

Resolute Energy Corp
Form 425
February 14, 2019

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

**PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934**

Date of Report (date of earliest event reported): **February 14, 2019**

CIMAREX ENERGY CO.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

001-31446
(Commission File Number)

45-0466694
(I.R.S. Employer
Identification No.)

1700 Lincoln Street, Suite 3700
Denver, Colorado 80203
(Address of principal executive offices)

80203
(Zip Code)

(303) 295-3995

(Registrant's telephone number, including area code)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240-14a-12)

- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

ITEM 8.01

OTHER EVENTS.

Supplemental Disclosures to the Proxy Statement

This Current Report on Form 8-K discloses certain additional information relating to the proposed acquisition by Cimarex Energy Co. (*Cimarex*) of Resolute Energy Corporation (*Resolute*). Subject to the terms and conditions of the Agreement and Plan of Merger (the *Merger Agreement*), dated as of November 18, 2018, by and among Cimarex, Resolute, CR Sub 1 Inc., a Delaware corporation and a direct wholly owned subsidiary of Cimarex (*Merger Sub 1*), and CR Sub 2 LLC, a Delaware limited liability company and a direct wholly owned subsidiary of Cimarex (*Merger Sub 2*), Merger Sub 1 will merge with and into Resolute, with Resolute continuing as the surviving corporation, and thereafter Resolute will merge with and into Merger Sub 2, with Merger Sub 2 continuing as the surviving company. In connection with the proposed transaction, Cimarex has filed with the Securities and Exchange Commission (the *SEC*) a registration statement on Form S-4, as amended, that includes a proxy statement of Resolute and a prospectus of Cimarex.

Resolute is making the following amended and supplemental disclosures (the *Supplemental Disclosures*) to the definitive proxy statement on Schedule 14A filed by Resolute with the SEC on January 30, 2019, which also constitutes a prospectus of Cimarex (the *Proxy Statement*). The Supplemental Disclosures should be read in conjunction with the Proxy Statement, which should be read in its entirety. Defined terms used but not defined herein have the meanings set forth in the Proxy Statement.

While Cimarex and Resolute believe that the disclosures set forth in the Proxy Statement comply fully with applicable law, to provide additional information to Resolute's stockholders, Resolute is making these Supplemental Disclosures. Nothing in the Supplemental Disclosures shall be deemed an admission of the legal necessity or materiality under applicable law of any of the disclosures set forth herein or in the Proxy Statement.

SUPPLEMENTAL DISCLOSURES

This supplemental information should be read in conjunction with the Proxy Statement, which should be read in its entirety. Defined terms used but not defined below have the meanings set forth in the Proxy Statement. All page references in the information below are to pages in the Proxy Statement. Paragraph references used herein refer to the Proxy Statement before any additions or deletions resulting from the supplemental disclosures. The information contained herein speaks only as of February 13, 2019 unless the information indicates another date applies.

1. The section of the Proxy Statement entitled "The Merger Resolute Board Recommendation and Its Reasons for the Merger Strategic Review Process" is hereby supplemented as follows:

The second bullet point on page 53 of the Proxy Statement is revised in its entirety:

Strategic Review Process.

- The Resolute board considered that (i) although Resolute's intention to review and consider its strategic alternatives had been publicly announced on multiple occasions during the period from May 2018 through November 2018, and (ii) during the fall of 2018, Resolute engaged in an organized process to solicit indications of interest for a business combination with or acquisition of Resolute, including contacting a total of 13 industry participants and entering into non-disclosure agreements with four of such industry participants, no indications of interest or proposals ultimately were received from any company or entity other than Cimarex. None of the non-disclosure agreements entered into with potentially-interested transaction counterparties during 2018 contain restrictive language that would prevent the counterparty from privately seeking a waiver of any standstill provision thereunder or otherwise from making a private proposal to Resolute.

