

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

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 No. 21629,
Eddy County, New Mexico

Division Case No. 21629
De Novo Case No. 21744

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY, FEBRUARY 22, 2022

COMMISSION HEARING

This matter came on for hearing before the
New Mexico Oil Conservation Commission on
Tuesday, February 22, 2022 via Webex Virtual
Conferencing Platform hosted by the New Mexico
Energy, Minerals and Natural Resources

IN ATTENDANCE:

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WILLIAM AMPOMAH	COMMISSIONER
GREG BLOOM	COMMISSIONER
CHRIS MOANDER	COMMISSION COUNSEL
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1 (Time noted 1:02 p.m.)

2 COMMISSIONER CHAIR SANDOVAL: It is 1:02 on
3 2-22, and we will get started again after lunch.

4 Coming in this afternoon we finished up
5 Case No. 21324, and we will start on Case No. 21744, the
6 Application of Cimarex Energy Company for De Novo Hearing
7 of Case No. 21629.

8 Mr. Savage, would you like to make a brief
9 opening statement?

10 MR. SAVAGE: I would, Madam Chair. Thank you.

11 Good morning, Madam Chair, Commissioners,
12 Mr. Moander and Counsel. In this evidentiary hearing
13 Cimarex respectfully submits that the evidence today will
14 show that Colgate Energy and affiliate Colgate Operating,
15 LLC, did not satisfy its obligation of making attempts to
16 reach a voluntary agreement with Cimarex Energy Company,
17 both under the Division's rules and the pooling statute.

18 After Colgate sent out its well proposal on
19 July 10, 2020, in Case 21629, a pooling case, they had
20 only one email exchange with Cimarex, an exchange initiate
21 by Cimarex, for which Colgate did not directly answer the
22 question posed. Nor did Colgate provide Cimarex with an
23 agreement that it could review in any meaningful way.

24 Under the OCD rules and policies an
25 application to a pooling procedure is required not only to

1 send out the initial -- uh, an applicant to a pooling
2 procedure is required not only to send out the initial
3 well proposal but it is further required to show evidence
4 of attempts to reach a voluntary agreement through a
5 record of good faith negotiations.

6 The evidence provided in this hearing will
7 not only show that Colgate did not satisfy these
8 requirements but also made matters worse by making
9 misrepresentations, or what Cimarex argues and believes
10 are misrepresentations in the exhibits and testimony
11 before the OCD.

12 An applicable analogy to the purpose behind
13 the OCD's rules and policies regarding the requirement for
14 good faith negotiations is the concept of informed consent
15 taken from the medical profession, for example. A form
16 issued to a patient requesting agreement for a procedure
17 is not valid unless the patient is provided information
18 that informs the agreement. In the same way, the record
19 of communications required by the OCD following the well
20 proposal ensures that a voluntary agreement has been
21 sought and entered into; and therefore if the owner does
22 fail or refuse to enter into the agreement then the record
23 of negotiations ensures that the owner's decision was
24 informed and therefore fully voluntary.

25 For an owner with substantial interest,

1 especially an amount of interest on par with the
2 applicant, as is the case herein, good faith negotiations
3 are essential to the process, which begins with the Well
4 Proposal and continues through the Chronology of Contacts.

5 Successful completion of this process is
6 the only way to uphold the integrity of the proceedings,
7 the rules of the OCD, and the statutory obligations under
8 the Oil and Gas Act.

9 Thank you.

10 COMMISSIONER CHAIR SANDOVAL: Thank you, Mr.
11 Savage.

12 Mr. Padilla, do you want to make an opening
13 statement.

14 MR. PADILLA: Sure.

15 Members of the Commission, Madam Chair,
16 this is a case where we have two experienced operators in
17 this case. It's true that there's one email between the
18 parties. You have to remember here that Cimarex was the
19 target of a compulsory pooling application. In our
20 Prehearing Statement we said that the ball -- essentially
21 that the ball was in their court in terms of responding to
22 the email and in responding to whether or not the well was
23 going to be drilled in the north half/north half of both
24 Sections 2 and 3 in 20 South, 29 East, in Eddy County.

