"). Cimarex agrees to comply with the following settlement and curtailment plan, and in the event of non-compliance, the OCD may seek additional penalties or BTA may bring an action in district court to enjoin the non-compliance pursuant to NMSA (1978), § 70-2-29.

**I. FINDINGS**

- 1) The OCD is the state division charged with administration and enforcement of the Act and OCD rules.
- 2) Cimarex is a Delaware corporation, registered to do business in New Mexico, under registration number 2263697. Cimarex's principal address, as listed by the Secretary of State, is 1700 Lincoln Street, Suite 3700, Denver, Colorado 80203-4518. Its registered agent for service of process in New Mexico is CSC of Lea County, Inc. Cimarex is an approved operator whose OGRID number is 215099.
- 3) Cimarex is the operator of record of the Chief 30 State #005 well (API# 30-025-40906) located in Unit M, Section 30, Township 20S, Range 35E, N.M.P.M., Lea County, New Mexico and the Chief 30 State #001H well (API# 30-025-40406), a horizontal well whose project area is comprised of the S/2 S/2, Section 30, Township 20S, Range 35E, N.M.P.M., Lea County, New Mexico which includes the spacing unit for the Chief 30 State #005 well.
- 4) The Chief 30 State #005 well was completed as a producer in the Berry; Bone Spring North pool (pool code 5535). The well initially began producing at a test rate of 288 barrels of oil and 486 Mcf of gas per day, as reported on OCD Form C-105 filed July 19, 2013.

- 5) The depth bracket allowable for the Berry; Bone Spring North pool (pool code 5535) is 365 barrels of oil per day, subject to the tolerances set forth in 19.15.20.9 NMAC.
- 6) BTA is the operator of record under OGRID 260297 for the 9012 JV-P Aline Well No. 2 (API No. 30-025-42771), a vertical well that is dedicated to a 40-acre spacing unit located in the NE/4 NE/4 (Unit A) of Section 36, Township 20 South, Range 34 East, NMPM, Lea County, New Mexico.
- 7) For the reporting months of April, 2013 to February, 2016 Cimarex overproduced Unit M, Section 30, Township 20S, Range 35E, N.M.P.M., Lea County, New Mexico by 125,342 bbls of oil.
- 8) Cimarex maintains it believed that the allowable for the Chief 30 State #005 well was included in the total project area allowable for the Chief 30 State #001H well.
- 9) At all relevant times, Cimarex reported its production to the OCD for the Chief 30 State #005 and Chief 30 State #001H wells on form C-115, which included reports of any potential overproduction. In January 2016, the OCD contacted Cimarex about the reported potential overproduction. On January 20, 2016, Daniel Sanchez, the Compliance and Enforcement Manager for the Division, notified Cimarex by letter that the Chief 30 State No. 5 was "out of compliance with 19.15.20.9(B)" because the well was producing "in excess of the top allowable." Mr. Sanchez requested that Cimarex "curtail [Cimarex's] production to conform with the top allowable for the pool in which the above proration unit and associated wells is located."
- 10) On January 28, 2016, Cimarex sent a formal request to the OCD to include the Chief 30 State #005 well in the project area for the Chief 30 State No. #001H well.
- 11) In response to Cimarex's request, on February 22, 2016 the OCD denied the request and issued a Notice of Violation to Cimarex ordering Cimarex to reduce production from the Chief 30 State #005 well to a rate that will not exceed the top unit allowable for the 40-acre proration unit in which the well is completed.
- 12) The Chief 30 State #005 well was shut-in shortly after receiving the Notice of Violation and has remained shut-in.
- 13) On March 1, 2016, BTA, filed an application with the Division, Case No. 15473, captioned:

**Application of BTA Oil Producers, LLC for an Order  
Directing Cimarex Energy Company to Shut-In Its  
Over-Produced Oil Wells in the Berry; Bone Spring  
North Pool, Assessing Production Penalties for the**

**Over-Production, and Ordering Compliance with the  
Division's Oil Proration Rules for the Berry; Bone  
Spring, North Pool, Lea County, New Mexico (Case No.  
15473).**

- 14) BTA's Application sought relief for Cimarex's overproduction of its Chief 30 State No. 5 well. The Application requested that the Division enter an order to: 1) shut-in the well; 2) assess production penalties against Cimarex; and 3) direct Cimarex to comply with the Division's allowable rules.
- 15) On March 16, 2016, counsel for Cimarex and BTA met with the Division's counsel, the Director of Enforcement, and Michael McMillan to determine the amount of overproduction and an appropriate solution to the overproduction, and have since agreed to a curtailment schedule for the Chief 30 State #005 well, attached hereto as Exhibit "A."
- 16) On March 24, 2016, counsel for Nearburg Producing Company ("Nearburg") filed an entry of appearance in Case No. 15473. On April 6, 2016, Counsel for Cimarex and Nearburg discussed and reviewed the curtailment plan included in Exhibit A.
- 17) Based on the curtailment plan in Exhibit A and compliance with the terms of this Settlement Agreement, BTA has agreed to the dismissal of Case No. 15473.
- 18) 19.15.20.9.C NMAC provides in pertinent part:

