

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

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

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

**RESPONSE TO MOTION TO DISMISS
AND MOTION FOR STAY OF PROCEEDINGS**

COMES NOW Protestant Lario Oil & Gas Co. (Lario), by and through its counsel Timothy E. McKee and Amy Fellows Cline of Triplett Woolf Garretson, LLC, and hereby responds to the Applicant, Cholla Production, LLC's (Cholla), motion to dismiss and also moves to stay all further proceedings in this docket, pending final judicial determination on Lario's petition for judicial review of the Commission's decision in Docket 17-CONS-3516-CUNI. Lario offers the following in support of this response and motion.

I. Background

1. On March 17, 2017, Lario filed an Application with the Commission requesting an order approving the unitization and unit operations for the Feiertag Unit in Scott County, Kansas (Docket 17-3516)
2. On April 4, 2017, Cholla filed a Protest and Petition to Intervene in Docket 17-3516. Cholla was granted intervention and protestant status.
3. An evidentiary hearing was held on September 21, 2017 in Docket 17-3516.

4. On November 2, 2017, the Commission issued its Order in Docket 17-3516, denying Lario's unitization Application.

5. On November 17, 2017, Lario timely filed a Petition for Reconsideration of the Commission's Order in Docket 17-3516, asking the Commission to rescind its Order and approve Lario's Unitization Application or, in the alternative, schedule another evidentiary hearing to explore evidence regarding the extent of pressure communication within and throughout the proposed unit.

6. On December 14, 2017, the Commission issued an Order denying Lario's Petition for Reconsideration in Docket 17-3516.

7. On January 4, 2018, Lario timely filed a Petition for Judicial Review of the Commission's Order on Lario's Unitization Application and Lario's Petition for Reconsideration of the Commission's Order in Docket 17-3516, in Scott County, Kansas, Case No. 2018-CV-000001 (Scott County Case).

8. On February 5, 2018, Cholla filed an Answer and Response to Lario's Petition for Judicial Review in the Scott County Case.

9. A Scheduling Conference was held in the Scott County Case (in which Cholla participated), after which the Scott County District Court established briefing deadlines as follows:

May 14, 2018: Lario's Brief deadline

June 29, 2018: Cholla's & the Commission's Brief deadline

July 9, 2018: Lario's Response Brief deadline

10. A Case Management Conference is scheduled in the Scott County Case on July 12, 2018, at which time oral arguments will be scheduled.

11. The above-captioned docket was instituted when Cholla filed an application to authorize injection of saltwater into the Marmaton C formation at the Metzger #1-16 well on March 12, 2018 (Metzger #1-16 Application).

12. Lario timely protested this application on March 26, 2018.

II. Response to Motion to Dismiss and Motion to Stay Proceedings

13. Cholla's Metzger #1-16 Application involves leases and wells which are directly and substantially impacted by the pending Scott County Case. While the Metzger #1-16 well is outside the boundary of Lario's proposed Feiertag unit in Docket 17-3516, Cholla's proposed injection of saltwater into the Metzger #1-16 well will materially impact Lario's proposed operations for the Feiertag unit.¹ Although the Metzger #1-16 is not inside Lario's proposed Feiertag Unit boundary, Cholla's Metzger #2-16 well is inside the proposed unit boundary. If 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 and converting it into an injection well. Cholla's Metzger lease is a two well lease, with an additional shallow SWD well. If Cholla is allowed to convert the Metzger #1-16 to an EOR injection well in the Marmaton C, and Lario takes over operations of the Metzger #2-16 well, then Cholla will have no other producing wells on the Metzger lease to establish production and maintain their lease requirements. If Cholla is granted a temporary permit and allowed to inject into the Metzger #1-16 up until the Feiertag unit decision is made and the Feiertag unit is approved, it would be very difficult for Cholla to reestablish oil

¹ Cholla is correct in its motion to dismiss that Lario's counsel mistakenly stated in Lario's protest that the "Metzger #1-16 well and its associated acreage will be part of the Feiertag unit and the decisions regarding the use of the Feiertag #1-16 well would be subject to the operational decisions by Lario as the unit operator." It is Cholla's #2-16 well that is in the proposed Feiertag unit, and it is the proximity of the Metzger #1-16 well to the proposed Feiertag unit that is cause for concern and justifies a hearing to determine whether Cholla's application should be granted.

production in the Marmaton formation of the Metzger #1-16 after injecting fluid for period of time.

