

STATE OF NEW MEXICO
ENERGY, MINERALS, AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

APPLICATION OF CIMAREX ENERGY COMPANY Case No. 21744
FOR HEARING DE NOVO OF CASE 21629 (OCD No. 21629)
EDDY COUNTY, NEW MEXICO

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

THURSDAY, JUNE 9, 2022

OIL CONSERVATION COMMISSION:

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Greg Bloom:	Commissioner (State Land Office)
William Ampomah:	Commissioner (NM Energy Dept.)
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A P P E A R A N C E S.

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C O N T E N T S

CASE NO.	PAGE
CASE CALLED:	3
STATUS REPORT BY MR. MOANDER	3
COLGATE MOTION TO Dismiss	
Argument by Mr. Padilla:	7, 12
Response by Mr. Savage:	9
COLGATE MOTION TO AFFIRM OCD Order .	
Argument by Mr. Padilla:	14
Response by Mr. Savage:	15
STATEMENT BY MR. MOANDER:	18
RECAP OF MOTIONS BY CHAIR SANDOVAL:	19
MOTION TO AMEND PREVIOUS ORDER	23
COLGATE MOTION TO DISMISS DENIED	38
COLGATE MOTION TO REAFFIRM ORDER DENIED	40

1 (Time noted 9:10 a.m.)

2 COMMISSION CHAIR SANDOVAL: Now moving on to
3 Item No. 5, motion hearing and status conference of De
4 Novo Case No. 21744, which was Application of Cimarex for
5 De Novo Hearing.

6 Mr. Padilla and Mr. Savage, we will hear
7 you.

8 MR. PADILLA: Ernest L. Padilla for Colgate
9 Operating, LLC.

10 MR. SAVAGE: Good morning Madam Chair,
11 Commissioners and Counsel. Darin Savage of Abadie &
12 Schill on behalf of Cimarex Energy Company.

13 COMMISSION CHAIR SANDOVAL: Okay. I believe we
14 have a handful of things we need to address today, I
15 believe. And, Mr. Moander, correct me if I am wrong but
16 we've got two existing motions that we need to address and
17 rule on today, as well as getting an update from the
18 parties on status?

19 MR. MOANDER: So Madam Chair, this is a little
20 bit convoluted today, as is the nature, it seems, of this
21 case.

22 So there is currently an outstanding motion
23 provided by Mr. Padilla. Behind that motion was a motion
24 filed by Mr. Savage that the Commission didn't take action
25 on, and then behind that there's the still-outstanding

1 motions to dismiss applications by Mr. Padilla and then
2 the motion to invalidate the Division Order by Mr. Savage.
3 Those were held in abeyance some time ago and brought back
4 to the Commission's attention through Mr. Padilla's
5 motion.

6 And then I think the other issue that we'll
7 be discussing, the Order that was adopted last month by
8 the Commission, and addressing perhaps -- addressing one
9 of the issue in there about the de novo hearing. But I
10 think that's the chronology here in order to best deal
11 with things in a fairly coherent manner.

12 COMMISSION CHAIR SANDOVAL: Okay. So you cut
13 out a little bit for me, I think, at the end. Can you say
14 that last bit one more time.

15 MR. MOANDER: Yes. The final issue will be
16 taking a look at the Order of the Commission adopted at
17 the last meeting. Probably the last item, I think, to be
18 addressed.

19 COMMISSION CHAIR SANDOVAL: So motions and then
20 Order?

21 MR. MOANDER: Yes, I think that's correct.

22 (Note: Reporter inquiry.)

23 MR. MOANDER: You know what it's probably my
24 office fan more than anything. Let me fix that, and that
25 should help.

1 COMMISSION CHAIR SANDOVAL: Okay. Mr. Moander,
2 is there a preference on which motion we address first?
3 There is a motion to invalidate and then there's a motion
4 to dismiss.

5 MR. MOANDER: I think the first motion that
6 needs to be addressed is Mr. Padilla's motion to
7 essentially have the Commission re-adopt its Order. We
8 can have the parties argue that first, because that's the
9 most recent.

10 Well, you know --

11 COMMISSION CHAIR SANDOVAL: I think that was the
12 motion to dismiss.

13 MR. MOANDER: Well, actually those are the two
14 motions that were held in abeyance that the Commission has
15 yet to rule on. So I think you could start with that, as
16 well. Actually, I don't know that it really matters, as
17 long as the last thing we do is address the Order in and
18 of itself.

19 COMMISSION CHAIR SANDOVAL: Okay. All right.
20 Well, let's start, then.

21 Actually, let's start with the motion to
22 invalidate. I think that probably makes the most sense.
23 They were both filed around the same time.

24 Mr. Savage, you submitted that one. Can
25 you please make -- and I believe you submitted, Mr. --

1 I'm sorry. Mr. Padilla made a reply, and then you made
2 another response. So could you please briefly make a
3 statement on that motion.

4 MR. SAVAGE: As I remember this particular
5 motion, the motion to invalidate was raised, was submitted
6 to consider the question of whether or not the de novo
7 hearing granted, because, uhm, Cimarex is a party of
8 record, was deemed a party of record, whether it should go
9 back to the OCD for review, if the -- if it turned out
10 that the application did not -- was not, uh, pursued in
11 good faith under the statutes and the rules, or if it was
12 determined that, then the forum would be -- of the hearing
13 would be at the Commission level.

14 It looks to me like the motion has been
15 decided based on the evidentiary hearing that the, uh, the
16 motion -- uh, the arguments in the motion were reviewed
17 during the evidentiary hearing and the question of good
18 faith in terms of the interaction between Cimarex and
19 Colgate was addressed. So I think the motion has been
20 addressed.

21 COMMISSION CHAIR SANDOVAL: Mr. Padilla.

22 MR. PADILLA: Well, its rare for me to agree
23 with Mr. Savage's rendition of argument, but I agree with
24 him. I think the Commission effectively ruled that motion
25 was denied by the Commission's determination that there

1 was good faith upon the part of Colgate. So I agree.