B. Monthly tolerance. No unit shall produce during any one proration period more than the unit's allowable production for the proration period plus a tolerance of not to exceed five days allowable production. This permissive tolerance of overproduction from a unit is subject to all other provisions of 19.15.20.9 NMAC and particularly to the provisions of Subsection D of 19.15.20.9 NMAC. The operator shall adjust or balance permissive tolerance of overproduction from a unit by subsequent corresponding underproduction from the same unit. The division shall consider overproduction within the permitted tolerance as oil produced against the allowable production assigned to the unit for the proration period during which the overproduction is adjusted or balanced by underproduction.

C. Production in excess of monthly allowable, plus tolerance.

(1) Oil produced from a unit in excess of the assigned monthly allowable plus the permissive proration period tolerance shall be "illegal oil" as defined in the Oil and Gas Act, unless the excess oil:

- (a) is produced as a result of mistake or error;

- (b) results from mechanical failure beyond the operator's immediate control; or
- (c) results from essential tests of the unit within the purview of division rules.

(2) Whenever production from a unit for a proration period exceeds the assigned allowable, plus the permitted tolerance authorized in Subsection B of 19.15.20.9 NMAC and the cause of the excess reasonably falls within Subparagraphs (a), (b) or (c) of Paragraph (1) of Subsection C of 19.15.20.9 NMAC, the producer or operator shall briefly set forth the excess production's cause together with a proposed plan for production adjustment in the comments area of form C-115 for the month in which the excess production occurs. The excess production shall be considered as oil produced against the allowable assigned to the unit for the following proration period, and it may be transported from the lease tanks only as and when the unit accrues daily allowable to offset the excess production.

#### D. General.

(1) The tolerance permitted on a daily or monthly basis as provided in Subsections A and B of 19.15.20.9 NMAC does not increase a producing unit's allowable or grant an operator authority to market or a transporter authority to transport any quantity of oil in excess of the unit's allowable.

(2) The possession of a quantity of oil in lease storage at the end of a proration period in excess of five days allowable plus any rerun allowable oil is a violation of 19.15.20.9 NMAC, unless the operator reports the possession in the manner and within the time provided in Subsection C of 19.15.20.9 NMAC for filing form C-115.

- 19) Cimarex submitted the Curtailment Plan to the Division on April 13, 2016. The Division approves the Curtailment Plan.

## II. CONCLUSIONS

- 20) The OCD has jurisdiction over the parties and subject matter in this proceeding.
- 21) Cimarex is a person as defined by NMSA (1978), § 70-2-33(A) that may be subject to civil penalties under NMSA 1978, § 70-2-31(A).
- 22) BTA is an offset operator who may, as necessary, take action pursuant to NMSA (1978), § 70-2-29.

- 23) The overproduction for the Chief 30 State #005 well was the result of mistake or error under 19.15.20.9.C NMAC and penalties beyond curtailment of future production are not warranted.
- 24) Production of the Chief 30 State #005 well and Chief 30 State #001H in accordance with the curtailment schedule attached as Exhibit "A" will bring the Chief 30 State No. 5 into compliance with 19.15.20.1 through 19.15.20.12 NMAC by making up the overproduction and will promote the conservation of resources and protect correlative rights.

WHEREFORE, the parties agree as follows:

- 25) Cimarex acknowledges that, as the Operator of Record of the Chief 30 State #005 well (API# 30-025-40906) and Chief 30 State #001H well (API# 30-025-40406), it is responsible to know and comply with Division rules in the operation of its wells and related facilities, and to produce its wells in compliance with Division rules and orders which limit the amount of oil that may be produced within a proration period.
- 26) In order to address the overproduction, Cimarex shall produce its Chief 30 State #005 well (API# 30-025-40906) and Chief 30 State #001H well (API# 30-025-40406) in accordance with the curtailment plan attached as Exhibit "A" and once the overproduction is made up shall produce its wells in conformity with 19.15.20.9 NMAC.
- 27) Should Cimarex fail to comply with the curtailment plan or thereafter produce from Unit M, Section 30, Township 20S, Range 35E, N.M.P.M., Lea County, New Mexico in excess of the monthly allowable plus the permissive proration period tolerance shall be "illegal oil" as defined in the Oil and Gas Act. For purposes of this agreement, the allowable for the unit is the amount identified in Exhibit "A." Nothing, however, within this order should be construed to prevent Cimarex from making up the overproduction shown in Exhibit A, sooner than what is agreed upon in that exhibit by either producing at a lower rate or by shutting in its wells.
- 28) Any subsequent Order issued by the Division increasing the depth bracket allowable for the Berry; Bone Spring North pool (pool code 5535) shall not relieve Cimarex from making up any remaining amount of overproduction shown in the curtailment plan attached as Exhibit A.
- 29) Any amount of overproduction in excess of the monthly allowable but within the permissive tolerance, shall be considered oil produced against the allowable assigned to the unit for the following proration period, and it may be transported from the lease tanks only as and when the unit accrues daily allowable to offset the excess production.