14. To support its protest in Docket 17-3516, Cholla argued it had been contemplating a competing waterflood using the Metzger #1-16 and #2-16 wells [Prefiled Testimony of William T. Goff in Docket 17-3516, 7:9-17, Exhibit 1.] As indicated on Exhibit A to Cholla's Motion to Dismiss, the Metzger #2-16 is within the boundaries of Lario's proposed Feiertag unit. Cholla's Metzger #1-16 Application is the first step in proceeding with that proposal, which would substantially impair Lario's proposed operations for the Feiertag Unit.

15. Cholla argues in its motion to dismiss that Lario does not believe the Marmaton "B" formation in Cholla's Metzger #1-16 well is in pressure communication with the oilfield to be produced in the Feiertag unit. However, this is a red herring, since the Marmaton "B" formation is not the formation at issue in Cholla's application. In the Metzger #1-16 Application, Cholla is seeking to inject saltwater into the Marmaton C formation. And, 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. [Prefiled Testimony of Emily Hundley-Goff in Docket 17-3516, p. 8-9, Exhibit 2.]

16. Cholla's Metzger #1-16 Application should be stayed because it involves consideration of some of the same matters and determinations involved in the Scott County Case. Lario's rights will be prejudiced if the Commission hears and considers Cholla's Metzger #1-16 Application before final review of the Commission's decision in Docket 17-3516 because, if a court reverses the Commission's decision in Docket 17-3516, Lario

will have the legal right to proceed with its proposed Feiertag unit operations. However, if Cholla's Metzger #1-16 Application is granted in the meantime, Lario's proposed Feiertag unit operations will be seriously and irreparably harmed. Thus, if the Commission were to grant Cholla's Metzger #1-16 Application, Lario's legal right to pursue judicial review of the Commission's decision in the 17-3516 Docket will be circumvented and destroyed.

17. The Commission has the power to exercise its discretion and stay this proceeding in the interest of economy. *Harsch v. Miller*, 288 Kan. 280, 292, 200 P.3d 467, 475 (2009). The judicial disposition of the pending Petition for Review will materially impact the facts and evidence the Commission must consider when determining whether or not to grant Cholla's Metzger #1-16 Application. It may also result in a dismissal of Cholla's Metzger #1-16 Application or discontinuance or alteration of Cholla's proposed operations.² It is not in the interests of justice or judicial economy for this case to proceed and for the parties to incur the cost and expense of litigating this case at this time, when the factors material to the Commission's decision on Cholla's Metzger #1-16 Application could very well be materially altered. Thus, the exercise of the Commission's equitable power to stay this case until completion of the judicial review of the Commission's decision on Lario's Unitization Application is reasonable and warranted under the present circumstances.

18. Judicial economy is a long-standing public policy concern. Specifically, all matters, whether legal or equitable, liquidated or merely capable of ascertainment, should be adjudicated in one action. See *Bicknell v. Edmondson*, 1999 Kan.App. Unpub. LEXIS

² Cholla provided testimony in Docket 17-3516 which indicated if Lario's Feiertag Unit is approved, then Cholla will not pursue its proposed waterflood. [Jim Hemmen Rebuttal Testimony Docket 17-3516, p.2:26-28 (Exhibit 3); William T. Goff Testimony in Docket 17-3516, p. 9:13-15.(Exhibit 1)]

