

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

**APPLICATION OF MAGNUM HUNTER PRODUCTION, INC.,
AFFILIATE OF CIMAREX ENERGY CO., TO REOPEN
COLGATE OPERATING, LLC'S POOLING CASE NO. 21629,
EDDY COUNTY, NEW MEXICO**

Reopen Case No. _____
Re: Case No. 21629; Order No. R-21575

APPLICATION TO REOPEN CASE

Magnum Hunter Production, Inc., an affiliate of Cimarex Energy Co. (collectively referred to herein as "Cimarex"), through its undersigned attorneys, hereby files its Application to Reopen Case No. 21629 in which Colgate Operating, LLC ("Colgate") sought a compulsory pooling order and operatorship from the Oil Conservation Division ("Division") for the N/2 N/2 of Sections 2 & 3, Township 20 South, Range 29 East, NMPM, Eddy County, New Mexico for the Bone Spring formation ("Subject Lands"). The basis of this application is that Colgate made certain material misrepresentations in its application and in its hearing exhibits that it introduced into the hearing of this case conducted before the Division on January 7, 2021, the most egregious being the representation that it sought to obtain a voluntary agreement from interest owners when, in fact, it failed to discuss any such agreement with Cimarex. Based on these defects, Cimarex contends that pursuant to NMAC 19.15.4.12 and Order Nos. R-20223 and R-21416-A, Colgate's notice was invalid, Colgate failed its obligation to make attempts to reach a voluntary agreement, and its hearing exhibits were fatally defective. Cimarex seeks relief in the form of reopening this Case to allow Cimarex to file its competing application to pool the Subject Lands that meets the regulatory

criteria for operations and development, including the prevention of waste and protection of correlative rights.

In support of its Application to Reopen, Cimarex states the following:

I. Procedural History and Background:

1. Cimarex received from Colgate a well proposal dated July 10, 2020, for the proposed development of the Meridian 3 Fed State Com 131H Well on the Subject Lands. This was one of 21 well proposals received from Colgate that year, and of the 21, Colgate has drilled two wells, the Dawson 31 Fed Com 124H and 134H Wells.

2. Upon its receipt, Cimarex reviewed the Meridian Well proposal and contacted Colgate on August 18, 2020, by email with a question:

Mark,
I just took over this proposal over here in our camp. Just a quick question, are y'all planning on drilling just the N2N2 mile or are there any development plans for the S2N2 that might make this a N2 JOA? I know Mewbourne operates the S2N2 in Section 3. Just trying to get a feel of what your plans are in the area.
Thank you,
John Coffman

Colgate responded August 31, 2020, to this inquiry, but never followed up with the information sought by Cimarex:

John,
As you probably noted, our operated strip is the N2N2, which abuts to several additional operated units in the section due north. Due to our consolidated operational efficiencies we would be happy to talk some options for the offsetting acreage in order to fully maximize the development of the area.
Thanks,
Mark

A copy of this email exchange is attached as Exhibit 1. Since Cimarex never provided the information requested, Cimarex filed the proposal with the other Colgate proposals that Cimarex had received.

3. Colgate decided to pool the Subject Lands for the proposed Meridian well, and on Christmas Eve, December 24, 2020, Magnum Hunter Production, Inc., an affiliate of Cimarex Energy Co., received Colgate's Notice Letter of the pooling hearing for January 7, 2020, which the law firm Modrall, Sperling, Roehl, Harris, & Sisk, P.A. ("Modrall") sent to Cimarex on behalf of Colgate.

4. However, under conditions of a renewed spike in the occurrence of COVID-19 infections, thus, stricter lockdown policies for the workplace, and in the midst of absences of support staff during the holiday, the Notice Letter was inadvertently misplaced and was not delivered to Cimarex's designated land team. Thus, the land team remained unaware of the hearing until after it was held, missing the opportunity to have filed an entry of appearance and competing application. Cimarex recognizes that the Notice Letter was sent within the prescribed time frame prior to the hearing date, and provides this explanation of how Cimarex missed notice of the hearing for the Division's consideration of why Cimarex failed to make an appearance. Had the circumstances of the Notice Letter's receipt been different, Cimarex's land team would have become aware of the hearing at the proper time and would have made a timely entry of appearance.

