

**STATE OF NEW MEXICO
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES
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 No. 21629
Order No. R-21575**

**CIMAREX ENERGY CO.'S AND MAGNUM HUNTER PRODUCTION INC.'S
MOTION TO STAY DIVISION ORDER NO. R-21575**

Cimarex Energy Co., and its affiliate Magnum Hunter Production Inc. (collectively “Cimarex”), made application to request a *de novo* hearing for Case No. 21629 before the Commission which has been docketed as Case No. 21744. Oral arguments were heard on March 25, 2021, to determine whether Cimarex had standing for a *de novo* hearing under NSMA 1978 Sec. 70-2-13. The Oil Conservation Commission (“Commission”), upon hearing oral arguments, requested from Cimarex and Colgate Operating, LLC (“Colgate”) a closing brief to address specific questions and concerns it had before making a final decision whether to grant the *de novo* hearing. In response to these circumstances, and to preserve the status quo until a decision can be made, Cimarex is submitting, pursuant to 19.15.4.23B, this motion to stay Pooling Order No. R-21575, issued by the Oil Conservation Division (“Division”) (“Motion to Stay”), in order to prevent gross negative consequences to an affected party, to prevent waste, and to protect correlative rights. In support of its Motion to Stay, Cimarex states the following:

I. Background and procedural history:

1. In Case No. 21629, Colgate sought a compulsory pooling order for the N/2 N/2 of Sections 2 and 3, Township 20 South, Range 29 East, NMPM, Eddy County New Mexico (“Subject Lands”).

2. Neither Colgate nor Cimarex own a majority working interest in the Subject Lands. While Colgate owns a 27.25% net working interest, Magnum Hunter Production, Inc. (“Magnum Hunter”), Cimarex’s affiliate, owns a 25% net working interest.

3. Colgate failed to initiate any meaningful discussions, let alone negotiations, to obtain a voluntary pooling agreement with Cimarex. Instead, after sending out its well proposal dated July 10, 2020, for the Meridian 3 Fed State Com 131H Well, the sole communication that Colgate sent to Cimarex about its proposal was an August 31, 2020 email responding to a question that Cimarex emailed to Colgate on August 18, 2020.

4. Contrary to the representations it made to the Division during the hearing on January 7, 2021, Colgate made no other attempts to negotiate with Cimarex and did not provide any follow-up information prior to the hearing. Colgate followed its response with four months of silence. Thus, the entirety of the discussions between Colgate and Cimarex concerning Colgate’s proposal can be repeated verbatim on a little more than a half page.

5. Months later, Colgate decided to pool the Subject Lands for the proposed Meridian well, and on Christmas Eve, December 24, 2020, Cimarex received Colgate’s Notice Letter of the pooling hearing docketed for January 7, 2021, which the law firm Modrall, Sperling, Roehl, Harris, & Sisk, P.A. (the “Modrall Firm”) sent to Cimarex on behalf of Colgate.

6. On November 22, 2020, Cimarex instituted a company-wide protocol for office workers for the holiday season for the period from November 22, 2020 through January 15, 2021.

Under that protocol, all office employees in Denver, Midland, and Tulsa were strongly encouraged to work from home. Employees at the Midland office were instructed not to work from the office during this time period unless it was an emergency and then only after having obtained permission from a supervisor.

7. The United States Postal Service proof of delivery indicates that the Notice Letter was delivered on December 24, 2020, at 5:26 a.m. Cimarex established a protocol for checking mail during the period from November 22, 2020 through January 15, 2021, and the Land Technician in charge of the internal distribution of mail at the Midland office scanned the Notice Letter and attached it to an email dated December 29, 2020. However, that email contained the following subject line: “RE: SWD Application_Muskegon 20 State Com 1_Sec 20-T175S-R29E, Eddy County_Longfellow Energy.pdf.” Mr. Morris, the landman at Cimarex who is responsible for reviewing pooling applications in the area in which the Subject Lands are located, received the email on Tuesday, December 29, 2020. However, he did not open the attachment (the Notice Letter) since the subject line of the email referenced an application for a salt water disposal well which did not involve the development of minerals in which Cimarex has a working interest. Mr. Morris became aware of the mistake on January 12, 2021.

8. This unusual set of circumstances deprived Cimarex of the opportunity to file an entry of appearance for purposes of attending the hearing and to submit a competing application prior to the hearing.

9. During the time leading up to, and during, the hearing on January 7, 2021, Colgate made a number of material misrepresentations to the Division in its application, in its exhibits, and to its counsel, the Modrall Firm, which also represented Cimarex during this time period, that prejudiced Cimarex. Colgate’s most egregious and impactful misrepresentation was that it sought

to obtain a voluntary agreement from interest owners when, in fact, it failed to discuss any such agreement with Cimarex. If Colgate had engaged in negotiations with Cimarex, as it represented to the Division, the parties may have been able to negotiate a voluntary pooling agreement or land swap avoiding the current dispute. Even if no such agreement could have been reached, Cimarex would have been aware of Colgate's intention to pursue its well proposal and pooling application and the Modrall Firm would not have been able to represent Colgate based on the conflict with Cimarex, which was a client of the firm.

