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

IN THE MATTER OF THE APPLICATION OF COLGATE OPERATING, LLC FOR COMPULSORY POOLING EDDY COUNTY, NEW MEXICO

OCC Case No. 21744 (*de novo*)
OCD Case No. 21629
ORDER NO. R-21679-D

AMENDED ORDER OF THE COMMISSION RE: GOOD FAITH NOTICE ISSUE

THIS MATTER came before the New Mexico Oil Conservation Commission ("Commission") on the *de novo* Application of Magnum Hunter Production, Inc., an affiliate of Cimarex Energy Co. (collectively referred to herein as "Cimarex" or the "Applicant"). The Commission, having conducted a public merits hearing on February 22, 2022 and March 10, 2022, and having convened for deliberation on March 10, 2022. both *via* the WebEx teleconferencing application and pursuant to the Governor's various COVID 19-related health orders, and having considered the testimony and the records and filings in this case, as well as the arguments of the parties, and being otherwise fully advised, enter the following findings, conclusions and order.

FINDS THAT:

Procedural History

1. Proper notice was given of the application and the hearing of this matter, and the Commission has jurisdiction of the parties and the subject matter herein.

2. The Commission reviewed all admitted exhibits and considered all admitted testimony given in this matter prior to rendering its final decision. In particular, the Commission admitted all party exhibits for its consideration.

3. On or about December 8, 2020, Colgate Operating, LLC ("Colgate") filed an application for compulsory pooling with the New Mexico Oil Conservation Division ("OCD" or "Division"), thereby opening OCD Case No. 21629. Specifically, Colgate sought the following relief:

a. Creation of an approximately 320-acre horizontal spacing unit in the Bone Spring formation comprised of N/2 N/2 of Section 3 and the N/2 N/2 of Section 2, Township 20 South, Range 29 East, NMPM, Eddy County, New Mexico;

b. Pooling of all mineral interests in the Bone Spring formation underlying a horizontal spacing unit within the N/2 N/2 of Section 3 and the N/2 N/2 of

Section 2, Township 20 South, Range 29 East, NMPM, Eddy County, New Mexico;

c. Designation of Colgate as operator of this unit and the well to be drilled thereon;

d. Authorizing Colgate to recover its costs of drilling, completing and equipping the well;

e. Approval of actual operating charges and costs charged for supervision, together with a provision adjusting the rates pursuant to the COPAS accounting procedure; and

f. Setting a 200% charge for the risk involved in drilling and completing the well in the event a working interest owner elects not to participate in the well.

4. OCD held a merits hearing in OCD Case No. 21629 on January 7, 2021 and rendered Order No. R-21575 on January 19, 2021, granting Colgate its sought-after pooling order. On January 19, 2021, the same date on which OCD issued its order in OCD Case No. 21629, counsel for Cimarex filed his Entry of Appearance in that same case.

5. On January 29, 2021, Cimarex filed a Motion to Stay OCD Order No. R-21575, entered on January 19, 2021.

6. On February 8, 2021, Cimarex filed its Application to Reopen Case No. 21629. On that same day, the Division issued Order No. R-21575-A, dismissing Cimarex's Application to Reopen Case No. 21629 and denying Cimarex's Motion to Reopen Case No. 21629. Order No. R-21575-A also stated that the Order was entered in time to allow Cimarex to pursue a timely appeal under the Division's rules.

7. On February 17, 2021, Cimarex filed its Application for Hearing *De Novo* with the Oil Conservation Commission ("OCC"), pursuant to § 70-2-13 NMSA, opening OCC Case No. 21744.

8. Prior to the merits hearing in this matter, the Parties filed several motions upon which the OCC rendered rulings. The motions filed and rulings made include:

a. A Motion to Dismiss filed by Colgate, which the OCC denied;
b. A Motion to Stay Order No. R-21575 filed by Cimarex, which was granted by the OCC;
c. A Motion to Invalidate Order No. R-21575, which the OCC denied;
d. A second Motion to Dismiss filed by Colgate, which the OCC denied;
e. A Motion to Include a Second Procedural Option for Consideration by the Commission filed by Cimarex, which the OCC held in abeyance for consideration during its deliberations in this matter and which was subsequently denied after deliberations concluded.

