

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

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

Application of ALPHA ENERGY PARTNERS, LLC,  
for Compulsory Pooling,  
Eddy County, New Mexico Case No. 22172

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, NOVEMBER 4, 2021

EXAMINER HEARING

This matter came on for hearing before the  
New Mexico Oil Conservation Division, William  
Brancard, Esq. Hearing Examiner, Dean McClure  
Technical Examiner, on Thursday, November 4, 2021,  
via Webex Virtual Conferencing Platform hosted  
by the New Mexico Department of Energy, Minerals and  
Natural Resources

Reported by: Mary Therese Macfarlane  
New Mexico CCR #122  
PAUL BACA PROFESSIONAL COURT REPORTERS  
500 Fourth Street NW, Suite 105  
Albuquerque, New Mexico 87102  
(505) 843-9241

A P P E A R A N C E S

1  
 2 FOR ALPHA ENERGY PARTNERS: Dana S. Hardy, Esq.  
 3 Hinkle Shanor, LLP  
 4 P.O. Box 2068  
 5 Santa Fe, NM 87504-2068  
 6 (505) 982-4544  
 7 dhardy@hinklelawfirm.com  
 8  
 9 FOR REALEZA DEL SPEAR: Brandon D. Hajny, Esq.  
 10 Scott S. Morgan, Esq.  
 11 Calvin & Ingram, P.A.  
 12 P.O. Box 1216  
 13 Albuquerque, NM 87103  
 14 (505) 234-5400  
 15 bhajny@cilawnm.com  
 16  
 17 FOR THE CITY OF CARLSBAD: Deana M. Bennett, Esq.  
 18 Modrall Sperling.  
 19 P.O Box 2168  
 20 Albuquerque, NM  
 21 (505) 848-1845  
 22 deana.bennett@modrall.com  
 23  
 24 FOR MRC PERMIAN: Michael Feldewert, Esq.  
 25 Holland & Hart  
 110 North Guadalupe, Suite 1  
 Santa Fe, New Mexico 87501  
 (505) 988-4421  
 mfeldewert@hollandhart.com.  
 For NMEMNRD: Jesse Tremaine, Esq  
 1220 South St. Francis Drive  
 Santa Fe, NM 87505  
 (505) 741-1231  
 jessek.tremaine@state.nm.us

C O N T E N T S

CASE NO. 22172	PAGE
CASE CALLED:	3
ARGUMENT BY MR. HAJNY:	5
ARGUMENT BY MS. HARDY:	12
CONTINUED To 03/02/2022:	24

1 (Time noted 11:30 a.m.)

2 EXAMINER BRANCARD: So with that I'm calling  
3 case 22172, essentially a motion hearing. Alpha Energy  
4 Partners.

5 MS. HARDY: Yes, Mr. Examiner. Dana Hardy with  
6 the Santa Fe office of Hinkle, Shanor on behalf of Alpha  
7 Energy Partners, LLC.

8 EXAMINER BRANCARD: All right. Then we have  
9 Realeza Del Spear.

10 MR. HAJNY: Mr. Examiner, Brandon Hajny and  
11 Scott Morgan with Cavin & Ingram in Albuquerque on behalf  
12 of Realeza Del Spear.

13 Also in attendance we have Nelson Spear,  
14 Shane Spear, and Glory Saunders with Realeza Del Spear.  
15 They are here to provide testimony or answer questions,  
16 as necessary.

17 EXAMINER BRANCARD: All right.

18 MRC Permian.

19 MR. FELDEWERT: May it please the examiner,  
20 Michael Feldewert with the Santa Fe office of Holland &  
21 Hart.

22 EXAMINER BRANCARD: City of Carlsbad.

23 MS. BENNETT: Good morning, Mr. Examiner. Deana  
24 Bennett, Modrall Sperling, on behalf of the City of  
25 Carlsbad.

