

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

IN THE MATTER OF THE HEARING CALLED  
BY THE OIL CONSERVATION COMMISSION FOR  
THE PURPOSE OF CONSIDERING:

Application of Cimarex Energy Company  
for Hearing De Novo of Case 21429  
Eddy County, New Mexico

Case No. 21744

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

THURSDAY, JULY 8, 2021

AGENDA ITEM NO. 5

BEFORE: ADRIENNE SANDOVAL, COMMISSION CHAIR  
GREG BLOOM, COMMISSIONER  
TERRY WARNELL, COMMISSIONER

This matter came on for hearing before the  
New Mexico Oil Conservation Commission on  
Thursday, July 8, 2021, Via the Webex Virtual  
Conferencing Platform, hosted by the New Mexico  
Energy, Minerals and Natural Resources Department

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1 (Time noted 9:18 a.m.)

2 COMMISSION CHAIR SANDOVAL: All right. Well,  
3 with that we can move on to Agenda Item No. 5, which is  
4 the motions hearing in De Novo Case No. 21744. This is an  
5 application of Cimarex Energy Company for a de novo  
6 hearing in Case No. 21629.

7 And I believe there were a handful,  
8 actually quite a few motions replies that were received  
9 over the last couple of months. Uhm, I think -- you know,  
10 unless, Mr. Moander, you have a better idea, probably best  
11 to let the parties sort of do some brief, not  
12 introductions but reviews of those, taking in mind the  
13 Commission has read those so you don't need to go over  
14 each and every item that's in there but probably hit on  
15 the high levels.

16 MR. MOANDER: I think that's appropriate, Madam  
17 Chair.

18 COMMISSION CHAIR SANDOVAL: All right. I'm  
19 probably going to get this wrong, which party is to go  
20 first. I apologize.

21 MR. SAVAGE: Madam Chair, I believe Colgate sent  
22 in the Motion to Dismiss, and Cimarex the Motion to  
23 Invalidate.

24 The Motion to Dismiss looks like the issues  
25 or the technical matters are a little more

1 straightforward, perhaps that should be the first  
2 consideration this morning.

3 MR. MOANDER: That sounds reasonable.

4 COMMISSION CHAIR SANDOVAL: Go ahead, then.  
5 Thank you.

6 MR. SAVAGE: So I'll leave Mr. Padilla, since he  
7 submitted the motion.

8 COMMISSION CHAIR SANDOVAL: Mr. Padilla, are you  
9 good to go?

10 I think you're muted.

11 MR. PADILLA: There. Got it.

12 COMMISSION CHAIR SANDOVAL: Thank you.

13 MR. PADILLA: The Colgate Motion to Dismiss the  
14 Application is simply based on the procedural requirements  
15 imposed by the Secretary Order 1986 in OCC Order R-111-P.  
16 Those control development in the Potash area.

17 Now, in our motion we attached a map that  
18 clearly shows that the Cimarex application is within the  
19 Potash area, and there are preconditions that have to be  
20 approved prior to even filing for Compulsory Pooling,  
21 because they are dependent on the Development Plan in this  
22 case has to be approved by the BLM. And we're arguing  
23 that the BLM has primacy in this case and for that reason  
24 we are saying that before you bring the Compulsory Pooling  
25 Application -- which, incidentally, calls for three-mile

1 laterals which arguably were going to be an issue in the  
2 de novo hearing.

3 But going back, let me address the de novo  
4 application here.

5 This is a de novo case and the Motion to  
6 Invalidate and to Vacate Order R-21575 we think is  
7 inappropriate, it's not proper. We are in a de novo  
8 hearing before the Commission. The Commission granted the  
9 de novo, the Application for de novo hearing, and that's  
10 where we are.

11 Without repeating all of the arguments that  
12 we've made, Mr. Savage and I basically agree that we  
13 should not go back to the Division to try everything  
14 starting all over again. He argues that in order not to  
15 get into collateral estoppel or a collateral preclusive  
16 effect on the valid OC Division Order, we ought to just  
17 start before the Commission.

18 We don't have any objection to the  
19 applications of Cimarex being heard before the Commission,  
20 I think we are clear on that, but the only issue we have  
21 is whether or not Cimarex has applied for approval of the  
22 Development Plan within the Potash area. I think that's a  
23 preliminary precondition to anything that Cimarex does  
24 here.

25 Now, if you go to that map which is our

1 Exhibit A, there's a yellow line in there, yellow/orange  
2 line, and Cimarex' application is going to have, it will  
3 require a development approval by the Bureau of Land  
4 Management. The Colgate Order pulls the north half/north  
5 half of Sections 2 and 3, and we feel that -- for that  
6 procedural requirement of the development area, it has to  
7 come before any kind of drilling activity. And clearly  
8 the BLM could thwart a Compulsory Pooling case.

9 Now, I'm not arguing, or we're not arguing  
10 that the OCC does not have authority to pool this area.  
11 Clearly Compulsory Pooling is assumed within the authority  
12 of the Division and the Commission and spacing  
13 requirements, but in terms of being in the Potash area,  
14 you can't -- you got to meet those requirements before you  
15 bring a case.

16 We also attached in our motion an  
17 Exhibit C, which is an email from one of the -- well, the  
18 BLM's person in authority in terms of reviewing Potash  
19 development areas. What he states in there is that the  
20 Colgate Application and the Order that was issued by the  
21 Division do not have to be approved for a Development Plan  
22 within the Potash area because those are outside, those  
23 two sections are outside of the yellow line.

24 Now, the yellow line is established by  
25 Order R-111-P, and so I -- and clearly federal lands are

1 involved in here. And the BLM has to approve the APDs,  
2 and the BLM is going to have approve the Potash area  
3 Development Plan, and the drilling of it. There's no  
4 drilling island either that has been established for this  
5 area.

6               So for the applications of Cimarex, there's  
7 a number of areas in there, but I just don't -- we're here  
8 in a de novo hearing. To go back and vacate anything the  
9 Division did, I think is entirely inappropriate. We've  
10 cited authority, the definitions of what a de novo hearing  
11 is about, and we're starting all over again as though we  
12 were starting a case before the Division but we are in a  
13 de novo hearing. And I think the motion, or both the  
14 motions, Cimarex' Motion to Invalidate or Vacate the  
15 Orders is wrong. It should be denied.

16              Now, in terms of our motion, admittedly  
17 that's an issue that may be more appropriately argued  
18 before the Commission in the de novo hearing, but still  
19 you can't simply ignore the rules. The rules are the  
20 rules, and Order R-111-P clearly says where federal lands  
21 are involved the feds have the authority to designate what  
22 lands are going to be included in APDs in the Potash area.