5. It was not until January 12, 2021, that Cimarex first realized that the hearing had already been held. Upon review of the testimony and exhibits submitted at the hearing, Cimarex found that Colgate had made a number of misrepresentations in its application and during the hearing and had introduced a number of irregularities. As a result, Cimarex requests that the Division reopen the case in order to determine the extent to which such misrepresentations have undermined and invalidated the merits of the proceedings.

II. Legal Arguments:

A. Colgate failed to make the necessary attempts to reach a voluntary agreement and failed to engage in good faith negotiations prior to the forced pooling.

6. Colgate's Landman falsely testified that its case "involves a request for an order from the Division for compulsory pooling of interest owners who have *refused* to voluntarily pool their interests...." Affidavit of Mark Hajdik, Exhibit B, ¶ 3 (emphasis added).¹ However, Colgate never made the prerequisite "attempts" to enter into a voluntary agreement with Cimarex and never made good-faith efforts to engage in any prior "negotiations" for that purpose. Therefore, Cimarex was never provided the opportunity to refuse or fail to enter a voluntary agreement, as is required under the pooling statutes and regulations before an application for a pooling hearing can be submitted and qualify for approval.

7. Colgate also represented to the Division, in its Communication Timeline, Exhibit B.3, that it had responded to various email questions from Cimarex from "August 2020 - January 2021." However, Colgate had responded only once by email to one question initiated by Cimarex, on August 31, 2020, and Colgate failed to follow up with any additional information that Cimarex requested, and did not make any attempt to reach an agreement from that point forward. *See* Exhibit 1. From the manner in which Colgate represented to the Division its communications with Cimarex, describing them as occurring over a six-month period, one would assume that the communications were ongoing or, at a minimum, there was some form of periodic communication

¹ *See also*, Colgate's Application at ¶ 6:

6. Colgate sought, but has been unable to obtain, a voluntary agreement from all interest owners in the Bone Spring formation underlying the proposed spacing unit to participate in the drilling of the well or to otherwise commit their interests to the well.

and correspondence between Colgate and Cimarex during these six months prior to the hearing; however, there was not. In reality, the only communication between the parties was Cimarex's email at the end of August, and Colgate's brief response, followed by five months of silence -- no correspondence, no phone calls, no delivery of a copy of the proposed operating agreement and no offer to discuss its terms.

8. For a pooling application to be valid on its merits, and to qualify for approval, it must be supported by "evidence of *attempts* the applicant made to gain voluntary agreement including but not limited to copies of relevant correspondence." NMAC 19.15.4.12A(b)(vi) (showing the minimum, barebones criteria that must be satisfied for approval of a pooling application) (emphasis added); *see also* Division Order No. R-20223 and Commission Order No. R-21416-A (both Orders showing that good-faith "negotiations" between parties prior to the applications to pool are among the essential criteria to be considered for approval of a pooling application). The Division should note that "attempts" in NMAC 19.15.4.12A(b)(vi) is plural, therefore, to satisfy these criteria, there should be a record that includes more than one attempt. Likewise, "negotiations" in Order Nos. R-20223 and R-21416-A is also plural, denoting the requirement of more than one attempt to negotiate.

9. Next to Colgate, which owned a 27% working interest in the proposed unit, Cimarex was the second largest working interest owner with 25%. Given this set of facts, Colgate's efforts to obtain working interest in the proposed unit by voluntary agreement should have placed a strong emphasis and priority on Cimarex. Yet, Colgate failed to make any attempts or efforts to negotiate a voluntary agreement with Cimarex and provided no evidence that it had done so except for its misrepresentations in Paragraph 6 of its Application, in the Affidavit of Mark Hajdik, Exhibit B, ¶ 3, and in its Communication Timeline.

10. At a minimum, to meet and satisfy the good-faith element of prior negotiations, both under the regulations and Division policy, an applicant must show a reasonable record of “attempts” and “prior negotiations,” which Colgate failed to do. Colgate’s single email to Cimarex is purely reactive and minimal at best, and not in any way proactive; it addresses only one question about the scope of the well proposal and makes no affirmative attempts to reach or negotiate a voluntary agreement.

B. Colgate’s pattern of misrepresentations extended to other parties involved in the pooling hearing, thereby undermining the integrity and merits of the adjudicatory process.