1                   EXAMINER BRANCARD: All right. Then we have the  
2 Oil Conservation Division.

3                   MR. TREMAINE: Mr. Hearing Examiner, this is  
4 Jesse Tremaine for the Oil Conservation Division.

5                   EXAMINER BRANCARD: Thank you.

6                   All right. This case was part of a larger  
7 group of cases that were set for an evidentiary hearing in  
8 March; however, there was an issue raised by one of the  
9 Intervenors, Realeza Del Spear, about whether the  
10 application should be dismissed, and so we thought we'd  
11 take the opportunity to see if there was any way to  
12 resolve that motion, which we are treating -- styled as a  
13 motion, we're treating it as a motion, at this juncture  
14 today. And that is the sole purpose for this. We are not  
15 set up for having a compulsory pooling hearing at this  
16 point.

17                   And so I'll just go around The Horn here  
18 and I will assume Realeza Del Spear is prepared to offer  
19 some arguments this morning.

20                   MR. HAJNY: Yes, Mr. Examiner, we are.

21                   EXAMINER BRANCARD: And then Alpha. Ms. Hardy?

22                   MS. HARDY: Yes, Mr. Examiner, we are prepared  
23 to address Realeza's arguments.

24                   EXAMINER BRANCARD: And will we be hearing  
25 anything from MRC Permian this morning, Mr. Feldewert?

1 MR. FELDEWERT: Mr. Examiner, I'm just  
2 observing.

3 EXAMINER BRANCARD: Thank you.

4 Ms. Bennett, City of Carlsbad?

5 MS. BENNETT: Mr. Examiner, I too, am just  
6 observing. Thank you.

7 EXAMINER BRANCARD: Mr. Tremaine with the  
8 Division?

9 MR. TREMAINE: The Division is just observing.

10 EXAMINER BRANCARD: Okay. So we are down to two  
11 participants this morning.

12 So we have your written statements, but I  
13 thought if we could have a little bit of expounding of the  
14 issues here briefly, that might be helpful.

15 So I don't know, what would be good for  
16 everybody? Ten minutes.

17 MR. HAJNY: I believe that works for us, Mr.  
18 Examiner.

19 EXAMINER BRANCARD: Ms. Hardy?

20 MS. HARDY: I agree, Mr. Examiner.

21 EXAMINER BRANCARD: So Realeza Del Spear raised  
22 the issue. I will allow you to go first, then.

23 MR. HAJNY: Thank you, Mr. Examiner.

24 We do note the OCD has intervened in this  
25 case, and I do believe we are in the area covered by the

1 Brine Cavity Order, and Realeza Del Spear would just like  
2 to reserve its chance to argue that issue either at this  
3 or at a later time.

4 EXAMINER BRANCARD: I think those issues will  
5 probably come up at the full evidentiary hearing.

6 MR. HAJNY: Thank you.

7 EXAMINER BRANCARD: You realize the full  
8 evidentiary hearing is also complicated by the fact that  
9 there are a number of competing compulsory pooling  
10 applications at the same time. I don't think this  
11 application is currently being contested, but just to the  
12 north of them it is.

13 So lots of issues.

14 Anyway I'm cutting into your time. Please  
15 proceed.

16 MR. HAJNY: Thank you. So the primary issue in  
17 this matter is Realeza Del Spear does not believe that  
18 Alpha has engaged in good faith negotiations to lease  
19 Realeza's interest.

20 Realeza owns a 20 net mineral acre interest  
21 in this proposed spacing unit. Under New Mexico statutes  
22 operators obviously have an obligation to obtain voluntary  
23 agreements. Alpha admits in their brief that it's  
24 appropriate for the Division to consider whether or not  
25 those negotiations take place. I think that's, you know,

1 a crucial element to it being an obligation.

2 In order to consider whether or not these  
3 obligations have taken place, there must be evidence  
4 that's proffered and analyzed by the Division to see  
5 whether or not that standard is reached.

6 In this case Alpha has not put forth any  
7 evidence at all as far as its negotiations and what those  
8 took place, instead relying on Realeza's evidence set  
9 forth in our motion.

10 I think the evidence that Alpha cites in  
11 their response to our brief is merely their own statement  
12 that they made good faith -- that they did make good faith  
13 negotiations. That's not evidence, that's simply their  
14 own statement.

15 Alpha attempts to argue that the OCD  
16 shouldn't get involved in personal discussions and  
17 analyzing whether or not offers are reasonable or fair. I  
18 think that obviously goes against the key nature of the  
19 OCD being able to consider this issue. I assume Alpha is  
20 not asserting that all the OCD can do is take their word  
21 for it.