9. The OCC convened a merits hearing in OCC Case No. 21744 on February 22, 2022 and which continued to March 10, 2022 due to witness scheduling issues on February 22, 2022. The Parties filed respective Prehearing Statements, accompanied by exhibits.

10. Colgate's Prehearing Statement included the direct testimony of Mark Hajdik, landman for Colgate, as Colgate's only witness in the case. Mr. Hajdik also testified in-person and consistent with the submission of his written testimony. Further, Colgate relied upon the exhibits used at the Division hearing as exhibits for the Commission's merits hearing.

11. Cimarex's Prehearing Statement included the direct testimony of John Coffman and Riley Morris, landmen for Cimarex, Messrs. Coffman and Riley also testified in-person and consistent with the submission of his written testimony. Further, Colgate relied eight (8) identified exhibits for the Commission's merits hearing.

12. Prior to the start of Cimarex's case-in-chief, Cimarex moved the OCC for an order limiting the scope of the merits hearing by barring Colgate from arguing that Cimarex engaged in a pattern of negligence and failure to service notices upon Colgate. The OCC held ruling in abeyance until the close of evidence.

Testimony of John Coffman

13. Cimarex called as its first witness John Coffman, Landman with Cimarex Energy Co.

14. Mr. Coffman is a landman for Cimarex who, at the time of Mr. Coffman's contact with Mr. Hajdik, has been a landman for approximately two (2) years.

15. Mr. Coffman adopted his testimony as offered in Cimarex's prehearing statement.

16. Mr. Coffman testified that it was Cimarex that reached out first about a well proposal, not Colgate.

17. Mr. Coffman, in discussing Cimarex Exhibit C (email chain between Coffman and Hajdik), stated that it was Colgate who had an obligation to respond to Cimarex, not the other way around. The basis for this opinion was that:

a. Colgate possessed a 27% working interest in the subject well;
b. Cimarex possessed a 25% working interest in the subject well; and
c. That it is "kind of" an industry standard that, when two interest holders possess a roughly equal share of interests, the smaller shareholder reaches out to the larger.

18. Mr. Coffman confirmed that Mark Hajdik is a landman with Colgate and is the person with whom Mr. Coffman communicated *via* email about Cimarex's well proposal.

19. Mr. Coffman stated that Mr. Hajdik did not respond to Mr. Coffman's questions concerning Cimarex's well proposal as found in Exhibit C.

20. Mr. Coffman expected more information from Mr. Hajdik concerning the well proposal, which should have included an operating agreement or a contract area for consideration. Mr. Coffman says this is his practice when dealing with well proposals sent to other producers. Mr. Coffman further commented that his practice is roughly based on OCD regulations; in particular, Mr. Coffman understood that an operating agreement had to be sent with a well proposal to result in a "valid proposal" under OCD regulations.

21. Mr. Coffman did not consider his well proposal to be sufficient to enter into an agreement with Colgate.

22. Mr. Coffman then addressed "good faith practices," explaining that, in his experience as a landman, he would have expected the bare minimum effort from Colgate to follow-up on Mr. Coffman's initial contact with Colgate, such as ideas of trades, or a courtesy call prior to filing for forced pooling, none of which occurred on the part of Colgate.

23. Mr. Coffman disagreed with Colgate's assertions that it attempted to communicate and reach an agreement with Cimarex prior to Colgate filing for a forced pooling order.

24. During cross-examination of Mr. Coffman, Mr. Coffman testified that, when he receives well proposals from another operator, he sends them out to his team and place the proposal on an OBO list.

25. After receiving Colgate's well proposal, Mr. Coffman stated that Cimarex put the proposal on a spreadsheet and subsequently discussed the well proposal, but Colgate's proposal was not deemed a priority for Cimarex. Cimarex considers priority those well proposals that come with a joint operating agreement ("JOA").