25 When you're the target of a Compulsory

1 Pooling Application and you say that you're going to look
2 for trade, or potential, uh, of resolution, and you don't
3 respond, then ultimately what's going to happen is that
4 you have an Application for Compulsory Pooling.

5 The record is clear in this case that
6 Cimarex totally mishandled the application or -- the
7 Application for Compulsory Pooling. It shows a pattern of
8 negligence is the only way I can see it. These wells are
9 very expensive to drill. It's true that Cimarex had a
10 substantial interest. They don't pay attention.

11 In their -- one of the statements, I think
12 by Mr. Morris, one of the landmen for Cimarex, he says
13 that they have a number of team meetings and back and
14 forth discussing proposals. Apparently this one was never
15 discussed, and there's no excuse for that. The concept of
16 good faith, it's a two-way street.

17 I'm getting into a closing argument here,
18 but the evidence is just going to show that Cimarex had a
19 responsibility and had to respond to the proposal made by
20 Colgate.

21 So that's where we are in this case. It's
22 very close, I will admit that, in terms of what is good
23 faith and what is not good faith, but you have to look at
24 the parties in this case. Cimarex is an experienced
25 company. They know -- they are supposed to know what they

1 are doing, and they are supposed to respond to proposals,
2 especially when they're a target of a Compulsory Pooling
3 Application.

4 Thank you.

5 COMMISSIONER CHAIR SANDOVAL: Thank you. Mr.
6 Rankin, would you like to make any Opening Statement?

7 MR. RANKIN: No, Madam Chair. At this time I
8 would not, other than just to make my formal entry of
9 appearance on behalf of EOG Resources Incorporated. At
10 this time, Madam Chair, Members of the Commission, EOG
11 takes no position in this contest and is remaining
12 neutral, just has an interest in the outcome of the case
13 and so is appearing.

14 Appreciate it.

15 MR. MOANDER: Mr. Rankin, Chris Moander. Just
16 one question. Did you file, on behalf of your client, a
17 Prehearing Statement in this matter?

18 MR. RANKIN: Did not.

19 MR. MOANDER: Okay. I just wanted to make sure
20 that was clear on the record. Thank you, Mr. Rankin.

21 COMMISSIONER CHAIR SANDOVAL: Thank you.

22 All right. Mr. Savage, would you like to
23 call your first witness?

24 MR. SAVAGE: Madam Chair, thank you. I would
25 like to see if we could quickly address some procedural

1 matters before we proceed to the witnesses.

2 COMMISSIONER CHAIR SANDOVAL: Okay.

3 MR. SAVAGE: I don't want to delay this, and
4 would appreciate Mr. Moander's input on this.

5 As I understand it, this is an issue
6 hearing to address whether the Pooling Order issued to
7 Colgate is valid or not, and that's based on whether or
8 not Colgate met certain regulatory and statutory
9 obligations. In my mind it's the attempt to reach an
10 agreement, good faith negotiations, and whether there are
11 material misrepresentations or not.

12 I noticed in Mr. Padilla's, one of
13 Mr. Padilla's exhibits he had highlighted some statements
14 about missing Notice, and also in his Opening Statement he
15 talked about a pattern of negligence. And that was the
16 exhibit with the -- to reopen the case that Cimarex had
17 filed. I would ask the Commission to recognize that those
18 issues are outside the scope of this particular hearing.
19 There's no evidence that this represents -- that the
20 missing Notice represents a pattern of negligence. It's,
21 uh -- you know, it was a unique set of circumstances; and
22 furthermore, the Commission has already ruled on that
23 issue in the hearing motion, and I believe that they found
24 that Cimarex does not have a valid excuse, but nonetheless
25 they also ruled that they qualified as a party of record

1 and deserving of a de novo hearing, nonetheless.

2 So I believe those issues have been
3 addressed already, and I believe that -- I request that we
4 acknowledge the scope of this evidentiary hearing.

5 And then in the Prehearing Statement that I
6 submitted I asked for a recognition of a rebuttable
7 presumption in this case based on the rulings that the
8 Commission had made, rebuttable presumption in favor of
9 Cimarex.