475, *6 (Kan. Ct. App. August 27, 1999); *Farney v. Hauser*, 109 Kan. 75, 82, 198 Pac. 178 (1921). It has also been recognized that judicial economy is served by settling the entire subject matter of a controversy in one action. *Bicknell*, supra; *Scarborough v. Smith*, 18 Kan. 399, 407 (1877). A stay of Cholla's Metzger #1-16 Application is necessary in order to avoid any conflict between this Commission's order on Cholla's application and judicial review of the Commission's action in Docket 17-3516. Proceeding with action on Cholla's Metzger #1-16 Application while Lario's Amended Application for the Feiertag Unit is subject to judicial review will result in judicial and administrative waste and expose Lario and other persons affected by the order under review to serious and irreparable harm.

19. Cholla will not be unduly prejudiced by staying the proceedings in this docket. In Docket 17-3516, Cholla's witnesses admitted they have been considering a waterflood of their Metzger lease since at least 2013, if not earlier. [Prefiled Testimony of William T. Goff in Docket 17-3516, p.3:6-18; p.7:9-17, Exhibit 1.] Interestingly, oil prices were significantly higher at that time than current oil prices. It wasn't until Lario sent Cholla Lario's unitization information for the proposed Feiertag unit that Cholla began taking more substantial actions in starting a Metzger lease waterflood. Because this potential waterflood has not been a high priority for Cholla, waiting until the judicial review of the Commission's decision in Docket 17-3516 is complete would not be a significant delay to Cholla's timeline or cause Cholla any undue prejudice.

WHEREFORE, based on the foregoing, Lario respectfully requests the Commission deny Cholla's motion to dismiss and, instead, enter an order that stays all further proceedings in this docket, including the filing of testimony, discovery, hearing and the entry of a final order, pending final judicial determination on Lario's petition for

judicial review of the Commission's decision in Docket 17-3516 and for such other and further relief as the Commission deems just and equitable.

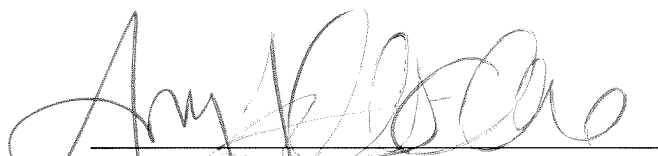
TRIPLETT WOOLF GARRETSON, LLC

By /s/ Amy Fellows Cline
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VERIFICATION

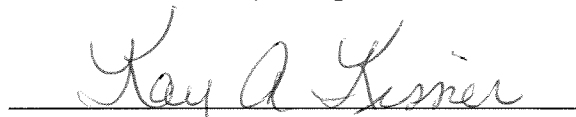
STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

Amy Fellows Cline, of lawful age, being first duly sworn upon his oath states that she is one of the attorneys for Lario Oil & Gas Co. in the captioned matter, that she has read the above Response to Motion to Dismiss and Motion for Stay of Proceedings, that she knows the contents thereof and declares that the statements made therein are true and correct to the best of her knowledge and belief.



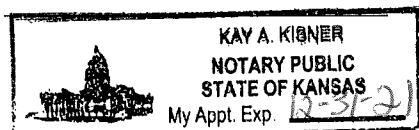
Amy Fellows Cline

SUBSCRIBED AND SWORN to before me this 27th day of April, 2018



Notary Public

My Appointment Expires:



CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April, 2018, a copy of the above ***Response to Motion to Dismiss and Motion to Stay Proceedings*** was sent via electronic mail to:

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/s/ Amy Fellows Cline
Amy Fellows Cline

BEFORE THE STATE CORPORATION COMMISSION
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Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
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In the Matter of the Application of Lario Oil)	
& Gas Company for an Order Authorizing)	Docket No. 17-CONS-3516-CUNI
the Unitization and Unit Operations of the)	Conservation Division
Feiertag Unit in Scott County, Kansas.)	Operator No. 5214

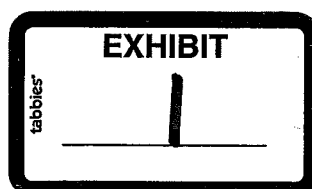
PREFILED TESTIMONY

OF

WILLIAM T. GOFF

ON BEHALF OF CHOLLA PRODUCTION LLC

PUBLIC VERSION



1 production data with goals to improve operations and ultimately enhance production.
2 Following two and half years in the offshore production engineering group, I was
3 transferred to the Onshore Division in geological engineering, handling geological
4 engineering functions for drilling and developing deep overpressured gas fields in south
5 Texas.