22 And so in this circumstance they also  
23 attempt to paint Realeza Del Spear, and specifically their  
24 request for a 25 percent royalty on the lease for their  
25 net mineral acreage, as unreasonable, not offering any

1 evidence as to what is reasonable.

2 Realeza has negotiated. Since 2007,  
3 Realeza and their related entities have negotiated and  
4 signed 62 leases in the Permian Basin. 51 of those have  
5 been on the New Mexico side of the Permian Basin. 100  
6 percent of those are at 25 percent royalty, and on  
7 substantially the same lease form that was offered to  
8 Alpha.

9 I think nearly every one -- any expert or  
10 someone who has experience in this area in leasing would  
11 agree that 25 percent is currently the going rate for  
12 royalties for fee acreage in the Permian Basin.

13 Additionally, since 2017, the last five  
14 years, Realeza has, and their entities have negotiated 16  
15 different leases in the Permian Basin. The average  
16 acreage bonus for these leases has been above 10,000 an  
17 acre. Those numbers reflect 61 -- or 62 different times  
18 that Realeza has come to terms with operators on fair  
19 market value for leases in this area, so I think  
20 statements to paint Realeza's request as unreasonable, are  
21 unfounded in this circumstance.

22 Alpha made a total of one offer at 25  
23 percent royalty. That offer was made almost a month after  
24 they filed -- or I'm sorry, it was made after they filed  
25 their Application for Compulsory Pooling, and that was



1 made in September. Their only other offers were made back  
2 in April. I believe the first was a 3/16th royalty, the  
3 second was at 20 percent. Neither of those are close to  
4 fair market value, not to mention after those offers in  
5 April Alpha didn't contact Realeza regarding leasing their  
6 interest with anything -- with a firm offer for five  
7 months or approximately five months.

8                   And so Alpha hasn't put forth any evidence  
9 as to what fair market value in this area is. Realeza  
10 has. This is Alpha's burden. It's their job to -- it's  
11 their obligation to show the Division that they've  
12 satisfied this obligation. Realeza is putting forth  
13 evidence that they have not. As a result, Realeza would  
14 request that the OCD deny their application for failure to  
15 satisfy this requirement.

16                   EXAMINER BRANCARD: Somebody who is on the phone  
17 does not have their mute button on, so we're catching a  
18 little bit of background conversation here, so please  
19 check your phones.

20                   Thank you, Mr. Hajny. Is that your  
21 argument today?

22                   MR. HAJNY: Yes, Mr. Examiner, though we would  
23 like to reserve the right to rebut, if necessary.

24                   EXAMINER BRANCARD: Sure.

25                   So I guess, you know, the question for the

1 Division is where is it clear that the Division has the  
2 authority if not the obligation to look into the  
3 negotiations between private parties and determine what's  
4 fair and reasonable.

5 MR. HAJNY: Is that a question for me, Mr.  
6 Examiner?

7 EXAMINER BRANCARD: Yes.

8 MR. HAJNY: Yes. Uhm, I think the statutes  
9 clearly say that operators have the obligation to do it,  
10 to conduct good-faith negotiations to obtain voluntary  
11 agreements. That's in the statute, and that's 70-2-18.

12 I think inherent in the idea of this  
13 obligation is that it's the OCD's job to determine whether  
14 or not obligations are satisfied that are prerequisites to  
15 compulsory pooling. As an obligation that all operators  
16 have, it's a prerequisite to compulsory pooling. If it's  
17 not the OCD's job to determine that that obligation has  
18 been fulfilled, then that renders that statutory  
19 obligation null and void.

20 EXAMINER BRANCARD: Well, but you're taking an  
21 obligation to have negotiations into an obligation to have  
22 substantive negotiation points in those negotiations that  
23 the agency has to somehow evaluate what a fair market  
24 offer is.

25 You know, we're a government agency, we're

1 not in the world of negotiating leases. So I'm not sure  
2 how we would even figure out what a fair market offer is.

