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
Case Nos. 21629
Order No. R-21575
Order No. R-21575-A

RESPONSE TO MOTION TO STAY DIVISION ORDER NO. R-21575

For its response to the Motion to Stay Division Order No. 21575 of Cimarex Energy Co. and its affiliate Magnum Hunter Production, Inc., (both hereinafter "Cimarex") Colgate Operating, LLC, ("Colgate") states:

A. Introduction.

The notion that Cimarex should be rewarded for its own ineptitude is unrealistic and unreasonable.

Cimarex continues to rehash the same arguments that it has previously made in its pleadings to reopen Case No. 21629 and stay of Order R-21575 before the Division and its request for a de novo hearing before the Commission. Cimarex's argument that a stay of Order R-21575 would "prevent gross negative consequences to an affected party, to prevent waste, and protect correlative rights." Cimarex argues that an "unusual set of circumstances" i.e. its own lack of diligence caused it not to appear at the hearing of Case 21629 after receiving notice of the hearing.

To begin with, Cimarex did not file with the Commission a request for stay of Order R-221575 until now. It did file a request for stay with the Division, but that request was effectively denied when the Division issued Order R-21575-A on February 8, 2021, denying Cimarex's motion to reopen Case 21629. Now Cimarex is trying another desperate argument which seeks to circumvent its own jurisdictional defect. As the Commission is aware, it is considering Colgate's motion to dismiss the request for a de novo hearing.

If Cimarex had done things right, i.e., enter an appearance before the hearing and become a party of record, then it might have standing to ask for a stay of Order R-21575 pending an appeal to the Commission. Then it might be considered an aggrieved person.

B. Response to Specific Cimarex points.

1. The issue of Colgate misrepresentations is being argued to the Commission in the pleadings relating to Colgate's motion to dismiss the Cimarex application for de novo hearing. Again, these are arguments that should have been made by Cimarex at the hearing of Case No. 21629.

2. The issue of the Modrall Law Firm raised by Cimarex is absurd in so far as a basis for the stay is concerned. Whether the Modrall Law Firm had a conflict or would have had a conflict has absolutely nothing to do insofar as stay is concerned.

3. Order R-21575-A did not grant a right of appeal to the Commission. Even if the order had given Cimarex a right to a de novo case before the Commission, the underlying compliance with NMSA 1978, § 70-2-13 of becoming a party of record would have still been required.

4. After the fact, i.e., issuance Order R-21575, Cimarex has filed competing

applications. Somehow, Cimarex believes that its competing applications will have a curative effect and allow its applications to go to hearing. Cimarex should have filed competing applications after it received Colgate's well proposals before the hearing of Case No. 21629. EOG Resources, Inc. has filed a motion to dismiss those applications in Cases 21764 and 21765 because Cimarex did not send well proposals to EOG. Colgate will join in that motion. Even though these cases are set for a status conferences, these cases are still subject to dispositive motions.

C. There is no valid status quo because Cimarex does not have a valid appellate right.

Gross negative consequences, if any, have been created by Cimarex not appearing at the compulsory pooling case. Cimarex cannot start as though Case 21629 had not already been heard and an order issued. Cimarex was asleep at the wheel from the time that it received Colgate's well proposal until after Order R-21575 was issued by the Division. Had Cimarex timely entered an appearance, or even filed competing applications to be heard with Case 21629, then perhaps, there would be a valid status quo. There simply is no status quo when Colgate is very much ahead with its drilling program.

The Federal District Court for the District of New Mexico in Legacy Church, Inc. v. Kunkel, 455 F. Supp. 3d 1100, 1145 (D.N.M. 2020) defines "status quo" as the last uncontested status between the parties preceding the dispute. In this regard the court said:

> The second disfavored category is "preliminary injunctions that alter the status quo." Schrier v. Univ. of Colo., 427 F.3d at 1258 (quoting O Centro, 389 F.3d at 977)(internal quotation marks omitted). The status quo is "the last uncontested status between the parties which preceded the controversy until the outcome of the final hearing." Dominion Video Satellite, Inc. v. EchoStar Satellite Corp., 269 F.3d 1149, 1155 (10th Cir. 2001). When evaluating whether the issuance of a requested injunction would alter the status quo between the parties, the court should look at "the reality of the existing status and relationships between the parties, regardless of whether the existing status and relationships may ultimately be found to be in accord or not in accord with the

parties' legal rights." SCFC ILC, Inc. v. Visa USA, Inc., 936 F.2d 1096, 1100 (10th Cir. 1991), overruled on other grounds by O Centro, 389 F.3d at 975.

By granting the requested stay the Commission would be altering the status quo which existed before the dispute arose. In other words, the uncontested status was that the Order R-21575 had been issued without the participation or intervention of Cimarex. To grant the stay, the Commission would be altering the status quo and effectively rescinding the Division's order.

D. The correlative rights of Cimarex are protected under Order R-21575.

Cimarex has the opportunity to participate in the drilling of the Colgate wells. It will have the opportunity to receive its just and fair share of the oil and gas proceeds from the wells. The order certainly does not eliminate or diminish its proportionate share.

E. Conclusion.

The motion for stay should be denied. The consequence of granting the motion to stay would allow anyone to commence filing competing applications and entries of appearance before the Division and Commission after valid orders have been issued by the Division without regard to valid hearings and orders of the Division that have already occurred.

Respectfully submitted,

PADILLA LAW FIRM, P.A.

/s/ Ernest L. Padilla
Ernest L. Padilla
Attorney for Colgate Operating, LLC
PO Box 2523
Santa Fe, New Mexico 87504
505-988-7577
padillalawnm@outlook.com

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 April 5, 2021.

Darin C. Savage darin@abadieschill.com
Brent McDonald Brent.mcdonald@prosperitybankusa.com

/s/ Ernest L. Padilla
Ernest L. Padilla