2 COMMISSION CHAIR SANDOVAL: Anything additional,
3 Mr. Savage?

4 MR. SAVAGE: Not on this particular issue.
5 Thank you.

6 MR. MOANDER: Madam Chair, I'm going to suggest
7 we do all the voting here at the end. I'm collecting the
8 information and I can assist with that, because I do
9 think there will be additional discussion today that I
10 think will have an impact on the vote in consideration of
11 this motion.

12 COMMISSION CHAIR SANDOVAL: Commissioners, do
13 you have any questions about this motion?

14 COMMISSIONER BLOOM: Madam Chair, not at this
15 time.

16 COMMISSIONER AMPOMAH: Madam Chair, no.

17 COMMISSION CHAIR SANDOVAL: Okay.

18 All right. Then let's move on to the
19 motion to dismiss that was filed by Mr. Padilla.

20 Mr. Padilla, would you like to make some
21 statements on that?

22 COMMISSIONER PADILLA: Sure. My -- when we
23 wrote that motion, we were -- uh, Cimarex had filed
24 applications for -- as part of its de novo hearing. We
25 filed a motion to deny that motion for those applications

1 simply because Cimarex had not done anything necessary to
2 perfect its application in terms of the rules of the
3 Commission and the rules of the Bureau of Land Management
4 with respect to the potash area.

5 There's complicated procedure for making
6 applications for compulsory pooling in terms of drilling
7 wells within the potash area.

8 But that said, it seems to me that the
9 Commission's Order, the latest Order, Order C, already
10 took care of that just by implication. The Commission
11 denied the de novo applications, which I think when you
12 look at the whole picture it invalidated those
13 applications. The Cimarex application calls for a
14 three-mile lateral that just baffles me in terms of how
15 that was brought up in order to essentially, uh, mess up
16 the Colgate application that had been in place and which
17 had been approved by the Commission.

18 So I don't see -- you know, here we have
19 the chicken and the egg, which is first, the chicken or
20 the egg kind of thing in terms of Cimarex' applications.
21 Those are only a reaction to the issues raised in these
22 hearings, and an attempt to make an argument that its
23 applications should be considered on the de novo hearing.
24 But once the Commission denied the applications then I
25 think it erased everything in the process. All of the

1 applications. And so effectively the Commission denied
2 the -- or (Note: Video/audio freeze.)

3 I think the Commission has already
4 effectively granted that motion to dismiss by its Order,
5 latest Order, and I think it's already been heard.

6 COMMISSION CHAIR SANDOVAL: Mr. Savage.

7 MR. SAVAGE: Yes. Thank you, Madam Chair.

8 As I understand on this particular
9 motion -- is this the original motion to dismiss, because
10 it was my understanding that the original motion -- there
11 was an original motion to dismiss filed by Colgate, and
12 that was denied by Order R-21679, and based on that the
13 Commission stated it was granting a de novo hearing and
14 therefore granted the stay of the underlying Pooling
15 Order. That's how I'm understanding this. Was there a
16 subsequent motion to dismiss, Mr. Moander?

17 MR. MOANDER: Mr. Savage, that's correct. There
18 were two filed. There was an original motion to dismiss.
19 This was filed immediately after you filed your competing
20 applications.

21 MR. SAVAGE: So this is the motion to dismiss
22 the Competing Applications not the Application for De Novo
23 Hearing.

24 MR. MOANDER: Correct.

25 MR. SAVAGE: Okay. All right. Thank you, Mr.

1 Moander. That is an important distinction.

2 Uhm, so Madam Chair, I'm not sure how much
3 more, you know, Cimarex should present in this part of the
4 proceedings. We believe that Cimarex has made its
5 position and arguments clear in its application for a
6 hearing and Order R-21679-C in its response to Colgate's
7 motion to affirm the Order.

8 As we stated in those pleadings, Section
9 72-13 of the Oil and Gas Act grants a de novo hearing to a
10 party of record adversely affected by the decision of the
11 Division. Cimarex is a party of record adversely
12 affected, and its application for de novo hearing was
13 granted by Order No. R-21679, and that occurred when that
14 Order confirmed that Cimarex was and is a party of record.

15 The Commission then agreed bifurcate the
16 case, and after the first part of the bifurcation case had
17 been heard the Commission, it appears midstream in the
18 proceedings, denied Cimarex's application for de novo
19 hearing after it had been previously granted.

20 We believe it was granted by operation of
21 law based on the confirmation that Cimarex was -- became a
22 party of record. And it looks like the most recent Order
23 thereby disallowed the hearing of the second part of the
24 case as originally conceived and agreed upon.

25 After the Commission's initial grant of

1 Cimarex's application for de novo hearing the Commission,
2 by subsequent Order No. R-21679-B directed Cimarex to file
3 competing applications and make them available for review,
4 a directive that Cimarex fully complied with.

5 So, Madam Chair, it appears at this moment
6 there are two competing development plans before the
7 Commission, made available pursuant to the Commission's
8 directive and correctly available for review, one from
9 Colgate for its Meridian well and one from Cimarex its
10 Crest wells.

11 Now, one of the development plans submitted
12 achieves optimal production rather than the other one; one
13 generates higher revenue for the State of New Mexico
14 better than the other one; and one of them prevents waste
15 and protects correlative rights better than the other
16 development plan submitted; and therefore is in the best
17 interest of the public.

18 Now, whichever development plan is better
19 in based on these criteria and in these regards has yet to
20 be determined, but the development plans are before the
21 Commission at this time.

22 So Cimarex respectfully submits that if the
23 opportunity exists before the Commission, as it does now,
24 to prevent waste and protect correlative rights by the
25 review of competing applications made available to the

1 Commission by its own directive in Order R-21679-B, a
2 directive that required Cimarex to file for review its
3 competing applications by 5:00 p.m. on June 3, 2021, then
4 the Commission, pursuant as to the Oil and Gas Act and
5 case law, should have an obligation to review the
6 competing applications in order to prevent waste and
7 protect correlative rights and protect the interests of
8 the public; and therefore we believe that Colgate's motion
9 to dismiss the competing applications should be denied.