3 MR. HAJNY: Mr. Examiner, I think that would be  
4 the purpose behind the proffer of evidence. We are not  
5 expecting that the Division knows the going rate or the  
6 fair market rate for leases all throughout the state and  
7 every county, and that's the purpose of gathering evidence  
8 and hearing testimony as to what this obligation is.

9 And the obligation is actually to obtain  
10 voluntary agreement, not simply to engage in negotiations.

11 And then they would have to -- and then  
12 operators have additional obligations if they fail to  
13 obtain.

14 So in this case they failed to obtain a  
15 voluntary agreement, and necessary in that I believe is  
16 the duty to show why, and if that failure is due to  
17 their -- to a lack of good faith on their own part.

18 EXAMINER BRANCARD: Well, at this point the only  
19 instruction that we have is from the New Mexico  
20 Legislature, and while it is a bit dated it's the only  
21 instruction we have, and it says that the royalty interest  
22 of an unleased mineral owner is 1/8.

23 So why we would consider anything beyond  
24 that?

25 MR. HAJNY: Mr. Examiner, I believe that that's

1 a floor, and that that's the royalty interest -- I believe  
2 it is attributable to an unleased mineral owner upon the  
3 entry of a Compulsory Pooling Order. If that was always  
4 the standard then there's no incentive for operators to  
5 engage in real negotiations if they know that those  
6 negotiations are never going to be analyzed by the  
7 regulatory body.

8 EXAMINER BRANCARD: Well, but it seems to give  
9 you an incentive to try to get something a little bit  
10 higher than that, because otherwise if you go to  
11 compulsory pooling all you're going to get is a 1/8.

12 MR. HAJNY: Well, while I agree, I think that's  
13 once again where the necessity of evidence comes in where  
14 you can have testimony, statistics so that we can  
15 determine what a good faith offer is, what going rates  
16 are, as opposed -- yes.

17 EXAMINER BRANCARD: Thank you. I think I have  
18 used up your time, Mr. Hajny, so why don't we throw Ms.  
19 Hardy onto the hot seat.

20 MS. HARDY: Thank you, Mr. Examiner.

21 Several points here. First, all of these  
22 issues would need to be addressed in an evidentiary  
23 hearing. That's well established, and we've cited  
24 Commission and Division Order R-13165, Good Faith  
25 Negotiation would be considered at a hearing upon the

1 presentation of evidence.

2 Here there is no evidence. Realeza has not  
3 submitted evidence either. They have only submitted  
4 arguments of counsel. They have not submitted affidavits.  
5 There's no evidence in the record. That would need to be  
6 considered at a full evidentiary hearing.

7 That's the first main issue I see here.  
8 It's not appropriate to be addressed at a motion.

9 And with respect to Realeza's request that  
10 the Division gets involved in evaluating whether the  
11 specific offers and responses are reasonable, as you have  
12 pointed out, that's not -- well, my understanding is it's  
13 not typically what the Division has done. That would  
14 embroil the Division extensively in private disputes, it  
15 would extend the length of pooling hearings. We would  
16 need experts on fair market value, I believe, probably to  
17 make those decisions, the Division would need experts on  
18 fair market value. None of that is contemplated by the  
19 Oil and Gas Act or the Division's regulations, rather  
20 those simply require good-faith negotiation, which is  
21 typically demonstrated by making a reasonable offer 30  
22 days prior to pooling.

23 So I think Realeza's arguments on those  
24 issues are invalid.

25 And, in addition, as you have pointed out,

1 the statutory interest of an unleased mineral interest,  
2 the royalty is 1/8. So the Legislature selected that  
3 amount. They could change it if they wished to do so, and  
4 they have not. So that's the policy guidance and the  
5 plain language of the Oil & Gas Act.

6 So I think that is what governs here.

7 Realeza also submitted arguments in its  
8 brief about this being an unconstitutional taking. We  
9 have addressed those in our Response. None of the  
10 elements of that requirement are met here. There's no  
11 governmental action, private property is not being taken  
12 for a public purpose, and there's simply no application  
13 here of case law on taking.

14 And it's also true of their reliance on  
15 eminent domain case law. There's no government action  
16 here. The eminent domain code doesn't apply, it applies  
17 to governmental action. Rather, here the Oil & Gas Act  
18 allows pooling, and it has, for I believe many, many  
19 years. I think we determined it was since 1935. So it's  
20 not new.

