

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

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

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

Case No. 14480

**CIMAREX ENERGY CO.'S RESPONSE
TO LYNX PETROLEUM CONSULTANTS, INC.
CLOSING STATEMENT**

Applicant Cimarex Energy Co. ("Cimarex") submits its response to the Closing Statement of Lynx Petroleum Consultants, Inc. ("Lynx").

In its attempt to convince the Division that it should deny Cimarex's application and require Cimarex to negotiate an allocation agreement on Lynx's terms, Lynx offers an untenable interpretation of the governing provisions of the Oil and Gas Act ("the Act") and the Division's rules, and morphs Cimarex's application into a request for statutory unitization. Lynx's argument that compulsory pooling is limited to "single" spacing units finds no support whatsoever in the applicable provisions of the Act and the Division's rules. *See Lynx Closing Statement* at 1-3. The Act does not limit pooling to "single" spacing units. *See* § 70-2-17(C) NMSA. Rather, the statute provides that the Division "shall pool all or any part of such lands or interests or both *in the spacing or proration unit as a unit.*" *Id.* (emphasis added); *see* 19.15.2.7(S)(9) NMAC ("'[s]pacing unit' means the area allocated to a well under a well spacing order").

Contrary to Lynx's misplaced argument, the Division plainly has the legal authority to create non-standard spacing units - such as the 160-acre unit proposed by Cimarex - and to pool

the uncommitted interests in the unitary spacing unit. *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 87 N.M. 286, 289, 582 P.2d 582, 585 (1975); see 19.15.2.7(S)(9) NMAC. The Division properly exercised that authority in granting Cimarex's substantially similar application in Case 14418 (Order No. 13228). The Division again exercised that authority in two cases that also involved substantially similar Cimarex applications and were heard on the same docket as this case. See *Order Nos.* 13288 and 13289.

Even though it correctly acknowledges that statutory unitization is not authorized for primary production, Lynx asserts that Cimarex's "application is more in the nature of [a request for] unitization." *Lynx Closing Statement* at 2-3. Lynx's apparent motivation in characterizing Cimarex's application as a request for statutory unitization is to convince the Division that it should have the discretion afforded under the Statutory Unitization Act to make its own allocation determination. See § 70-7-6(B) NMSA. But Cimarex is not seeking statutory unitization. Its application seeks the creation of a non-standard spacing unit and the compulsory pooling of all uncommitted interest owners within the spacing unit. Therefore, the Division is statutorily mandated to proportionately allocate production based solely on the surface acreage within the non-standard unit. § 70-2-17(C) NMSA ("production *shall be allocated* to the respective tracts within the unit in the proportion that the number of surface acres included within such tract bears to the number of surface acres included in the entire unit") (emphasis added). The Division has no discretion to allocate production based on a different methodology.

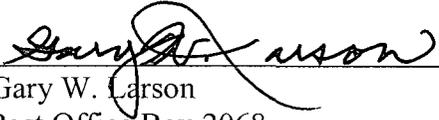
Despite the absence of any legal basis for its argument that an allocation of production based on surface acreage would violate its correlative rights, Lynx contends that the evidence it presented at the hearing shows that there are "significant differences" in reservoir quality between the N/2 and S/2 of Section 21. See *Lynx Closing Statement* at 4. Cimarex fundamentally

disagrees with Lynx's contention, and refers the Examiner to the reservoir quality testimony and documentary exhibits presented by its geologist and reservoir engineer - who, unlike Lynx's witness, have substantial experience in developing horizontal wells - which demonstrate that Cimarex's proposed horizontal well will be productive, in substantially similar quantities, throughout the E/2 W/2 of Section 21. The parties' differing interpretations of the reservoir quality aside, the Act simply does not afford the Division any discretion to deviate from the clear mandate to allocate production based on the acreage within the proposed non-standard unit or to compel Cimarex to assign production to Lynx in a manner that Lynx believes is most appropriate. *See Lynx Closing Statement* at 4 (asking the Division to require Cimarex to negotiate an agreement with Lynx).

In sum, Cimarex submits that Lynx's hearing presentation and written closing statement fail to provide any legal or factual basis for the Division to deny Cimarex's application or to require Cimarex to negotiate an allocation agreement that uniquely serves Lynx's interests. Accordingly, Cimarex requests that the Division enter an order granting Cimarex's application in all respects.

Respectfully submitted,

HINKLE, HENSLEY, SHANOR &
MARTIN, LLP



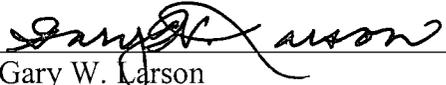
Gary W. Larson
Post Office Box 2068
Santa Fe, New Mexico 87504-2068
(505) 982-4554

Attorney for Cimarex Energy Co.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of July, 2010, I sent a true and correct copy of the foregoing *Cimarex Energy Co.'s Response to Lynx Petroleum Consultants, Inc. Closing Statement* via email to:

Ocean Munds-Dry
Holland & Hart, LLP
Post Office Box 2208
Santa Fe, NM 87504
omundsdry@hollandhart.com



Gary W. Larson