

**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
Order No. R-21575-A
Order Nos. R-21679, R-21679-A,
and R-21679-B**

**CIMAREX ENERGY CO.'S RESPONSE TO COLGATE OPERATING, LLC'S
MOTION TO DISMISS CIMAREX'S APPLICATIONS**

In response to the Motion to Dismiss Cimarex's Applications ("Motion to Dismiss") submitted by Colgate Operating, LLC ("Colgate") to the New Mexico Oil Conservation Commission ("Commission"), Cimarex Energy Co., and its affiliate Magnum Hunter Production Inc. (collectively "Cimarex"), respectfully request that Colgate's Motion to Dismiss be denied. In support of its Response to Colgate's Motion to Dismiss, Cimarex states the following:

I. Relevant Background and Procedural History.

1. On June 1, 2021, Cimarex filed its applications with the New Mexico Oil Conservation Division ("Division") in Case Nos. 22018 and 22019 covering the N/2 of Sections 1 and 2, Township 20 South, Range 29 East; and the N/2 of Section 6, Township 20 South, Range 30 East, NMPM, Eddy County, New Mexico.

2. Cimarex filed these applications with the consent of the Commission to remediate the harm to the judicial process as well as to Cimarex caused by Colgate's misrepresentations in Case No. 21629. *See, i.e.*, Preliminary Order No. R-21679-B at ¶ 3 ("Cimarex shall file all competing pooling applications by 5:00 P.M. June 3, 2021").

3. Cimarex's applications should be reviewed because not only do they provide a superior development plan for optimal production, the prevention of waste, and protection of correlative rights than those proposed by Colgate, but these applications qualify as a "matter" related to the original hearing in Case No. 21629 under NMSA 1978 § 70-2-13."

4. In Order No. 21679, the Commission concluded that Cimarex meets the requirements under *New Energy Economy, Inc., v. Vanzi*, 2012-NMSC-5, to be deemed a party of record, and "likewise, meets the requirements found in... [NMSA 1978 §] 70-2-13. Order No. R-21679 § II.k. Therefore, under § 70-2-13, Cimarex has a right to have heard what the Commission deems to be a "matter" of the original hearing in Case No. 21629. Cimarex respectfully submits that the competing applications which Cimarex would have presented at the original hearing for the Division's review, absent Colgate's failure to fulfill its statutory obligations, should be included as part of the *de novo* review.

5. The Parties held a status conference with the Commission on May 13, 2021, setting dates for pleadings and subsequent filings, including the filing of Cimarex's competing applications, which were filed with the Division at the behest of the Commission on June 1, 2021, prior to the June 3 deadline. Cimarex asked the Commission to determine the proper forum for hearing the competing applications, whether before the Division or the Commission, pursuant to issues addressed in Cimarex's Motion to Invalidate and Vacate Colgate's Order No. R-21575 ("Motion to Vacate") filed with the Commission on June 2, 2021, in Case No. 21744.

II. Cimarex's competing applications as filed in Case Nos. 22018 and 22019 are ripe for review and should not be dismissed.

6. The Bureau of Land Management ("BLM") has delegated responsibilities for pooling oil and gas units involving federal lands and potash interests to the Division and Commission for determinations of waste and protection of correlative rights and relies on, and generally defers to, the agencies' judgement for decisions that fall within the New Mexico Oil and Gas Act ("Act"). This remains true unless there are specific federal regulations or statutes that prohibit the state agencies from exercising their authority and jurisdiction.

7. In its Motion to Dismiss, Colgate fails to provide any federal regulations or statutes that prohibit the Division or Commission from reviewing and adjudicating Cimarex's applications. Colgate's assertions offer only unsubstantiated speculation whether the BLM would ultimately approve Cimarex's development area, approval which Cimarex is currently working with the BLM to obtain. Colgate's speculations could just as easily be applied to the risk that Colgate may not receive approval of its federal APDs, for which it has not applied, and for which the BLM is the lead agency for making the final determination whether to grant Colgate a federal APD. Absent extenuating circumstances, such as a specific federal rule or statute prohibiting the granting of a development area or APD, it is reasonable for the Commission to presume, as it does under its current practice, that the BLM will grant federal approval based on the Commission's or Division's decision and recommendations.

8. Contrary to Colgate's speculations about hypothetical restrictions on Cimarex's development plan, the BLM has informed Cimarex that there are no potash restrictions undermining the feasibility of its plan as proposed. According to conversations with the BLM, the lateral in the N/2 N/2 (crossing from west to east, Sections 2, 1 and 6) does not require BLM approval of a development area, and 2 ½ miles of the lateral in the S/2 N/2 of said Sections can be

developed without approval, leaving a requirement of notice and final approval only for the remaining 140 acres in Section 6, which would be granted upon proper completion of the application process.