23              If we were just talking about state land or  
24 fee land, no question that the Division and the Commission  
25 would have authority over areas in the Potash area, but

1 they're not. We have federal lands involved, and that's  
2 just the way it goes. Rules are rules and they should be  
3 followed.

4 So while I'm arguing for our motion, it  
5 highlights the deficiency of the Cimarex applications, and  
6 we feel that the Cimarex application, especially when you  
7 go the three-mile laterals, are simply weighted  
8 (phonetic), attack the spacing units established in the  
9 priority.

10 Now, so far the Commission has not had an  
11 opportunity to address whether or not there was actually a  
12 misrepresentation or not, as argued by Cimarex. I'm not  
13 going to go back and argue whether or not the Commission's  
14 decisions, or decision to allow de novo hearing and argue  
15 70-2-13. I'm not going to do that. It just simply -- we  
16 should go to the de novo hearing and start all over again,  
17 and that's -- that hearing is already scheduled before the  
18 Commission sometime in September, I believe.

19 But I don't think that we need to go back  
20 and create more legal arguments about validating or  
21 vacating the Division Order. You either affirm it or deny  
22 it based on the de novo hearing.

23 So we ask that on the limited basis that  
24 our motion be approved, simply because there has been no  
25 approval for the development area by the BLM, and, to our



1 knowledge, there has been no application to start a  
2 development area approval in the Potash area, and drilling  
3 islands, as well.

4 So with that we ask that the Cimarex  
5 motions dismissed and the Colgate motion be approved.

6 COMMISSION CHAIR SANDOVAL: Thank you.

7 Commissioners would you prefer to ask  
8 questions now or would you rather after Mr. Savage  
9 addresses us?

10 COMMISSIONER BLOOM: Madam Chair, I'd prefer to  
11 hold my questions until we hear from Mr. Savage.

12 COMMISSION CHAIR SANDOVAL: Okay. Mr. Warnell?

13 COMMISSIONER WARNELL: One question, Ma'am  
14 Chair, for Mr. Padilla.

15 COMMISSION CHAIR SANDOVAL: Go ahead.

16 COMMISSIONER WARNELL: Mr. Padilla, am I  
17 understanding you're against three-mile laterals?

18 MR. PADILLA: Well, that's -- I'm not against  
19 three-mile laterals. I think in this case the way it  
20 looks to us it was just a -- and I have never argued about  
21 three-mile laterals but I'm sure that's going to be an  
22 engineering case if it goes to the Commission where we  
23 will argue the efficiencies of the three-mile lateral from  
24 an engineering standpoint.

25 I mean, I think producers are beginning to

1     drill three-mile laterals, and it's no different than the  
2     arguments that were made when one-mile laterals, two-mile  
3     laterals were being approved, Applications for two-mile  
4     laterals versus one-mile lateral, which right now I don't  
5     think there's an argument that two-mile laterals are  
6     preferred.

7                 COMMISSIONER WARNELL:   Okay.   Well, thank you.

8                 COMMISSION CHAIR SANDOVAL:   Mr. Savage, go  
9     ahead, please.

10                MR. SAVAGE:   Good morning, Madam Chair,  
11     Commissioner Bloom, Commissioner Warnell, Mr. Moander.

12                         Respectfully, Colgate's motion to dismiss  
13     Cimarex' pooling applications should be denied.   Not only  
14     does Commission Order R-111-P and Secretarial Order No.  
15     3324 and the two policy papers governing review of the oil  
16     and development of the Potash area, not only do they  
17     authorize the Commission and Division to take lead roles  
18     in their evaluation but it has been a longstanding  
19     practice of the Commission and Division to engage in such  
20     reciprocity with the BLM to determine the best development  
21     plans for the Potash area.

22                         There is nothing that prohibits the  
23     Commission or Division from moving forward with a review  
24     of Development Plans while the applicants work with BLM to  
25     complete the approval process for their permits in the

1 final establishment of a development area.

2 Mr. Rutley, Jim Rutley at the BLM, told  
3 Cimarex that its proposed plan is really feasible and that  
4 no apparent obstacles stand in its way. In fact in recent  
5 email correspondence with Cimarex, Mr. Rutley points out,  
6 and I quote, "Because your surface hole is on state land  
7 and minerals, your process for surface access should be  
8 much smoother," end quote, meaning that Cimarex has  
9 provided him more of a green light for going forward than  
10 what parties might typically encounter involving all  
11 federal lands.

12 The Commission and even Colgate acknowledge  
13 that Cimarex has a right to have its competing  
14 applications heard as a matter under Section 72-13. A  
15 dismissal under the reasoning proposed by Colgate would  
16 result in the inefficiency of waste of administrative  
17 resources as Cimarex waits for final approval of its  
18 development area and Colgate waits for a final approval of  
19 its federal permit.

20 Furthermore, the findings and conclusions  
21 that would arise from a competing hearing at the state  
22 level would be beneficial to the BLM for assisting in its  
23 decisions during its approval process, providing the BLM  
24 with a thorough understanding of how the Development Plans  
25 would prevent waste, optimize production, and protect

1 correlative rights.

2 As a result Cimarex respectfully requests  
3 that the Commission deny Colgate's Motion to Dismiss the  
4 Applications.

5 And, Madam Chair, that concludes the issues  
6 directed towards the dismissal. I'd be glad to go on to  
7 address the question of invalidation, but if you want to  
8 stop at that point or proceed, let me know.

9 COMMISSION CHAIR SANDOVAL: No, I think we can  
10 stop at this point.

11 Commissioners Bloom or Warnell, do you have  
12 questions for either of the parties?

13 COMMISSIONER BLOOM: Madam Chair, if you would  
14 like to just go ahead and ask questions I'll hold mine for  
15 a bit here.

16 COMMISSIONER WARNELL: No questions, Madam  
17 Chair, at this time.

18 MR. MOANDER: Madam Chair.

19 COMMISSION CHAIR SANDOVAL: Go ahead.

20 MR. MOANDER: I'd be curious, because we just  
21 had a representation on the record that essentially BLM --  
22 it's not an official approval but it sounds like BLM is  
23 inclined to approve Cimarex' plans. Would it be possible  
24 to get a copy of that email circulated to both the  
25 Commission and opposing counsel for review and

1 consideration?

2 MR. SAVAGE: Yes, Mr. Moander, I can provide  
3 that. I'll do that after the conclusion of our hearing,  
4 if that would work.

5 MR. MOANDER: Thank you, Mr. Savage.

6 MR. SAVAGE: Just to clarify, it's preliminary  
7 discussions and they are talking about the feasibility in  
8 that email. So it's not an approval, but it's -- it  
9 demonstrates that there's nothing at this point that would  
10 obstruct approval.

11 MR. MOANDER: I appreciate that, Mr. Savage.  
12 That was the impression that you gave me. I think it  
13 would be useful for that to be able to look at that at as  
14 documentary, at least, proof of the conversation.