2. The section of the Proxy Statement entitled "The Merger Opinions of Resolute's Financial Advisors" Opinion of Goldman Sachs Selected Transactions Analysis is hereby supplemented as follows:

The chart and second paragraph on page 60 of the Proxy Statement are revised in their entirety:

Selected Transactions Analysis. Goldman Sachs analyzed certain information relating to the following selected transactions involving oil and gas-related assets in the Delaware Basin region announced from January 2018 through November 16, 2018 for aggregate consideration greater than \$100 million:

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Announcement Date	Transaction	Adj \$ / Acre
02/06/2018	Halcón Resources Corporation's acquisition of certain acreage from Royal Dutch Shell	\$ 15,868
02/06/2018	Halcón Resources Corporation's acquisition of certain acreage from an undisclosed seller	22,037
02/20/2018	Luxe Energy II LLC's acquisition of certain acreage from Concho Resources Inc.	12,545
02/26/2018	Luxe Energy II LLC's acquisition of certain acreage from Centennial Resource Development, Inc.	15,488
05/10/2018	Matador Resources Company's acquisition of acreage from an undisclosed seller	12,487
05/24/2018	Callon Petroleum Company's acquisition of certain oil and gas properties from Cimarex Energy Co.	12,739
08/14/2018	Carrizo Oil & Gas, Inc.'s acquisition of Delaware Basin properties from Devon Energy Corporation	14,583

While none of the companies or assets that were sold in the selected transactions are directly comparable to Resolute or its assets, the companies or assets sold in the selected transactions, for the purposes of analysis, in Goldman Sachs' professional judgment and experience, may be considered similar to certain of Resolute's assets. Additionally, while none of the transactions used in the above analyses as a comparison is directly comparable to the contemplated transaction, the companies or assets sold in such transactions, along with the timing and size of such transactions, for purposes of analysis, in Goldman Sachs' professional judgment, may be considered similar to the contemplated transaction.

3. The section of the Proxy Statement entitled "The Merger - Opinions of Resolute's Financial Advisors - Opinion of Goldman Sachs - Premia Analysis" is hereby supplemented as follows:

The chart on page 61 of the Proxy Statement is revised in its entirety:

Premia Analysis. Using publicly available information, Goldman Sachs reviewed and analyzed the acquisition premia for the following U.S. E&P acquisition transactions announced from January 1, 2009 through November 16, 2018 involving a public company target where the disclosed enterprise value was between \$1 billion and \$10 billion:

Announcement Date	Acquiror(s)	Target	Premia
11/01/2009	Denbury Resources Inc.	Encore Acquisition Company	34.9%
04/04/2010	SandRidge Energy, Inc.	Arena Resources, Inc.	16.8%
11/09/2010	Chevron Corporation	Atlas Energy, Inc.	36.6%
10/17/2011	Statoil ASA	Brigham Exploration Company	20.2%
04/25/2012	Halcón Resources Corporation	GeoResources, Inc.	23.4%
02/21/2013	LINN Energy, LLC and LinnCo, LLC	Berry Petroleum Company	19.8%
09/29/2014	Encana Corporation	Athlon Energy Inc.	25.2%
05/11/2015	Noble Energy, Inc.	Rosetta Resources Inc.	37.7%
05/16/2016	Range Resources Corporation	Memorial Resource Development Corp.	17.1%
01/16/2017	Noble Energy, Inc.	Clayton Williams Energy, Inc.	33.7%
06/19/2017	EQT Corporation	Rice Energy Inc.	37.4%
03/28/2018	Concho Resources Inc.	RSP Permian, Inc.	29.1%
08/14/2018	Diamondback Energy, Inc.	Energen Corporation	19.0%
10/28/2018	Denbury Resources Inc.	Penn Virginia Corporation	18.4%
10/30/2018	Chesapeake Energy Corporation	WildHorse Resource Development Corporation	24.0%
11/01/2018	Encana Corporation	Newfield Exploration Company	35.4%