26. Mr. Coffman disagreed that Cimarex was obligated to respond to Colgate's well proposal because Mr. Hajdik did not provide responses to Mr. Coffman's queries in Exhibit C. Mr. Coffman conceded that Mr. Hajdik did confirm that the north half/north half of sections 2 and 3 constituted Colgate's unit proposal, but asserted that Colgate doing so was no guarantee those parcels would end up in an agreement between the operators.

27. Mr. Coffman testified that he did not receive a JOA from Colgate, despite his practice of issuing a JOA with all well proposals and that the majority of operators do send out JOA's with well proposals.

28. Mr. Coffman admitted that:

a. Cimarex drills a lot of wells in Southeast New Mexico;
b. Cimarex is a prudent and successful operator; and
c. One more email from Mr. Hajdik, prior to Colgate filing for a forced pooling order, was expected by Mr. Coffman;

29. Mr. Coffman then commented that he wasn't sure how many emails it would take to satisfy the good faith requirement in OCD regulations prior to Colgate filing for a forced pooling order.

30. Mr. Coffman testified that, when he has a forced pooling application before him, his due diligence in avoiding being forced pooled involved his identification of Colgate's proposal as one that may not be forced pooled by the Division.

31. When probed about Cimarex claiming that it did not receive notice of the OCD forced pooling hearing heard by the Division on January 7, 2022, Mr. Coffman stated that he no longer worked on the subject project at the time when the Notice was purportedly sent to Cimarex; Riley Morris took over for Mr. Coffman upon Mr. Coffman's transition.

32. Regarding the notice of hearing, Mr. Coffman further explained that the notice was received on Christmas Eve, in the middle of the COVID 19 Pandemic, with many Cimarex employees already on vacation, and most employees working from home.

33. Mr. Coffman explained that, when Cimarex received Colgate's proposal, Cimarex determined it did not have enough information to make a decision whether to elect to join or not. Further, Cimarex would only receive an operating agreement after electing to join, which Mr. Coffman believes is not correct procedure as Cimarex does not like to commit capital to a project before Cimarex knows the terms of the operating agreement and any related contracts.

34. After Mr. Coffman determined that Colgate's proposal lack sufficient information for Cimarex to make a decision about electing to join in forced pooling, Mr. Coffman reached out to Mr. Hajdik with the result that, in Mr. Coffman's eyes, Mr. Hajdik did not answer Mr. Coffman's questions. Mr. Coffman did not otherwise follow-up with Mr. Hajdik after the exchange in Exhibit C and conceded that he only made one attempt to confer with Colgate about Colgate's proposal.

35. When questioned about that plain language of 19.15.4.12 NMAC, Mr. Coffman stated that the burden to make good-faith attempts to secure an election to join a forced pooling proceeding falls on the applicant, not an owner.

36. Mr. Coffman testified that Cimarex manages received well proposals *via* a monitoring system, a system aimed at monitoring the obligations of applicants under 19.15.4.12 NMAC. Mr. Coffman further explained that Cimarex analyzes the likelihood that a well proposal will turn into actual drilling by the volume of correspondence between Cimarex and the proposing entity. Mr. Coffman detailed, again, that it is his experience that a well proposal comes with a JOA to satisfy the Division's good faith requirements.

37. Mr. Coffman stated that a well proposal that comes in without a JOA is given low priority, which is the case here with Colgate's proposal.

Testimony of Riley Morris

38. Cimarex called Riley Morris, Landman for Cimarex, to testify.

39. Mr. Morris was the Cimarex Landman who dealt with the subject proposal from Colgate upon submission of the proposal to the Division.

40. Mr. Morris possesses twelve (12) years of experience as a landman in Lea and Eddy County, State of New Mexico.

41. After review of Mr. Coffman's affidavit and having heard Mr. Coffman's testimony, Mr. Morris testified that he believes Mr. Coffman's testimony is accurate.