15 So thank you.

16 MR. SAVAGE: Yes, sir.

17 COMMISSION CHAIR SANDOVAL: I guess I just  
18 have -- just to clarify, both parties, Mr. Savage and  
19 Mr. Padilla, you both agree that this should not go back  
20 to the Division but it should proceed as a de novo hearing  
21 in front of the Commission. I believe we have a date  
22 scheduled in September.

23 Is that correct, Mr. Padilla?

24 MR. PADILLA: That's correct.

25 COMMISSION CHAIR SANDOVAL: Mr. Savage?

1           MR. SAVAGE: Madam Chair, I believe that's not  
2 quite correct. Cimarex believes it should go back to the  
3 Division but it would need to go in a procedural manner  
4 that would be fitting to allow it to be remanded to the  
5 Division, in our opinion; and that would be the  
6 invalidation/vacating of Colgate's Pooling Order. If the  
7 Commission decides that that is still a standing and valid  
8 Order, then Cimarex would be, you know, happy with  
9 proceeding at the Commission level.

10           Cimarex appreciates being able to have its  
11 day before the tribunal and we believe there is some  
12 important precedence in this case that has already been  
13 established to allow for that, but there is a difference  
14 in opinion as to where the proper forum would be. I have  
15 a couple of paragraphs that address that which I'd be  
16 happy to provide here at some point.

17           COMMISSION CHAIR SANDOVAL: The Order -- what is  
18 it -- Order No. R-21575, that's been stayed by the  
19 Commission, but you think it should be invalidated and  
20 then reheard in front of the Division. Correct?

21           MR. SAVAGE: Yes, that's correct. It has been  
22 also stayed at the request -- you know the overriding  
23 issues when we first began this process were, you know,  
24 the question of party of standing and party of record, and  
25 that has been like the main focus. And that has been

1 established, and during the establishment of that there  
2 has been quite a bit of new evidence that's become of  
3 record, and based on that additional evidence there is  
4 questions that arise about the validity of that Order.

5                   We did raise that question initially, as  
6 well, whether it was a valid Order, but we didn't push  
7 that because we didn't want to, you know, confuse or cloud  
8 the main issues to be argued. Once that has been cleared,  
9 we feel that the Commission certainly has authority to  
10 address the remaining issue, and Cimarex submitted a  
11 motion requesting that be addressed, and we believe  
12 there's good justification, important justification for  
13 doing so.

14                   COMMISSION CHAIR SANDOVAL: Okay. Uhm --

15                   MR. SAVAGE: It basically tracks the precedence  
16 set in Molycorp, the particular case.

17                   If it's true that Colgate did not satisfy  
18 its statutory criteria -- and the Division would not have  
19 known this at the time of the hearing, they would have  
20 accepted the testimony on good faith from Colgate. But  
21 once it has been shown after the fact that Colgate did not  
22 satisfy the statutory criteria and therefore did not have  
23 standing to receive a valid Order, it looks to us like  
24 Molycorp comes into play, and in retrospect the Division  
25 should invalidate that Order.

1                   Basically our position is that the Order is  
2   invalid, and that, you know, under the circumstances, the  
3   Commission should recognize that, you know, if it feels  
4   like the Molycorp precedent applies.

5                   MR. MOANDER:   So Mr. Savage, I want to clarify  
6   this topic, because I've spent quite a bit of time trying  
7   to come to my own conclusions.

8                   I'm not clear -- well, I recognize that  
9   it's your client's position that the Order we are  
10   discussing here -- let me grab my note -- whatever the  
11   order number is, that that is just a filed legally-invalid  
12   Order.   Is that correct?

13                  MR. SAVAGE:   That's what it appears to us based  
14   on the case law, is that is an invalid Order.   Now, that  
15   had not been determined during the initial proceedings.  
16   It still is of record, presuming to be a valid Order, and  
17   therefore, you know, that would be why we asked for the  
18   stay, that is why we have asked for the de novo hearing  
19   under the presumption that it is a valid Order, but upon  
20   the addition -- the submission of additional evidence,  
21   additional motions to address that issue, it appears in  
22   retrospect that this is basically an invalid Order under  
23   the facts and circumstances.

24                  You know, if Colgate did not meet the  
25   statutory criteria under 72-17 (C), it wouldn't have been



1 in a position to receive a valid Order, it would not be in  
2 a position to have a legitimate Order.

3 You know, based on the misconduct and that  
4 failure, I don't see where they can have standing to  
5 receive a valid Order. Basically it becomes an  
6 administrative matter to deem it invalid.

7 MR. MOANDER: Let me ask this. And I follow  
8 where you're going here, but my question, then, that  
9 follows is: An invalid Order versus an Order that is  
10 stayed. In terms of practical effect, in terms of the  
11 impact on the parties, can you explain to me what the  
12 distinction there is?

13 MR. SAVAGE: So -- I can. Thank you for the  
14 question.

15 So let's take Colgate's position, which is  
16 also my position if you are facing a valid Order. Both of  
17 our positions is that you have -- that Order becomes a  
18 matter under 72-13 and you would not be able to go back to  
19 the Division to hear that, because -- there has to be a  
20 reasoning for it. There has to be.

21 Well, why can't you go back to the Division  
22 to challenge the Order? And the reason would be -- there  
23 is a couple of reasons.

24 No. 1, the language of the statute talks  
25 about matter and provides for a de novo hearing in that

1 particular forum. But also the question of collateral  
2 attack. And the question of collateral attack runs  
3 throughout the case law, not only in New Mexico but in  
4 numerous -- basically in all of the oil-and-gas-producing  
5 states. And you know, that is something that -- it's hard  
6 for me to get around. That is something that, you know, I  
7 think is an important legal principal. I would not want  
8 to transgress it. You know, if I were to represent  
9 Cimarex's best interest, I would want to be able to return  
10 to the Division for a hearing in a manner that it looks  
11 like it's procedurally valid to us, to avoid any possible  
12 challenges or problems down the road.

13               So the returning to the Division -- and the  
14 Commission has returned cases, other cases in other -- I  
15 mean, has returned cases in other -- in other cases to the  
16 Division for rehearing, and some of those cases are still  
17 being considered. And I'm not sure what the final  
18 reasoning for the Commission is on that, but we feel like  
19 it's just -- it's a more secure, valid procedural way to  
20 get a review that -- where Cimarex can have its  
21 application reviewed on par with Colgate's application in  
22 a manner that does not continue to undermine the integrity  
23 of the process.