9. Cimarex's development plan includes a mix of both federal and state lands. Order No. R-111-P, at ¶ 10, clearly empowers the Division, under the Act, to review Cimarex's development plan, in order "to regulate and, where necessary, prohibit drilling or producing operations for oil and gas' in areas which would cause waste as described in 70-2-3 F." Thus, Order No. R-111-P does not preclude the Division or Commission from taking the lead performing its integral role in regulating the development of oil and gas in the potash areas, nor does it specify the order in which the review of a development plan by the Division, Commission, and BLM should occur. The interactive nature of this process, among the agencies, is reflected and endorsed by Secretarial Order No. 3324, which requires the BLM to consider the Division's rules, regulations and orders: "In taking any action under Section 6.e. of this Order [Oil and Gas Drilling], *the Authorized Officer will take into consideration the applicable rules and regulations of the NMOCD.*" Order No. 3324 at ¶ 5(c) (emphasis added).¹

¹ Current practice of the Division and Commission provides examples where the state agencies took the primary lead to determine proper development of oil and gas involving federal lands when no preemptive federal rule or statute barred such lead. In Division Case Nos. 16481-82, for example, the applicant's development area had not yet been approved by the BLM for the potash area at the time of the Division hearing. Counsel for an interested party submitted a Motion to Dismiss the application arguing the BLM had primary jurisdiction and therefore the application was premature. The Division denied the Motion and proceeded with the case, issuing the final order granting operatorship to the applicant. The BLM in reliance on the Division's Order No. R-21258 approved the applicant's plan in the potash area.

In Commission Case Nos. 21475 and 21276, the applicant, who received BLM approval of both its development area and drilling locations in the potash area, had its order challenged at the Commission in a *de novo* hearing. The Commission found, based on state criteria, that the appellant presented a superior development plan, and despite the BLM having approved the applicant's development area and drilling islands, the Commission ruled against the applicant and awarded operatorship to the appellant. In accordance with Order No. R-111-P and Secretarial Order No. 3324, the BLM followed the Commission's lead in upholding the appellant as the rightful operator.

10. Current practice by the Division and Commission provides no precedent or justification to dismiss Cimarex's applications which are ripe for review. *See* Footnote 1, below. The Commission has already granted Cimarex its application for a hearing *de novo*, in Case No. 21744, and has docketed and set aside time to hear whether Colgate's application in Case No. 21629 constitutes a proper plan. It will be an efficient use of the Commission's time and resources to utilize the time already allotted for the *de novo* hearing to compare Colgate's and Cimarex's plans to ensure that the Commission will select the best plan for development. Furthermore, if the Commission rules in favor of Cimarex on its Motion to Vacate Order No. R-21575, then the Division would be allowed to properly review Cimarex development plan without additional burden to the Commission.

III. Cimarex's proposed development plan does not strand Section 5, Township 20 South, Range 30 East, NMPM; does not create waste; and represents a feasible plan for development in the potash area.

11. The laterals of Cimarex's proposed Crest wells begin in Section 2 and extend to Section 6 in order to efficiently develop the Bone Spring formation. Colgate argues that Cimarex's plan will likely strand Section 5. *See* Colgate's Motion to Dismiss at p. 2. However, the Bone Spring formation in Section 5 is being produced by the Solution Federal Com 3H and 4H wells (API Nos. 30-015-43227 and 30-015-44011), through standup units that extend from Section 5 to Section 8. Cimarex's development plan for the Bone Spring extends into Section 6, adjacent to Section 5, which is as far as can be extended for optimal production. Therefore, Cimarex's plan does not waste or strand acreage. Finally, a review of wells already in place in Sections 1 through 5, Township 20 South, Range 30 East, show that oil and gas development is feasible in this potash area under federal rules and regulations. *See, i.e.*, Crazy Horse 0304 Fed Com 4H Well (API No. 30-015-45241) which traverses Sections 3 and 4.

Conclusion:

For the foregoing reasons, Cimarex respectfully requests that the Commission deny Colgate's Motion to Dismiss Cimarex's Applications. There is no justification for their dismissal under the Commission's rules and regulations. Moreover, Order No. R-111-P and Secretarial Order No. 3324 militate against their dismissal. Proceeding with the hearing of Cimarex's applications before the Commission would promote administrative efficiency and allow the Commission to decide which set of applications will best prevent waste and protect correlative rights. Thus, Cimarex requests that the Commission proceed with its review of Cimarex's applications in Case Nos. 22018 and 22019 as planned.

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 via electronic mail on June 11, 2021:

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