4. The section of the Proxy Statement entitled "The Merger Opinions of Resolute's Financial Advisors" Opinion of Goldman Sachs General is hereby supplemented as follows:

The fourth paragraph on page 62 of the Proxy Statement is revised in its entirety:

The Resolute board selected Goldman Sachs as its financial advisor because it is an internationally recognized investment banking firm that has substantial experience in transactions similar to the merger. Pursuant to a letter agreement dated November 18, 2018, Resolute engaged Goldman Sachs to act as its financial advisor in connection with the contemplated transaction. The engagement letter between Resolute and Goldman Sachs provides for a transaction fee that is estimated, based on the information available as of the date of public announcement of the merger, at approximately \$7.5 million, \$2.5 million of which was payable on announcement of the transaction and the remainder of which is contingent upon consummation of the merger. In addition, Resolute has agreed to reimburse Goldman Sachs for certain of its expenses, including attorney's fees and disbursements, and to indemnify Goldman Sachs and related persons against various liabilities, including certain liabilities under the federal securities laws.

5. The section of the Proxy Statement entitled "The Merger Opinions of Resolute's Financial Advisors" Opinion of Petrie Partners Comparable Transaction Analysis is hereby supplemented as follows:

The second full paragraph on page 66 of the Proxy Statement is revised in its entirety:

Comparable Transaction Analysis

Petrie Partners reviewed selected publicly-available information for 14 oil and gas transactions announced since July 2016 that included assets in the Texas Delaware Basin and had a value greater than or equal to \$400 million. Petrie Partners reviewed all transactions with publicly-available information that it deemed to have certain characteristics similar to those of Resolute, although Petrie Partners noted that none of the reviewed transactions or the companies that participated in the selected transactions were directly comparable to Resolute.

Precedent Transactions for Resolute

Date Announced	Buyer	Seller
05/24/18	Callon Petroleum Company	Cimarex Energy Co.
12/11/17	Oasis Petroleum Inc.	Forge Energy, LLC
06/28/17	Carrizo Oil & Gas, Inc.	ExL Petroleum Management, LLC
01/24/17	Halcón Resources Corporation	Samson Exploration LLC
01/12/17	WPX Energy, Inc.	Panther Energy Company II, LLC; Carrier Energy Partners, LLC
12/20/16	KLR Energy Acquisition Corp.	Tema Oil and Gas Company
12/14/16	Diamondback Energy, Inc.	Brigham Resources Operating, LLC
12/13/16	Callon Petroleum Company	American Resource Development LLC
11/28/16	Centennial Resource Development, Inc.	Silverback Exploration, LLC

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10/31/16	Occidental Petroleum Corporation	J Cleo Thompson Operating; Et al.
10/13/16	RSP Permian, Inc.	Silver Hill Energy Partners, LLC; Silver Hill E&P II, LLC
08/23/16	PDC Energy Inc.	Arris Petro. and 299 Resources
07/13/16	Diamondback Energy, Inc.	Luxe Energy LLC
07/06/16	Silver Run Acquisition Corporation	Centennial Resource Production, LLC

The minimum, mean, median and maximum price per acre multiples implied by the precedent transactions are set forth below.

Measure	Minimum	Mean	Median	Maximum
Production-Adjusted Transaction Value/Acre (1)	\$ 12,739	\$ 33,073	\$ 31,132	\$ 63,234

(1) Production-Adjusted Transaction Value per acre multiples calculated by subtracting the estimated value of current production at \$30,000 per barrel of oil equivalent per day (Boepd) from the transaction value for each selected transaction and then dividing the remaining value by the net acreage acquired.