10. After later realizing that the hearing had already been held on January 7, 2021, Cimarex was forced to find and retain new counsel since the Modrall Firm had been compromised because of Colgate's misrepresentations to the Modrall Firm that Cimarex was not going to object to Colgate's Application. After being retained, the undersigned counsel filed an Entry of Appearance on behalf of Cimarex on January 19, 2021. On January 29, 2021, Cimarex filed an Application to Reopen the Case, which presented new evidence along with Cimarex's plans to file a competing application.

11. By Order No. R-21575-A, Mr. Brancard, the hearing examiner, denied Cimarex's Application to Reopen Case; however, Mr. Brancard specifically preserved the option "for the Applicant to pursue a timely appeal [with the Commission] of Order R-21575." See Order No. R-21575-A. Cimarex exercised that option and timely filed an Application for *De Novo* Hearing, which included a copy of the Application to Reopen the Case with its new evidence and which the Commission docketed as Case No. 21744.

12. Cimarex filed competing applications in Case Nos. 21764 and 21765, which have been docketed and scheduled for a status conference with the Oil Conservation Division ("Division") on April 8, 2021.

13. On March 3, 2021, Colgate filed its Motion to Dismiss Cimarex's Application for *De Novo* Hearing. Oral Arguments on this motion were held on March 25, 2021, and a decision is pending pursuant to additional briefings to be heard by the Commission on April 15, 2021

II. A motion to stay Pooling Order No. R-21575 is necessary to preserve the status quo and prevent gross negative consequences until the controversy is resolved.

14. At present, based on a review BLM records and conversations with the BLM, Colgate has not relied on Pooling Order No. R-21575 to make an application for an APD for its Meridian 3 Fed State Com 131H well. The only action taken by Colgate at present was sending out an Election Letter dated March 17, 2021, for which the working interest owners have a full 30 days to respond after the letter's receipt; thus, response deadlines fall sometime after April 17. Given the fact that it appears no permits have been applied for or issued, the Election Letter could easily be resent and election deadlines extended as the well at this time cannot be drilled or operations commenced until a federal APD is issued. Under the Pooling Order, Colgate has a full year after the date of the Order, January 19, 2021, to commence drilling, and the matter of the controversy should be resolved well before this deadline. Thus, Colgate would not be prejudiced by this Motion to Stay.

15. Based on the facts and circumstances of both the original proceedings and pending decisions, there are significant issues at stake in this request for a stay that affect Cimarex, the working interest owners subject to the proceedings' outcome, and the Division. Upon Cimarex's review of the proceedings in Case No. 21629, Cimarex discovered and has presented new evidence to the Division and Commission that identifies misrepresentations, false claims, and defects in Colgate's application, exhibits and testimony that prejudiced Cimarex and that, as argued by Cimarex, invalidated the legitimacy of the original proceedings before the Division. Serious

questions have arisen regarding the validity of Pooling Order No. R-21575, and the Commission is currently reviewing the law and regulations to determine whether such issues can be properly addressed at this point in the proceedings by means of a *de novo* hearing. Consequently, Cimarex respectfully submits that it is imperative that Pooling Order No. R-21575 be stayed until such issues are resolved.

16. If Colgate is allowed to act upon the order, and it is found that the order is invalid or defective, the consequences could be detrimental to the correlative rights of Cimarex and other working interest owners subject to the order. Furthermore, under the circumstances, Cimarex has filed competing applications in Case Nos. 21764 and 21765 that Cimarex submits are superior to Colgate's development plan and would better protect the correlative rights of all the owners involved and that would better prevent waste, conforming to the primary factors under the New Mexico Oil and Gas Act ("Act") for how the lands involved in this controversy should be developed. The Division should be provided the necessary time and opportunity to hear and evaluate Cimarex's competing applications to determine whether they offer better protection of correlative rights and the prevention of waste. Such evaluation is particularly imperative should it be determined that Pooling Order No. R-21575 is invalid or defective and no longer applicable to the lands involved.

III. Conclusion:

For the foregoing reasons, Cimarex respectfully requests that the Commission grant Cimarex's Motion to Stay as a necessary action to prevent waste, protect correlative rights, and to prevent gross negative consequences to an affected party, pursuant to 19.15.4.23B NMAC. A proposed Order of the Commission is attached.

Respectfully Submitted,

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**Attorneys for Cimarex Energy Co., and
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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 26, 2021:

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[PROPOSED] ORDER OF THE COMMISSION

THIS MATTER came before the New Mexico Oil Conservation Commission (“Commission”) as a Motion to Stay Division Order No. R-21575 (“Motion to Stay”), filed by Cimarex Energy Co., and its affiliate Magnum Hunter Production Inc. (collectively “Cimarex”) on March 26, 2021. The Motion, submitted pursuant to 19.15.4.23B NMAC, describes the status of current matters and issues pending before the Commission in the above-referenced cases.

After review of the Motion to Stay, the Commission finds that it is necessary, and there is good cause, to grant the Motion to Stay in order to preserve the status quo, protect the correlative rights of the parties involved, prevent waste, and prevent gross negative consequences of an affected party, pursuant to 19.15.4.23B, until the matters and issues in the above-referenced cases are addressed and resolved.

For the foregoing reasons, the Commission finds that Cimarex's Motion to Stay is well taken and is hereby GRANTED.

IT IS SO ORDERED.

DONE at Santa Fe New Mexico, on this ____ day of _____, 2021.

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