24               Basically that's what the argument would  
25 be.

1 COMMISSION CHAIR SANDOVAL: Well, so --

2 MR. SAVAGE: I hope that was clear. I kind of  
3 meandered a little bit on that, but...

4 COMMISSION CHAIR SANDOVAL: I guess I have a  
5 follow-up question.

6 So I mean I think the Commission, in  
7 granting the de novo hearing, you know, did have concerns  
8 about whether or not the requirements, the good faith  
9 effort to -- I can't remember the exact language, but to  
10 contact the parties, et cetera, all of that, whether or  
11 not that was followed, but I don't think we've gone  
12 through -- I mean, at this point we haven't...

13 Sorry, I'm like --

14 MR. SAVAGE: I think it's one of those mornings.

15 COMMISSION CHAIR SANDOVAL: We haven't, like,  
16 considered, you know, a lot of evidence or testimony or  
17 any of those components in that. But what you're asking  
18 the Commission is to make a decision today that there's  
19 enough evidence that there was not a good faith effort,  
20 and that the Order should be invalidated and it should be  
21 sent back to the Division.

22 MR. SAVAGE: Madam Chair, I believe that's  
23 correct. I believe that the Commission went up to the  
24 point to confirm as a factual matter that the arguments  
25 that Colgate made about the misconduct/misrepresentations,

1     that the argument was compelling. So the Commission has  
2     acknowledged at this point that the argument is  
3     compelling.

4                     I believe that we -- the evidence, all the  
5     evidence for a final determination on that question is of  
6     record before the Commission. I believe that you're  
7     correct that Colgate is asking for a final determination  
8     on that assessment.

9                     So I believe technically the Commission has  
10    not made -- has not tipped the scale in that manner, but  
11    it has gone up to the precipice, and what is remaining is  
12    a final determination.

13                    COMMISSION CHAIR SANDOVAL. Okay. I guess what  
14    I'm initially thinking, Mr. Moander, is give, you know,  
15    the Commissioners the opportunity to, you know, ask as  
16    many questions here as we need, and then go into executive  
17    section to discuss that.

18                    Is that an option?

19                    MR. MOANDER: No, --

20                    COMMISSION CHAIR SANDOVAL: No.

21                    MR. MOANDER: -- Madam Chair. No, this is -- so  
22    there are a couple of options, because I will admit that  
23    the parties in this case have really brought some very  
24    fine-tuned issues that are not typical, nor are they  
25    easily cut-and-dry items, I think.

1                   So the Commission can decide whether or not  
2   to grant or deny the motion today, it's allowed to do  
3   that.

4                   Besides that the Commission has had success  
5   requesting some additional briefing, but we also have a  
6   deadline line of about, what, two months from now to have  
7   the final determination hearing.

8                   So the Commission could solicit some  
9   additional argument, some proffers of evidence, that's  
10   always permissible, and hold a decision in abeyance until  
11   the next meeting. That is also an option, I think.

12                  Again these are not -- these are pretty  
13   complicated issues with some case law that I have  
14   certainly not seen before, but the -- so, yes, the  
15   Commission has some options here. Really there is only  
16   two I see. I'm always open to alternatives to that. But,  
17   yeah, I mean I will acknowledge from a legal standpoint  
18   there's some complexity here and it's not the norm for  
19   this Commission.

20                  COMMISSION CHAIR SANDOVAL: But at the end of  
21   the day the Commission has the choice on any case, if we  
22   so choose, to pull it from the Division to the Commission.

23                  MR. MOANDER: Yes, that's correct.

24                  I think that -- see, the concern that I see  
25   with this, and this is sort of speaking to the parties,

1 too, is that really one of benefits of de novo, whether  
2 it's de novo on the record or I guess we will call it  
3 pure de novo, is that the parties get to provide evidence  
4 about all of claims that have been made in both motions.  
5 And argument of parties, even though they may have  
6 documents, is still -- it's not quite the level of  
7 evidence that will be solicited and provided in a de novo  
8 hearing where there is witnesses that can be cross  
9 examined, documents that can be discussed, or challenged,  
10 even. And the whole idea of de novo, regardless of its  
11 flavor, is to actually flesh out almost everything the  
12 parties are concerned about in these motions, and at that  
13 point in time the Commission would have the ability to  
14 dismiss certain claims or relief sought, then issue  
15 Findings of Fact.

16 My concern is if even though there may be  
17 procedural flaws below, those issues were -- if the  
18 parties don't bring those up in the hearing I would be  
19 completely floored, because that would be something I  
20 would almost expect as a matter of course here. And so  
21 the issue of like Procedurally Defective Order could be  
22 discussed at some length, and like why this Order is no  
23 good and why the Commission should ultimately reject it.  
24 I'm not seeing the prejudice here that the  
25 parties are arguing for, but I mean I'm more than happy to

1     hear some fine-tuned arguments on that.

2                   COMMISSION CHAIR SANDOVAL: Commissioners Bloom,  
3     or Warnell, do you have any questions for the parties?

4                   COMMISSIONER BLOOM: Yes. Let me think here  
5     which one I want to go with first.

6                   I guess we'll stick with -- let's keep  
7     talking about the Motion to Invalidate and Vacate.

8                   Mr. Savage, how do you feel -- how would  
9     you feel if Cimarex went into the de novo hearing with the  
10    current Order R-21575 in place? How do you see that  
11    impacting Cimarex's case at the de novo hearing?

12                  MR. SAVAGE: Well, there's several issues there  
13    that I'd like to point out.

14                  First of all, and this will really not  
15    affect Cimarex's interest, but there is a question about  
16    whether or not that stain or tarnish from the Commission's  
17    Order about the status of and description of Colgate's  
18    conduct. To me there's a question about whether or not  
19    that would prejudice Colgate. It seems like a return to  
20    the Division with Colgate being allowed to fully satisfy  
21    and fulfill the statutory requirements would provide a  
22    clear playing field and level playing field for both  
23    parties that would sequester and eradicate whatever  
24    controversy surrounding Colgate's conduct.

25                  So it seems like a very clean way to

1 proceed.

2 COMMISSIONER BLOOM: So you're saying,  
3 Mr. Savage, that's what would happen if the existing Order  
4 was invalidated and vacated.

5 MR. SAVAGE: If the existing Order was  
6 invalidated, yes, the parties would return to the Division  
7 and there would be a clean slate, basically, both  
8 procedurally and any other way. Colgate could cure  
9 whatever issues they had with their proceedings by doing  
10 it anew and Cimarex would be returned, restored to the  
11 position prior to the harm committed upon Cimarex and the  
12 harm committed upon the proceedings.

13 And so there would be an erad- -- you know,  
14 a clean slate and there would be no question of prejudice.

15 I think with the alternative you have  
16 prejudice that continues to haunt these proceedings and  
17 affect both Colgate negatively and affect Cimarex  
18 negatively.

