

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)
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,) Operator # 31819
Scott County, Kansas)

REPLY AND RESPONSE OPPOSING LARIO MOTION TO STAY

COMES NOW, Applicant, Cholla Production, LLC (“Applicant” or “Cholla”), and for its reply and response to the Response and Motion to Stay (hereinafter referred to as the “Response” and/or the “Motion”) filed by Protestant Lario Oil & Gas Company on April 27, 2018, Cholla states the following:

1. Paragraphs 1 through 10 of Lario’s Response and Motion are not about this case; but are a procedural chronology of Lario’s Feiertag Unit case¹. The Commission denied Lario’s Feiertag unit application. Lario did not seek a stay of the Commission’s action pursuant to K.S.A. 77-528, pending judicial review. Applicant Cholla’s Metzger 1-16 well is not located within, and will not be injecting into a formation within Lario’s proposed Feiertag unit.
2. Cholla’s Metzger 1-16 well is approximately 1530 feet outside and away from Lario’s proposed Feiertag unit boundary. Cholla’s Metzger 1-16 Application is for injection into the Marmaton C formation—which formation is not in Lario’s proposed Feiertag unit.

¹KCC Dkt No. 17-CONS-3516-CUNI

3. Unless the Commission's denial of Lario's Feiertag unit is reversed in the future on judicial review, and a unit in some form subsequently approved; and that theoretical unit is somehow expanded to impact Cholla's Metzger 1-16 well and the Marmaton C zone, the existence of Lario's proposed Feiertag unit is irrelevant to this Application.
4. The Commission's denial of the Feiertag unit is presumed valid and has not been stayed. The burden is on Lario to convince a reviewing court that the Commission committed error in its denial of the unit. *Southwest Kansas Royalty Owners Association v. State Corporation Commission*, 244 Kan. 157 (1989). Even if Lario is eventually successful in having a court remand the unit to the Commission, the possible eventual outcomes on remand are too numerous for speculation; one likely outcome being that the unit would still be denied. To stall development of surrounding properties based on the potentially lengthy speculation is wasteful and a violation of Cholla's and all surrounding owners' correlative, and constitutional property rights.
5. Lario's original March 26, 2018, Protest against this Application was based on its erroneous allegation—that Cholla's Metzger 1-16 well was within the proposed Feiertag unit. Lario acknowledges this error in a footnote on page 3 of its April 27, 2018, Reply and Motion. But rather than withdraw its Protest, having been based on the inaccuracy, Lario has in its April 27 Reply and Motion, rolled its position forward, in essence framing a second protest.
6. Not only is this second protest procedurally improper, but the Protest and accompanying Motion to Stay are still without merit. Lario's position presumes that by virtue of its proposed Feiertag unit, Lario has acquired a superior position with regard to *surrounding*

lands and properties in which Lario holds no property rights whatsoever; and that it can veto further development of those properties. There is no factual or legal basis for this position. Lario argues at length about judicial economy and the Commission's equitable power to grant a stay under appropriate circumstances, but these concepts will not sustain or be sustained by, a protest and motion for stay that is otherwise without merit. Judicial economy would dictate that a protest without merit be dismissed.

7. Lario in its Reply and Motion, attempts to use testimony excerpts to create a dialogue regarding the Marmaton B and C zones. But Cholla's Application pertains only to the Marmaton C. Lario's testimony on the Marmaton C speaks for itself: As Cholla's April 24, 2018, Motion cites, the Marmaton C formation is not present under Lario's leases; Lario's proposed Feiertag unit does not include the Marmaton C formation; and Lario has no plans to produce the Marmaton C formation reserves, even if it ultimately succeeds in getting the Feiertag unit approved.
8. There is no basis for Lario's assertion that Lario's rights will be prejudiced if the Commission hears, considers, and grants Cholla's Metzger 1-16 Application at this time. The prospective harm Lario describes all centers on Cholla's rights and Cholla's future production, and *only if* Lario's proposed Feiertag unit is ultimately approved after Cholla has begun injecting into the Metzger 1-16. Cholla's principals have decades of experience in the Kansas oil and gas exploration and production business and operations. Cholla carefully weighs and determines its own development prospects and risks; and will not cede or subordinate that right to Lario and Lario's interests. The granting of this Application for the Metzger 1-16, will have no impact on Lario, even indulging their

speculation of the unlikely reversal of the Feiertag case. Lario's speculation as to potential harm to Cholla's own reserves, if Lario's proposed unit is ultimately approved, is not a valid basis for Lario to protest or request a stay of this Application.

9. Lario continues to make an issue of the timing of Cholla's Application and waterflood plans. This is a red herring. The timing of an injection application and waterflood plan that will *not* impact Lario's properties, is irrelevant to this Application. Furthermore, Cholla explained its timing in its testimony in the Feiertag unit hearing—that the plan had to be timed in conjunction with transitioning interests of certain working interest owners, before proceeding. Lario's re-raising of this issue won't change the facts or make Lario's assertion relevant to this Application.
10. As Cholla stated in its Motion to Dismiss, Lario's protest fails to establish that it has or will suffer a cognizable injury; or that there is a causal connection between the injury and the operations described in the Application. Lario's Protest thus does not meet the Commission's "direct and substantial interest" requirement to be sustained. Lario's Motion to Stay based on this protest therefore also cannot be sustained.
11. Lario has layered its arguments on a non-existent foundation. Lario wants to stay and prevent approval of an application for a well Lario doesn't own and doesn't want, that is not within the unit that was not approved, because that well is on a lease that has another well that Lario wants, but not for the formation involved in this Application. Judicial economy and rules concerning meritless claims dictate that Lario's protest be dismissed and this Application be allowed to proceed.

12. Cholla acknowledges Staff's Response filed May 4, 2018. Staff has confined their position to the procedural handling of the Application if Lario's Protest is dismissed. Cholla does not oppose the procedure advocated by Staff.

FOR THE FOREGOING REASONS, Cholla requests an Order from the Commission dismissing Lario's protest; denying Lario's motion for stay; and granting Cholla's Application to authorize injection into the Marmaton C formation through the Metzger #1-16 well, and for such other relief as the Commission deems necessary and appropriate.

Respectfully submitted,

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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:

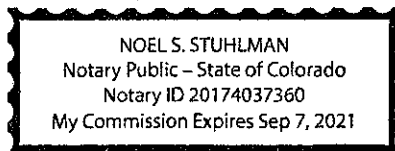
That she is the Owner/Manager for the Applicant in the above-captioned action; that she has read the above and foregoing, knows and understands the contents thereof, and states that the statements and allegations therein contained are true and correct according to her knowledge, information, and belief.

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

SUBSCRIBED AND SWORN TO before me, the undersigned authority, this 7 day of May, 2018.

My commission expires:

Sept. 7, 2021



Noel S. Stuhlman
Name Noel S. Stuhlman
Notary Public

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this 7th day of **May, 2018**, she caused the above and foregoing **Motion** 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