10 Thank you.

11 COMMISSION CHAIR SANDOVAL: Any follow up,
12 Mr. Padilla?

13 MR. PADILLA: Well, we can always make arguments
14 on waste and correlative rights, and I think we argued
15 that waste and correlative rights are the paramount
16 objectives or duties of the Oil Conservation Commission
17 and of the Division, but Cimarex hasn't put anything
18 forward that would help the Commission in terms of right
19 now demonstrating that the Commission did not take those
20 issues into consideration. Two-mile laterals, for one
21 thing, are the standard in the industry these days. To
22 say in argument that one-three mile lateral is going to be
23 better than a two-mile lateral is an issue of fact.

24 But if this case solely can be dealing with
25 procedural issues, Cimarex, despite the Commission's

1 ruling that allowed de novo hearing, simply has failed to
2 do anything correctly in this case, as demonstrated by the
3 Commission's ruling on good faith. We argued that they
4 dropped the ball, and it continuously dropped the ball
5 throughout this process. Cimarex filed competing
6 applications to begin with that had to be dismissed
7 because they didn't provide Notice to interest owners.
8 And they are now in a second round of competing
9 applications, and I think that the Commission saw through
10 that in its Order, in its latest Order, and effectively
11 denied everything in terms of -- uh, and obviously Cimarex
12 is entitled to appeal to the District Court, and it's
13 already on its way technically, subject to these hearings
14 today.

15 So I think they are just -- they have the
16 right to review, obviously, and so they can go to the
17 District Court. Thank you.

18 COMMISSION CHAIR SANDOVAL: Okay. Mr. Moander
19 is it best to address these or address the Order first.

20 MR. MOANDER: There's still one more motion out
21 there, and this is the one that is -- I'll call it "purely
22 outstanding" for lack of a better descriptor, and that's
23 Mr. Padilla's motion essentially for the Commission to
24 re-adopt the Order below.

25 I'm going to recommend we hear argument on

1 that first, and then we are going to discuss the Order. I
2 think that's the best way to do it. That way all the
3 arguments are out, there's nothing left for the parties to
4 argue, and then the Commission can take up its discussion.

5 COMMISSION CHAIR SANDOVAL: All right. I
6 believe Mr. Padilla filed that one, correct?

7 MR. MOANDER: That's correct, Madam Chair.

8 COMMISSION CHAIR SANDOVAL: All right. You're
9 up again, Mr. Padilla.

10 MR. PADILLA: Well, I don't want to go beyond
11 what we said in the motion to affirm, but it just makes
12 sense that this case has to end somewhere.

13 This record is very complicated. Just
14 simply filing that motion and doing the research on the
15 motion to affirm, you almost have to look at the entire
16 record -- and it's heavy -- uh, to see procedurally
17 where we went and what was argued.

18 And the Commission's Order is very
19 comprehensive. I'm astounded at the findings of the
20 Commission and the time that it took to come up with those
21 findings and decide this case. So my feeling is that
22 there's nothing more to argue, and if Cimarex feels that
23 it needs to go to the district court, then I think that's
24 their prerogative, but to go back and say, "Well, we're
25 going to retry this case," it doesn't make any sense.

1 We spent nearly two days on trying this
2 case before the Commission, and before that a whole bunch
3 of hearings on various issues of this case.

4 So I just don't see how in the world the
5 Commission needs to go back and retry this case. It's got
6 to end.

7 And I think Cimarex has already viewed this
8 case as being ripe for appeal to the district court, so I
9 just don't -- I think the Commission ought to just
10 re-adopt its Order and simply take it the way it is,
11 because it's done a lot of work to come up with this
12 Order, and there's got to be some finality to this
13 argument.

14 Thank you.

15 COMMISSION CHAIR SANDOVAL: Mr. Savage.

16 MR. SAVAGE: Yes. Thank you, Madam Chair.

17 Cimarex believes that the general framework
18 that was discussed to come to the procedural posture for
19 addressing basically which forum the competing
20 applications would be heard in, uhm, that good faith --
21 that -- it was within that general framework of the
22 procedural posture that good faith played a role, and the
23 only the role that good faith played was the consideration
24 of whether or not the cases should go back to the OCD if
25 there was not good faith on the part of Colgate, or to

1 remain at the forum for consideration and review if it was
2 determined that there was good faith.

3 Basically that general framework -- and it
4 was -- you know, there was a lot of complicated
5 discussions and variations of discussions in that, but I
6 think everybody kind of agreed on the general framework,
7 because it was brought up during the April 4th, 2022 --
8 uh, April 4th status conference when it appeared that the
9 Commission was wrestling with the discrepancy between
10 denying the de novo application at this point in the
11 proceedings and the prior adoption of the procedural
12 framework that bifurcated the case, and reserved the
13 second part of the case for the second part of the
14 proceedings.

15 So that was the only place that good faith
16 played a role.

17 Now, in the de novo application, it doesn't
18 matter whether or not a applicant at the OCD exercised
19 good faith or not. The de novo hearing is a hearing
20 granted as a right under the statute, and it's premised --
21 it's predicated on the premise that the Order was issued
22 in good faith.

23 So an applicant goes through the hearing
24 process at the OCD level, they are presumed to have done
25 everything in good faith, they get an Order issued. A

1 party of record has a right if they are qualified as a
2 party of record has a right, if they are qualified as a
3 party of record, and Cimarex was qualified as a party of
4 record, has a right upon application within 30 days to
5 have a de novo hearing, whether or not the original
6 applicant acts in good faith or not. In fact we presume
7 they did act in good faith.

8 So because the Commission recognized and
9 confirmed that Cimarex was a party of record, the only
10 consideration regarding good faith in the evidentiary
11 hearing was the proper forum for the second part of the
12 bifurcated case.

