

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

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

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

ORDER ON PETITION FOR RECONSIDERATION

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being fully advised in the premises, the Commission finds and concludes as follows:

Background:

1. On March 12, 2018, Cholla Production, LLC (Cholla) filed an Application seeking injection authority into the Marmaton C Formation at the Metzger #1-16 well, located in Section 16, Township 19 South, Range 33 West, Scott County, Kansas.¹

2. On March 27, 2018, Lario Oil & Gas Company (Lario) filed a letter of protest alleging that the Metzger #1-16 was part of a prior unitization docket, *Application of Lario Oil & Gas Company for an Order Authorizing the Unitization and Unit Operations of the Feiertag Unit in Scott County, Kansas*, Docket No. 17-CONS-3516-CUNI (Dec. 14, 2017) [*hereinafter* Docket 17-3516], that remains in dispute in the District Court of Scott County, Kansas.² Lario further alleged that granting injection authority would harm its correlative rights and cause waste.³

¹ Application (Mar. 12, 2018).

² Protest by Lario Oil & Gas Company (Mar. 27, 2018).

³ *Id.*

3. On April 24, 2018, Cholla filed a Motion to Dismiss Protest and Approval of Application (Motion to Dismiss). Cholla alleged Lario's arguments are meritless as "the Metzger 1-16 well is outside the boundary of Lario's proposed Feiertag unit" and "there is no communication between the Metzger 1-16 and Lario's proposed Feiertag unit."⁴ Cholla also moved for dismissal for failure to establish a direct and substantial interest pursuant to K.A.R. 82-3-135b.⁵

4. On April 27, 2018, Lario filed a Response to Motion to Dismiss and Motion for Stay of Proceedings (Motion for Stay). Lario acknowledged "the Metzger #1-16 well is outside the boundary of Lario's proposed Feiertag unit in Docket 17-3516."⁶ Lario alleged that the Metzger #1-16, the subject of the current application, and the Metzger #2-16, which is a well that is proposed to be part of the unit in Docket 17-3516, are related.⁷ Lario explained, "[i]f Lario is successful in the Scott County Case, and its Feiertag unit is approved, Lario would be taking over operations of the Metzger #2-16 well"⁸ "Cholla is seeking to inject saltwater into the Marmaton C formation, [a]nd, the entire basis for Cholla's protest in Docket 17-3516 was Cholla's contention that the Marmaton C reservoirs in the Metzger #1-16 and Metzger #2-16 wells are connected."⁹ Lario requested the Commission deny Cholla's Motion to Dismiss and enter an order staying all proceedings in the docket pending final judicial determination of Docket 17-3516.¹⁰

5. On May 4, 2018, Commission Staff (Staff) filed a Response to Operator's Motion to Dismiss Protests, stating "Staff has not completed its review of the application . . ." and therefore

⁴ Motion to Dismiss Protest and for Approval of Application at 2-3 (Apr. 24, 2018).

⁵ *Id.* at 3. Cholla cites *Application of Cross Bar Energy, LLC, for a Permit to Authorize the Injection of Saltwater into the Vigle VW-6 Well Located in the SW/4 of Section 14, Township 23 South, Range 10 East, Greenwood County, and an Amendment to Injection Permit E-27315 to Change the Authorized Injection Rate and Pressure*, Docket No. 17-CONS-3689-CUIC (Apr. 5, 2018) [*hereinafter* Cross Bar], wherein the Commission held that a protestant in a proceeding must establish standing under Kansas's two part test to maintain a protest in the matter.

⁶ Response to Motion to Dismiss and Motion for Stay of Proceedings at 3 (Apr. 27, 2018).

⁷ *Id.* at 3-5.

⁸ *Id.* at 3.

⁹ *Id.* at 4.

¹⁰ *Id.* at 6.

Staff commits to no position except that the Application should not be granted by the Commission at this time.¹¹

6. On May 7, 2018, Cholla filed a Reply and Response Opposing Lario Motion to Stay. Cholla reasserted its primary concerns that Lario does not have standing and the prospective harm is mere speculation regarding future occurrences, including the outcome of Docket 17-3516 on judicial review.¹²

7. On June 12, 2018, the Commission denied Cholla's Motion to Dismiss and granted Lario's Motion for Stay. The Commission held that Lario provided enough of a nexus between the Metzger #1-16 and #2-16 to establish a prima facie case for protestant status.¹³ The Commission also concluded that, "Lario has met the burden of proving a stay is warranted because the outcome of Docket 17-3516, the Metzger #2-16, and the underlying facts are critical to the resolution of this Docket and the Metzger #1-16."¹⁴

8. On June 27, 2018, Cholla filed a Petition for Reconsideration. Cholla alleged the Commission erred in denying its Motion to Dismiss pre-discovery because there is already a full record in Docket 17-3516 supportive of its Motion and the Commission took official notice of the Docket.¹⁵ Cholla also argued that its Application is separate and distinct from Docket 17-3516 and granting the Application would have no effect on Lario's interests but would only suppress Cholla's opportunity to develop its lease.¹⁶

9. On July 9, 2018, Lario filed a response to Cholla's Petition for Reconsideration. Lario claimed that Cholla ignores the fact that despite Cholla's properties not being subject to

¹¹ Staff's Response to Operator's Motion to Dismiss Protests at 2-3 (May 4, 2018).

