

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) Docket No. 18-CONS-3350-CUIC
saltwater into the Marmaton C formation at)
the Metzger #1-16 well, located in Section) Operator # 31819
16, Township 19 South, Range 33 West,)
Scott County, Kansas)

**APPLICANT CHOLLA'S REPLY TO LARIO RESPONSE TO PETITION FOR
RECONSIDERATION**

COMES NOW, Applicant, Cholla Production, LLC ("Applicant" or "Cholla"), and states
the following in reply to the Response of Protestant Lario:

1. The pertinent facts in this UIC Application are not in dispute; they are uncontroverted:
 - a. The well subject to this UIC Application (Cholla's Metzger 1-16 well) is not in Lario's proposed unit.¹
 - b. The target formation of this Application, Cholla's Marmaton C reservoir, is not in Lario's proposed unit.²
 - c. Lario has not included the Marmaton C in its proposed unit operations.³
2. The Commission has taken notice in this above-captioned docket, of the record in Docket 17-CONS-3516-CUNI, in which the above-stated facts are uncontroverted. The above

¹See Exhibit D of Application of Lario, KCC Dkt. 17-CONS-3516-CUNI

²See Hearing Transcript, p. 82, ln. 22, KCC Dkt. 17-CONS-3516-CUNI

³See Hearing Transcript, p. 64, ln. 20 through p. 65, ln. 2, KCC Dkt. 17-CONS-3516-CUNI

facts disavow any rights, correlative or otherwise, Lario may attempt to assert against Cholla's UIC Application for the Metzger 1-16.

3. The mere filing by Lario of a unit application⁴ under K.S.A. 55-1301 *et seq.*, does not bestow Lario with rights in properties that Lario does not own. No such statutory language exists in the Kansas unitization act. Laws protecting property rights and prohibiting the unjust taking of property, do not allow for Lario to gain any level of control over Cholla's property by mere implication and speculation. Lario does not have the right to impede Cholla's planned operations.

“Three types of regulatory takings by use of police power have been recognized: physical, title, and economic. Where a government regulation authorizes permanent, physical occupation by parties other than the government, there is a per se taking, and no balancing test is applied. A title regulatory taking is a restriction on use which significantly interferes with the incidents of ownership. Although title takings are not subject to a per se rule, heightened scrutiny of the governmental objective is implied. An economic regulatory taking is a taking only if the economic impact on the landowner outweighs the public purpose of the regulation.” *Garrett v. City of Topeka*, 259 Kan. 896 (1996), Syl. 5.

4. Not only did the mere filing of Lario's unit application not bestow rights to Lario in other people's property, but the Commission made no finding in its orders in Lario's unitization case that would, or could, give Lario a present contingent interest in Cholla's leases and wells. Furthermore, Lario did not request such a ruling from the Commission, even with Lario and the Commission having been made prominently aware in that docket that Cholla has been methodically planning and taking the preparation steps for a Marmaton C waterflood for some time.

⁴ Docket 17-CONS-3516-CUNI

5. Given the above-stated facts and law, there are no ‘disputed issues’ Lario has raised in any version of its protests, that will give it standing to protest and be awarded a stay of Cholla’s UIC Application; or justify the impairment of Cholla’s rights to develop and operate its own properties.
6. Lario asserts in paragraph 5 of its Response, that Cholla has ‘improperly framed’ its issues presented in its Petition for Reconsideration. However, it is up to Cholla as the Applicant and Petitioner, to frame the issues it is presenting to the Commission. Lario is not entitled to choose which laws the Commission should apply to Cholla’s UIC Application, and Lario cannot erase or nullify the laws and regulations that protect Cholla’s property rights, or the statutes prohibiting waste of Cholla’s Marmaton C reserves.

CONCLUSION

Lario first filed a protest based on an untrue allegation, and then filed a second version of a protest, claiming in general terms what amounts to a superior right to Cholla’s property and a veto power over Cholla’s planned operations, by virtue of Lario’s own unit application being on judicial review. Lario’s assertions have led the Commission down the wrong path, to a faulty result. The law does not permit Cholla’s property and operations to be burdened, restricted, or impaired by Lario’s unit application, unless or until all of the constitutional and statutory mandates for that unit application have been satisfied; and even then, only to the extent allowed by applicable law. Not only has Lario not satisfied those unitization requirements, but the Commission’s Order finding Lario’s unit application does not meet the requirements is presumed

valid. To stay Cholla's Metzger 1-16 UIC Application on this basis is contrary to applicable law and the facts in this case, and is arbitrary, capricious and unreasonable.

Again, this is Cholla's application for an injection well. The Commission's scope of inquiry per its injection regulations and authority, K.A.R 82-3-400 *et seq.* is to determine whether the Metzger 1-16 well will be constructed and operated so as to protect fresh and usable water, and whether the prospective injection will cause waste or harm correlative rights. As Cholla has shown, there will be no waste or harm to correlative rights in the granting of this UIC Application. To the contrary, the stay of this UIC Application will cause, and is causing, waste and harm to Cholla's correlative rights, and denies Cholla its property rights, for an indefinite and possibly permanent duration.

FOR THE FOREGOING REASONS, and the reasons stated in its June 27, 2018, Petition for Reconsideration, Cholla requests the Commission to reconsider and reverse its order denying Cholla's motion to dismiss Lario's protest, and regardless of the outcome of that request, that above all, the Commission reconsider and reverse its Order staying Cholla's Metzger 1-16 injection application; and for such other relief as the Commission deems necessary and appropriate.

Respectfully submitted,

EDMISTON LAW OFFICE, LLC

By: /s/ Diana Edmiston

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VERIFICATION

STATE OF KANSAS)
) SS:
COUNTY OF SEDGWICK)

Diana Edmiston, of lawful age and being first duly sworn upon her oath, deposes and states:

That she is the attorney representing Cholla Production LLC in the captioned matter; 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.

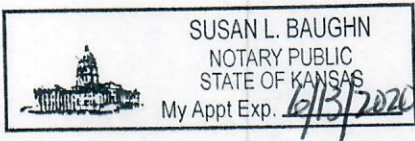


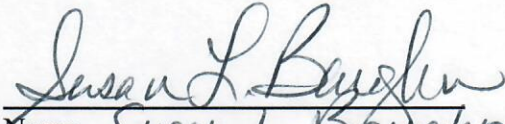
Diana Edmiston

SUBSCRIBED AND SWORN TO before me, the undersigned authority, this 19th day of July, 2018.

My commission expires:

June 13, 2020




Name Susan L. Baughn
Notary Public

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this **19th** day of **July 2018**, she caused the above and foregoing **Reply** 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