6 In 1981 I moved to Denver and began working for Petro-Lewis Corp in
7 midcontinent exploration. My duties for PLC included regional subsurface geologic
8 mapping in a variety of geologic settings and leasing recommendations, most notably in
9 the Forest City Basin in Kansas, the eastern Arkoma Basin in Arkansas and the Oklahoma
10 Panhandle areas.

11 In 1982, I became exploration manager and subsequently Vice President
12 Exploration for Wichita Industries Inc. in Denver. Highlights included the evaluation of
13 large leaseholds on Federal lands in various Rocky Mountain basins; established a Mid-
14 Continent exploration presence and early entry into the Codell Niobrara play in the
15 Denver Basin where the company became a prominent player in the play and the
16 development of gas gathering infrastructure.

17 In 1986, I formed Cholla Resources, Inc. (predecessor to Cholla Production, LLC).
18 The company was active in south Louisiana from 1988-1996 exploring existing fields and
19 developing untapped reserves. The company was also involved in SE Colorado and
20 western Kansas. In 1996, Cholla Resources was restructured into Cholla Production LLC.
21 Cholla has been active in gas gathering, electric cogeneration and developing low BTU

in the Marmaton C and placed on production. We dispute Lario's contention that the Vulgamore produced from either the Morrow or the Cherokee as the Morrow was predominately water and the Cherokee did not give up any fluid. This conclusion is also supported by the results of later work. In December 2012, a cast iron bridge plug was put over the Cherokee and Morrow perforations and the well was returned to production. No change in the well's oil production rate was observed but a significant drop in water production occurred, supporting the conclusion the oil production was coming from the Marmaton C with little to no contribution from the Morrow.

I would like to add that Cholla considered the Marmaton C a waterflood candidate on its leases very early after seeing the drawn down pressures in both the Metzger and the Vulgamore DST results. The Marmaton B was never considered a candidate on the Cholla lease hold as only the Metzger 1-16 had significantly well developed reservoir quality and was a very limited reservoir.

Q. Can you discuss Cholla's plans for the Metzger and Vulgamore leases?

A. Yes. Since the Metzger 2-16 well was drilled and we discovered the pressure communication with the Metzger 1-16 well we have discussed implementing a waterflood for the Marmaton C reservoir on our leasehold. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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the Unitization and Unit Operations of the)	Conservation Division
Feiertag Unit in Scott County, Kansas.)	Operator No. 5214

PREFILED TESTIMONY

OF

EMILY M. HUNDLEY- GOFF

ON BEHALF OF CHOLLA PRODUCTION LLC

PUBLIC VERSION



1 the Marmaton B for 104 BO and 52 BWPD. In 9/93 the Feiertag A 2-15, located in the
2 SENW of 15, DST'd the Marmaton B with SIP's of 374-384, clearly showing depletion and
3 communication with the Feiertag A 1-15. The Feiertag A 4-15, located ½ mile south of
4 the A 2-15, DST'd the Marmaton B in 7/94 with SIP's of 395-395#. The pressure
5 depletion extended to the Feiertag A 10-15, located in the SWSWSW of 15, even though
6 Lario has this well mapped on a completely separate structural feature from the A 2-15
7 and A 4-15. The A 10-15 DST'd the Marmaton B in 12/2013 and had SIP's of 298-295#,
8 proving that communication and pressure depletion can extend for nearly a mile and
9 can cross structural features.