¹² Reply and Response Opposing Lario Motion to Stay at 3 (May 7, 2018).

¹³ Order on Applicant's Motion to Dismiss and Protestant's Motion for Stay of Proceedings at 3-4 (Jun. 12, 2018).

¹⁴ *Id.* at 4.

¹⁵ Petition for Reconsideration at 2-3 (June 27, 2018).

¹⁶ *Id.* at 4-6.

Lario's unit currently, they are in consideration in Docket 17-3516 before the Scott County District Court, which forms a proper basis to maintain Lario's Protest and stay the proceedings.¹⁷

10. On July 19, 2018, Cholla filed a reply to Lario's response.

Findings and Conclusions:

11. Cholla's Petition for Reconsideration is denied. A petition for reconsideration must state the specific grounds upon which relief is requested.¹⁸ The purpose of requiring matters to be raised in a petition for reconsideration is to inform the other parties and the Commission "wherein mistakes of law and fact were made in the order."¹⁹

12. Cholla does not make a valid argument as to how the Commission erred in either the decision on Cholla's Motion to Dismiss or Lario's Motion for Stay. Cholla faults the Commission for not dismissing Lario's protest pre-discovery because the record in Docket 17-3516 provides the evidentiary support for dismissal.²⁰

13. Cholla insists the record is the same to the extent Cholla's pleadings are dependent on testimony and evidence filed in Docket 17-3516. Accordingly, the Commission concluded that because the sufficiency of the evidence is being challenged in Docket 17-3516, meaning the record is under scrutiny, denying Cholla's motion and staying the proceedings pending the outcome of Docket 17-3516 was appropriate.

14. Cholla attempts to avoid this rationale by arguing that the record in Docket 17-3516 proves that Lario's unit, even if approved, would not impact Cholla's interest in the Marmaton C formation; where the Metzger #1-16 and #2-16 wells are completed.²¹ Cholla bases this assertion

¹⁷ Response to Petition for Reconsideration at 2-3 (July 9, 2018).

¹⁸ K.S.A. 77-529(a).

¹⁹ *Citizens' Util. Ratepayer Bd. v. State Corp. Comm'n*, 24 Kan. App. 2d 222, 228 (1997) (citing *Peoples Nat. Gas Div. of N. Nat. Gas Co. v. State Corp. Comm'n*, 7 Kan. App. 2d 519, 525 (1982)).

²⁰ Petition for Reconsideration at 2-3.

²¹ *Id.*

on the fact that Lario had no plan to produce from the Marmaton C.²² Cholla asserts that even if the Commission's understanding of the evidence is found to be faulty, that record would still support Cholla's positions. However, Cholla ignores the interplay between the two situations, as demonstrated by its own assertions.

15. Cholla admits that both the Metzger #1-16 and #2-16 are completed in the Marmaton C formation and are therefore connected.²³ Cholla admits that if Lario's unit is eventually approved, Lario would take over Cholla's leases and the Metzger #2-16.²⁴ Regardless of Lario's intentions, if Lario succeeds at the District Court level, it will have a well completed in and, presumably, acreage over the Marmaton C formation. These concessions, and the inference drawn therefrom, completely undermine Cholla's assertions that "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."²⁵

16. The Commission is not making a determination regarding Cholla's correlative rights and/or potential waste at this time. The Commission agrees with Lario's observation that Cholla has produced no credible rationale that its rights will be affected or that waste will occur. Cholla's insistence that waste will occur and its correlative rights will be impacted is conclusory and unsupported. To the extent that Cholla must rely on the facts from Docket 17-3516 to support its arguments only confirms the necessity that Docket 17-3516 should be fully resolved to ensure a clean record is under consideration in this proceeding. Lario is equally accurate in stating that the

²² *Id.* at 3.

²³ *Id.*

²⁴ *Id.* at 1-2.

²⁵ Cholla Petition at 2.

Commission has not denied Cholla's Application, but only stayed the proceeding. Contrary to Cholla's assertions, the Commission's determinations here are not indefinite or permanent.²⁶

17. Therefore, the Commission finds and concludes Cholla has not made a valid argument as to how the Commission has erred in fact or law.

THEREFORE, THE COMMISSION ORDERS:

A. Cholla's Petition for Reconsideration is denied.

B. This Order constitutes non-final agency action.²⁷ Any request for review of this action shall be in accordance with K.S.A. 77-608 and K.S.A. 77-613. Lynn M. Retz, Secretary to the Commission, is the proper party to receive service of a petition for judicial review on behalf of the Commission.²⁸

C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 07/24/2018

07/25/2018

Mailed Date: _____
DLK/sc



Lynn M. Retz
Secretary to the Commission

²⁶ See Applicant Cholla's Rply to Lario Response to Petition for Reconsideration at 4 (Jul. 19, 2018).

²⁷ K.S.A. 77-607(b)(2).

²⁸ K.S.A. 77-613(e).

CERTIFICATE OF SERVICE

18-CONS-3350-CUIC

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail and electronic service on 07/24/2018.

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