19 The other question I have, and, you know,  
20 and this is something is that the Commission would have to  
21 consider and, you know, address would be -- what would be  
22 appropriate and the reasoning for what is appropriate.

23 So that we have current cases, and they're  
24 referenced in Cimarex's motion, in which the Commission  
25 did return the cases and applications to the Division for



1 rehearing of the units.

2                   So there is precedent, there is a  
3 precedent. I'm not sure if the reasoning has been fully  
4 provided, but there is a precedent for returning to the  
5 Division.

6                   So in some ways, you know, Cimarex looks at  
7 that treatment of those parties and wonders which -- is  
8 it -- it is an advantage to have that opportunity to go  
9 back to the Division and have your case, you know,  
10 reconsidered or reheard.

11                   So Cimarex looks at that and wonders should  
12 the same treatment be afforded to Cimarex, and what is --  
13 and if it is, or if it's not, what is the reasoning and  
14 basis for that treatment of one party versus another  
15 party.

16                   That's -- that's -- that's kind of the  
17 large overriding issue. And I agree with Mr. Moander,  
18 it's very complicated and very complex and there's nuances  
19 in there, and I don't have a full answer for that.

20                   But Cimarex looking at how other parties  
21 are allowed to go back to the Division, we would like to  
22 be afforded that, unless there is a very substantial  
23 reason that that should not be allowed.

24                   And I think Cimarex has provided a  
25 procedural pathway for allowing that and still have a

1 secure Order at the end.

2 COMMISSIONER BLOOM: Mr. Padilla, would you like  
3 to respond?

4 MR. PADILLA: Mr. Savage is arguing that  
5 essentially the Commission cannot make a decision from a  
6 brand new case. To go to the Division doesn't make any  
7 sense, because we are never going to finish this case.  
8 For one, the Commission already granted a de novo hearing,  
9 and I don't see any reason to go back.

10 Now, in terms of prejudice, we cited  
11 authority that a stayed Order has no -- should have no  
12 effect. And, you know, the Division granted the Order,  
13 but I think that the main thing is that the Commission now  
14 has an opportunity to assess whether or not Colgate did  
15 not provide sufficient dialogue in terms of trying to get  
16 joinder in this case.

17 We're obviously going to go back and bring  
18 all that forward to see whether or not Cimarex addressed  
19 the proposals that were made by Colgate, and that has to  
20 be considered by the Division. And certainly in terms of  
21 we already made an argument that they simply messed up the  
22 Notice requirement.

23 Now, that's an issue that's not before the  
24 Commission now, but all of that has to be decided by the  
25 Commission, the totality of circumstances of why, you

1 know, Cimarex completely dropped the ball here.

2 And so now they are trying to get back in  
3 the game and we are starting all over again. I don't see  
4 the reason to go back, and I don't know what the procedure  
5 is. I know that Mr. Savage is addressing, because he's  
6 been a lawyer in the Ascent/Mewbourne/Apache -- I'm in  
7 that monitoring for EOG, but those cases have been bounced  
8 up and down from the Commission to the Division and  
9 arguments back and forth. We simply would like to avoid  
10 all that of and go back and not argue about collateral  
11 attack on the State Order.

12 I don't see any reason why that would have  
13 any prejudicial effect on the Commission. The Commission  
14 is supposed to be looking at this all over again, and we  
15 start -- and they conceded that they had the opportunity  
16 to present their case to the Commission.

17 But to say that the Commission cannot -- by  
18 implication cannot make the decision I think is entirely  
19 wrong, that the Commission can decide whether or not --  
20 uh, which application to approve.

21 COMMISSIONER BLOOM: Mr. Padilla, how would --  
22 I'm sorry. How would Colgate be harmed by vacating the --  
23 in effect, as you said, the State Order should have no  
24 effect on the de novo hearing.

25 MR. PADILLA: Well, one of the reasons is that

1 if this goes beyond, I would like to exhaust  
2 administrative remedies. We can go back to argue 7-2-13  
3 and whether or not it's appropriate to grant a de novo  
4 hearing in the first place under the circumstances that  
5 the Commission did. So going back to consider factual  
6 allegations would just simply delay Colgate's ability to  
7 exhaust administrative remedies if we decide to go there.

8 COMMISSIONER BLOOM: Okay. Thank you. I don't  
9 have any further questions on this point. At some point I  
10 might like to return to the issue of the Motion to Dismiss  
11 and issues with BLM and the Potash raised by Colgate.

12 COMMISSION CHAIR SANDOVAL: Mr. Warnell, do you  
13 have any additional questions of the parties?

14 COMMISSIONER WARNELL: Madam Chair, I appreciate  
15 both Mr. Padilla and Mr. Savage's comments, and I have  
16 nothing at this time.

17 COMMISSION CHAIR SANDOVAL: Okay. Well, we now  
18 have to figure out what to do.

19 I guess I'm sort of -- I'm struggling with  
20 sending it back down to the Division. And why I say that  
21 is because I think, you know, the Commission has heard  
22 enough information and enough on the record from the  
23 previous hearings that there is a question as to whether  
24 or not that good faith effort was -- you know, was gone  
25 through on Colgate's side. But I would want additional,

1    like, testimony, evidence, et cetera, to make that -- you  
2    know, make like a sort of official ruling on that, or, you  
3    know, to invalidate the Order.

4                   I'm not in a place where I feel like  
5    there's enough, we've heard enough evidence and  
6    testimony -- well, we haven't heard any testimony -- to  
7    invalidate that Order, which leaves us, I think, at the  
8    place where we have the Order stayed, the Order was stayed  
9    at the last hearing, and I do think that de novo appeal is  
10   the place where all of that comes out, where the evidence  
11   and testimony should be made and the Commission would then  
12   make that decision.

13                  So I don't think the Order at this point  
14   should be invalidated. Now, that may be something that we  
15   come to at the de novo hearing, but I'm not there today.

16                 MR. MOANDER: And I just want to note for the  
17   benefit of the parties and the Commission, in the second  
18   paragraph of Order 21679-A that the effect of the Order  
19   has Colgate ceasing operations pursuant to the underlying  
20   Division Order, and then in the third paragraph, the  
21   matter -- that this stays in effect either until the  
22   Commission reaches a resolution or the parties settle out.

23                  So the impact of the Order is  
24   long-reaching, essentially through the end of this de novo  
25   appeal, or if the parties come to some mutual agreement.

1                   So it's lengthy and it's, I read, strongly.

2     It was crafted that way based on the Commission's

3     decision.

4                   So just put that out there.

5                   MR. SAVAGE: Madam Chair, if I may comment based

6     on the comments that you made.

7                   It sounds to me like if that's how we would  
8     proceed at the de novo level, that there would be a  
9     consideration of whether the Order is invalid along with  
10    the consideration of the merits of the Development Plans.