- 30) Any amount of overproduction in excess of the monthly allowable but within the permissive tolerance not offset in the following proration period shall be "illegal oil" as defined in the Oil and Gas Act.
- 31) Should Cimarex produce illegal oil, Cimarex will be subject to penalties as established in NMSA (1978), §70-2-31 and §70-2-32, or subject to legal action pursuant to NMSA (1978), § 70-2-29.
- 32) Nothing in this Agreement relieves Cimarex of its responsibility for compliance with any other federal, state or local laws, rules, or regulations.
- 33) Nothing in this Agreement shall be construed as preventing any operator from drilling future wells in the Berry; Bone Spring North pool (pool code 5535) in conformity with Division Rules or preventing any owner of each property in the Berry; Bone Spring North pool from bringing an application to increase the depth bracket allowable for existing or future wells in the pool or to establish a different allowable based upon a showing, in conformity with Division rules and NMSA 1978, § 70-2-17, that the existing allowable does not afford it the opportunity to produce its just and equitable share of the oil or gas, or both, in the pool, being an amount, so far as can be practically determined, and so far as such can be practicably obtained without waste, substantially in the proportion that the quantity of the recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for this purpose to use its just and equitable share of the reservoir energy.

Done at Santa Fe, New Mexico this 23rd day of May, 2016.

By: \_\_\_\_\_

David Catanach  
Director, Oil Conservation Division

## ACCEPTANCE

**CIMAREX ENERGY CO.**, (OGRID No. 215099), operator of record of the Chief 30 State #005 well, (API# 30-025-4096), hereby accepts the foregoing Agreement, and agrees to all of the terms and provisions as set forth in the Agreement.

**CIMAREX ENERGY CO.**

By: [Signature]

Title: Attorney-in-Fact

Date: 4/27/16

**BTA OIL PRODUCER, LLC**, (OGRID No. 260297), applicant in Case No. 15473, hereby accepts the foregoing Agreement, and agrees to all of the terms and provisions as set forth in the Agreement.

**BTA OIL PRODUCER, LLC**

By: [Signature]

Title: TRUWING MANAGER

Date: 4/27/2016

**NEW MEXICO SPECIAL ASSISTANT ATTORNEY GENERAL**, representing the Oil Conservation Division of the Energy, Minerals and Natural Resources Department, hereby accepts the foregoing Agreement, and agrees to all of the terms and provisions as set forth in the Agreement, and retains jurisdiction to enforce this Agreement should the provisions not be complied with.

**NEW MEXICO SPECIAL ASSISTANT ATTORNEY GENERAL**

By: [Signature]

Title: Special Assistant Attorney General

Date: 5/23/2016

Chief 30 State #1 #5  
Section 30 T20S R35E  
Lea County, New Mexico

## Cumulative Oil Over Production Calculation per 40-Acres

30-025-40406  
MNOP-30-20S-35E

30-025-40906  
M(4)-30-20S-35E

160.12-Acres

40.12-Acres

## Berry;Bone Spring, North Pool (5535)

Discovery Depth 11,000 Feet (Getty 6 State Com Well No. 1 30-025-26731)

