

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

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

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

**Commission Case No. 21744
Case No. 21629
Order No. R-21575
Order No. R-21575-A
Order No. R-21575-B**

**CIMAREX ENERGY CO.'S MOTION TO INCLUDE AN ADDITIONAL
PROCEDURAL OPTION FOR CONSIDERATION BY THE COMMISSION IN THE
EVIDENTIARY HEARING CONTINUED TO MARCH 10, 2022**

Cimarex Energy Co., and its affiliate Magnum Hunter Production Inc. (collectively “Cimarex”), files with the Oil Conservation Commission (“Commission”) its Motion to Include an Additional Procedural Option for Consideration by the Commission in the Evidentiary Hearing Continued to March 10, 2022 (“Motion”) pursuant to New Mexico case law, in particular, *Udhen v. New Mexico Oil Conservation Com’n*, 1991-NMSC-089, 112 N.M. 528, and *Johnson v. New Mexico Oil Conservation Comm’n*, 1999-NMSC-021, 127 N.M. 120; and NMSA 1978 §§70-2-13.

In support of its Motion, Cimarex states the following:

1. On February 22, 2022, Cimarex and Colgate Energy/Colgate Operating, LLC (“Colgate”) participated in an Evidentiary Hearing in Case No. 21744 (“Hearing”). The Hearing has not been concluded and was continued to March 10, 2022, for final resolution.

2. The current premise of the Hearing, binary in nature, is whether Colgate's pooling order, R-21629, is sufficient for the Commission to maintain venue in a *de novo* hearing involving adjudication of the competing applications; or whether the order is invalid as a whole, resulting in the removal of the competing applications to the New Mexico Oil Conservation Division ("Division") to hear the applications. The criteria for the decision in the Hearing turns on (1) whether Colgate made attempts to enter into a voluntary agreement with Cimarex, satisfying the requirement of 19.15.4.12(A)(b)(vi), and (2) whether the single email exchange between Cimarex and Colgate at the end of August 2020 satisfies good-faith negotiations. Under the current premise supported by *Property Tax Department v. MolyCorp, Inc.*, 1976-NMSC-72, 89 N.M. 603, failure of either criterion would invalidate the order and return the applications to the Division.

3. However, further review of New Mexico case law shows that the premise is more nuanced in a manner that allows the Commission a third option for its consideration.

4. Counsel for the Commission stated at the hearing that the Commission has discretion to consider additional information if it is relevant and informs the ruling. Cimarex respectfully submits that a defect in an application for which an order was issued could invalidate the order either as a whole or partially. If the defect should be isolated to a particular party, such as Cimarex or the Trustee of the Welborn Trust ("Trustee"), the order could be void with respect to that owner, but still valid as to the remaining owners. *See, e.g., Udhen*, 1991-NMSC-089, ¶ 13 (showing that due to a defect in notice to a particular owner, the order is void as to that owner, but remains in place for the remaining owners); *Johnson*, 1999-NMSC-021, ¶ 31 (because the applicant did not comply with notice requirements, the spacing order is void with respect to specific owners who did not receive notice).

5. In the present case, if the Commission should consider the third option, invalidating the order only as it applies to Cimarex and/or the Trustee, instead of invalidating it in its entirety, then regardless of the outcome of the Hearing, the Commission could, at its discretion, maintain venue in a *de novo* proceeding at the Commission-level under NMSA 1978 §70-2-13, thereby proceeding directly to the hearing on the merits that the Commission has granted to Cimarex to determine which competing development plan better protects correlative rights and prevents waste. Thus, the Commission would have discretion to return the contested cases to the Division or hear them at the Commission.

6. Cimarex submits this Motion in the spirit of providing the Commission with the tools necessary to make a fully informed decision according to the most administratively efficient procedural options available. Opposing counsel has been notified of this Motion and has expressed his objection.

7. For the foregoing reasons, Cimarex respectfully requests that the Commission grant this Motion to incorporate a third option for the Commission's consideration in order to expand any unnecessary limitations of the current binary premise.

Respectfully Submitted,

ABADIE & SCHILL, PC

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed with the New Mexico Oil Conservation Commission and was served on counsel of record, or on the party of record, if no counsel was provided, via electronic mail on March 4, 2022:

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