

**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**

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

Cimarex Energy Co. and its affiliate Magnum Hunter Production Inc. (collectively “Cimarex”), submit their Reply to the Response to Motion to Stay Division Order No. R-21575 filed by Colgate Operating, LLC (“Colgate”).

A. Introduction

1. Colgate attempts to obfuscate its malfeasance in seeking Division approval of its proposed development plan with colorful but inaccurate descriptions of Cimarex’s participation in this pooling process. Colgate accuses Cimarex of “ineptitude,” claims that it lacked diligence, that one of its arguments is “absurd,” and that Cimarex “was asleep at the wheel.” *See* Response at p. 1, 2 and 3. In concluding its Introduction, Colgate unironically asserts that “[i]f Cimarex had done things right . . . then it might have standing to ask for a stay . . .” *Id.* at p. 2.

2. However, if Colgate had “done things right,” *i.e.*, fulfilled its statutory and regulatory obligation to seek a voluntary pooling agreement with Cimarex before filing its pooling application that sought the Division’s intervention to force pool Cimarex’s working interest, and significantly, if Colgate had submitted a complete application, including the missing

Form C-102, prior to hearing, then Colgate's attempt to claim the mantle of protector of the application process might resonate, but it does not. Colgate was "asleep at the wheel" for 20 days after it assured the Division at the January 7 hearing that it would complete the record with its submission of final exhibits the very next day, January 8. But, it failed to do this until Cimarex woke Colgate from its slumber, and even then, Colgate still did not fulfill this statutory requirement until January 27. Colgate should not be rewarded for its lack of regard in the fulfillment of its statutory obligations. Under NMSA 1978 Section 70-2-13, the Division is required have in place a complete record before it can issue a valid decision, otherwise the decision, and ensuing order, are invalid.

3. While Colgate's failure to submit a complete application falls well within the realm of "ineptitude," "lack of diligence," and being "asleep at the wheel" that it ascribes to Cimarex, its misrepresentation to the Division that it fulfilled its fundamental statutory duty to reach a voluntary pooling agreement with Cimarex is a much more critical concern since it eviscerates the purpose of evoking the assistance of the Division to enter a pooling order under NMSA 1978 §70-2-17(C). Thus, it is "absurd" for Colgate to castigate Cimarex when its actions, including its misrepresentations to its own counsel, precipitated the chain of events, including the gross negative consequences, that justify staying the Division's Order that granted Colgate its fundamentally deficient application.

B. Colgate has failed to demonstrate a real world effect granting a stay will have on the *status quo*

4. Colgate's reliance on *Legacy Church, Inc. v. Kunkel*, 455 F. Supp. 3d 1100, 1145 (D.N.M. 2020) is misplaced. See Response at pp. 3-4. As a threshold matter, while the Response makes the vague assertion that "Colgate is very much ahead with its drilling program," it provides no details in support of this claim. *Id.* at 3. Nor does Colgate challenge summation of

its activities set forth in the Motion, which shows that Colgate has not filed for an APD with the BLM, but has only sent out election letters, that can be easily re-sent if the Commission rules in its favor. See Motion at ¶ 14. Thus, the Commission cannot determine what real world effect granting a stay will have on Colgate's actual drilling of the proposed wells. In other words, granting a relatively short stay of Order R-21575 until the outcome of the *de novo* hearing would, in effect, maintain the actual *status quo* since Colgate has not shown it would have any substantial effect on its drilling program. Furthermore, the Commission should weigh any nominal delay in Colgate's proposed operations against the very real risk that if Colgate proceeds as planned, it may be acting upon an invalid order. The Commission should take every precaution, including the granting of the stay to avoid such risks.

5. Moreover, the decision in *Legacy Church* did not involve the issue of whether an administrative agency should issue a stay of one of its own orders. Instead, that decision involved a motion for a preliminary injunction seeking to enjoin the enforcement of a public health order issued by the New Mexico Department of Public Health. While it is true that a preliminary injunction seeking to alter the *status quo* between the parties is "disfavored," there are no "disfavored" categories for requests made to an administrative agency to stay one of its own orders pending completion of the administrative process. Instead, the Commission has the discretion to grant a stay "if granting the stay would prevent waste, protect correlative rights, protect public health or the environment or present gross negative consequences to an affected party." *Id.*

C. Conclusion

6. Cimarex respectfully requests that the order to stay be granted. In its Conclusion, Colgate expresses concern about the consequences of granting a stay opening the doors to filing competing applications *after valid* orders and *valid* hearings have been conducted. See Response

at p. 4. Those concerns are misplaced under the facts of this case because Colgate failed to submit a complete application to the Division prior to Cimarex entering its appearance in this case and, more importantly, it not only ignored its statutory and regulatory duty to attempt to obtain a voluntary pooling agreement, it misrepresented this fundamental fact in order to obtain the force pooling order that Cimarex is seeking to stay.

Respectfully Submitted,

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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 April 9, 2021:

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