42. Mr. Morris testified that, having reviewed Colgate's allegations regarding good faith negotiations, that Colgate did not engaged in good faith negotiations to arrive a voluntary agreement. Mr. Morris based his assessment on conversations he held with Mr. Coffman and Mr. Morris's post-application dealings with Colgate.

43. Like Mr. Coffman, Mr. Morris believes that, under 19.15.4.12 NMAC, that the burden to initiate good-faith negotiations lies on applicant, which in this case is Colgate. Mr. Morris testified that his belief is also the accepted practice of prominent operators.

44. Mr. Morris confirmed that all well proposals issued by Cimarex are accompanied with a JOA.

45. Mr. Morris stated that he has worked with Mr. Hajdik on other oil and gas matters, mostly *via* email and once in-person. Some of these interactions overlapped with the email chain found in Exhibit C, per Mr. Morris.

46. Mr. Morris was examined about Exhibit H, which is a timeline of communications between Cimarex and Colgate. Mr. Morris confirmed that he had contact with Mr. Hajdik around the time of the email found in Exhibit C and further agreed that Mr. Hajdik had the opportunity to initiate a discussion with Mr. Morris about the subject well proposal, but did not.

47. Mr. Morris verified that he and Mr. Coffman conducted less than five (5) meetings concerning Colgate's well proposal after the email exchange between Mr. Coffman and Mr. Hajdik. The conclusion reached by Messrs. Coffman and Morris was that Colgate's proposal was not a serious proposal as it was not accompanied by a JOA and neither received follow-up communications from Colgate. Mr. Morris did not instruct Mr. Coffman to acquire more information from Colgate. Finally, Mr. Morris shared that he did not work up Colgate's proposal for a possible trade, again because Mr. Morris did not believe that Colgate's proposal was serious in nature and therefore was of low priority.

48. Mr. Morris further testified about the ranking system used by Cimarex to weight applications, considering factors such as definition of the contract area in which an operator intends to drill and supply a JOA along with the proposal to allow proposal recipients to make elections.

49. Mr. Morris explained Cimarex's process for good-faith negotiations:

a. Cimarex begins by supplying to potential electors a well proposal, a JOA, and Cimarex's contact information;
b. Nine (9) times out of ten (10), Cimarex receives communications from proposed parties, resulting in discussions between Cimarex and the potential elector, with conversations including the size of the proposed party's interest in the contract area and across the proration unit. Timing is discussed, including spudding, completion, and first production;
c. At that point, Cimarex and the potential elector discuss "termasiting" the elector's acreage or the proposed party executes the JOA to participate.

50. Mr. Morris testified that he believes that the obligation to advance a proposal is on the operator who initiates the proposal, not on the receiving entity. Mr. Morris further testified that, in this instance, the obligation fell on Mr. Hajdik, who in his email to Mr. Coffman commented that there were items to discuss in the future. Mr. Morris believes it was fair for him to think that, if Mr. Hajdik did not follow up with Cimarex concerning Colgate's proposal, Colgate's proposal was not serious and the likelihood the proposal would result in a forced pooling hearing was low.

51. Mr. Morris acknowledged that the reason this case did not settle was due to title defects in the land Cimarex sought to trade.

52. Mr. Morris further acknowledged that Authorization for Expenditure (AFE) defined the acreage that would be committed to Colgate's well proposal, but under the caveat that the AFE defines acreage for a proration unit, not what acreage would be committed to the contract area as those are two distinct concepts.

53. Mr. Morris reiterated that an obligation existed on the part of Colgate to clearly define its well proposal, specifically the land to be included in the proposal. Mr. Morris stated that, had Colgate submitted to Cimarex an operating agreement that identified the lands subject to development with clarity, the situation would have turned out differently.

54. Mr. Morris testified that Cimarex, prior to the Division's entry of a forced pooling order but while Colgate's application was pending, sent to Colgate a competing proposal along with a JOA.

55. Mr. Morris does not believe Colgate acted in good faith in its negotiations with Cimarex.

56. Mr. Morris further believes that Cimarex initiated negotiations, not Colgate.

57. Mr. Morris testified that it is unusual for an applicant to cease communications about a proposal for four (4) months and then file a forced pooling application.

