

**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 PETITION FOR RECONSIDERATION**

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), Petition to Reconsider the Commission's June 12, 2018 Order, granting Lario's Motion to Stay this Proceeding and denying Cholla's Motion to Dismiss Lario's Protest. Lario offers the following in support of this response.

**I.        Standard of Review**

1.        As the party challenging the legality of the Commission's June 12, 2018 Order, Cholla bears the burden of proof pursuant to K.S.A. 77-621(a)(1).<sup>1</sup>

2.        An order of the Commission is lawful if it is within the statutory authority of the Commission, and if the prescribed statutory and procedural rules are followed in making the order.<sup>2</sup>

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<sup>1</sup> *Citizens' Utility Ratepayer Bd. v. Kansas Corporation Commission*, 28 Kan.App.2d 313, 315, 16 P.3d 319 (2000).

<sup>2</sup> *Farmland Industries, Inc. v. Kansas Corporation Commission*, 24 Kan.App.2d 172, 175, 943 P.2d 470 (1997).

3. A Commission order is valid if it is based upon a determination of fact, made or implied by the Commission, which is support by evidence that is substantial when viewed in light of the record as a whole.<sup>3</sup> Substantial competent evidence is such legal and relevant evidence as a reasonable person might accept as being sufficient to support a conclusion.<sup>4</sup>

## **II. Response to Petition for Reconsideration**

4. Cholla's Petition for Reconsideration relies primarily upon disputed factual issues, which Lario denies and which the Commission rightly found cannot be reached until after Lario's Petition for Judicial Review in the Scott County Case is finally determined.

5. Cholla has improperly framed the questions before the Commission in its Petition for Reconsideration. While Cholla claims in paragraph five of its Petition that the Commission has no right to stay further development of adjacent properties under different ownership or operation from Lario, this claim ignores the fact that those properties are the subject of Lario's Petition for Judicial Review.

6. Cholla also overstates any alleged prejudice it claims it will suffer if its Application is stayed. First, the Scott County Case is moving along; all parties have filed their Briefs and a Case Management Conference is scheduled on July 12, 2018, at which time oral arguments will be scheduled. Further, the Commission has not denied Cholla's application; it has only stayed the matter. This stay will not cause waste since, if Cholla eventually prevails, it will be allowed to develop the alleged reserves that are the subject

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<sup>3</sup> K.S.A. 77-621(c)(7).

<sup>4</sup> *In re Appeal of Collingwood Grain, Inc.*, 257 Kan. 237, 891 P.2d 422, 423 (1995).

of its Application. Cholla has not brought forth any evidence that if those reserves are not produced now, then Cholla will not be able to produce them in the future.

7. 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.<sup>5</sup> The only thing that has changed in the interim is Lario's unit application. It is clear that Cholla's belated actions are either an effort to stop Lario's proposed unit operations (so that Cholla can position itself to maximize any production it may gain, if Lario is forced to revise its plan, and conduct the waterflood only on property operated by Lario), or prejudice Lario's proposed unit operations if they are allowed to proceed. Either motivation is improper, and should not persuade the Commission to reverse its decision.

8. Despite Cholla's claims in its Petition for Reconsideration, Lario set forth the prejudice Lario would suffer if Cholla's Application is allowed to proceed. Much like the timing of Cholla's Application in this matter, Cholla's Petition for Reconsideration seems designed to prejudice Lario's legal rights – including Lario's right to petition for judicial review and, if Lario is successful in getting the matter remanded and its unit application approved, then Lario's proposed unit operations.

9. The Commission acted within its statutory authority when it stayed Cholla's application and denied Cholla's motion to dismiss Lario's protest. The Commission's decision is also supported by substantial and competent evidence in light of the proceeding as a whole.

10. Cholla has not provided any factual or legal basis to set aside the Commission's order staying this application. Cholla fails to meet its burden of proof that

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<sup>5</sup> Prefiled Testimony of William T. Goff in Docket 17-3516, p.3:6-18; p.7:9-17, Exhibit 1 to Lario's Motion to Stay.

the Commission's Order is unlawful or unreasonable. Cholla's arguments fail to meet the legal standard for reconsideration of an administrative order.

WHEREFORE, based on the foregoing, Lario respectfully requests the Commission deny Cholla's Petition for Reconsideration and for such other and further relief as the Commission deems just and equitable.

TRIPLETT WOOLF GARRETSON, LLC

By /s/ Amy Fellows Cline  
Timothy E. McKee, #7135  
Amy Fellows Cline, #19995  
2959 N. Rock Road, Suite 300  
Wichita, Kansas 67226  
*Attorneys for Protestant Lario Oil & Gas Co.*

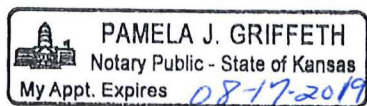
**VERIFICATION**

STATE OF KANSAS            )  
  ) ss:  
COUNTY OF SEDGWICK    )

Amy Fellows Cline, of lawful age, being first duly sworn upon her 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 Petition for Reconsideration, 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.

  
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Amy Fellows Cline

SUBSCRIBED AND SWORN to before me this 10<sup>th</sup> day of July, 2018



  
\_\_\_\_\_  
Notary Public

My Appointment Expires:

August 17, 2019

**CERTIFICATE OF SERVICE**

I hereby certify that on this 9<sup>h</sup> day of July 2018, a copy of the above ***Response to Petition for Reconsideration*** was sent via electronic mail to:

Lauren Wright  
Assistant General Counsel  
Kansas Corporation Commission  
266 N. Main St., Ste. 220  
Wichita, KS 67202  
[l.wright@kcc.ks.gov](mailto:l.wright@kcc.ks.gov)

Diana Edmiston  
Edmiston Law Office, LLC  
200 E. 1<sup>st</sup> Street, Suite 301  
Wichita, KS 67202  
[diana@edmistonlawoffice.com](mailto:diana@edmistonlawoffice.com)  
*Attorney for Cholla Production, LLC*

/s/ Amy Fellows Cline

Amy Fellows Cline