13 Madam Chair, we are only asking that --
14 Cimarex is only asking that we be given the same
15 consideration for review of its competing applications
16 submitted during the de novo process. For example, the
17 parties in Case Nos. 21277 and 21278 and other
18 precedential cases such as 22191 and 22192, in which it
19 appears that the Division and the Commission acknowledge
20 that they are moving in this direction where they, uhm --
21 in order to prevent waste and protect correlative rights
22 they believe it is important to hear these competing
23 applications at a contested hearing.

24 So we request that the Commission follow
25 the precedent they have previously established and pursue

1 this matter as a review of competing applications.

2 Thank you.

3 MR. MOANDER: So, Madam Chair, it looks like we
4 are now going to discuss the Order. Do you mind if I make
5 a few comments here as we proceed into that?

6 COMMISSION CHAIR SANDOVAL: Go ahead.

7 MR. MOANDER: So I appreciate actually the
8 recognition from both parties that this case has, to put
9 it mildly, a complicated and lengthy history to it. So
10 I'm going -- I will draw a bit of a mea culpa here and the
11 Commission is going to address this momentarily. I ended
12 up confused about exactly where this case was during the
13 course of drafting this Order. I anticipate the
14 Commission will address that momentarily. I apologize to
15 both the parties and the Commission for the fact that my
16 mind got completely twisted with going through everything.

17 So I'm going to hand this back to Madam
18 Chair, but I really do mean I'm glad to hear that I'm not
19 the only attorney who looked at this case and had to
20 actually go back and start from Day One to begin to unwind
21 thing a bit more.

22 COMMISSION CHAIR SANDOVAL: All right.

23 Commissioners, before we go further, do you
24 have any additional questions for Mr. Savage or
25 Mr. Padilla on any of the pieces?

1 COMMISSIONER BLOOM: No, Madam Chair.

2 COMMISSIONER AMPOMAH: No, Madam Chair.

3 COMMISSION CHAIR SANDOVAL: Okay. All right.

4 So there are quite a few pieces on this.

5 I believe that the -- sorry. (Note:

6 Coughing.)

7 -- that the Order may need to -- I mean, we
8 need to discuss it, but I think it's created maybe a
9 little confusion, so I believe just a really short history
10 of all of this is: The Commission, probably a year ago,
11 bifurcated -- or I'm not sure if that is the right term,
12 split sort of the two core issues of the application.
13 First there was the core issue of was good faith effort,
14 was that met, and should the Order from the Division be
15 invalidated.

16 So that was one piece, which we spent, as
17 Mr. Padilla said, two days listening to.

18 There was another piece of the case. There
19 was the de novo application for competing compulsory
20 pooling. That piece has not been heard yet.

21 Uhm, I believe -- okay. So in Mr. Savage's
22 motion to invalidate, the request was essentially, you
23 know, invalidate the Division's Order and/or grant a
24 motion -- grant a competing compulsory pooling de novo
25 hearing.

1 You know, the Commission heard at length on
2 the whole invalidation of the Division Order, and had
3 earlier, I think, granted that de novo hearing, which was
4 originally scheduled, I think for today, but we switched
5 it to a motion hearing.

6 Okay. That's one motion.

7 Another motion was the motion to dismiss
8 from Mr. Padilla saying that basically it was too early,
9 things were too soon, BLM needed to go through their
10 process, and that there should not be a de novo hearing at
11 this point.

12 And then there was the third one which
13 Mr. Padilla just mentioned, which was, uhm, basically
14 reaffirming the Division's Order.

15 Okay. So then we have the Order that we
16 entered into last hearing, which says, I believe: The de
17 novo application is denied. I believe that there -- I
18 think that that has created potentially some confusion,
19 because there are so many pieces to this case. I do not
20 believe the intent of that was to deny the de novo
21 application for competing compulsory pooling. That was
22 intended to say that we are not rehearing this case again.
23 It has been decided. It is not being remanded back to the
24 Division.

25 MR. MOANDER: Madam Chair, just to make sure

1 your thoughts are clear on the record, I think what you
2 mean is that the issue of the Good Faith Notice, which was
3 Part 1 of the bifurcation, has now been decided. Is that
4 correct?

5 COMMISSION CHAIR SANDOVAL: Correct. Yes. That
6 Order was not intended to decide the de novo case for
7 competing compulsory pooling applications.

8 So that is, I think, sort of the short
9 version of the very long history.

10 Commissioner Bloom, Ampomah, do you have
11 anything additional, or thoughts?

12 COMMISSIONER BLOOM: No, Madam Chair. That's my
13 view and recollection of where things are and how we got
14 here. Thank you.

15 COMMISSIONER AMPOMAH: Yeah, Madam Chair, I
16 don't have any further comment on that.

17 COMMISSION CHAIR SANDOVAL. Okay. Uhm, Mr.
18 Moander, what is the best way to move forward? Should we
19 vote on each motion?

20 MR. MOANDER: I think to start off, Madam Chair,
21 I think we need to address, basically amend the Order is
22 the way to go on this, because this is -- there was an
23 error involved -- I cop to it, I made an error here. But
24 there is an error in the Order in and of itself in that
25 Order. I think the way to do that is what would have been

1 paragraphs 111 and 112 will be amended to reflect that to
2 some extent -- or to -- well, the Notice and good faith
3 issue has been decided, that the matter will proceed to a
4 hearing on the competing applications, and then you would
5 remove that the Division Order stands, because that has
6 yet to be determined. And then we can proceed to the
7 motions.

8 Because I think that, as Mr. Savage and
9 Mr. Padilla noted, a lot of the decisions on those pending
10 motions or motions held in abeyance are impacted by the
11 Order. Essentially it will make it a little easier to
12 make motions on the -- or make for the motions for the...

13 COMMISSION CHAIR SANDOVAL: Okay. So first
14 let's make a motion on the Order, then. Yes? Okay.

15 Do we have a motion to amend the previous
16 Order entered into by the Commission?

17 COMMISSIONER BLOOM: Yes, Madam Chair, I so
18 move.

19 COMMISSIONER AMPOMAH: Madam Chair, I second.

20 COMMISSION CHAIR SANDOVAL: Is there discussion
21 on how we should amend the Order?

22 COMMISSIONER BLOOM: Madam Chair, I think Mr.
23 Moander expressed how this can be amended. I guess that's
24 where we need to go, that the de novo hearing mentioned in
25 paragraph 111 is denied with respect to the OCD but that

1 at the OCC we will still have a hearing on competing
2 applications.

