

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

Before Commissioners: Pat Apple, Chairman  
Shari Feist Albrecht  
Jay Scott Emler

In the Matter of the Application of Lario )  
Oil & Gas Company for an Order ) Docket No. 17-CONS-3516-CUNI  
Authorizing the Unitization and Unit ) Conservation Division  
Operations of the Feiertag Unit in Scott ) Operator No. 5214  
County, Kansas. )

**RESPONSE OF CHOLLA PRODUCTION LLC  
TO LARIO'S PETITION FOR RECONSIDERATION**

COMES NOW Protestant, Cholla Production, LLC. ("Cholla"), and for its response to the Petition for Reconsideration filed by Applicant Lario, on November 17, 2017, states the following:

**The Commission's findings and conclusions on the requirement  
of a single pressure system are proper and supported by the  
record.**

1. Lario argues that the Commission erred in its November 2, 2017, Order, in how it applied the "single pressure system" requirement; specifically, in finding and concluding that the proposed unit does not meet the statutory definition of "pool" (K.S.A. 55-1302(b)). While the Kansas Unitization Act allows for a "pool" to consist of a single pressure system that has been created in part via wellbore configuration [see *In re application of Chesapeake Operating Inc.*, KCC Dkt 01-CONS-349-CUNI, April 22, 2002, affirmed in *Trees Oil Company v. KCC*, 279 Kan. 209 (2005) (hereinafter, the "*Trees* case")], the burden is on Lario as the Applicant, to establish an evidentiary basis for the Commission to find that such a single pressure system in fact exists within and throughout the proposed unit. In the instant case, finding that Lario's evidence was inconclusive and in some ways contrary to what would signify a single pressure system, the

Commission rightly denied the unit application. In so doing, the Commission rightly declined to subject the affected reserves and property interests to such speculation and the resultant involuntary taking of the property rights, violation of correlative rights, and waste.

2. Cholla disputes Lario's characterization of Mr. Hemmen's testimony and Mr. Goff's testimony on the existence of a slight degree of pressure communication. Lario has based much of its argument on its own characterization of that testimony—that Mr. Hemmen and Mr. Goff somehow believe there is a small amount of pressure communication throughout the proposed unit area and zones. Cholla does not believe this is an accurate characterization of Mr. Hemmen's testimony; and Cholla confirms that this is not an accurate characterization of Mr. Goff's testimony. Cholla wholly disputes that there is any such pressure communication throughout the proposed unit. If part of the proposed unit is not in pressure communication with the rest of the unit, then there is not a "single pressure system".

3. Furthermore, Lario's evidence on pressure communication does not rule out a result that Lario could perforate *all* zones in *all* wells in the proposed unit, and still not have a single pressure system, due to reservoir discontinuities or separate reservoir lenses. In fact, the differences in bottom hole pressure measurements submitted by Lario (Exhibit 20) may well be due to reservoir discontinuities and/or separate reservoirs, meaning that the action of perforating all reservoirs in all wells would not ever create a single pressure system. The KCC's reasoning is sound, including its notation in paragraph 46 of its Order, that Lario itself implies there is a problem with pressure communication.

4. Lario also implies in paragraph 7 of its Petition, that the Commission has required "equalized or near equalized pressure in all wells to satisfy KSA 55-1304 (a)(2)". Again

Commission Staff did not propose this standard; nor does Cholla identify anything in the record or in the Commission's Order to suggest that the Commission is requiring equalized pressure in all wells. Rather, the Commission cited the unambiguous statutory definition of "pool", and properly noted the wide range of pressures in the "bottom hole pressure" data submitted by Lario, that tended to disprove the characterization of the proposed unit as a "single pressure system". The Commission properly interpreted and weighed the significance of the bottom hole pressure data provided by Lario. The pressure evidence presented by Lario simply does not support Lario's desired conclusion that all eleven reservoirs they wish to waterflood "constitute a single pressure system so that production from one part of the pool affects the pressure throughout its extent." (*Trees* Order at para. 65.)