Testimony of Brent McDonald

58. Cimarex then called its final witness, Bruce McDonald, Senior Vice President of Prosperity Bank ("Prosperity"). Mr. McDonald manages real estate and oil & gas assets for Prosperity, including the J.M. Wellborn Trust ("Wellborn").

59. Mr. McDonald was questioned about Exhibit H, Colgate's timeline of communications exhibit from the Division hearing. Mr. McDonald acknowledged:

a. That Mr. McDonald and Colgate exchanged emails between July 2020 and January 2021;
b. That Mr. McDonald sent two emails to Colgate in July 2020, one on July 16 and another on July 30;
c. Colgate did not respond to either email until August 19, 2020;
d. That Colgate failed to respond to Mr. McDonald's emails for nearly a month;
e. That there were no "exchanges" between Mr. McDonald and Colgate.

60. Mr. McDonald received no formal offers to enter into an agreement for acquisition of Wellborn's interests.

61. Mr. McDonald filed a prehearing statement in the Division case to ensure the Hearing Officer knew that Wellborn had no interest in participating in the well.

62. Mr. McDonald only began negotiations with Colgate after December 31, 2020 and those occurred with Mr. Hajdik. Mr. McDonald subsequently received an offer to purchase the Wellborn interest from Colgate on December 31, 2020, a week prior to the Division merits hearing.

63. Mr. McDonald was unaware that the Division force pooled Wellborn on January 7, 2021 because Colgate did not remove Wellborn from the list of uncommitted owners.

64. As of February 22, 2022, no agreement was finalized between Colgate and Wellborn, per Mr. McDonald.

65. Mr. McDonald detailed that the deal between Colgate and Wellborn effectively failed as of June 2021, in part due to Mr. McDonald's awareness of the issues in Division Case No. 21629. However, Mr. McDonald did admit that he and Mr. Hajdik continued to try to come to an agreement on valuation of the Wellborn asset up for purchase through the beginning of February 2021, post-Division merits hearing.

66. Mr. McDonald further admitted that the Wellborn prehearing statement filed in Division Case No. 21629, while accurate at the time of filing on December 21, 2020, is no longer accurate.

Testimony of Mark Hajdik

67. Colgate called Mark Hajdik, landman for Colgate, as Colgate's sole witness.

68. Mr. Hajdik possesses a law degree from South Texas College of Law in Houston, Texas. Mr. Hajdik has over a decade of experience as a landman and spent the last three (3) years working in Southeast New Mexico.

69. The Division deemed Mr. Hajdik an expert witness in Division cases in the past.

70. Mr. Hajdik confirmed that Cimarex possessed a working interest in Colgate's proposal.

71. Mr. Hajdik received no indication that his email to Mr. Coffman (Exhibit C) was insufficient. Mr. Hajdik received no follow-up questions from Mr. Coffman.

72. Mr. Hajdik testified that Colgate does not always send a JOA with proposals, but will issue one if requested of Colgate.

73. Mr. Hajdik asserted that there is no industry standard that JOA's must accompany well proposals.

74. Mr. Hajdik explained that a contract area is whatever the parties agree to and has nothing to do with an OCD spacing unit outlined in a proposal. Mr. Hajdik further explained that the proposal sent to Cimarex proposed the spacing unit of the well and, therefore, there was no contract area that exceeded that spacing unit.

75. Mr. Hajdik testified that Colgate's procedure for reception of a well proposal is as follows:
    a. It depends on the nature of the acreage;
    b. If the proposal is a "nonop" proposal, then Colgate either signs a JOA or let the proposal go straight to a hearing;
    c. However, if Colgate wishes to compete for operatorship, Colgate coordinators put the proposal into Colgate's tracking system, which triggers a trade or other discussions in which Colgate reaches out to the operator to ensure Colgate protects its rights.