3 COMMISSION CHAIR SANDOVAL: Okay. Mr. Moander,
4 is that clear enough?

5 MR. MOANDER: I think so. The only other point
6 I would add for consideration is that the Division Order
7 be upheld, that Order, that just be stricken for further
8 consideration after the applications are heard.

9 COMMISSION CHAIR SANDOVAL: Okay.

10 Will you do a roll call.

11 Oh, I'm sorry. Go ahead.

12 COMMISSIONER BLOOM: Madam Chair, yes, I would
13 agree with that.

14 MR. MOANDER: Commissioner Bloom, so just to be
15 clear was your motion now incorporating the changes as
16 discussed, since that wasn't in your original motion?

17 COMMISSIONER BLOOM: Yes.

18 MR. MOANDER: Was there a second to that, by
19 chance, out there?

20 COMMISSIONER AMPOMAH: Yes.

21 MS. MOANDER: Thank you, Dr. Ampomah.

22 Madam Chair, would you like me to proceed
23 to roll call?

24 COMMISSION CHAIR SANDOVAL: Please.

25 MR. MOANDER: Dr. Ampomah?

1 COMMISSIONER AMPOMAH: Approved.

2 MR. MOANDER: COMMISSIONER Bloom?

3 COMMISSIONER BLOOM: Approved.

4 MR. MOANDER: Madam Chair?

5 COMMISSION CHAIR SANDOVAL: Approved.

6 MR. MOANDER: Motion carries.

7 COMMISSION CHAIR SANDOVAL: So I guess, Mr.

8 Moander, will you draft an updated Order, and do we vote
9 on that at the next hearing?

10 MR. MOANDER: Yes, Madam Chair. I think one
11 thing I'd like to ask the parties before we secure that
12 process is if Commission proceeds as just described by
13 Madam Chair, would that in any way limit the parties from
14 being prepared to present the competing applications in
15 July or maybe August? Aside from witnesses, which I know
16 I understand there may be some.

17 (Note: Pause.) Sounds like that will work,
18 then.

19 MR. SAVAGE: Yes. There's no objection on that,
20 thank you, from Cimarex.

21 MR. MOANDER: And Madam Chair, I will produce an
22 Amended Order for the Commission's consideration in
23 accordance with that.

24 COMMISSION CHAIR SANDOVAL: Okay. So then is
25 it -- this Order seems to sort of wrap up the decisions of

1 the prior motions. Is it cleaner to just vote on those?

2 MR. MOANDER: It's -- at some point, Madam
3 Chair, we are going to need to deal with any of the
4 outstanding Orders. If you -- because I think the Amended
5 Order that we are discussing, the primary Order here, I
6 don't have the Order number in front of me, I think the
7 parties understand that that impacts these motions. If
8 you would like to table a vote on these motions, I don't
9 think that's a problem, either, because there may be some
10 value in going back now and yet again taking another dive
11 to make sure any motion by the Commission properly
12 disposes of those motions, if the parties are now on
13 notice that this is proceeding to a competing application
14 hearing.

15 COMMISSION CHAIR SANDOVAL: Does that just kind
16 of punt it?

17 MR. MOANDER: That's exactly what it does, Madam
18 Chair.

19 COMMISSION CHAIR SANDOVAL: Do we -- I mean, I'm
20 kind of inclined that we clean things up, but...

21 MR. MOANDER: That is at the Commission's
22 discretion. I think that --

23 COMMISSION CHAIR SANDOVAL: Uhm -- go ahead.

24 MR. MOANDER: I think just looking at this
25 purely from the perspective of the Amended Order, that

1 would probably mean that by authorization that would
2 appear to deny Mr. Padilla's motion to reaffirm, deny the
3 motion to invalidate the Division Order, uh, to the --
4 limited to the extent that the matter will proceed to a de
5 novo hearing for the competing applications, and result in
6 denial of the motion to dismiss the competing
7 applications.

8 I think that is a how that would work.

9 COMMISSION CHAIR SANDOVAL: I feel like
10 you're -- I don't know if it's just me, but I feel like
11 you're fading out towards the end.

12 MR. MOANDER: Oh, let me -- is this better?

13 You know, I think my headset is probably
14 dying. It's only been abused for two and a half years --

15 COMMISSION CHAIR SANDOVAL: It's been --

16 MR. MOANDER: So it's had a good run.

17 But yeah, I think that would be the
18 sequence of things.

19 On the other hand if you decide -- if the
20 Commission decided to table these to be determined for a
21 final vote on all these motions at the close of the
22 evidentiary hearing that would be held, that also would be
23 a good way to clean it up on the off chance something odd
24 comes up during the course and scope of the hearing.

25 COMMISSION CHAIR SANDOVAL: Okay. Do we need to

1 make a motion to table the motions?

2 MR. MOANDER: I would recommend it.

3 COMMISSION CHAIR SANDOVAL: Is there a motion to
4 table the three motions that we discussed today until the
5 close of the evidentiary hearing for the de novo competing
6 compulsory pooling?

7 COMMISSIONER BLOOM: I so move.

8 COMMISSIONER AMPOMAH: Madam Chair, I do second.

9 COMMISSION CHAIR SANDOVAL: All right. Would
10 you do you a roll call vote, please.

11 MR. MOANDER: Yes, Madam Chair.

12 Dr. Ampomah.

13 COMMISSIONER AMPOMAH: Approved.

14 MR. MOANDER: Commissioner Bloom.

15 COMMISSIONER BLOOM: Approved.

16 MR. MOANDER: Madam Chair.

17 COMMISSION CHAIR SANDOVAL: Approved.

18 MR. MOANDER: The motion carries. The Motion to
19 Dismiss Application, Motion to Invalidate Division Order,
20 and Motion to Reaffirm the Final Order are tabled until to
21 the close of the evidentiary hearing to be held on
22 competing applications.

