

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)

MOTION TO DISMISS PROTEST AND FOR APPROVAL OF APPLICATION

COMES NOW, Applicant, Cholla Production, LLC (“Applicant”), and moves the Commission for an Order dismissing the protest of Lario Oil & Gas Company, and granting the above-captioned Application. In support of its Motion, Cholla states the following:

1. Cholla filed this saltwater injection application for its Metzger 1-16 well (the “Application”) on March 12, 2018. The Application and supporting information supplied therewith, meets the requirements for Commission approval. Cholla served notice of the Application in accordance with K.A.R. 82-3-135a. The protest period has expired. K.A.R. 82-3-135a(e).
2. Only one protest was received by the Commission; that being a letter dated March 26, 2018 on behalf of Lario Oil & Gas Company. The protest did not request a hearing on the matter. A formal evidentiary hearing is not required by statute or regulation for this Application; and is unnecessary in this instance for the reasons hereafter stated.

3. Lario's protest letter contains a factually incorrect statement, which statement serves as the basis for its protest. Said incorrect statement is that Cholla's Metzger 1-16 well is within Lario's proposed 'Feiertag Unit', which unit was denied by the Commission on November 2, 2018, in Dkt 17-CONS-3516-CUNI.

Lario's Protest states in pertinent part:

"The basis for our protest is that the Metzger acreage and well, which is the subject of the referenced application by Cholla, was also part of the subject matter of Lario's application for unitization of the Feiertag unit in Scott County, Kansas, Docket No. 17-CONS-3516-CUNI. The decision of the Kansas Corporation Commission in the Lario Feiertag application is now on appeal to the District Court of Scott County, Kansas.

We are protesting the application of Cholla because the outcome of the appeal could materially impact (and possibly entirely moot) any decision the Commission might make on the application of Cholla for Metzger 1-16. As an illustration, if the Scott County appeal reverses the decision of the Kansas Corporation Commission, then the Metzger 1-16 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 the subject of operational decisions by Lario as the unit operator."

4. In truth, *the Metzger 1-16 well is outside the boundary of Lario's proposed Feiertag unit.*

Attached as **Exhibit A**, is the plat from Lario's Feiertag unit application, showing Cholla's Metzger 1-16 well in relation to the proposed Feiertag Unit boundary.

5. Cholla's Metzger 1-16 well is not only outside of Lario's proposed unit, but Lario witnesses have testified on the record, that there is no communication between the Metzger 1-16 and Lario's proposed Feiertag unit. The prefiled direct testimony of Brenten Birk, filed August 22, 2017, on behalf of Lario, states on page 15, lines 17-21:

"Q. In addition to the testimony that was provided by John Hastings, were there any additional reasons why Cholla's Metzger #1-16 well was not included inside the proposed Unit boundary?

A. Yes. The Marmaton “B” formation in Cholla’s Metzger #1-16 is not in pressure communication with the MSEOF [the oilfield to be produced in the Feiertag unit]....” KCC Dkt 17-CONS-3516-CUNI. [The remainder of Mr. Birk’s answer is attached for reference as **Exhibit B.**]

6. To allow Lario’s protest would in essence grant Lario a stay of the Commission’s denial of the Feiertag Unit application, in circumvention of the statutory procedure for requesting a stay [K.S.A. 77-528]; and would indulge Lario’s speculative and unlikely assertion that the Commission’s Feiertag Unit Orders may eventually be reversed on appeal, and the unit ultimately approved. (Reminding again that Lario’s speculation is irrelevant as it is based on Lario’s mistaken assertion that Cholla’s Metzger 1-16 well is within the Feiertag Unit.)
7. Reference is made to the Commission’s Final Precedential Order issued on April 5, 2018, in Dkt. 17-CONS-3689-CUIC, which Order recites the “direct and substantial interest” requirement for a UIC protest to be sustained before the Commission. 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 ‘direct and substantial interest’ requirement.
8. In summary, Cholla’s above-captioned UIC Application meets the requirements for Commission approval, and is ripe for an Order granting said approval. Lario’s protest is in its own words, an attempt to delay the Commission’s approval of Cholla’s Application, and prevent Cholla’s operation of its Metzger 1-16 as an injection well. Said protest and delay is not supported by the facts or law. Said delay would violate the correlative rights

of Cholla and the other Metzger lease interest holders; and will cause waste by preventing Cholla from the production and development to be served by the Metzger 1-16 injection well.