76. Mr. Hajdik stated that, in response to Mr. Coffman's email, Mr. Hajdik answered Mr. Coffman's question and received no further questions.

77. Mr. Hajdik explained that he does not understand why Cimarex would not consider Colgate's proposal as a real proposal since both companies were working in the area. Mr. Hajdik reiterated that Colgate will do what it needs to do to preserve its rights or resolve conflicts.

78. Mr. Hajdik testified that he does not ignore proposals that are unaccompanied by a JOA, provided the proposal meets OCD regulatory requirements. Mr. Hajdik stated that he treats all well proposals the same way.

79. Mr. Hajdik does not believe a burden fell on him to follow-up with Cimarex after the email exchange with Mr. Coffman. He never received additional questions from Mr. Coffman, nor did he receive communications from Cimarex after the Division issued its notice of hearing.

80. Mr. Hajdik explained that he sees good-faith negotiations as a two-way street because he does not know what, for example, Cimarex needed from him.

81. Mr. Hajdik noted that, in his exchange with Mr. Coffman, he never received a response email from Mr. Coffman that answered the questions Mr. Hajdik posed to Mr. Coffman.

82. Mr. Hajdik distinguished entities such as Prosperity versus Cimarex, with Cimarex being an experienced operator that, Mr. Hajdik assumed, understood the repercussions of actions and timelines, including depth of knowledge as to those factors. Mr. Hajdik stated that Prosperity, which managed a small interest, requires more communication to protect its rights.

83. Mr. Hajdik agreed that he reinitiated contact with Prosperity once Prosperity filed its prehearing statement at the Division level as Prosperity's stated position could have harmed Colgate.

84. Mr. Hajdik was not aware of any COVID 19 related rule suspensions or the like during December 2020.

85. Mr. Hajdik believed that Colgate conducted good-faith negotiations with Cimarex.

86. Mr. Hajdik confirmed that he is familiar with OCD and OCC regulation, specifically those concerning filings for a hearing and proceeding with a hearing. Mr. Hajdik further confirmed that he is familiar with the good-faith negotiation requirement found in 19.15.4.12 NMAC.

87. When asked to describe Colgate's good-faith efforts in this matter, Mr. Hajdik testified as follows:

a. The well proposal is the initial trigger of communication to let interested parties know Colgate's position;
b. Usually the well proposal triggers phone calls and emails from interested parties with questions, but sometimes the interested parties simply want to participate;
c. If an interested party requests a JOA, one is sent to them for consideration;
d. Sometimes interested parties prefer to participate under a forced pooling order, which leads to a forced pooling hearing;
e. Some interested parties want to sell their interests to Colgate. If the proposed terms are not accepted by an interested party, Colgate will proceed to a forced pooling hearing.
f. Colgate must wait at least thirty (30) days after issuing a well proposal before seeking a forced pooling hearing.

88. When asked about his email exchange with Mr. Coffman (Exhibit C), Mr. Hajdik testified as follows:

a. The first sentence of his response to Mr. Coffman was an answer to Mr. Coffman's question as posed in the email from Mr. Coffman;
b. That such an answer is part of Mr. Hajdik's attempt to secure voluntary agreement because he was providing requested information to Mr. Coffman;
c. That the second sentence of his response to Mr. Coffman placed the onus onto Mr. Coffman to continue the discussion based on what Cimarex wished to do;
d. That the second sentence of his response to Mr. Coffman does not appear to ask or request Cimarex to enter into an pooling agreement;
e. That Mr. Hajdik could have phrased his email to include a request that Cimarex clarify what it needed to reach an agreement.

89. Mr. Hajdik agreed that negotiations are similar to a game of tennis, with volleys going back and forth seeking an advantage.

a. Mr. Hajdik claimed that he felt he sent the ball back into Cimarex's court with his email response to Mr. Coffman and it was Cimarex's job to come back to Mr. Hajdik, if necessary.

90. Mr. Hajdik testified that he believes the opening communication between Cimarex and Colgate was Colgate's well proposal issued to Cimarex, not the email communications between Mr. Hajdik and Mr. Coffman.