23 COMMISSION CHAIR SANDOVAL: Okay. At this point
24 that is not scheduled. Can we, I guess, sort of move to
25 the status conference piece of this where we get an update

1 from the parties?

2 MR. MOANDER: I think at this point -- this is
3 probably worth getting right, getting to hearing at this
4 stage, because the parties need to get the this wrapped
5 up. They have fought valiantly, the attorneys have, on
6 behalf of their clients. I think it's time to get this to
7 what amounts to trial so the parties can get a final
8 resolution.

9 COMMISSION CHAIR SANDOVAL: Ms. Davidson, what
10 do the next couple of dockets look like, July, August,
11 September? Can you tell the Commission what we've got on
12 those dockets at this point?

13 MS. DAVIDSON: Okay. For July, we just have the
14 adoption of the Final Order in the case the Commission
15 heard. And I think that the case scheduled for today for
16 Energy Partners, I think possibly that will be continued
17 to July 14th. It's up to the Commission. We have
18 nothing else scheduled for the rest of the year.

19 COMMISSION CHAIR SANDOVAL: All right. Thank
20 you, Ms. Davidson.

21 Mr. Savage and Mr. Padilla, is July too
22 soon? Would August be better?

23 MR. PADILLA: For me August would be better.
24 I'm going to be out, let's see, in July, from the 20th,
25 21st and 22nd on another matter, and then I have a case in

1 federal court that I have to really do some depositions,
2 and so August would work better for me.

3 COMMISSION CHAIR SANDOVAL: Mr. Savage.

4 (Note: Pause.) If you're saying something,
5 you're muted.

6 MR. SAVAGE: I'm sorry. August would be fine
7 with Cimarex. July or August is fine. Can I ask one
8 point of clarification on this?

9 So with tabling the motions, having the
10 hearing of the competing applications first, does that
11 mean there could be issues -- so, for example, if the OCC
12 made a decision on one development plan or the other, are
13 there still outstanding issues that could affect that
14 decision? Is that how that -- because your comments on
15 your feeling that things should be cleaned up prior, I
16 kind of feel that way, as well. I'm just wondering if
17 there is -- like, if the OCC made a decision to select one
18 development plan, could there be outstanding issues based
19 on those motions that could effect that decision?

20 That's the concern I would have.

21 MR. MOANDER: Just to clarify Mr. Savage. So
22 like for example the motion to dismiss your client's
23 competing application, is that the motion you're most
24 concerned about? I'm guessing.

25 MR. SAVAGE: Yeah, that seems like it could be

1 an issue. What is the other motion that's outstanding,
2 the motion to invalidate?

3 MR. MOANDER: Yes.

4 MR. SAVAGE: Okay. So that could potentially
5 affect a decision in favor of Colgate. The other motion
6 could potentially affect the decision in favor of -- I
7 mean I think it would be remote, but I think that it seems
8 like it would be a good idea to clean those up, as opposed
9 to having any ambiguous issues hanging over our heads. I
10 mean, that's -- that's highly precautionous. You know, that
11 would be my precaution.

12 MR. MOANDER: You know, Madam Chair, I think
13 Mr. Savage probably does have a point here. Uhm, I mean I
14 don't have strong feelings in any particular way, I have
15 my own sense of where this is likely to go, but I can see
16 the need to review -- the desire to have these decided
17 before the hearing. Because I think what Mr. Savage is
18 voicing concern about is if there's evidence that would
19 come out that would somehow impact the status of those
20 motions.

21 I also think that the Commission could make
22 a decision that would inherently result in a denial --
23 there would be an inherent or implicit denial or granting
24 of a particular motion.

25 And, Mr. Savage, I'm assuming you would

1 want rulings from the Commission before the day of the
2 hearing. Is that right?

3 MR. SAVAGE: That would be preferable, Mr.
4 Moander. I mean, you know, the concern -- all we've had
5 is one of the parties decides to appeal the final decision
6 on the competing applications --

7 MR. MOANDER: What constitutes a final decision.

8 MR. SAVAGE: Yeah, how would the Commission
9 review those outstanding decisions.

10 MR. MOANDER: I agree. That's a pretty valid
11 point.

12 Mr. Padilla, what is your commentary on
13 this?

14 MR. PADILLA: You know, I think an evidentiary
15 hearing is going to decide Colgate's motion to dismiss the
16 competing applications, and I think it would also
17 invalidate, or effectively rule on the motion to
18 invalidate.

19 The Commission's prior discussion on the
20 motion to invalidate is that -- I get -- well, that motion
21 could be decided on the merits of this case, and so would
22 the -- so tabling, as far as I'm concerned, would be
23 appropriate, because once you have an evidentiary hearing
24 the Commission can decide both motions, especially our
25 motion to dismiss. Our motion to dismiss is going to be

1 based entirely on the merits here on the de novo. We
2 don't agree with the de novo but if we have to go to a de
3 novo, then that motion is going to be decided by whatever
4 decision the Commission makes.

5 The only issue that I have with that is:
6 What is the scope of the de novo hearing? Is it just
7 simply who can better develop the acreage at stake? Do we
8 have to Notice everybody? That has been one of my issues,
9 is that if we are going to start all over again do we have
10 to start from -- I don't think we have to start all over
11 again. It's just an issue between Cimarex and Colgate,
12 and we don't have to go through all the Notice
13 requirements that are necessary with the Division hearing,
14 as you would at a Division hearing.

15 MR. MOANDER: So Madam Chair, I think both sides
16 have put out their arguments here. I think there's --
17 both sides have interesting and compelling arguments.
18 I'll leave the decision, of course, to the Commission to
19 answer the questions.

20 MR. SAVAGE: Mr. Moander, could I respond just
21 real quickly to that?

22 MR. MOANDER: Sure.

23 Oh, Madam Chair, may he respond?

24 COMMISSION CHAIR SANDOVAL: Go ahead.

25 MR. SAVAGE: Thank you. Thank you.

1 So it is a good question that Mr. Padilla
2 raises, the scope of this review. I am assuming -- we
3 referred to it as an evidentiary hearing but I am assuming
4 that we are considering all the factors that the
5 Commission and Division consider when selecting a
6 development plan, and that this particular hearing will
7 select a development plan to issue an Order for
8 operatorship.