365

= 40-Acres, Depth Bracket Allowable per 19.15.20.12 A NMAC

1,825

= 5 day tolerance

Top Proration Unit Allowable with Market Demand Percentage Factor of 100%

Month	Days	Chief 30 State #1 Reported Production	Chief 30 State #1 Allocation to Unit M	Chief 30 State #5 Reported Production	40-Acre Total Production (BOPM)	40-Acre Depth Bracket Allowable (BOPM)	40-Acre Monthly Over Production	Since March 2013 Cumulative Over Production Barrels of Oil
Mar-13	31	8,445	2,111	8,266	10,377	11,315	0	0
Apr-13	30	7,645	1,911	10,699	12,610	10,950	1,660	1,660
May-13	31	5,369	1,342	10,700	12,042	11,315	727	2,388
Jun-13	30	8,662	2,166	11,141	13,307	10,950	2,357	4,744
Jul-13	31	6,680	1,670	10,234	11,904	11,315	589	5,333
Aug-13	31	7,952	1,988	11,144	13,132	11,315	1,817	7,150
Sep-13	30	7,934	1,984	11,057	13,041	10,950	2,091	9,241
Oct-13	31	5,671	1,418	10,990	12,408	11,315	1,093	10,333
Nov-13	30	4,836	1,209	9,918	11,127	10,950	177	10,510
Dec-13	31	5,220	1,305	10,490	11,795	11,315	480	10,990
Jan-14	31	5,628	1,407	8,522	9,929	11,315	(1,386)	9,604
Feb-14	28	5,881	1,470	5,879	7,349	10,220	(2,871)	6,734
Mar-14	31	5,226	1,307	9,064	10,371	11,315	(945)	5,789
Apr-14	30	4,264	1,066	11,185	12,251	10,950	1,301	7,090
May-14	31	5,071	1,268	10,821	12,089	11,315	774	7,864
Jun-14	30	4,058	1,015	10,867	11,882	10,950	932	8,795
Jul-14	31	4,489	1,122	11,602	12,724	11,315	1,409	10,205
Aug-14	31	4,483	1,121	11,109	12,230	11,315	915	11,119
Sep-14	30	3,701	925	8,379	9,304	10,950	(1,646)	9,474
Oct-14	31	3,974	994	9,974	10,968	11,315	(348)	9,126
Nov-14	30	3,792	948	9,600	10,548	10,950	(402)	8,724
Dec-14	31	4,366	1,092	7,517	8,609	11,315	(2,707)	6,018
Jan-15	31	2,635	659	8,075	8,734	11,315	(2,581)	3,436
Feb-15	28	3,452	863	10,327	11,190	10,220	970	4,406
Mar-15	31	4,215	1,054	12,780	13,834	11,315	2,519	6,925
Apr-15	30	3,772	943	16,530	17,473	10,950	6,523	13,448
May-15	31	3,965	991	17,400	18,391	11,315	7,076	20,524
Jun-15	30	3,450	863	19,155	20,018	10,950	9,068	29,592
Jul-15	31	2,758	690	24,279	24,969	11,315	13,654	43,245
Aug-15	31	2,575	644	26,822	27,466	11,315	16,151	59,396
Sep-15	30	2,616	654	19,524	20,178	10,950	9,228	68,624
Oct-15	31	3,573	893	27,905	28,798	11,315	17,483	86,107
Nov-15	30	3,283	821	26,533	27,354	10,950	16,404	102,511
Dec-15	31	2,952	738	23,479	24,217	11,315	12,902	115,413
Jan-16	31	2,918	730	20,439	21,169	11,315	9,854	125,267
Feb-16	29	2,617	654	10,006	10,661	10,585	76	125,342



Chief 30 State #1 #5  
Section 30 T20S R35E  
Lea County, New Mexico

Calculated Allowables to compensate for Past overproduction  
40-Acre

Month	Days	Corresponding Month	Depth Bracket Allowable (BOPM)	40-Acre Monthly Adjusted Allowable	Monthly Loss	Chief 5 Recommended Rate	Chief 1H Recommended Cont
Mar-16	31	Aug-13	11,315	775	10,540	0	25
Apr-16	30	Sep-13	10,950	750	10,200	0	25
May-16	31	Oct-13	11,315	4,495	6,820	120	25
Jun-16	30	Nov-13	10,950	4,200	6,750	120	20
Jul-16	31	Dec-13	11,315	4,340	6,975	120	20
Aug-16	31	Feb-15	11,315	4,340	6,975	120	20
Sep-16	30	Mar-15	10,950	4,200	6,750	120	20
Oct-16	31	Apr-15	11,315	4,340	6,975	120	20
Nov-16	30	May-15	10,950	4,200	6,750	120	20
Dec-16	31	Jun-15	11,315	4,278	7,037	120	18
Jan-17	31	Jul-15	11,315	4,278	7,037	120	18
Feb-17	28	Aug-15	10,220	3,864	6,356	120	18
Mar-17	31	Sep-15	11,315	4,278	7,037	120	18
Apr-17	30	Oct-15	10,950	4,140	6,810	120	18
May-17	31	Nov-15	11,315	4,278	7,037	120	18
Jun-17	30	Dec-15	10,950	4,050	6,900	120	15
Jul-17	31	Jan-16	11,315	4,185	7,130	120	15
Aug-17	31	Jul-15	11,315	7,130	4,185	215	15
Cumulative production compensated for					128,264		