91. Mr. Hajdik testified that he does not see a well proposals as merely a requirement for an operator to proceed to a forced pooling hearing.

92. Mr. Hajdik testified that, if the roles were reversed between Colgate and Cimarex, Mr. Hajdik would not be surprised if Cimarex proceeded to a forced pooling hearing. Mr. Hajdik further testified that such scenarios happen all the time, to the point that doing so could be seen as standard industry practice.

93. Mr. Hajdik stated that he takes a non-response to a well proposal as a non-objection to proceeding with a forced pooling hearing, which in turn tends to stimulate communication between operators and other interested parties.

94. Mr. Hajdik believes Cimarex had multiple opportunities to engage with Colgate concerning Colgate's well proposal and Cimarex did not do so.

Exhibits admitted into evidence

95. During the course of Cimarex's presentation, the Commission admitted Cimarex's Exhibits A through H, as follows:

a. Exhibit A – self-affirmed statement of John Coffman;
b. Exhibit B – self-affirmed statement of Riley Morris;
c. Exhibit C – email exchange between Mark Hajdik (Colgate) and John Coffman (Cimarex) dated August 18, 2020 and August 31, 2020;
d. Exhibit D – Prosperity Bank Prehearing statement filed in Division Case No. 21629;
e. Exhibit E – transcript excerpt from Division Case No. 21629, dated January 7, 2021;
f. Exhibit F – Colgate's Application that opened Division Case No. 21629;
g. Exhibit G – self-affirmed statement of Colgate witness Mark Hajdik;
h. Exhibit H - communication timeline between Cimarex and Colgate.

96. During the course of Colgate's presentation, the Commission admitted Colgate's Exhibits 1 through 3, as follows:

a. Exhibit 1 – self-affirmed statement of Mark Hajdik;
b. Exhibit 2 – email chain between Mark Hajdik (Colgate) and John Coffman (Cimarex);
c. Exhibit 3 – Cimarex's application to reopen case filed with OCD.

CONCLUSIONS

97. The Commission has jurisdiction over the parties and the subject matter of this case.

98. Proper public notice has been given for the merits hearing in this matter.

99. The Oil and Gas Act, NMSA 1978 Sections 70-2-1 et seq. (Act), prohibits the waste of oil and gas and delegates to the Division the authority to prevent waste and protect correlative rights.

100. Section 70-2-17(C) of the Act provides that when the owners of the interests in a spacing unit "have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit."

101. 19.15.4.12(A) states:

"A. Applications for the following adjudicatory hearings before the division or commission, in addition to that 19.15.14.9 NMAC requires, as follows:

(1) Compulsory pooling and statutory unitization.

(a) The applicant shall give notice to each owner of an interest in the mineral estate of any portion of the lands the applicant proposes to be pooled or unitized whose interest is evidenced by a written conveyance document either of record or known to the applicant at the time the applicant filed the application and whose interest has not been voluntarily committed to the area proposed to be pooled or unitized (other than a royalty interest subject to a pooling or unitization clause). An applicant seeking compulsory pooling of a standard horizontal spacing unit need not give notice to affected persons in adjoining spacing units or tracts unless the division so directs.

(b) When the applicant has given notice as required in Subsection A of 19.15.4.9 NMAC, of a compulsory pooling application, and those owners the applicant has located do not oppose the application, the applicant may file under the following alternative procedure. The application shall include the following:

(i) a statement that the applicant expects no opposition including the reasons why;

(ii) a map outlining the spacing unit to be pooled, showing the ownership of each separate tract in the proposed unit and the proposed well's location;

(iii) the names and last known addresses of the interest owners to be pooled and the nature and percent of their interests and an attestation that the applicant has conducted a diligent search of all public records in the county where the well is located and of phone directories, including computer searches;

(iv) the names of the formations and pools to be pooled;

(v) a statement as to whether the pooled unit is for gas or oil production or both;

(vi) written evidence of attempts the applicant made to gain voluntary agreement including but not limited to copies of relevant correspondence;"

102. Colgate did enter into a good faith effort to secure voluntary unitization by sending out the AFE and Well Proposal, as well as in the letter provided in Exhibit E-4 by Colgate and Exhibit B-5, additional timelines and contact info;

103. Colgate reached out via email to Cimarex after sending out the AFE and Well Proposal, complying with OCD regulations that operators make attempts (as in more than one attempt) to reach out to "gain voluntary agreement" with interest owners.