FOR THE FOREGOING REASONS, Cholla requests an Order from the Commission dismissing Lario's protest, and granting Cholla's Application to authorize injection of saltwater 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,

EDMISTON LAW OFFICE, LLC

By: /s/ Diana Edmiston

Diana Edmiston (S.C. 15160)

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Attorney for Cholla Production, LLC

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:

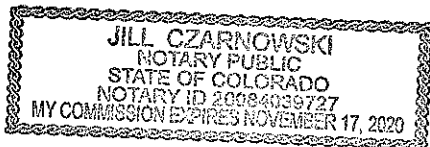
That she is the Owner/Manager for the Applicant in the above-captioned action; that she has read the above and foregoing, knows and understands the contents thereof, and states that the statements and allegations therein contained are true and correct according to her knowledge, information, and belief.

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

SUBSCRIBED AND SWORN TO before me, the undersigned authority, this **24th** day of **April, 2018**.

My commission expires:

11/17/2020



Jill Czarnowski
Name Jill Czarnowski
Notary Public

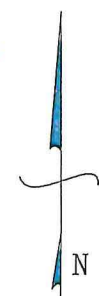
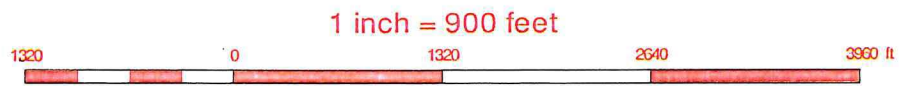
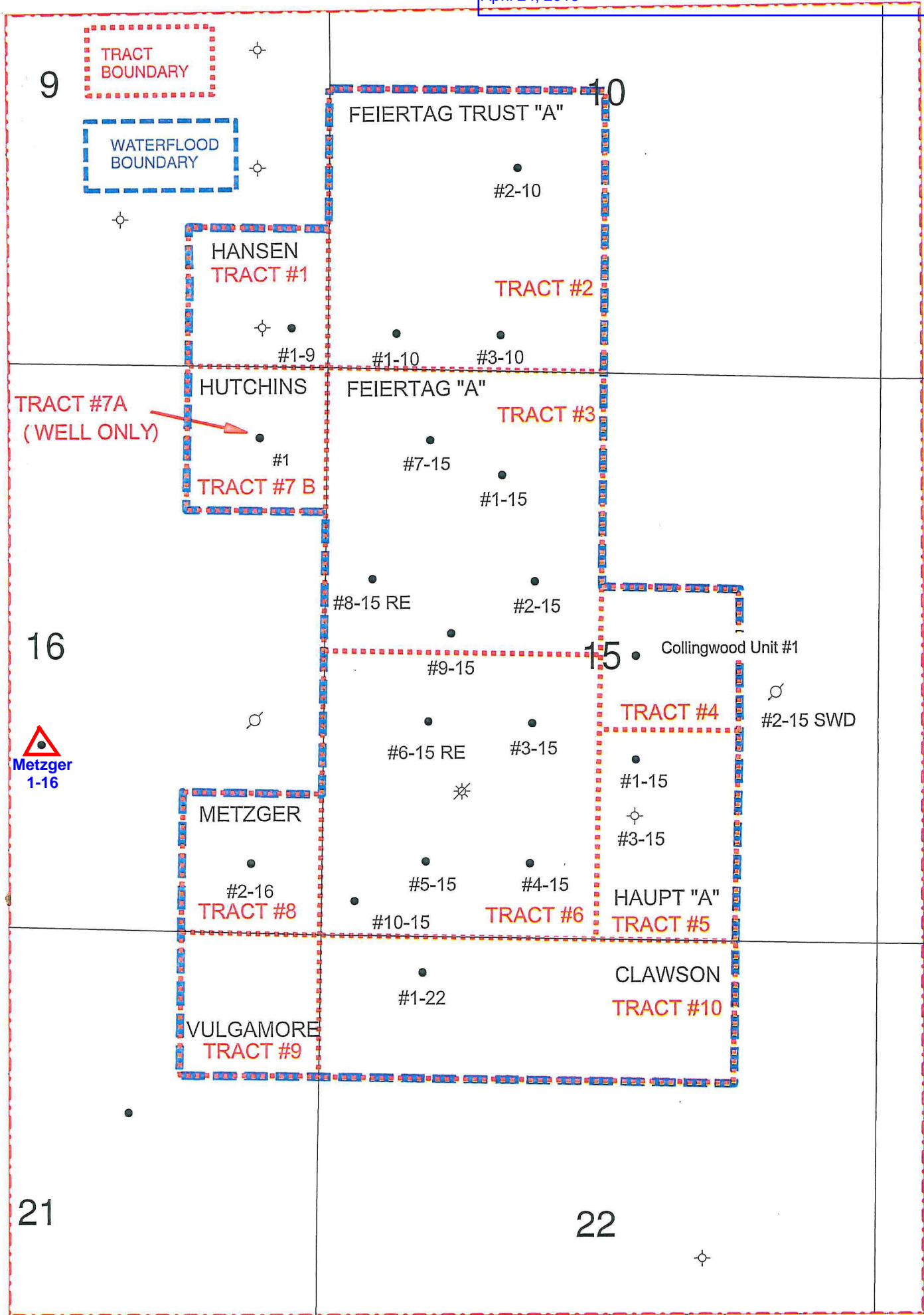
CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this **24th** day of **April, 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:

Timothy E. McKee
Amy Fellows Cline
Triplett Woolf & Garretson, LLC
temckee@twgfirm.com
amycline@twgfirm.com
Attorneys for Applicant Lario Oil and Gas Company

Lauren Wright, Litigation Counsel
Kansas Corporation Commission
Conservation Division
l.wright@kcc.ks.gov
Attorney for Commission Staff

/s/ Diana Edmiston



	LARIO OIL & GAS COMPANY FEIERTAG UNIT MILLRICH SOUTHEAST POOL T 19 S - R 33 W SCOTT COUNTY, KANSAS
Figure #1 Tract Map	
Date: 17 August, 2016	Geologist: Cristina Goodrich

tabbles

EXHIBIT

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Filed
20170317154149
State Corporation Commission
of Kansas

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

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

In the Matter of the Amended 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)	License No. 5214
County, Kansas.)	

PREFILED TESTIMONY

OF

BRENTEN E. BIRK

**ON BEHALF OF
LARIO OIL & GAS COMPANY**

PUBLIC VERSION

EXCERPT
For Cholla's Motion to Dismiss Protest and for Approval of Application
Dkt 18-CONS-3350-CUIC
April 24, 2018

1 the estimated additional cost incident to conducting such operations). What is your
2 position on this issue?

3 A. I disagree with Cholla's position. The total capital expenditure cost for all five stages of
4 development of the Feiertag Unit waterflood project is estimated at \$4,185,000. Total
5 cumulative net cash flow for working interest owners for the life of the waterflood is
6 estimated at \$26,986,900 (after the payout of the capital investment). In addition, royalty
7 interest owners will receive a total cumulative cash flow of \$14,930,440 throughout the
8 life of the waterflood Unit. This clearly demonstrates that the value of the estimated
9 additional recovery of oil or gas substantially exceeds the estimated additional cost incident
10 to conducting such operations.

11 Q. Do you agree with Cholla's Protest that the Feiertag Unit does not meet Kansas Unitization
12 Act K.S.A. 55-1304(c) (the proposed operation is fair and equitable to all interest owners)?

13 A. I disagree with Cholla's position. The parameters used to calculate tract ownership in the
14 proposed Unit formula are similar to previous enhance oil recovery units granted by the
15 Kansas Corporation Commission in western Kansas which were found to be fair and
16 equitable.

17 Q. In addition to the testimony that was provided by John Hastings, were there any additional
18 reasons why Cholla's Metzger #1-16 well was not included inside the proposed Unit
19 boundary?

20 A. Yes. The Marmaton "B" formation in Cholla's Metzger #1-16 is not in pressure
21 communication with the MSEOF. A timeline of Marmaton "B" DST (drill stem test)
22 recorded shut-in pressures were charted on Exhibit #10 for most of the wells inside the
23 proposed Unit boundary (including the Metzger #1-16). As you can see from the chart,

1 initial reservoir pressure in the Marmaton "B" formation was 1132 psi. This reading was
2 taken on the Hutchins #1 wellbore before the Marmaton "B" was ever produced in the
3 MSEOF. In July of 1992, McCoy Petroleum first perforated and began producing the
4 Marmaton "B" in the Feiertag "A" #1-15. This was the first production of the Marmaton
5 "B" inside the MSEOF. As you can see from Exhibit #10, all of the wells inside the
6 proposed Unit boundary had significantly depleted DST shut-in reservoir pressures as
7 quickly as 1 year later. The reservoir pressure continued to decline to 190 psi, as shown in
8 the Hansen #1-9 Marmaton "B" DST in September of 2007. However, in stark contrast,
9 in August of 2010 Cholla ran a DST in the Metzger #1-16 covering the Marmaton "B"
10 formation and measured a shut-in reservoir pressure of over 1120 psi (during a short 15
11 min shut-in period). Showing that after 18 years of significant Marmaton "B" production
12 from the MSEOF, the Marmaton "B" formation in the Metzger #1-16 was still at original
13 shut-in reservoir pressure of the MSEOF and not in pressure communication with the
14 MSEOF. Reduced DST shut-in pressures in multiple formations throughout the MSEOF
15 confirm that the entire field is in pressure communication.

16 Q. Based on all of your studies, the exhibits you have provided, and your testimony here today,
17 are you recommending that the Commission grant this Application?

18 A. Yes.

19 Q. What date are you requesting the Commissioners grant as the effective unitization date?

20 A. For purposes of lease management, we respectfully request an effective date of October 1,
21 2017.

22 Q. Does this conclude your testimony?

23 A. Yes.