11    It sound to me like Cimarex could approach -- could  
12    prevail based on two bases. One basis would be that  
13    Cimarex submits a superior plan, and that would show the  
14    superior prevention of waste, protection of correlative  
15    rights, et cetera; but the other means of prevailing at  
16    the de novo hearing would be severed from the merits of  
17    the superior plan, and that would be a showing that the  
18    Order on its face, based on the evidence, is invalid.

19                  So the Commission could rule that the Order  
20    is invalid and that would allow Cimarex to prevail, and  
21    it's possible it could allow Cimarex to prevail without  
22    having a superior plan.

23                  So, for example, let's say Cimarex submits  
24    a plan, Colgate submits plan. Colgate's plan is actually  
25    superior in terms of prevention of waste and optimal

1 development. Cimarex could argue that levied in the case  
2 that we show definitively that the Order is invalid. So  
3 once that Order is invalidated Colgate has no Order to go  
4 forward if it shows it has a superior plan, and therefore  
5 Cimarex wins, prevails with what would be an inferior  
6 plan.

7 And that seems to be a logical  
8 inconsistency that kind of contradicts the policy of  
9 completing applications, and that's the prevention of  
10 waste, protection of correlative rights.

11 So, you know -- so that -- you know, that  
12 just seems like an inconsistency in the de novo hearing.  
13 I don't know what your opinion might be on that.

14 COMMISSION CHAIR SANDOVAL: I think, Mr. Moander  
15 (sic), the intent of a de novo hearing is to hear all of  
16 the pieces. We have each of these competing applications.  
17 One of the criteria for compulsory pooling is, again, the  
18 good faith effort, so that's inherent in either of your --  
19 that would be inherent in sort of either of your showings,  
20 but I don't think that that representation there is  
21 accurate. I think it's just inherent in both of your  
22 cases, you need to both -- well, you can show whatever you  
23 want to, you can bring whatever you want to at the  
24 hearing, but typically the core pieces of Compulsory  
25 Pooling Applications is that good faith effort. And, you

1 know, whatever representations that you bring to the  
2 Commission.

3 So I don't think the representation you  
4 made just now was accurate, but inherent in both of the  
5 representations I think should be --

6 MR. SAVAGE: So --

7 COMMISSION CHAIR SANDOVAL: (inaudible) as that.

8 MR. SAVAGE: Right. Yes.

9 So if I understand this correctly, the  
10 Commission would issue an Order that would override the  
11 Division Order based on hearing both applications.

12 COMMISSION CHAIR SANDOVAL: Mr. Moander, do you  
13 want to go into the procedure of it? We haven't made a  
14 decision yet here, either yet. We are just having a  
15 discussion, and that was my initial discussion.

16 So I might -- then Mr. Moander, if you have  
17 any pieces on procedure or whatever, jump in, but then I  
18 would like to hear from the other commissioners and know  
19 where you guys are.

20 MR. MOANDER: So ultimately the Commission is  
21 going to issue -- there would be a Final Order issued in  
22 this matter, which by its very nature is -- although  
23 likely, I mean I am not a prognosticator and I don't  
24 pretend to be, but will likely have elements in some  
25 capacity that would override any lower, like the Division



1 Order.

2 It may not. It may also change the Order.

3 As I say, the evidence isn't in.

4 But whatever Order would come out of the  
5 Commission would presumably, under the procedure -- and  
6 I'll try to pull these up now -- would supersede the  
7 Division Order. I don't think I have seen an adjudication  
8 where that's not the case, but I certainly could be wrong.

9 Let me check on this real quick and I will  
10 opine a little further here in just a moment.

11 MR. SAVAGE: Mr. Moander, if I could point out,  
12 so then the determination of whether or not --

13 COMMISSION CHAIR SANDOVAL: Mr. Savage, can the  
14 commissioners --

15 MR. SAVAGE: Oh, I'm sorry. Yes, please.

16 COMMISSION CHAIR SANDOVAL: Hold for a minute.  
17 I would like to hear from the commissioners.

18 Commissioner Bloom or Warnell?

19 COMMISSIONER BLOOM: Commissioner Warnell,  
20 please go ahead.

21 COMMISSIONER WARNELL: I have some band width  
22 issues here.

23 I would like to see what Mr. Moander has to  
24 say here before I comment any further.

25 COMMISSIONER BLOOM: Madam Chair, I think as I

1 can see the de novo hearing, I would picture both parties  
2 making fresh presentations, essentially a fresh  
3 presentation of their best plans at that point, and we  
4 wouldn't be going back and looking at what Colgate  
5 presented in the previous OCD hearing.

6 We spent a decent amount of time in  
7 previous meetings, of course, looking at this, and, you  
8 know, I look at the Order and I think it's point then says  
9 "Finally Cimarex argues that Colgate effectively engaged  
10 in fraud by filing the original pooling application that  
11 contained material misrepresentations of fact," end quote.

12 And that material misrepresentation was  
13 about the good faith effort to negotiate with other  
14 parties, and we never saw Colgate come back and prove that  
15 that wasn't the case, that they had negotiated. So I'm  
16 not -- I don't know that I need to -- I don't know that  
17 the Commission needs to take action today to invalidate  
18 and vacate the previous Order, but I could see that being  
19 part of what would happen at some point in the de novo  
20 hearing if this were to arise again.

21 And maybe Mr. Moander has more to add. Or  
22 we can take a 10-minute break and give him some time to  
23 review.

24 MR. MOANDER: I would be appreciative of that.

25 The alternative is the Commission could --

1 I mean the Commission could continue this matter till  
2 after we here the other items on the agenda and we can  
3 resume. Because it did occur to me that the status  
4 conference should not take very long and we could probably  
5 release those attorneys so they don't have to sit  
6 necessarily and listen to this. That's also an option.

7 COMMISSION CHAIR SANDOVAL: That would be fine,  
8 continuing this to the end of the agenda today, unless you  
9 guys want a break.

10 COMMISSIONER BLOOM: Madam Chair, I would be  
11 fine with going to the status hearing, Permian Oil Field  
12 Partners, and continuing this hearing shortly after that.

13 COMMISSION CHAIR SANDOVAL: Mr. Moander, do we  
14 need like a formal motion?

15 MR. MOANDER: That's a good question. It's  
16 still on the agenda, so I don't think it needs to be --  
17 like, no motion to table or anything like that is  
18 required.

19 An abundance of caution it never hurts to  
20 do a quick vote, especially with a composition this small  
21 so it would be nice and formal. So I think there would be  
22 some value in maybe considering that.

23 COMMISSION CHAIR SANDOVAL: Is there a motion to  
24 continue Agenda Item No. 6 until after we have heard the  
25 status conference for agenda Items No. 6, 7, 8 and 9?