#### **Applicability of the *Trees* case.**

5. A significant difference between the formations at issue in the *Trees* case and those here, is that there were only two zones at issue in *Trees*: The Chester, and the Morrow which immediately overlies the Chester; both being sandstones. These two reservoirs span a vertical distance of approximately 175'. In this case, Lario is contending that *eleven different reservoirs (from the Oread to the St. Louis "B") spanning a vertical distance of nearly 1000'* are a single pressure system. Ten of the eleven formations are carbonates, and one is a sandstone. Logic and geology principles indicate that the sheer depth and number of zones Lario wishes to combine into a proposed multi-staged project spanning 30-50 years, weighs against an assumed existence of a single pressure system.

6. Besides the comparison of zones between the *Trees* case and this Application, the Commission here is also aided with bottom hole pressure data, which does not appear to have been

provided in the *Trees* case. As support for their assertion that its eleven zones are in pressure communication, Lario simply averaged<sup>1</sup> its September 2017 bottom hole pressure measurements from sixteen of its wells (see Exhibit 20), to get an “Average Current Bottom-Hole Pressure” of 231 psi. It is flawed logic to use this average to suggest that since all of their wells show some pressure decline from an average “Initial Bottom-Hole Pressure” of 1092 psi (Exhibit 20), that this is evidence of a single pressure system. In making this assumption, Lario ignores the fact that all of the reservoirs have been producing throughout the field in various wells for nearly 25 years. The various pressure declines Lario has logged are due to various degrees of production from the individual reservoirs. The measurements represent individual declines; and averaging those declines does not indicate that the eleven reservoirs they want to flood represent a single pressure system.

7. Lario presented evidence that after they purchased the field from McCoy in November 2003 they began to aggressively re-acidize existing perforations in these wells and perforate additional zones that were behind pipe. Lario also added larger pumping equipment. It bears noting that after 25 years of production, and Lario’s aggressive workover and perforation programs to increase production rates, the formations still exhibit a 400% disparity in Bottom Hole Pressures. This resulting disparity on bottom hole pressures today further suggests that the eleven zones are not a single pressure system. A reasonable conclusion is that these natural reservoirs are not continuous throughout the extent of the field as mapped by Lario, and as such they do not, and will never, represent a single pressure system.

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<sup>1</sup>The pressure measurements in September 2017 displayed a 400% difference (from ~100 psi to 400 psi), a point which the Commission noted and discussed in its Order on page 13.

8. To sum up the foregoing facts, arguments and authorities, there is no basis or authority in the law or in the record, for the Commission to relax the requirement that multiple zones must all form a single pressure system.

**Granting Lario's application would have caused economic and physical waste, and unreasonable harm to correlative rights.**

9. Cholla's witnesses, both petroleum geologists, each with 40 years of professional experience, testified as to the waste that would occur if Lario's proposed Feiertag unit were approved. Cholla's own imminent waterflood project would be rendered infeasible, and Cholla's significant Marmaton C reserves would go unproduced, as Lario testified it had no plans to develop the Marmaton C. The record shows that waste will occur if Lario's application is granted, as that will result in stranded reserves in the Marmaton C on Cholla's leases.

10. The record also shows that Lario has other viable options for staging and configuring lands and zones on which it holds lease rights within the proposed Feiertag unit. There is no reason for the Commission to conclude that its denial of the Lario's application will result in waste. Lario states in its Petition for Reconsideration that the prefiled testimony of Brenten E Birk on the matter of waste was uncontroverted. This is incorrect. Cholla geologist William Goff, testified that Lario has other viable options for producing the reserves targeted by the proposed unit. Mr. Hemmen also alluded in his testimony to other options, but properly declined to speculate too far on alternatives. Lario did not propose or seek approval of any alternative options for its proposed Unit, but is not prohibited from proceeding with a waterflood within its leasehold

rights, or from filing a new unit application for lands and zones that do in fact form a single pressure system and otherwise meet the statutory requirements for unitization.

