

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

**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.**

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

**COLGATE OPERATING, LLC'S
RESPONSE TO MAGNUM HUNTER PRODUCTION INC.'S AND CIMAREX ENERGY
CO.'S MOTION TO STAY ORDER NO. R-21575 ISSUED FOR THE POOLING
APPLICATION OF COLGATE OPERATING, LLC, IN CASE NO. 21629**

For its response to the respective motions of Cimarex Energy Co. and its affiliate Magnum Hunter Production, Inc., (both hereinafter "Cimarex") to stay Order No. 21575, and to Reopen Case 21629, Colgate Operating, LLC, ("Colgate") states:

A. Introduction.

To begin with Cimarex is forthright in its motions, it admits it had notice of the application and hearing on the matter. Cimarex cites no defect in notice. In its Application to Reopen, Cimarex seems to now to be making an argument in the nature of "throwing itself on the mercy of the court" (or the Division in this case) because it "misplaced the Notice Letter due to extenuating circumstance..." Or, can that excuse also be characterized as "the dog ate my homework." Cimarex alleges that Colgate's landman, in his affidavit, made "material misrepresentations" as to whether good faith negotiations took place. The time and place to have brought forth these allegations would have been at the hearing of the matter. Whether Cimarex had an acreage position in the spacing unit comparable to Colgate's should have been a matter

of, perhaps, who should have been named operator in a contest between Cimarex and Colgate not in an after the fact competing application.

The arguments of Cimarex are clearly not persuasive in light of the jurisdictional effect of not appearing at a hearing after proper notice. At almost all or most every Division hearings, parties enter appearances routinely either to challenge an application or to preserve appellate rights.

B. Cimarex never became a party of record.

To get in the game, a person who has a grievance or concern about the application to be heard before the Division must enter an appearance before the hearing. NMAC 19.15.4.10, providing for who may be included as a party in an adjudicatory proceeding before the Division, states in in Subparagraph (2) as follows:

(2) a person to whom statute, rule or order requires notice (not including those persons to whom 19.15.4.9 NMAC requires distribution of hearing notices, who are not otherwise entitled to notice of the particular application), who has entered an appearance in the case; (emphasis added).

Cimarex, as a working interest owner in the spacing unit, falls within the ambit of Subparagraph (2) above. Cimarex received notice of the hearing, but did not enter an appearance nor did it otherwise timely intervene in the case. Cimarex also cites an upsurge in COVID 19 positive cases as a mitigating factor. There is no doubt that COVID 19 has affected the hearing process at the Division and the Commission, but during the relevant time period hearings were scheduled and held in a normal manner through virtual or voice appearances.

NMSA 1978, § 70-2-25, which outlines the timing and procedure for Commission review from an order or decision of the Division, limits review to “a party of record adversely affected” (emphasis added). Again, Cimarex never became a party of record.

C. Cimarex failed to exhaust its administrative remedies by not entering its appearance.

Pubco Petroleum Corp. v. Oil Conservation Commn., 1965-NMSC-023 ¶ 8, 399 P.2d 932, 933–34 illustrates the effect of a procedural failure with respect to oil and gas procedural issues arising from Division or Commission proceedings. There, Pubco Petroleum Corp. failed to ask the Oil Conservation Commission for rehearing pursuant to the NMSA 1953, § 65-3-22 (now NMSA 1978 § 70-2-25). The Supreme Court upheld the district court ruling that Pubco Petroleum had failed to exhaust its administrative remedies by not filing a request for rehearing. At the outset in this case, Cimarex failed to even commence its standing as a party of record in order to make a case on the merits against the Colgate application or to ask for a de novo hearing before the Commission if it was a party of record adversely affected by the Division's order.

D. Conclusion.

The motion of Cimarex to Stay Order R-21575 and Application to Re-open Case 21629 should be denied. Cimarex and Magnum Hunter are not strangers to the procedures of the Division and the Commission. They have shown no compelling reason to stay the order issued by the Division, other than to bring up issues that should have litigated at the Division's hearing. Lack of notice is clearly not an issue here.

Respectfully submitted,

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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 February 8th, 2021.

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