21 I don't think any of Realeza's arguments  
22 have any merit, and to the extent that the Division  
23 chooses to consider these issues, they would be  
24 appropriately presented at the evidentiary hearing.

25 That's all that I have. Thank you.

1           EXAMINER BRANCARD: Thank you. So basically,  
2 Ms. Hardy, you're arguing that the standard, as put forth  
3 in R-13165 should apply?

4           MS. HARDY: Well, I believe that Order states  
5 that compliance with good-faith negotiation should be  
6 considered at a hearing rather than on a Motion to  
7 Dismiss. So yes.

8           EXAMINER BRANCARD: Right. But they talk About  
9 exactly what you're supposed to do. 30 days prior to  
10 filing the Application you have to send a Well Proposal  
11 together with an AFE, you have to provide the exact length  
12 of what you're doing, et cetera.

13           MS. HARDY: Yes. And all of those things were  
14 done, and I think that Realeza's brief actually admits  
15 that they were done. The Well Proposal was sent in April,  
16 approximately six months before Alpha filed this  
17 Application. Realeza just isn't happy with the amounts  
18 they have been offered and believe they are entitled to  
19 more. That's not a basis to find a lack of good-faith  
20 negotiation.

21           EXAMINER BRANCARD: All right. But I was a  
22 little caught off guard, because you, and maybe this was a  
23 slip of the tongue, you said that the obligation is to  
24 admit a reasonable offer 30 days in advance. What's a  
25 reasonable offer?

1 MS. HARDY: Well, I think it's to submit an  
2 offer that identifies what you're doing and what you're  
3 proposed to pay, and what your overhead costs are, and  
4 includes an AFE. I don't think the Division has ever  
5 gotten involved in evaluating whether an offer has  
6 reasonable terms, it's really whether it includes those  
7 basic items.

8 EXAMINER BRANCARD: Now, normally what we're  
9 dealing with are working interest owners here, but this  
10 appears to be an unleased mineral interest owner. Is that  
11 correct?

12 MS. HARDY: That's correct.

13 EXAMINER BRANCARD: So I mean what would be  
14 good-faith negotiations with an unleased mineral interest  
15 owner?

16 MS. HARDY: I think an offer to lease.

17 EXAMINER BRANCARD: Any offer to lease?

18 MS. HARDY: (Inaudible) those issues and  
19 determine whether an offer is reasonable.

20 EXAMINER BRANCARD: Would you assume it should  
21 be at least 1/8th?

22 MS. HARDY: I would think that the statutory  
23 royalty interest would apply, but I don't know that that  
24 is a requirement. If they're pooled that's what they get.  
25 There may be other offers in the lease that are different.



1 I mean, you know, I'm sure there are different provisions  
2 and give and take on multiple components of a lease.

3 So I don't know that you're required to  
4 offer the 1/8 if you're offering other items.

5 EXAMINER BRANCARD: I mean, you could offer just  
6 to buy a mineral interest, right?

7 MS. HARDY: Yes.

8 EXAMINER BRANCARD: And it's not just one type  
9 of offer that happens, particularly with somebody only  
10 with a mineral interest.

11 MS. HARDY: Exactly.

12 EXAMINER BRANCARD: Thank you. All right.  
13 Thank you.

14 Mr. Hajny, you have a minute or two if you  
15 want to respond.

16 MR. HAJNY: Yes, just to touch on a couple of  
17 points, Mr. Examiner.

18 First, I think the very idea of reasonable  
19 offer means that someone has to determine what is  
20 reasonable. It seems like Mrs. Hardy and Alpha are  
21 arguing that that reasonableness belongs to the operator,  
22 that they get to decide what is reasonable and the OCD  
23 must take their word for it. I think it's the OCD that  
24 determines what is reasonable. They do that by receiving  
25 evidence as to reasonableness.

1           As far as the 1/8th being listed in the Oil  
2 & Gas Act, I believe that's a floor. It acts as an  
3 incentive for unleased mineral owners to come to terms on  
4 fair market value leases and not to hold out for  
5 unreasonable terms, knowing that if they are unreasonable  
6 they are likely going to receive a lease at 1/8th.