6. The section of the Proxy Statement entitled The Merger Opinions of Resolute s Financial Advisors Opinion of Petrie Partners Precedent Transactions Oil & Gas Corporate Transactions is hereby supplemented as follows:

The chart on page 67 of the Proxy Statement is revised in its entirety:

Date Announced	Date Closed	Acquiring Company	Target Company
11/01/18	02/13/19	Encana Corporation	Newfield Exploration Company
10/30/18	02/01/19	Chesapeake Energy Corporation	WildHorse Resource Development Corporation
10/28/18	Pending	Denbury Resources Inc.	Penn Virginia Corporation
08/14/18	11/29/18	Diamondback Energy, Inc.	Energen Corporation
06/18/18	10/18/18	MLCJR LLC (Cox Oil)	Energy XXI Gulf Coast, Inc.
03/28/18	07/19/18	Concho Resources Inc.	RSP Permian, Inc.
06/19/17	11/13/17	EQT Corporation	Rice Energy Inc.
01/16/17	04/24/17	Noble Energy, Inc.	Clayton Williams Energy, Inc.
05/16/16	09/16/16	Range Resources Corporation	Memorial Resource Development Corp.
05/11/15	07/20/15	Noble Energy, Inc.	Rosetta Resources Inc.
09/29/14	11/13/14	Encana Corporation	Athlon Energy Inc.
07/13/14	12/08/14	Whiting Petroleum Corporation	Kodiak Oil & Gas Corp.
03/12/14	06/03/14	Energy XXI (Bermuda) Limited	EPL Oil & Gas, Inc.
04/30/13	10/02/13	Contango Oil & Gas Company	Crimson Exploration Inc.
02/21/13	12/16/13	LINN Energy, LLC and LinnCo, LLC	Berry Petroleum Company
12/05/12	06/03/13	Freeport-McMoRan Copper & Gold Inc.	McMoRan Exploration Co.
12/05/12	05/31/13	Freeport-McMoRan Copper & Gold Inc.	Plains Exploration & Production Company
04/25/12	08/01/12	Halcón Resources Corporation	GeoResources, Inc.
01/16/12	10/03/12	Denver Parent Corporation	Venoco, Inc.
10/17/11	12/09/11	Statoil ASA	Brigham Exploration Company
07/14/11	08/26/11	BHP Billiton Petroleum (North America) Inc.	Petrohawk Energy Corporation
11/09/10	02/18/11	Chevron Corporation	Atlas Energy, Inc.
04/15/10	11/10/10	Apache Corporation	Mariner Energy, Inc.
04/04/10	07/16/10	SandRidge Energy, Inc.	Arena Resources, Inc.
12/14/09	06/25/10	ExxonMobil Corporation	XTO Energy Inc.
11/01/09	03/10/10	Denbury Resources Inc.	Encore Acquisition Company
09/15/09	11/25/09	Apollo Management, LP	Parallel Petroleum Corporation
04/27/09	09/29/09	Atlas America, Inc.	Atlas Energy Resources, LLC

7. The section of the Proxy Statement entitled The Merger Opinions of Resolute s Financial Advisors Opinion of Petrie Partners Capital Market Comparison Analysis is hereby supplemented as follows:

Paragraphs one and two and the chart on page 70 of the Proxy Statement are revised in their entirety:

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The trading multiples for the Resolute peer group are set forth below.

Company	Market Value/ 18E Disc. Cash Flow	Market Value/ 19E Disc. Cash Flow	Enterprise Value/ 18E EBITDA	Enterprise Value/ 19E EBITDA	Enterprise Value/Proved Reserves (\$/Boe)	Enterprise Value/ 18E Production (\$/Boepd)	Enterprise Value/ 19E Production (\$/Boepd)
Centennial Resource Development, Inc.	7.1x	5.3x	7.7x	5.7x	\$ 29.51	\$ 88,758	\$ 63,734
Callon Petroleum Company	5.1x	3.5x	7.9x	5.2x	25.39	106,884	77,210
Jagged Peak Energy Inc.	6.3x	5.1x	7.1x	5.8x	38.97	95,235	75,970
Laredo Petroleum, Inc.	2.2x	1.9x	3.8x	3.3x	10.49	35,859	31,466
Halcón Resources Corporation	7.8x	2.6x	10.7x	4.9x	21.48	76,319	41,955
Rosehill Resources Inc.	0.9x	0.7x	3.1x	2.3x	21.08	36,790	27,033
Lilis Energy, Inc.	7.1x	2.1x	10.6x	4.1x	32.76	70,220	40,404