11. Colgate’s misrepresentation of its communications with another working interest owner in the case is also quite evident and well-documented. In its Communication Timeline, Colgate represents that it had various email exchanges from “July 2020 - January 2021” with the J.M. Welborn Trust (“Welborn Trust”). However, the Pre-hearing Statement filed by Prosperity Bank, as Trustee of the Welborn Trust, shows that communication efforts between Colgate and the Welborn Trust were initiated by Welborn Trust, not by Colgate, on July 16, 2020, with follow up emails on July 30 and August 19, 2020. *See* Prehearing Statement of Welborn Trust, attached hereto as Exhibit 2. According to its clear recounting of correspondence, the Welborn Trust shows that communication efforts did not extend past August 19, 2020; and yet, Colgate represents to the Division that email exchanges continued past August 19, through September, October, November, December and into January, 2021. The discrepancies between the Prehearing Statement of the Welborn Trust and Colgate’s Communication Timeline provides additional evidence of Colgate’s material misrepresentations during the hearing that the Division should review by reopening the case.

12. Furthermore, Modrall represented Colgate during the filing of Colgate's pooling application and its hearing on January 7, 2021. Colgate misrepresented to Modrall that Cimarex, who is also a client of Modrall for Division work, was not objecting to Colgate's proposal. When Cimarex found out that the hearing had already been conducted, it informed Modrall that Cimarex did not inform Colgate that it was not objecting to Colgate's Application. To its credit, upon receiving this information, Modrall immediately withdrew its representation of Colgate for any subsequent matters involving Case No. 21629. However, Colgate's misrepresentation to its own counsel regarding Colgate's communications with another working interest owner in the hearing, when it knew Cimarex was also a client of Modrall, is another example of the pattern of misrepresentations that Colgate engaged in connection with its Application and in its hearing exhibits.

13. Although Cimarex acknowledges that it misplaced the Notice Letter due to extenuating circumstances, the Division should note that if Colgate had made good-faith attempts to enter into an agreement or negotiations with Cimarex during the time period leading up to the hearing, Cimarex would have been fully aware of Colgate's pooling application and the hearing. Colgate represented to the Division that it had communicated with Cimarex during this time period, but it had not. Similarly, if Colgate had accurately communicated to Modrall that Cimarex had not yet taken a position on Colgate's Application, then Modrall would have requested a waiver from Cimarex in order to maintain representation, and again, upon such request, Cimarex would have become aware of the pooling application and hearing. Thus, although it sent out its Notice Letters within the prescribed time frame, Colgate nonetheless played an affirmative role through its failures and lack of communication in Cimarex's lack of awareness of the hearing.

WHEREFORE, Cimarex respectfully submits that, based on the foregoing, its Application to Reopen be set for hearing before an Examiner of the Oil Conservation Division on March 4, 2021, in order to determine, after proper notice, whether Colgate undermined the adjudicatory process through its patterns of misrepresentations to the extent that the pooling hearing held January 7, 2021, should be dismissed, and the Division require a re-hearing of the case on the merits which should include Cimarex's competing application, to be filed promptly by Cimarex; or if the Division decides that Colgate's case should not be dismissed, then in the alternative, Cimarex requests that Case No. 21629 be reopened and reviewed in order to find, under the circumstances, whether Cimarex's competing application should be heard and considered at this point in the proceedings.

Respectfully submitted,

ABADIE & SCHILL, PC

/s/ Darin C. Savage

Darin C. Savage

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**Attorneys for Cimarex Energy Co., and
Magnum Hunter Production, Inc., an affiliate of
Cimarex Energy**

Application of Magnum Hunter Production, Inc., an affiliate of Cimarex Energy Co., (“Cimarex”) to Reopen Case No. 21629, Eddy County, New Mexico. Applicant in the above-styled cause seeks to reopen Case No. 21629 in order to determine grounds for the introduction and submission by Applicant of a competing pooling application for the Bone Spring formation underlying N/2 N/2 of Sections 2 and 3, Township 20 South, Range 29 East, NMPM, Eddy County, New Mexico. The lands are located approximately 15.5 miles northeast of Carlsbad, New Mexico.