104. The Commission readopts the standards set forth in Division Order No. R-13165, standards that have been utilized in other Compulsory Pooling cases before the OCC and OCC Orders since the original entry of Division Order No. R-13165.

105. Division Order No. R-13165, Paragraph 5 states, in relevant part:

"(5) Because past Division practice has not been entirely consistent, and because some language in Order No. R-l3155 was not intended to apply to all cases, the Division takes this opportunity to clarify the requirements that it will ordinarily apply in compulsory pooling cases as follows:

(a) At least thirty days prior to filing a compulsory pooling application, in the absence of extenuating circumstances, an applicant should send to locatable parties it intends to ask the Division to pool a well proposal identifying the proposed depth and location and target formation, together with a proposed Authorization for Expenditures (AFE) for the well. The proposal should specify the footages from section lines of the intended location, and, in the case of a directional well, of the intended point of penetration and bottomhole location. The Division understands these requirements to be comparable to the proposal requirements included in forms operating agreements generally used in the industry.

(b) Although exact footage locations for the proposed well should be specified in the well proposal, the exact footage locations need not necessarily be specified in the application filed with the Division or in formal notices of hearing. These documents (the application

and formal hearing notices) establish the Division's jurisdiction, and, if an exact location for the well is specified in such documents, any modification may require new notices and a further hearing. There may be perfectly legitimate reasons for varying the well location at the hearing, such as federal or private surface owner requirements. If a more generalized location is specified in the application and legal notices, and it becomes necessary to change the location prior to the hearing, reasons for such variation can be explained at the hearing and approved by the Division in its order, without the necessity of further proceedings.

(c) A proposed form of joint operating agreement should not be required in every case but should be furnished with reasonable promptness if requested.

(d) The issue of compliance with the more subjective requirement the Division has customarily recognized for good faith negotiation is better examined in these cases, and in most cases, at the compulsory pooling hearing, based upon a full evidentiary record, rather than upon a preliminary motion to dismiss."

106. Colgate made two good-faith attempts to confer with Cimarex concerning the pooled wells.

107. Based on the timelines established through Colgate Exhibit B-5, Cimarex did not reach out within the required 30-day timeframe as indicated in Exhibit 5.

108. Therefore, Cimarex did not elect within that 30-day timeframe and Colgate was within its rights to proceed with force pooling Cimarex.

109. That this matter shall be set for a status conference on April 14, 2022 for consideration of next procedural steps based on the Commission's findings stemming from the OCC's deliberations on March 10, 2022.

110. Jurisdiction over this case is retained for the entry of such further orders as the Commission may deem necessary.

ORDER

~~111. Cimarex's application in this matter for a hearing *de novo* before OCC is **DENIED**;~~

112. The Commission finds that Colgate engaged in good faith voluntary efforts to resolve matters between the Parties as required by 19.15.4.12(A)(1)(b)(vi), and therefore this matter shall now proceed to a hearing on the competing applications before the Commission.

~~113. That the Division order **STANDS** (formerly paragraph 112)~~

114. Cimarex's Motion to Include a Second Procedural Option for Consideration by the Commission is **DENIED.**

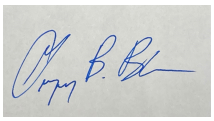
IT IS SO ORDERED.

DONE at Santa Fe, New Mexico, on the 14th Day of July 2022.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

William Ampomah

DR. WILLIAM AMPOMAH, PhD
MEMBER



GREG BLOOM, MEMBER

ADRIENNE SANDOVAL, M.E., CHAIR

SEAL