**Minimum, Mean, Median,
Maximum
Multiples**

Maximum	7.8x	5.3x	10.7x	5.8x	\$ 38.97	\$ 106,884	\$ 77,210
Median	6.3x	2.6x	7.7x	4.9x	25.39	76,319	41,955
Mean	5.2x	3.0x	7.3x	4.5x	25.67	72,866	51,110
Minimum	0.9x	0.7x	3.1x	2.3x	10.49	35,859	27,033

Based upon its review of the peer group and its judgment of the comparability of each peer considering size, asset location, commodity mix and other factors, Petrie Partners selected market value multiple ranges for Resolute of 4.0x - 6.0x 2018E discretionary cash flow and 3.0x - 4.0x 2019E discretionary cash flow, enterprise value multiple ranges of 6.5x - 8.0x 2018E EBITDA, 4.0x - 5.0x 2019E EBITDA, \$25.00 - \$30.00 per Boe of proved reserves, \$60,000 - \$75,000 per Boepd of 2018E production and \$40,000 - \$50,000 per Boepd of 2019E production.

8. The section of the Proxy Statement entitled "The Merger Opinions of Resolute's Financial Advisors" Opinion of Petrie Partners Miscellaneous is hereby supplemented as follows:

The fifth full paragraph of page 71 of the Proxy Statement is revised in its entirety:

Under the terms of Petrie Partners' engagement letter with Resolute, Petrie Partners provided Resolute financial advisory services and rendered a fairness opinion in connection with the merger. The engagement letter between Resolute and Petrie Partners provides for a transaction fee that is estimated, based on the information available as of the date of public announcement of the merger, at approximately \$10.0 million, \$2.5 million of which was payable on the announcement of the transaction and the remainder of which is contingent upon consummation of the merger. In addition, Resolute has agreed to reimburse Petrie Partners for certain of its expenses, including attorney's fees and disbursements, and to indemnify Petrie Partners and related persons against various liabilities.

* * *

Additional Information and Where to Find It

This report does not constitute an offer to buy or sell or the solicitation of an offer to buy or sell any securities or a solicitation of any vote or approval. This communication relates to a proposed transaction between Cimarex and Resolute.

In connection with the proposed transaction, Cimarex has filed with the SEC a registration statement on Form S-4, as amended, that includes a proxy statement of Resolute and a prospectus of Cimarex. The registration statement became effective on January 30, 2019. Resolute filed the Proxy Statement on January 30, 2019. The proxy statement/prospectus was mailed to stockholders of Resolute on or about January 30, 2019. Each of Cimarex and Resolute also plan to file other relevant documents with the SEC regarding the proposed transaction. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the U.S. Securities Act of 1933, as amended. INVESTORS AND SECURITY HOLDERS OF RESOLUTE ARE URGED TO READ THE REGISTRATION STATEMENT, PROXY STATEMENT/PROSPECTUS AND OTHER DOCUMENTS THAT MAY BE FILED WITH THE SEC CAREFULLY AND IN THEIR ENTIRETY IF AND WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION.

Investors and security holders will be able to obtain free copies of these documents (if and when available) and other documents containing important information about Cimarex and Resolute, once such documents are filed with the SEC through the website maintained by the SEC at <http://www.sec.gov>. Copies of the documents filed with the SEC by Cimarex will be available free of charge on Cimarex's website at <https://www.cimarex.com/home/default.aspx> under the tab Investor Relations and then under the heading Financial Information. Copies of the documents filed with the SEC by Resolute will be available free of charge on Resolute's website at <https://www.resoluteenergy.com/> under the tab Investors and then under the heading SEC Filings.

