

**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 HEARING:**

CASE NO. 14311

**APPLICATION OF NADEL AND GUSSMAN HEYCO, LLC
FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO**

CASE NO. 14322

**APPLICATION OF CIMAREX ENERGY CO.
FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO**

CONSOLIDATED PRE-HEARING STATEMENT

**Cimarex Energy Co. submits this pre-hearing statement as required
by the New Mexico Oil Conservation Division.**

APPEARANCES OF THE PARTIES

APPLICANT-Case 14311

Nadel and Gussman Heyco LLC

ATTORNEY

**Bill Carr, Esq.
Ocean Munds-Dry, Esq.
Holland & Hart
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APPLICANT-Case 14322

**Cimarex Energy Inc.
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Midland, TX 80201
Attn: Jeff Gotcher
432-571-7800**

ATTORNEY

**Thomas Kellahin, Esq.
706 Gonzales Rd.
Santa Fe, NM 87501
505-982-4285**

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STATEMENT OF THE CASE

CIMAREX:

(1) Cimarex controls the largest working interest ownership in the NW/4 of Section 28, T19S, R34E, the working interest ownership is as follows:

(a) Magnum Hunter Production, Inc. (Cimarex)	50.000000%
(b) Nadel and Gussman Heyco, LLC	18.750000%
(c) Merit Partners, L.P.	17.625000%
(d) Merit Energy Partners D-III, L.P.	0.6562500%
(e) Merit Energy Partners III, L.P.	0.4687500%
(f) EOG Resources, Inc.	12.500000%

(2) On December 12, 2008, Nadel and Gussman Heyco, LLC, ("NGH") without first proposing its well to Cimarex, obtained approval of an application for permit to drill ("APD") from the BLM, dated December 12, 2008, for its Paloma Ridge Federal Well No. 1 (API # 30-025-39310).

(3) Competing compulsory pooling application should not be decided based upon which applicant was first to obtain an approved APD. COG's motion to dismiss is an attempt to block Chesapeake from having its cases heard by the Division--a practice that is not permitted by the Division:

"(17) The mere fact that an applicant obtained an APD first which has not been revoked does not necessarily guarantee that the applicant should be designated the operator *of the* wells and of the units under the compulsory pooling procedures. The Division does not want to decide this case based on a race to obtain an APD. Doing so would encourage potential operators to file for APD's strategically, to block other potential operators." See Order R-12451

(4) By letter dated February 3, 2009, NGH proposed the drilling of four (4) wells, including the Paloma Ridge 28 Fed #1, Unit D, within the NW/4 of Section 28 to Cimarex by sending its letter to Cimarex's Tulsa, Oklahoma office and not its Midland, Texas office

(5) On March 31, 2009, without waiting for a final answer from Cimarex, NGH filed a compulsory pooling application for these four wells, that has been docketed as Division Case 14311 that is currently set for hearing on April 30, 2009.

(6) On April 14, 2009, Cimarex (Midland), having finally received NGH's proposal for these 4 wells, responded to NGH with a competing wellbore proposals for 3 wells in the NW/4 of Section 28.

(7) The applicant, NGH seeks a compulsory pooling order pooling the interest of Cimarex in the NW/4 of Section 28, T19S, R34E, NMPM, Lea County, NM in order to form four (4) 40-acre spacing units for the drilling of 4 wells to the base of the Queen formation

(8) By doing so, NGH prematurely filed this case and failed to comply with the custom and practice of the Division concerning Section 70-2-17.C NMSA 1978 by instituting an application for compulsory pooling prior to conducting good faith efforts to reach a voluntary agreement with Cimarex.

(9) In response, Cimarex has filed a competing compulsory pooling application docketed as Case 14322.

(10) The Division decision in these cases should be controlled by precedent:

(a) Cases No. 13537 & 13539 (R-12451) Synergy Operating, LLC vs. Lance Oil & Gas Company, Inc. The interest ownership was the ultimate factor in deciding this case notwithstanding the fact that the largest interest owner was not the first to initiate development of the unit. Synergy had a larger working interest, however, there were some interesting findings. "(17) The mere fact that an applicant obtained an APD first which has not been revoked does not necessarily guarantee that the applicant should be designated the operator *of the* wells and of the units under the compulsory pooling procedures. The Division does not want to decide this case based on a race to obtain an APD. Doing so would encourage potential operators to file for APD's strategically, to block other potential operators."

(b) If the geology, well location, well costs and the ability to operator are not at issue and are not significant factors, then the ownership and working interest control can be a "controlling factor" or a "critical factor". See Findings 24 and 25 of Commission Order R-10731-B, dated February 28, 1997, Cases 11666 and 11677 (deNovo).

PROPOSED EVIDENCE

FOR CIMAREX:

WITNESSES

EST. TIME

EST. EXHIBITS

Jeff Gotcher (land)

@ 30minutes

@ 8-10

PROCEDURAL MATTERS

Upon motion of Cimarex, the Division continued HEYCO's Case 14311 to the June 2, 2009 docket for the consolidation with the Cimarex Case 14322.

KELLAHIN & KELLAHIN



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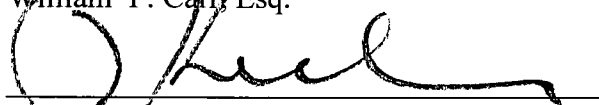
CERTIFICATE OF SERVICE

I certify that on June 4, 2009, I served a copy of the foregoing documents by:

- ☐ US Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Facsimile
- ☒ Email

to the following:

William F. Carr, Esq.



W. Thomas Kellahin