

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Before Commissioners: Shari Feist Albrecht, Chair  
Jay Scott Emler, Commissioner  
Dwight Keen, Commissioner

In the Matter of the Application of Cholla )  
Production, LLC to authorize injection of ) Docket No. 18-CONS-3350-CUIC  
saltwater into the Marmaton C formation at )  
the Metzger #1-16 well, located in Section ) Operator # 31819  
16, Township 19 South, Range 33 West, )  
Scott County, Kansas )

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**PETITION FOR RECONSIDERATION**

COMES NOW, Applicant, Cholla Production, LLC (“Applicant” or “Cholla”), and  
petitions the Commission to reconsider its Order issued June 12, 2018. In support of its petition,  
Cholla states the following:

1. The pertinent facts and allegations for this Petition for Reconsideration are:
  - a. This Application is for authority for Cholla to inject into the Marmaton C  
reservoir via the Metzger 1-16 well.
  - b. The Marmaton C is not present under the surface of Lario’s leases<sup>1</sup>.
  - c. Even if Lario’s unit application is eventually approved, thereby compelling  
Cholla’s leases and Metzger 2-16 well into the unit, Lario does not intend to  
produce the Marmaton C reserves.

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<sup>1</sup> The prefiled direct testimony of Brenten Birk, filed August 22, 2017, on behalf of Lario,  
states on page 15, lines 17-21:

“Q. In addition to the testimony that was provided by John Hastings, were there any additional  
reasons why Cholla’s Metzger #1-16 well was not included inside the proposed Unit boundary?

A. Yes. The Marmaton “B” formation in Cholla’s Metzger #1-16 is not in pressure  
communication with the MSEOF [the oilfield to be produced in the Feiertag unit]....”  
KCC Dkt 17-CONS-3516- CUNI. [The remainder of Mr. Birk’s answer is omitted here for  
brevity, but is attached to Cholla’s April 24, 2018 ‘Motion’ for reference as Exhibit B.]

- d. Under Lario's plan, Cholla and the other interest holders in Cholla's leases will be deprived of the Marmaton C production, because the cost for Cholla to do a waterflood without the use of its Metzger 2-16 well will be prohibitive. The result will lead to waste in the form of stranded Marmaton C reserves, and premature abandonment of Cholla's leases.
  - e. Lario has not acquired correlative rights in Cholla's Marmaton C reserves, or the Metzger 1-16, Metzger 2-16 wells, by virtue of the filing of the Feiertag unit application, or by appealing the denial of that application.
  - f. Cholla's injection into the Marmaton C via the Metzger 1-16, and production from the Metzger 2-16 pending Lario's judicial review, will not have any impact on Lario's application or on its unit even if eventually approved.
2. **Allegations of error.** Cholla asserts that key findings and conclusions in the Commission's Order are based on errors of fact and law, and thus lead to an unlawful, unreasonable, and arbitrary, or capricious result. The referenced findings and conclusions are hereafter enumerated and addressed.

**LARIO'S PROTEST IS NOT SUPPORTED BY THE RECORD.**

3. **This matter is ripe for dismissal of Lario's protest.** While the Commission's protest requirements may hinge on timing; *i.e.*, whether discovery has occurred [Order para. 7-8, pg. 3.], in this unique situation, the parties are past that point in time. The parties have engaged in extensive discovery concerning both the proposed Feiertag unit and Cholla's leases. An evidentiary record has been made. The Commission has taken notice of that

record. [Order at para.12 pg.4.] The record describes Cholla's development plans for the Marmaton C, and establishes that Lario has no interest or correlative rights in the Marmaton C, and only wants the Metzger 2-16 for its value as an injection well in a different formation.

4. **The Record does not support Lario's protest.** The Commission's Order quotes Lario's assertion that "the Marmaton C reservoir in the Metzger #1-16 and Metzger #2-16 wells are connected" [Order at para. 4, p. 2 ]; and then in ruling against Cholla's Motion to dismiss Lario's protest, states that "there exists a factual dispute as to whether the Metzger 1-16 and 2-16 and the underlying formations are related". [Order para. 10, pg. 4.]