7           Finally, I believe Alpha's arguments  
8 regarding constitutional takings are unfounded. Actions  
9 by the OCD to compulsory pool are clearly state actions.  
10 Alpha cannot move forward pooling these lands absent an  
11 Order from the OCD, which is a state action.

12           She argues that there's no public purpose.  
13 There is a public purpose to produce oil and gas, and the  
14 rationale behind compulsory pooling that the OCD orders to  
15 move forward oil and gas. So we do have -- and obviously  
16 Realeza is not arguing at all compulsory pooling is a  
17 violation of the taking laws. Obviously compulsory  
18 pooling is allowed, and it has been. But the backdrop,  
19 the limits of compulsory pooling are still the U.S.  
20 Constitution, which limits state action, limits state  
21 action to take private property absent just compensation.

22           EXAMINER BRANCARD: So will a 1/8 royalty  
23 interest be a taking?

24           MR. HAJNY: I believe if a 1/8 royalty interest  
25 is shown to be below market value, then yes it's not just

1 compensation.

2 EXAMINER BRANCARD: So basically the Oil and Gas  
3 Act provision is unconstitutional?

4 MR. HAJNY: No, the 1/8 royalty is an incentive  
5 floor to incentivize mineral owners not to be  
6 unreasonable. If mineral owners are unreasonable then  
7 they suffer the consequences of that unreasonableness,  
8 which is a 1/8 royalty.

9 Just like there is a requirement for the  
10 operators to engage in good faith, that requirement  
11 extends to the mineral owners. In the case where someone  
12 has not engaged in good-faith negotiations, you have a  
13 mineral owner who has not engaged in good-faith  
14 negotiations then a fair result may be a 1/8 royalty.

15 EXAMINER BRANCARD: So if the Applicant doesn't  
16 offer you at least 1/4, they are being unreasonable and we  
17 should dismiss their application, but if you ask for more  
18 than 1/4 that means you're being unreasonable, and, too  
19 bad, you could get stuck with 1/8.

20 MR. HAJNY: I believe that the OCD needs to hear  
21 evidence as to what the market rate is. That way you can  
22 determine what is reasonable. It's going to differ in  
23 different states, different areas of the state, different  
24 basins, all of those sort of things. I don't think that  
25 simply holding to 1/8 is unreasonable all the time, 1/4 is

1 reasonable all of the time. It's not the standard we are  
2 pushing. I believe that the evidence we put forward does  
3 show that 1/4 royalty is fair market value in the Permian  
4 Basin, so that is what would constitute a reasonable  
5 offer, is to make an offer at fair market value.

6 EXAMINER BRANCARD: So every compulsory pooling  
7 application has to involve economic testimony.

8 MR. HAJNY: I think if there's a dispute as to  
9 reasonableness and whether or not an operator fulfilled  
10 its obligations to obtain voluntary agreement, then yes, I  
11 believe to protect the unleased mineral interests there  
12 has to be a look into whether a reasonable offer was made.  
13 That reasonableness requires market-value analysis.

14 EXAMINER BRANCARD: Well, thank you.

15 It seems that both sides here seem to be  
16 pushing for wanting to get some evidence admitted into  
17 this issue, and that's obviously not at the point where we  
18 can do that.

19 We have a hearing coming up, although we  
20 haven't scheduled a date for it yet, on this particular  
21 case, and so I'm going to leave the issue open for that  
22 hearing. I will say in agreement, however, with Ms.  
23 Hardy, that the Division has never looked into the  
24 substantive portions of negotiations between parties on  
25 negotiations, it has always been much more a procedural

1 question of did you give another party enough time to  
2 consider the offer and did you make a clear offer as to  
3 what you were doing. So this would be breaking entirely  
4 new ground for the Division, and frankly I'll have to  
5 admit it's unlikely we will go there. But we can leave  
6 this issue for the hearing and discuss it further then.

7                   Since we have all the parties on the call  
8 here today, it will be my intent to include this case into  
9 the March hearing for the cases that are also related to  
10 these parcels.

