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
Division Case Nos. 21629
Order No. R-21575

MOTION TO DISMISS MAGNUM HUNTER PRODUCTION INC.'S AND CIMAREX ENERGY CO.'S APPLICATION FOR DE NOVO HEARING

For its motion to dismiss the de novo application of Cimarex Energy Co. and its affiliate Magnum Hunter Production, Inc., (both hereinafter "Cimarex"), Colgate Operating, LLC, ("Colgate") states:

A. Introduction.

In its effort to reopen Division Case No. 21629 and stay the Division's Order No. R-21575 Cimarex was forthright in its motions, in that it admits that it had notice of the application and hearing on the matter. Cimarex cites no defect in notice. In its Application to Reopen before the Division (which was denied by the Division), Cimarex's factual argument that the case should be reopened because it "misplaced the Notice Letter due to extenuating circumstance…" Also, Cimarex alleged 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. Similarly, Cimarex also argued that it had an acreage position in the spacing unit comparable to Colgate's. This later

argument should, perhaps, have been which entity should have operated the spacing unit and the wells drilled thereon. Cimarex did not file a competing application.

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

Now Cimarex argues that it became a party of record because it entered an appearance on the same day that Order No. R-21575 was issued.

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), <u>who has entered an appearance in the case</u>; (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 timely party of record.

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

This is a simple case. Cimarex did not become a party of record before or at the Division hearing. They did not become parties of record, and therefore, are not entitled to review of Order No. R-21575 or a de novo hearing. Cimarex and Magnum Hunter are not strangers to the procedures of the Division and the Commission. Clearly, NMSA 1978, § 70-2-25 offers no relief for excusable neglect.

The application for de novo hearing should be denied and dismissed.

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 March 3, 2021.

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