While true that the Metzger 1-16 and 2-16 are connected to one another via the Marmaton C, the Marmaton C is present only on Cholla's leases; not on Lario's property. The connection of the Metzger 1-16 and 2-16 in the Marmaton C and Cholla's plan to inject into the Marmaton C and produce that formation, makes Cholla's injection application separate and distinct, rather than entangled with, Lario's proposed Feiertag unit, because Lario has confirmed it will *not* be producing the Marmaton C. The Marmaton C is not part of Lario's Feiertag unit application. What is left of Lario's asserted basis for protest is an unfounded blanket assertion that their interest is interconnected anyway. Where Lario's Feiertag application does not include the Marmaton C, and Lario's own testimony in the Record disavows its interest in the Marmaton C, this lone blanket assertion cannot be a valid or sufficient factual basis for sustaining a protest.

**THE STAYING OF CHOLLA'S APPLICATION IS UNREASONABLE AND  
CONTRARY TO APPLICABLE LAW.**

5. A threshold question here, is whether a pending unit application on judicial review, is grounds to stay further development of adjacent properties under different ownership or operation from the applicant. The answer must be 'no', as the opposite ruling would suppress adjacent development in clear violation of the Commission's statutory duty and the policy of this state to prevent waste and protect correlative rights.
6. **There is no risk of harm to the Commission or Lario in the granting now, of Cholla's Metzger 1-16 injection application.** The Commission's Order has not acknowledged the fact that the only risk in granting Cholla's application now, is that at some point months or years from now, Cholla may be compelled to relinquish its Metzger 2-16 well to Lario's Feiertag unit. In the interim, if Cholla's injection application is granted, Cholla will be allowed to waterflood and produce its Marmaton C. There is no harm to Lario whatsoever in that.
7. **It is unreasonable to characterize Cholla's protest and Lario's protest as equal actions.** In Lario's Feiertag case, Cholla has protested the taking and stranding of Cholla's own well, leases and reserves in a manner not allowed by law. The Commission's Feiertag order is consistent with Cholla's position, and vice versa. That order is presumed valid unless overturned by the District Court.

Conversely, here Lario is protesting Cholla's development of the Marmaton C—a formation not on Lario's property, not included in its Feiertag application, and not in communication with the formations Lario is targeting for its Feiertag unit. Lario did not

by virtue of filing a unit application and seeking judicial review of its denial, acquire an interest or veto power over Cholla's or any other party's adjacent leases and operations. Lario is attempting to use a pending appeal of a denied application to assert dominion over something it does not have an interest in; while Cholla is taking action necessary to legally protect its property from what it believes is an unlawful taking—prohibited by the Kansas unitization act, as well as the state and federal Constitutions. An effort to protect one's property is not on the same legal foundation with an effort to take someone's property before a showing has been made that such taking is legal and proper. The Commission is dealing with property rights versus an alleged contingency which may never vest. To put these two protests on equal footing merely because they are both 'protests', is arbitrary, unreasonable, and not based on the facts and law applicable to this case.

The Commission notes that Lario's requesting a stay of the Feiertag order would give Lario nothing. This is because Lario has no interest at stake, for which it is entitled to the protection of a stay, or for which a stay is warranted. (This relates back to the reason Lario's protest is unfounded.) The granting of the stay has the defacto effect of granting unitization, or at least in regard to the harm to be caused to Cholla and its owners thereby, in the ordering of a standstill of Cholla's planned development, as if the unit had been granted.

The Commission has correctly noted that Cholla has an interest in the affirmation of the Commission's Feiertag order, because a reversal of that order will result in a loss to Cholla of its property and reserves. However, this is not grounds to discredit Cholla or to

stay its legitimate legal efforts to preserve its property, and to develop its own property in accordance with its leasehold rights. In fact, Cholla has a duty to its fellow interest holders to do just that.