11                   Ms. Hardy, do you have a problem with that?

12                   MS. HARDY: Mr. Examiner, if possible I think  
13 Alpha would prefer an earlier hearing date just because  
14 this is a separate case, separate acreage with a more  
15 limited issue. But I also understand that if we are  
16 looking at dates in something like February, then it would  
17 just make sense to include this in the March hearing date.

18                   EXAMINER BRANCARD: Mr. Tremaine?

19                   MR. TREMAINE: Pardon me, Mr. Examiner, while I  
20 unmute here.

21                   The OCD is in favor of hearing this case at  
22 the same time as the other cases referenced.

23                   EXAMINER BRANCARD: Mr. Hajny, is there any  
24 concern with that, being prepared for March?

25                   MR. HAJNY: No, Mr. Examiner. March 3rd works

1 for us.

2 EXAMINER BRANCARD: Mr. Feldewert?

3 MR. FELDEWERT: Mr. Examiner, when you talk  
4 about the other cases, what other cases are you  
5 referencing?

6 EXAMINER BRANCARD: 22171, 22093. There were  
7 more added this week, actually.

8 MR. FELDEWERT: So you're talking about the  
9 issues involving -- I forget which case that is. I think  
10 there is, like, three parties involved.

11 MS. HARDY: It's Ascent, Mewbourne, and Alpha.

12 MR. FELDEWERT: That's right. Ascent, Mewbourne  
13 and Alpha.

14 EXAMINER BRANCARD: It was what I believe Mr.  
15 Savage referred to as a Daisy Chain.

16 MR. FELDEWERT: It is a Daisy Chain, that's  
17 exactly right, which is sometimes hard to keep track of.

18 I suppose I don't -- I'm representing  
19 Mewbourne in that case. I suppose I don't have any strong  
20 objection to that if you think that's appropriate,  
21 Mr. Examiner.

22 EXAMINER BRANCARD: Okay. My reason for doing  
23 that is that while those cases have that competing  
24 compulsory pooling issue, those cases, along with this  
25 case, also have the issue of proximity to the Carlsbad

1 Brine Well and what conditions would need to be imposed at  
2 that point.

3 So that's why I propose you hear this case  
4 at the same time.

5 MR. FELDEWERT: Understood.

6 EXAMINER BRANCARD: Ms. Bennett, are you here?

7 MS. BENNETT: Yes. Yes, thank you.

8 March 3rd, 2022, is fine with the City of  
9 Carlsbad and does make sense in terms of keeping the cases  
10 together, given the proximity to the Carlsbad Brine Well.

11 EXAMINER BRANCARD: Well, thank you.

12 So with that, this case will get continued  
13 to the March 2nd docket. I have the date correct. We can  
14 combine with other cases filed by Alpha, Ascent, and  
15 Mewbourne.

16 Any other questions at this point from the  
17 parties?

18 I hear silence. I like that.

19 With that, I think we may be done for  
20 today.

21 Just so you fans know, we will be back  
22 tomorrow morning with a special docket, in case you-all  
23 want to come and listen to that.

24 MR. FELDEWERT: Mr. Examiner, I think that is  
25 due to start at 8:30. Is that right?

1                   EXAMINER BRANCARD: Ms. Salvidrez, I think  
2 that's when we normally start those.

3                   MS. SALVIDREZ: Yes, 8:30.

4                   EXAMINER BRANCARD: Thank you.

5                   (Time noted 11:59 a.m.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



1 STATE OF NEW MEXICO )

2 : ss

3 COUNTY OF TAOS )

4

5

REPORTER'S CERTIFICATE

6

I, MARY THERESE MACFARLANE, New Mexico Reporter

7

CCR No. 122, DO HEREBY CERTIFY that on Thursday,

8

November 4, 2021, the proceedings in the Above-captioned

9

matter were taken before me; that I did report in

10

stenographic shorthand the proceedings set forth herein,

11

and the foregoing pages are a true and correct

12

transcription to 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

19

/s/Mary Macfarlane\_\_\_\_\_

20

MARY THERESE MACFARLANE, CCR  
NM Certified Court Reporter No. 122  
License Expires: 12/31/2021

21

22

23

24

25