

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

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

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

**Commission Case No. 21744
Division Case Nos. 21629
Order No. R-21575
Commission Order Nos. 21679,
R-21679-A, R-21679-B**

**REPLY TO CIMAREX’S RESPONSE TO COLGATE’S MOTION TO DISMISS
APPLICATIONS**

For its reply to Cimarex’s Response to Colgate’s Motion to Dismiss Applications,
Colgate Operating, LLC, (“Colgate”) states:

A. Introduction.

Colgate’s motion to dismiss the Cimarex applications is not directed to whether the Cimarex competing applications are within the scope of “matter” under NMSA 1978, § 78-2-13. Instead, Colgate’s motion is directed to compliance with pre-conditions established by the Department of the Interior and the Oil Conservation Commission in Order R-111-P. Cimarex has now filed compulsory pooling Cases Nos. 22018 and 22019. The claims made in its Response to Colgate’s motion to dismiss is certainly not speculative. Colgate’s motion to dismiss is directed to the BLM’s primacy in this matter.

B. Where federal lands are involved within the Potash Area the BLM has primacy.

Section G(e)(3) of Order R-111-P states:

Drilling applications on federal land will be processed for approval by BLM. Applications on state or patented lands will be processed by the Division and, in the case of state lands, in collaboration with the SLO....

Although R-111-P does not state indicate a jurisdictional assignment of which agency controls when there is a mixture of federal and state land, it is clear that when federal lands are included in a proposed spacing unit within the Potash Area, the BLM has primacy. It is common knowledge that in APDs which include federal lands, the BLM is the governing agency.

Federal regulations at 43 C.F.R. § 3105.2-2

When a lease or a portion thereof cannot be independently developed and operated in conformity with an established well-spacing or well-development program, the authorized officer may approve communitization or drilling agreements for such lands with other lands, whether or not owned by the United States, upon a determination that it is in the public interest. Operations or production under such an agreement shall be deemed to be operations or production as to each lease committed thereto.

Kirkpatrick Oil & Gas Co. v. U. S., 675 F.2d 1122, 1124–26 (10th Cir. 1982) in applying 30 USC § 226(j) of the Mineral Lands Leasing Act of 1920 held that a state communitization order could not bind federally owned land without the consent of the Secretary of the Interior. Kirkpatrick is very clear that “leases, unit or cooperative agreements, and operating, drilling or development contracts” involving federal lands have to be approved by the Secretary.

The purpose of the 1986 Secretarial Potash Order and Order R-111-P are to establish procedures for development of both oil and gas and potash resources within the Potash Area. Where, however, federal lands, as in the Cimarex applications, are involved certain conditions have to be satisfied. These conditions are set forth in Potash Assn. of New Mexico v. U.S. Dept. of the Int., CV 06-1190 MCA/ACT, 2008 WL 11359154, at *1–2 (D.N.M. Aug. 29, 2008) where the “authorized officer” is clearly a federal official:

More generally, the 1986 Order sets forth the following four “stipulations” which form conditions to the issuance of a lease for oil and gas drilling in the Potash Area:

*2 1. Drilling for oil and gas shall be permitted only in the event that the lessee establishes to the satisfaction of the authorized officer, Bureau of Land Management, that such drilling will not interfere with the mining and recovery of potash deposits, or the interest of the United States will best be served by permitting such drilling.

2. No wells shall be drilled for oil or gas at a location which, in the opinion of the authorized officer, would result in undue waste of potash deposits or constitute a hazard to or unduly interfere with mining operations being conducted for the extraction of potash deposits.

3. When the authorized officer determines that unitization is necessary for orderly oil and gas development and proper protection of potash deposits, no well shall be drilled for oil or gas except pursuant to a unit plan approved by the authorized officer.

4. The drilling or the abandonment of any well on said lease shall be done in accordance with applicable oil and gas operating regulations (43 CFR 3160), including such requirements as the authorized officer may prescribe as necessary to prevent the infiltration of oil, gas or water into formations containing potash deposits or into mines or workings being utilized in the extraction of such deposits.

In taking any action under Part A, Items 1, 2, 3 and 4 of this Order, the authorized officer shall take into consideration the applicable rules and regulations of the Oil Conservation Division of the State of New Mexico.

51 Fed. Reg. at 39,425.

C. Conclusion.

Cimarex’s applications are premature. They are premature because it has not met the stipulations of the Secretarial Order for drilling oil and gas wells within the Potash Area.

The applications should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on counsel of record by electronic mail on June 22, 2021.

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