8. **Judicial economy does not supersede the Commission's duty to protect waste and protect correlative rights.** The prevention of waste is the Commission's primary statutory duty. The perceived economy in waiting for the outcome of Lario's judicial review, does not take precedence over the Commission's statutory duties to prevent waste and protect correlative rights. The issue here is the immediate waste and violation of Cholla's actual, as opposed to speculative correlative rights. Cholla's protection of its correlative rights, and its right to develop its leasehold and not allow its reserves to be wasted, is paramount.
9. **There is no waste and no harm to correlative rights in granting Cholla's application and allowing it to proceed with its development.** The waste and harm to correlative rights will occur if Cholla is prevented from developing its lease and producing its Marmaton C. This result would be contrary to law, and a violation of Cholla's rights, while the reverse is of no consequence whatsoever to Lario. The Commission has before it the question of whether to allow Cholla to develop its lease and avoid the waste that will occur if the Feiertag order is reversed, or to block Cholla's development and production of its leasehold reserves, and assure those reserves will be wasted and Cholla's correlative rights will be violated and sacrificed for the indefinite future to Lario's desired outcome.

10. **Conclusion.** This is Cholla's application for an injection well. The Commission's scope of inquiry per its injection regulations and authority, K.A.R 82-3-400 *et seq.* is to determine whether the Metzger 1 will be constructed and operated so as to protect fresh and usable water, and whether the prospective injection will cause waste or harm correlative rights. As Cholla has shown, there will be no waste or harm to correlative rights in the granting of this application. To the contrary, the stay of this application will cause waste and harm Cholla's correlative rights, and deny Cholla its property rights, for an indefinite and possibly permanent duration.

FOR THE FOREGOING REASONS, Cholla requests the Commission to reconsider and reverse its order denying Cholla's motion to dismiss Lario's protest, and regardless of the outcome of that request, that above all, the Commission reconsider and reverse its Order staying Cholla's Metzger 1-16 injection application; and for such other relief as the Commission deems necessary and appropriate.

Respectfully submitted,

EDMISTON LAW OFFICE, LLC

By: /s/ Diana Edmiston

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*Attorney for Cholla Production, LLC*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this 27<sup>th</sup> day of **June, 2018**, she caused the above and foregoing **Petition** to be filed with the Kansas Corporation Commission, Conservation Division, in accordance with the Commission's e-filing rules, and that she caused a true and correct copy of the same to be served via electronic mail, to the following persons at the addresses shown:

Timothy E. McKee  
Amy Fellows Cline  
Triplett Woolf & Garretson, LLC  
[temckee@twgfirm.com](mailto:temckee@twgfirm.com)  
[amycline@twgfirm.com](mailto:amycline@twgfirm.com)  
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Conservation Division  
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*Attorney for Commission Staff*

/s/ Diana Edmiston

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VERIFICATION

STATE OF COLORADO     )  
  ) SS:  
COUNTY OF Jefferson )

William T. Goff, of lawful age and being first duly sworn upon his oath, deposes and states:

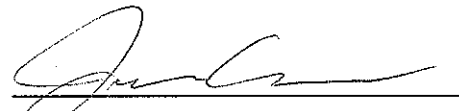
That he is an Owner and Manager for Cholla Production LLC; that he has read the above and foregoing, knows and understands the contents thereof, and states that the statements and allegations therein contained are true and correct according to his knowledge, information, and belief.

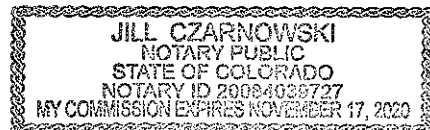
  
\_\_\_\_\_  
William T. Goff

SUBSCRIBED AND SWORN TO before me, the undersigned authority, this  
26 day of June 2018.

My commission expires:

11/17/2020

  
\_\_\_\_\_  
Name Jill Czarnowski  
Notary Public



VERIFICATION

STATE OF COLORADO     )  
                                  ) SS:  
COUNTY OF Jefferson )

Emily M. Hundley-Goff, of lawful age and being first duly sworn upon his oath, deposes and states:

That she is an Owner and Manager for Cholla Production LLC; that she has read the above and foregoing, knows and understands the contents thereof, and states that the statements and allegations therein contained are true and correct according to her knowledge, information, and belief.

Emily M. Hundley-Goff  
Emily M. Hundley-Goff

SUBSCRIBED AND SWORN TO before me, the undersigned authority, this 26 day of June, 2018.

My commission expires:

11/17/2020

Jill Czarnowski  
Name Jill Czarnowski  
Notary Public