**The Commission's Order contains the necessary findings of fact  
and conclusions of law.**

11. Lario asserts in its Petition that the Commission's November 2, 2017, Order fails to include findings of fact and conclusions of law, as required by the Kansas Administrative Procedures Act. However, it does appear that the Commission's Order sets out the necessary finding(s) and conclusions. The Commission's Order at paragraph 42, states and thoroughly explains its finding that "...Lario's evidence was not sufficiently persuasive to meet its burden of showing that its proposed Feiertag Unit does, in fact, constitute a single pressure system." The Commission devoted much of the Order to a thorough and detailed explanation of the basis for its findings and conclusions. The order at paragraph 30 recites the statutory mandate, noting that a "...the existence of a single pressure system is the *sine qua non* of what constitutes a 'pool'..."; meaning that the Commission does not need to make any further findings if it finds that threshold statutory requirement has not been satisfied. The Order contains the findings and conclusions necessary to meet the requirements of both the Unitization Act and the Kansas Administrative Procedures Act.

12. However, should the Commission determine on reconsideration that it should look beyond the threshold requirement of a single pressure system, and make additional findings, it will find that the rest of the record supports and requires sustaining its denial of the Feiertag Unit application. The proposed Feiertag Unit is simply too long term (30-50 years) and too speculative

in relation to the tiny percentage of interests to be given to Cholla and its royalty and mineral owners, for the property and operating funds those owners will be involuntarily required to contribute to the unit, on top of the reserves in Cholla's Marmaton C formation that will all be wasted. The relative rights, interests, risks and costs if properly weighed and balanced do not support granting the proposed unit application. The proposed Feiertag Unit as described in this application was properly denied as reaching beyond and outside of the requirements and purpose of the unitization act at K.S.A. 55-1301 *et seq.*

**A supplemental evidentiary hearing is not necessary.**

13. Cholla objects to Lario's request for a supplemental evidentiary hearing. Lario claims to have been surprised by the Staff's position. However, there was no surprise that Lario was not able to prepare for. Mr. Hemmen let his concerns be known in his initial prefiled testimony, and continued to address the issue in his rebuttal testimony. There was no undue element of surprise at the hearing. Cholla has gone to the effort and expense of preparing for the hearing, and its witnesses traveled to Wichita for the hearing. It is unfair and unnecessary to subject the parties to another evidentiary hearing.

14. The Commission's Order denying Lario's unit application complies with the Kansas Unitization Act; and is consistent with the Commission's duty to prevent waste and protect correlative rights. The form and substance of the Order meets the requirements of the Kansas Administrative Procedures Act.

BASED ON THE FOREGOING, Lario's Petition for Reconsideration should be denied.

Cholla requests that the Commission issue an order denying the said Petition for Reconsideration, and for such other; and further relief as the Commission may deem just and proper.

Respectfully submitted,

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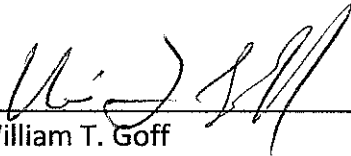


VERIFICATION

STATE OF COLORADO     )  
  ) SS:  
COUNTY OF JEFFERSON    )

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

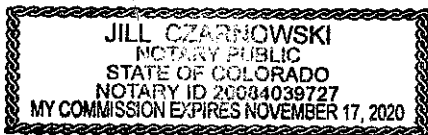
That he is the Owner / MANAGER for the Protestant/Intervenor in the above-captioned action; that he has read the above and foregoing, knows and understands the contents thereof, and states that the statements and allegations therein contained are true and correct according to his knowledge, information, and belief.

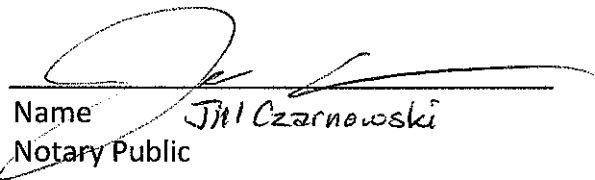
  
\_\_\_\_\_  
William T. Goff

SUBSCRIBED AND SWORN TO before me, the undersigned authority, this 27th day of November, 2017.

My commission expires:

11/17/2020



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



CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this 27<sup>th</sup> day of **November, 2017**, she caused the above and foregoing **Response to Petition for Reconsideration** 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:

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/s/ Diana Edmiston  
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