From: Mark Hajdik <MHajdik@colgateenergy.com>
Subject: [External] RE: Meridian Proposal
Date: August 31, 2020 at 9:28:14 PM MDT
To: John Coffman <jcoffman@cimarex.com>

WARNING: This email originated from outside of Cimarex Energy. Do not click links or open attachments unless you recognize the sender, are expecting the content and know it is safe.

John,

As you probably noted, our operated strip is the N2 N2, which abuts to several additional operated units in the section due north. Due to our consolidated operational efficiencies we would be happy to talk some options for the offsetting acreage in order to fully maximize the development of the area.

Thanks,
Mark

Mark Hajdik | Colgate Energy | Senior Landman
300 N. Marienfeld St. | Suite 1000 | Midland, TX 79701
O: (432) 257-3886 | C: (832) 904-6006
Email: mhajdik@colgateenergy.com

From: John Coffman <jcoffman@cimarex.com>
Sent: Tuesday, August 18, 2020 1:38 PM
To: Mark Hajdik <MHajdik@colgateenergy.com>
Subject: [EXTERNAL] Meridian Proposal

*** Attention: This is an external email, use caution. ***
Mark,

I just took over this proposal over here in our camp. Just had a quick question, are y'all planning on drilling just the N2N2 2 mile or are there any development plans for the S2N2 that might make this a N2 JOA? I know Mewbourne operates the S2N2 in Section 3. Just trying to get a

EXHIBIT

1

feel of what your plans are in the area.

Thank you,

John Coffman



Landman

600 N. Marienfeld St., Suite 600

Midland, TX 79701

Direct: 432.571.7883

jcoffman@cimarex.com

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

APPLICATION OF COLGATE OPERATING, LLC
FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO

CASE NO. 21629



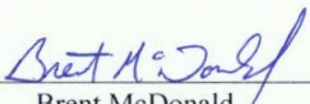
PRE-HEARING STATEMENT
OF
PROSPERITY BANK F/K/A AMERICAN STATE BANK
AS TRUSTEE OF THE J.M. WELBORN TRUST

Prosperity Bank f/k/a American State Bank, Trustee of the J.M. Welborn Trust ("Trustee") received a letter from Colgate dated July 10, 2020 notifying the Trustee of the proposed well and indicating that Colgate would be interested in acquiring the Trustee's interest. The Trustee contacted Colgate by e-mail on July 16, 2020. Follow-up e-mails were sent on July 30, 2020 and August 19, 2020. On the latter date, Colgate responded to the Trustee's inquiry. The Trustee sent another e-mail on August 19, 2020 notifying Colgate that the Trustee would be interested in an assignment of the interest held by the Trustee. Colgate promptly responded on the same date and notified the Trustee that there would be a meeting with management to "see what we can offer here." That was the last communication that the Trustee received from Colgate until a letter from Colgate's attorney regarding this Application and the hearing was received on December 21, 2020.

The Trustee has invested time and money in determining a market value for an assignment of the interest. The Trustee does not desire to participate in the well and wishes to reach an agreement with Colgate for an assignment of the interest at a market rate. In its Application, Colgate indicated that it "has been unable to obtain" a voluntary agreement from all interested owners. The Trustee has shown its willingness to assign its interest. Colgate indicated they would make an offer, but to date, an offer has not been received.

Respectfully submitted,

Prosperity Bank f/k/a American State Bank, Trustee
of the J.M. Welborn Trust

By: 
Brent McDonald
Senior Vice President
1401 Avenue Q
Lubbock, TX 79401
Telephone: 806.741.2371
brent.mcdonald@prosperitybankusa.com

EXHIBIT

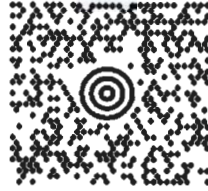
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BILLIE MCMINN
806-741-2370
PROSPERITY BANK 227
1401 AVENUE O
LUBBOCK TX 79401

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SHIP TO:
OIL CONSERVATION DIVISION
DEPT. OF ENERGY, MINERALS, NAT. RES
1220 SOUTH ST., FRANCIS DRIVE
SANTA FE NM 87505-4225



NM 875 0-03



UPS NEXT DAY AIR

TRACKING #: 1Z F7F 455 01 9163 7794

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BILLING: 3RD PARTY

Reference # 1: 311
Reference # 2: J. M. Welborn



CS 22.0.12. WNTNVS0 39.0A 11/2020*