9 That's what I'm assuming. Is that correct
10 or is this falling short of that and addressing some of
11 the motion hearings and whether or not one of development
12 plans is trying to go forward? I guess I'm a little bit
13 uncertain about the final nature of the decision.

14 COMMISSION CHAIR SANDOVAL: Mr. Moander, it
15 seems to me that we probably need to vote on some of these
16 motions, because I think the motions are going to make
17 clear what the cases that we're hearing.

18 MR. MOANDER: I think that's --

19 COMMISSION CHAIR SANDOVAL: The competing
20 applications.

21 MR. MOANDER: That's a reasonable
22 interpretation, Madam Chair.

23 Based on -- I believe it was Order R-21679,
24 the bifurcation was designed -- I mean, really there were
25 two preliminary issues that have been argued and have now

1 been decided by the Commission. One of them was the Party
2 of Record issue raised by Mr. Padilla very early on. So
3 that was a preliminary gatekeeping matter on whether a
4 hurdle had to be overcome to get to a competing
5 application hearing.

6 Then Mr. Savage raised the issue, and we
7 had a full evidentiary hearing on the issue of Good Faith
8 Notice, and now that's been resolved.

9 So as far as everyone having looked through
10 the case, and I did go through the entire case recently,
11 with every single paper, that only leaves the competing
12 application hearing, and that's essentially what I would
13 call the merits hearing.

14 So if you cleaned out all the motions
15 today, that does not in any way mean that if there's
16 evidence that comes up in the hearing that those motions
17 can't be reviewed, or the Commission may learn something
18 that could change its position.

19 The motions as they were drafted were
20 obviously not with the benefit of the motion, the
21 evidence, all the evidence in front of parties, so
22 cleaning them out, that still does not prohibit the
23 parties from making their arguments about, for example,
24 the validity of the Division Order.

25 You know, I think it might be somewhat

1 semantic about whether or not dismissing an application is
2 the same as finding an opposition to an application. That
3 effectively dismisses it, but I don't know that I would
4 say they are identical.

5 So clearing them out now, it could be done
6 here in a matter of a couple of minutes, because I do
7 think the Commission is fully informed and has heard all
8 the argument, has seen about all they need to see to rule
9 on those, in so far the timing (inaudible).

10 COMMISSION CHAIR SANDOVAL: Okay.

11 Commissioners, I know we voted a minute ago
12 to wait until the close of the evidentiary hearing on the
13 competing applications, but at this point I think I'm
14 inclined to manage these.

15 COMMISSIONER BLOOM: Madam Chair, I think Mr.
16 Savage raised a good point there, and (inaudible).

17 (Note: Reporter inquiry.)

18 COMMISSIONER BLOOM: I'm sorry.

19 Yes, Madam Chair. I believe Mr. Savage
20 made some good points there about resolving these before
21 we go to the hearing about competing applications. Uhm,
22 and with that I would be prepared to offer a motion to --
23 I'm not sure what that motion would be, Mr. Moander? To
24 untable or bring back?

25 MR. MOANDER: Re --

1 COMMISSIONER BLOOM: Reconsider the three
2 motions in front of the OCC. I would perhaps see if Dr.
3 Ampomah has feelings on this or perhaps would proffer a
4 second to my motion.

5 COMMISSIONER AMPOMAH: Yes, Mr. Bloom. I
6 believe like you said.

7 (Note: Audio/Video freeze.)

8 COMMISSION CHAIR SANDOVAL: So there was the
9 motion to invalidate, I believe, that was filed by Cimarex
10 back in June of last year. In this one they essentially
11 asked to invalidate the Division's previous Order. That
12 was, you know, what we spent extensive time a couple of
13 months ago having a hearing on, and closing out that
14 matter. However, there was also another piece in that
15 motion to grant a de novo competing compulsory pooling
16 application at the OCC.

17 And so I think, you know, we have closed
18 out the issue on the Division's order, but, you know, I
19 think we are granting the Commission's -- the de novo
20 hearing at the Commission for the competing compulsory
21 pooling matter.

22 COMMISSIONER BLOOM: Madam Chair? I would just
23 ask if -- let me say that again.

24 Madam Chair, I would just ask if we haven't
25 already granted the de novo hearing for competing

1 applications in our Order that I think was related to the
2 parties of record, I would guess we could reconfirm it,
3 but I don't know that that's necessary.

4 MR. MOANDER: Commissioners, my recommendation
5 is you can grant the motion insofar as the matter will
6 proceed with a competing applications hearing; otherwise,
7 the remainder is denied.

8 I think that cleans the motion up, even
9 though you're right, Commissioner Bloom. I think it's
10 R-21679 that already deals with this, as does the Amended
11 Order, but just for the sake of clarity, I think that's
12 what I'm hearing the Commission discuss, so just some
13 words for you.

14 COMMISSION CHAIR SANDOVAL: Is there a motion to
15 grant Cimarex's application for de novo hearing at the
16 Commission for the competing compulsory pooling case, and
17 deny the remainder of the requests in the motion?

18 COMMISSIONER BLOOM: Madam Chair, I so move.

19 COMMISSIONER AMPOMAH: Madam Chair, I do second
20 the motion.

21 COMMISSION CHAIR SANDOVAL: Mr. Moander, would
22 you do a roll call, please.

23 MR. MOANDER: Yes, Madam Chair.

24 Dr. Ampomah.

25 COMMISSIONER AMPOMAH: Approved.

1 MR. MOANDER: Commissioner Bloom.

2 COMMISSIONER BLOOM: Approved.

3 MR. MOANDER: Madam Chair.

4 COMMISSION CHAIR SANDOVAL: Approved.

5 MR. MOANDER: Motion carries.

6 Also I will do an omnibus Order dealing
7 with all three of these motions for your entry, Madam
8 Chair.

9 COMMISSION CHAIR SANDOVAL: Okay. Great. Thank
10 you.

11 All right. The second motion was filed by
12 Mr. Padilla, I believe back in June of 2021. Again it was
13 a motion to dismiss the application, basically saying it
14 was premature at this point. And I believe to be
15 specific, when I'm saying "application," it was competing
16 pooling application.