1           COMMISSIONER BLOOM: Yes, Madam Chair. I move  
2 to continue Agenda Item No. 6 until after we have heard  
3 Agenda Items 7, 8 and 9.

4           COMMISSION CHAIR SANDOVAL: Just to be clear do  
5 you mean continue Agenda Item No. 5?

6           COMMISSIONER BLOOM: Oh, I'm sorry, Madam Chair.  
7 Yes, continue Item No. 5 until after we've heard Agenda  
8 Items Nos. 6, 7, 8 and 9.

9           COMMISSION CHAIR SANDOVAL: Is there a second?

10          COMMISSIONER WARNELL: Madam Chair, I second  
11 that.

12          COMMISSION CHAIR SANDOVAL: Thank you.  
13 Mr. Moander, would you do a roll call vote, please.

14          MR. MOANDER: Yes, Madam Chair.

15                 Commissioner Warnell.

16          COMMISSIONER WARNELL: Approved.

17          MR. MOANDER: Commissioner Bloom.

18          COMMISSIONER BLOOM: Approved.

19          MR. MOANDER: Madam Chair.

20          COMMISSION CHAIR SANDOVAL: Approved.

21          MR. MOANDER: Motion carries.

22          COMMISSION CHAIR SANDOVAL: All right. Mr.  
23 Savage and Mr. Padilla, hang tight. We will finish up  
24 after we conclude Agenda Items 6, 7, 8 and 9.

25                 (Time noted 10:23 a.m.)

1 (Note: Agenda items 6, 7, 8, 9 heard.)

2 (Note: A recess was taken.)

3 (Time noted 10:45 a.m.)

4 COMMISSION CHAIR SANDOVAL: Well, I think it's  
5 now time to go back.

6 MR. MOANDER: Yes.

7 COMMISSION CHAIR SANDOVAL: Commissioner Bloom?

8 COMMISSIONER BLOOM: I'm back now.

9 COMMISSION CHAIR SANDOVAL: Okay. All right. I  
10 think we have the gang all back together.

11 So we are back on Agenda Item No. 5, Case  
12 No. 21744.

13 Mr. Moander, I believe you were looking  
14 into a couple of things.

15 Would you, like to open it up, please.

16 MR. MOANDER: Yes. So I wanted to just address  
17 some of the concerns here, because I think Mr. Savage  
18 brought up a good point, and that is it's -- he was  
19 attempting to clarify whether the Commission sought to  
20 effectively rule that the merits hearing would encompass  
21 potentially two avenues of victory for his client, one of  
22 them being the attack on the underlying Order and  
23 invalidating it, and the other being the actual merits of  
24 the matter.

25 In taking a look at the various statutes

1    like 70-2-13, as well as some of the language in 19.15.4  
2    NMAC, too, but taking a look at 19.15.4.16C, which  
3    concerns a hearing on motions, or those motions here, my  
4    suggestion is at this point -- because one of the problems  
5    I'm struggling with is I think the parties, that's why  
6    they are in front of the Commission. I think that an  
7    evidentiary hearing at the August setting on the issue of  
8    whether or not -- I hope I don't get this wrong, whether  
9    or not Colgate met the requirements of conference before  
10   filing its original application at the Division level  
11   would be appropriate, because we would get actually  
12   substantive evidence on the record for everybody involved,  
13   the parties would have the opportunity to demonstrate  
14   either the deficiency or lack of deficiency in the  
15   original Division's application, and it would be  
16   consistent with 19.5.4.16C to have that resolved prior to  
17   a merits hearing, because it is, I suppose, possible that  
18   at this point that a merits hearing be determined as being  
19   not necessary.

20                    So a motions hearing on -- sorry, an  
21   evidentiary hearing specifically concerning the Notice  
22   requirements that have been complained about.

23                    Give me just a second, because if we take a  
24   look at the application to re-open the case by Cimarex I  
25   note here that the legal arguments about having a de novo

1 hearing Cimarex focuses on -- it's first argument is that  
2 Colgate failed to negotiate, contrary to the agreement to  
3 engage in good faith negotiations. And that I think  
4 stands out, as well, because it's clearly the focal point  
5 of the application, and to resolve whether it actually  
6 happened or not would determine the future of this case as  
7 a de novo matter.

8                   So again to distill this down, I would  
9 recommend or I do recommend an evidentiary hearing for the  
10 July -- sorry, August docket for OCC. The Commission can  
11 enforce subpoenas, although customarily that is not an  
12 issue, but if the Commission proceeds with that, the  
13 parties can bring in whoever they needed to testify one  
14 way or the other.

15                   COMMISSION CHAIR SANDOVAL: Thank you Mr.  
16 Moander.

17                   To add, just to clarify. In your proposal,  
18 in the August OCC we would hear evidence and testimony on  
19 first the issue of whether or not the Order from the  
20 Division should be invalidated because Colgate didn't  
21 follow the good faith negotiation requirement. Is that  
22 correct?

23                   MR. MOANDER: Yes. Add to that, or maybe  
24 clarify it, I think I would suggest the Commission hold in  
25 abeyance its rulings on the two pending motions until the

1 conclusion of the evidentiary hearing in August.

2 COMMISSION CHAIR SANDOVAL: And then depending  
3 upon the outcome of the August hearing would dictate  
4 whether or not we move forward with the September hearing.

5 MR. MOANDER: That's correct. Any  
6 determinations made at the conclusion of the evidentiary  
7 hearing would essentially determine the future of the  
8 remainder of the case, if any.

9 And I do want to comment just to the  
10 parties that, you know, I realize this has been a rather  
11 tedious process, but I also recognize that both parties  
12 are bringing issues before the Commission that don't --  
13 they don't have a lot of history, so the Commission is  
14 trying here, if I may speak for them as their counsel,  
15 very diligently to get this right so that whatever comes  
16 out at the end is reliable and viable for the parties.

17 So at least from my perspective I  
18 appreciate your tolerance of this, because I want to get  
19 it right for you, as well. (Note: Pause.)

20 COMMISSION CHAIR SANDOVAL: Okay. Commissioners,  
21 do you have any questions for Mr. Moander or additional  
22 thoughts?

23 COMMISSIONER BLOOM: Madam Chair, Mr. Moander,  
24 are we then holding in abeyance both the -- I think it was  
25 the Motion to Invalidate and Vacate and also the Motion to



1 Dismiss until that point?

2 MR. MOANDER: That would be correct. I think  
3 there is an order for these to be evaluated, and the  
4 primary motion to be dealt with is the one concerning  
5 vacating the underlying Division Order.

6 COMMISSIONER BLOOM: I guess as I consider it at  
7 this point, I wouldn't -- I think I'm going to leave it  
8 there.

9 Thank you, Mr. Moander.

10 COMMISSIONER WARNELL: Madam Chair, Commissioner  
11 Warnell here. I see no harm to either party if we were to  
12 put this on the OCC August docket.