Participants in the Solicitation

Cimarex, Resolute and certain of their respective directors, executive officers and other persons may be deemed to be participants in the solicitation of proxies from Resolute's stockholders in respect of the proposed transaction. Information about the directors and executive officers of Cimarex is set forth in Cimarex's definitive proxy statement for its 2018 annual meeting of stockholders, which was filed with the SEC on March 30, 2018. Information about the directors and executive officers of Resolute, including a description of their direct and indirect interests, by security holdings or otherwise, is set forth in the proxy statement/prospectus and is set forth in its definitive proxy statement for its 2018 annual meeting of stockholders, which was filed with the SEC on May 18, 2018. These documents can be obtained free of charge from the sources indicated above. Other information regarding the participants in the proxy solicitation and a description of their direct and indirect interests, by security holdings or otherwise, are contained in the proxy statement/prospectus and will be contained in other relevant materials to be filed with the SEC when such materials become available. Investors should read the proxy statement/prospectus carefully before making any voting or investment decisions. You may obtain free copies of these documents from Cimarex or Resolute using the sources indicated above.

Cautionary Statements Regarding Forward-Looking Information

This report contains certain forward-looking statements within the meaning of federal securities laws. Words such as anticipates, believes, expects, intends, will, should, may and similar expressions may be used to identify forward-looking statements. Forward-looking statements are not statements of historical fact and reflect Cimarex's and Resolute's current views about future events. Such forward-looking statements include, but are not limited to, statements about the benefits of the proposed merger involving Cimarex and Resolute, including future financial and operating results, Cimarex's and Resolute's plans, objectives, expectations and intentions, the expected timing and likelihood of completion of the transaction, and other statements that are not historical facts, including estimates of oil and natural gas reserves and resources, estimates of future

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production, assumptions regarding future oil and natural gas pricing, planned drilling activity, future results of operations, projected cash flow and liquidity, business strategy and other plans and objectives for future operations. No assurances can be given that the forward-looking statements contained in this communication will occur as projected and actual results may differ materially from those projected. Forward-looking statements are based on current expectations, estimates and assumptions that

involve a number of risks and uncertainties that could cause actual results to differ materially from those projected. These risks and uncertainties include, without limitation, the ability to obtain the requisite Resolute stockholder approval, the risk that an event, change or other circumstances could give rise to the termination of the proposed merger, the risk that a condition to closing of the merger may not be satisfied, the timing to consummate the proposed merger, the risk that the businesses will not be integrated successfully, the risk that the cost savings and any other synergies from the transaction may not be fully realized or may take longer to realize than expected, the risk that any announcement relating to the proposed transaction could have adverse effects on the market price of Cimarex's common stock or Resolute's common stock, the outcome of litigation related to the proposed transaction, disruption from the transaction making it more difficult to maintain relationships with customers, employees or suppliers, the diversion of management time on merger-related issues, the volatility in commodity prices for crude oil and natural gas, the presence or recoverability of estimated reserves, the ability to replace reserves, environmental risks, drilling and operating risks, exploration and development risks, competition, government regulation or other actions, the ability of management to execute its plans to meet its goals and other risks inherent in Cimarex's and Resolute's businesses.

All such factors are difficult to predict and are beyond Cimarex's or Resolute's control, including those detailed in Cimarex's annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K that are available on its website at <https://www.cimarex.com> and on the SEC's website at <http://www.sec.gov>, and those detailed in Resolute's annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K that are available on Resolute's website at <https://www.resoluteenergy.com/> and on the SEC's website at <http://www.sec.gov>.

Forward-looking statements are based on the estimates and opinions of management at the time the statements are made. Cimarex undertakes no obligation to publicly update any forward-looking statement, whether as a result of new information, future events or otherwise. Readers are cautioned not to place undue reliance on these forward-looking statements that speak only as of the date hereof.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, Cimarex has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

CIMAREX ENERGY CO.

Dated: February 14, 2019

By:

/s/ Francis B. Barron

Francis B. Barron

Senior Vice President General Counsel