17 Is there a motion to deny Colgate's motion
18 to dismiss Cimarex's Application for Competing Compulsory
19 Pooling de novo hearing at the Commission?

20 COMMISSIONER BLOOM: Madam Chair, given where we
21 are at now in this case, I would move to dismiss the
22 motion.

23 COMMISSIONER AMPOMAH: Madam Chair, I do second
24 the motion.

25 COMMISSION CHAIR SANDOVAL: Mr. Moander, would

1 you do a roll call, please.

2 MR. MOANDER: Yes, Madam Chair.

3 Dr. Ampomah.

4 COMMISSIONER AMPOMAH: Approved.

5 MR. MOANDER: Commissioner Bloom.

6 COMMISSIONER BLOOM: Approved.

7 MR. MOANDER: Madam Chair.

8 COMMISSION CHAIR SANDOVAL: Approved.

9 MR. MOANDER: The motion carries.

10 COMMISSION CHAIR SANDOVAL: All right. The
11 third and final was Colgate's motion to reaffirm the
12 Division's -- I'm sorry, the Commission's Order. And, you
13 know, it seems as if we are making modifications to that
14 Order to be more clear as to what the intent was of the
15 Commission. What's maybe the best way to potentially
16 address that, Mr. Moander? If we, you know, are making --
17 if we are amending that Order, are we essentially denying
18 the motion to reaffirm?

19 MR. MOANDER: I think that's correct, Madam
20 Chair.

21 COMMISSION CHAIR SANDOVAL: Okay.

22 Then based on the Commission's discussion
23 earlier regarding the amendment to the past Order, is
24 there a motion to deny Colgate's motion to reaffirm the
25 Commission's Order? (Note: Pause.)

1 Did we lose Commissioner Bloom?

2 MR. MOANDER: I think so.

3 COMMISSION CHAIR SANDOVAL: Commissioner Bloom,
4 are you there? He appears frozen.

5 COMMISSIONER BLOOM: How about now?

6 COMMISSION CHAIR SANDOVAL: We can hear you.

7 COMMISSIONER BLOOM: Okay. Let's see.

8 Madam Chair, can you see and hear me okay?

9 COMMISSION CHAIR SANDOVAL: Yeah, now we can.

10 COMMISSIONER BLOOM: I'm sorry, if we could just
11 back up, the last thing I heard was you asking Mr. Moander
12 to talk about how we could deal with this.

13 COMMISSION CHAIR SANDOVAL: Yeah. So I think I
14 asked if there was a motion to deny Colgate's motion to
15 have the Commission reaffirm its previous Order, based on
16 the discussion earlier from the Commission, and that the
17 Commission is asking for an Amended Order.

18 Is there a motion to deny Colgate's motion
19 to reaffirm the Order?

20 COMMISSIONER BLOOM: Yes, Madam Chair. I would
21 so move.

22 COMMISSIONER AMPOMAH: Madam Chair, I do second.

23 COMMISSION CHAIR SANDOVAL: Mr. Moander, would
24 you please do a roll call vote.

25 MR. MOANDER: Yes, Madam Chair.

1 Dr. Ampomah.

2 COMMISSIONER AMPOMAH: Approved.

3 MR. MOANDER: Commissioner Bloom.

4 COMMISSIONER BLOOM: Approved.

5 MR. MOANDER: Madam Chair.

6 COMMISSION CHAIR SANDOVAL: Approved.

7 MR. MOANDER: The motion carries.

8 COMMISSION CHAIR SANDOVAL: Okay. Everything is
9 buttoned up, and it sounds like we will be seeing Mr.
10 Savage and Mr. Padilla once again in August.

11 COMMISSIONER BLOOM: Madam Chair?

12 COMMISSION CHAIR SANDOVAL: Yes.

13 COMMISSIONER BLOOM: Might we need more than one
14 day to hear the competing applications? Should we look at
15 availability on the Friday following our regular Thursday?

16 COMMISSION CHAIR SANDOVAL: There is always the
17 possibility with competing compulsory applications that
18 they can go longer than a day.

19 I am available the 12th as well as August
20 11th.

21 Dr. Ampomah?

22 COMMISSIONER AMPOMAH: Yeah, I'm also available.

23 COMMISSIONER BLOOM: I can put that on my
24 schedule, Madam Chair.

25 COMMISSION CHAIR SANDOVAL: Okay.

1 MR. MOANDER: The parties have no issue with
2 that?

3 MR. PADILLA: I'd like to check with my clients
4 whether or not we have witness availability. I believe
5 Mr. Moander already addressed that, but if we can check,
6 it would be a good idea.

7 MR. MOANDER: And as long as the parties are
8 communicating with any of those issues, it usually isn't a
9 problem. And I have no doubt with this set of attorneys
10 that we will know and we will hear about it if there are
11 issues.

12 MR. PADILLA: I'm clear on those days.

13 MR. SAVAGE: I'm clear. It would be good to
14 confirm with the client, Mr. Moander, but that should
15 work.

16 COMMISSION CHAIR SANDOVAL: I believe you guys
17 are going to have to also file -- I think there's already
18 an application in the, system so there's probably going to
19 have to be a continuance filed in the portal anyway, so
20 you're going to need to clean that piece up as well.

21 So maybe you can confirm those pieces for
22 the filing.

23 MR. SAVAGE: Yes. Thank you.

24 COMMISSION CHAIR SANDOVAL: All right.

25 (Time noted 10:12 A.M.)

1 STATE OF NEW MEXICO)
2) SS
3 COUNTY OF TAOS)
4

5 REPORTER'S CERTIFICATE

6 I, MARY THERESE MACFARLANE, New Mexico Reporter
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