13 COMMISSION CHAIR SANDOVAL: Thank you, Mr.  
14 Warnell.

15 I agree. I think -- you know, there's  
16 been -- you know in the previous hearings conversations  
17 surrounding whether or not the good faith effort was  
18 undergone, but I would like to hear testimony and  
19 witnesses to that effect so that the Commission, you know,  
20 has enough information to make a decision on that issue  
21 itself.

22 So is there a motion to hold the motion --  
23 is there a motion to hold the motions in abeyance until  
24 the next regularly scheduled OCC hearing on August 12th,  
25 and have the parties provide testimony and witnesses?

1           MR. PADILLA: Madam Chair, if I may, this is  
2 Ernest Padilla.

3                   I know that I have vacated or continued  
4 cases because Mark Hajdik, who would be my main witness,  
5 is unavailable in August, and I think we had Division  
6 hearings somewhere around August 15th and we continued  
7 those.

8                   So if you want to hear additional testimony  
9 as the Commission considering, can I ask for witness  
10 availability on August 12th? Other than that, I should  
11 add that --

12           COMMISSION CHAIR SANDOVAL: Mr. Moander, how do  
13 we take that into consideration?

14           MR. MOANDER: It's fair if a party has witness  
15 unavailability. I mean, that's understandable.

16                   But, Mr. Padilla, what's the likelihood --  
17 and I missed his name and apologize, but that your witness  
18 might be able to appear by video.

19           MR. PADILLA: I --

20           MR. MOANDER: No idea?

21           MR. PADILLA: I have no idea, and I particularly  
22 wouldn't want to do that. But that's neither here nor  
23 there. I'm just -- I know that I continued cases on a  
24 number of Colgate into September because of that  
25 unavailability.

1           MR. MOANDER: Okay. So then I think the next  
2 question is, we obviously want to -- we don't want to kick  
3 the can down the road any further than absolutely  
4 necessary.

5           Mr. Savage, would you voice an objection if  
6 we need to reschedule the merits hearing to ensure that  
7 both parties can bring their witnesses to address the  
8 Commission for purposes of the evidentiary hearing?

9           Mr. Savage, if you are speaking, I can't  
10 hear you.

11          MR. SAVAGE: How's that?

12          MR. MOANDER: That's better.

13          MR. Savage: I guess I'm not sure if I  
14 understand. Were we going to change that evidentiary  
15 hearing to August 12th? Was that --

16          MR. MOANDER: So the original proposal was to  
17 have the evidentiary hearing on August 12th. Mr. Padilla  
18 voiced concern about the availability of the witness and  
19 that he had continued other cases, based on that witness'  
20 unavailability in August, which would mean that we would  
21 probably -- unfortunately, I know the OCC has some  
22 difficulty with special meetings so we really try to keep  
23 everything on scheduled meetings dates.

24                 So based on all of that, whether you would  
25 object or have a concern about rescheduling the merits

1 hearing, so that way all parties can provide all their  
2 necessary witnesses in an evidentiary hearing that I would  
3 suspect that's probably looking into September.

4 MR. SAVAGE: So the merits hearing, would be --

5 MR. MOANDER: Switched back. It would need to  
6 be under the circumstances.

7 MR. SAVAGE: That would be -- as long as we are  
8 pushing it back, that would be okay. I have to check with  
9 my client to see what's available for them, but, you  
10 know -- yeah, if -- you know, fortunately setting dates so  
11 they are in sequence and allow witnesses, that would be  
12 great.

13 MR. MOANDER: How does --

14 COMMISSION CHAIR SANDOVAL: Mr. Moander. What  
15 about -- I mean, we already have -- well, we of course  
16 have the de novo hearing on the docket for September,  
17 which means that likely all the parties are available.

18 What if we do the evidentiary hearing in  
19 September and move the de novo hearing to October?

20 MR. MOANDER: I think that's a great proposal,  
21 Madam Chair. And that gives the parties enough time to  
22 ensure availability for a merits hearing as well as the  
23 evidentiary hearing.

24 COMMISSION CHAIR SANDOVAL: Okay. That would  
25 be -- yeah, that makes sense. Okay.

1                   Is there a motion to hold the motions that  
2   we considered today in abeyance until an evidentiary  
3   hearing on the regularly scheduled September OCC hearing  
4   date, and then move the subsequent de novo hearing date  
5   into the regularly scheduled October OCC hearings date?

6                   COMMISSIONER BLOOM:   Yes.   I am just looking --  
7   one second here.

8                   Okay.   Uhm, Madam Chair I would move to  
9   move the Motions to Invalidate and Vacate and the Motion  
10   to Dismiss until the regularly scheduled September meeting  
11   of the OCC and move the de novo hearing for Case 21744 to  
12   our regularly scheduled OCC October meeting.

13                  COMMISSIONER WARNELL:   Madam Chair, Commissioner  
14   Warnell.   I would second that motion.

15                  COMMISSION CHAIR SANDOVAL:   Thank you.

16                  Mr. Moander, will you do a roll call.

17                  MR. MOANDER:   Yes, Madam Chair.

18                  Commissioner Warnell?

19                  COMMISSIONER WARNELL:   Approved.

20                  MR. MOANDER:   Commissioner Bloom.

21                  COMMISSIONER BLOOM:   Approved.

22                  MR. MOANDER:   And Madam Chair.

23                  COMMISSION CHAIR SANDOVAL:   Approved.

24                  MR. MOANDER:   The motion carries.

25                  COMMISSION CHAIR SANDOVAL:   Well, Mr. Savage and

1 Mr. Padilla, you get a month break from us and then we  
2 will see you back in September, and potentially October.

3 MR. SAVAGE: Thank you, Madam Chair.

4 MR. PADILLA: We will see you.

5 MR. SAVAGE: Thank you everybody.

6 (Time noted 11:01 a.m.)

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

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5   REPORTER'S CERTIFICATE

6                     I, MARY THERESE MACFARLANE, New Mexico Reporter  
7     CCR No. 122, DO HEREBY CERTIFY that on Thursday, July 8,  
8     2021, the proceedings in the above-captioned matter were  
9     taken before me; that I did report in stenographic  
10    shorthand the proceedings set forth herein, and the  
11    foregoing pages are a true and correct transcription to  
12    the best of my ability and control.

13                    I FURTHER CERTIFY that I am neither employed by  
14    nor related to nor contracted with (unless excepted by the  
15    rules) any of the parties or attorneys in this case, and  
16    that I have no interest whatsoever in the final  
17    disposition of this case in any court.

18

                                      /s/ Mary Macfarlane

19

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