10 **Q. Can you address Lario's contention that the Metzger 1-16 is a separate and distinct**
11 **producing feature from the Metzger 2-16 and therefore the Metzger 2-16 well would**
12 **not be integral to Cholla's plans?**

13 **A.** Yes. Firstly, Lario maintains that the 3D seismic clearly shows that the 1-16 is on a
14 separate producing feature yet the actual subsurface tops after the 1-16 and the 2-16
15 wells were drilled showed that the seismic was inaccurate. [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED] Exhibit 7 is

1 the structure map of the Morrow Shale after the drilling of the Metzger and Vulgamore
2 wells. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED] Exhibit 9 is a Lansing to Morrow Shale Isopach post
7 drilling. When these values are mapped it shows that the Metzger 1-16 well is slightly
8 downplunge to the Metzger 2-16 on the same structural nose, as shown on the updated
9 maps of the Morrow Shale and the Lansing to Morrow Isopach.

10 Secondly, the Marmaton C clearly showed pressure depletion in the Metzger 2-
11 16 from production in the Metzger 1-16, evidence that the reservoirs are connected and
12 that the 1-16 is not on a separate and distinct structure as Lario contends. Even if there
13 is disagreement as to the structural configuration, the Marmaton C reservoirs in the 1-
14 16 and 2-16 wells are not separate. Similar pressure depletion on Lario's lease in the
15 Marmaton B has been previously discussed. Lario is planning to waterflood the
16 Marmaton B on their leasehold across separate structural features. Again, even if we
17 believed the Metzger 1-16 to be on its own structure, we would still be able to
18 implement a Marmaton C flood similar to Lario's plan for the Marmaton B across
19 structures on their leasehold.

20 Thirdly, in Brenten Birk's confidential testimony (page 15-16), he discusses
21 Marmaton B DST pressures in the area and uses this data to prove the 1-16 is on a

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& Gas Company for an order authorizing the)
unitization and unit operations of the Feiertag) CONSERVATION DIVISION
Unit in Scott County, Kansas.)
_____) License No. 5214

PRE-FILED TESTIMONY

OF

JIM HEMMEN



1 Q. What is your name and business address?
2 A. Jim Hemmen, 266 North Main Suite 220, Wichita, Kansas 67202.
3 Q. By whom are you employed and in what capacity?
4 A. I'm employed by the Conservation Division of the Kansas Corporation Commission as a
5 Research Analyst within the Division's Production Department.
6 Q. How long have you been employed by the KCC?
7 A. Since July 1982.
8 Q. Have you previously testified before this Commission?
9 A. Yes. I have testified as an expert witness on numerous occasions.
10 Q. What does your position with the Conservation Division involve?
11 A. I provide technical input concerning various applications, including those involving
12 unitizations, horizontal wells, well-location exceptions, alternate tract units, flaring, and
13 vacuum or high volume pumps. I enforce the Commission's gas gathering regulations,
14 review gas well test reports for accuracy, monitor monthly production from
15 Hugoton/Panoma gas wells, and generally present Staff recommendations before the
16 Commission where appropriate.
17 Q. Are you familiar with this docket, 17-CONS-3516-CUNI?
18 A. Yes.
19 Q. Would you please summarize the circumstances which led to this docket coming to your
20 attention?
21 A. Yes. As part of my responsibilities, I provide technical input concerning applications for
22 unitization for secondary recovery of oil. My job is to analyze the application and
23 provide Staff's opinion regarding whether it meets all statutory requirements and should
24 be granted. In situations such as these, where a unitization application is protested, I
25 review the application and all pertinent information.
26 Q. Your testimony is likely to be lengthy. Could you please summarize your testimony in a
27 few sentences, before we get into the details?
28 A. Yes. I have some concern regarding whether the proposed unit constitutes part of a
29 "pool" as defined in K.S.A. 55-1302(b), but Applicant has otherwise complied with
30 K.S.A. 55-1303. I am reserving my opinion on whether Applicant has complied with