10 MR. MOANDER: Mr. Savage, can we maybe clarify
11 what action you're seeking specifically from the
12 Commission?

13 MR. SAVAGE: One particular action is that the
14 arguments about the -- any kind of negligence for missing
15 Notice is outside the scope of this evidentiary hearing
16 and they shouldn't be addressed in the hearing, or should
17 not be a valid subject of cross-examination in this.

18 That would be one. Because that issue has
19 already been decided, and we feel it only works to
20 prejudice Cimarex to continue to bring that up when the
21 focus of the evidentiary hearing is otherwise.

22 So that would be one request.

23 And the other request is if the Commission
24 feels in its wisdom to do so, that the rebuttable
25 presumption that we described in the procedural matters of

1 the prehearing statement be acknowledged. And that was
2 Cimarex pointing out that the Commission -- I'm sorry, the
3 Commission pointing out that it found Cimarex's arguments
4 compelling, that there were misrepresentations that
5 undermined judicial proceedings and the integrity of the
6 judicial proceedings, and therefore they found it
7 compelling.

8 Now, they did not go as far as to rule on
9 whether they actually occurred, and I believe that's why
10 we are having this evidentiary hearing, but the fact that
11 they found it compelling suggests to us under the Black's
12 Law Dictionary, that they found it to be convincing, and
13 therefore we believe that a rebuttable presumption has
14 arisen in this case.

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

16 Madam Chair, would you like my input on
17 this or do you have some thoughts?

18 COMMISSIONER CHAIR SANDOVAL: I have some
19 thoughts but I would like your input.

20 MR. MOANDER: Okay. So at this point I think
21 that my suggestion is the best way to proceed is that
22 there may be exhibits, as Mr. Savage has referred to, that
23 at a minimum could be objectionable. Whether or not the
24 Commission chooses to accept those documents and any
25 attendant arguments, I think best reserved for

1 consideration at that time, if there is an objection or an
2 issue, because part of this hearing is to collect evidence
3 and have the Commission weigh it, and there is a
4 presumption that the Commission will take in as much
5 evidence as it needs to make its decision.

6 As to the rebuttable presumption, it
7 probably would have been helpful to have something like --
8 well, both of these issues, one of them with the evidence
9 being a motion, or subject to a Motion in Limine perhaps
10 to exclude; and then the other one, moving the Commission
11 to accept and implement the rebuttable presumption. That
12 might have been subject to motion practice. But I think
13 in this instance the Commission knows what it ruled upon
14 and it understands its own rulings, so I think you could
15 probably hold the decision in abeyance to see how the
16 evidence fleshes out, but ultimately I would advise the
17 commission when it renders its final decision to address
18 the rebuttable presumption request by Mr. Savage.

19 COMMISSIONER CHAIR SANDOVAL: It makes sense to
20 me.

21 MR. SAVAGE: Thank you, Madam Chair.

22 MR. MOANDER: So, Madam Chair, is that a ruling
23 that you're going to hold a decision in abeyance on these?

24 COMMISSIONER CHAIR SANDOVAL: I'm sorry. Yes.
25 I could have been clearer.

1 MR. PADILLA: If I may add, Madam Chair, the --
2 this motion or procedural question that Mr. Savage raises
3 goes to the weight of the evidence. I think the
4 Commission has to weigh everything. That's really -- in
5 an administrative hearing we are not bound by strict
6 evidentiary rulings, as you would in a judicial matter.

7 That's all I have to say on that.

8 COMMISSIONER CHAIR SANDOVAL: Thanks,
9 Mr. Padilla.

10 Okay. With that, Mr. Savage were you ready
11 to call your first witness?

12 MR. SAVAGE: I am. Thank you.

13 That's Mr. John Coffman, landman with
14 Cimarex Energy Company.

15 Exhibit A in our Prehearing Statement gives
16 an overview of his testimony, but I would like to ask just
17 a few additional questions for some clarification, and to
18 address some points.

19 Colgate did not provide written testimony
20 as an exhibit so they have had the benefit of reviewing
21 our testimony, and I'd just like to clarify a few items.

22 Mr. Coffman, are you present?

23 MR. COFFMAN: Yes, I am.

24 Okay.

25 JOHN COFFMAN,

1 having been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. SAVAGE:

4 Q. Mr. Coffman, your qualifications as a landman
5 and your history of -- your work history with Cimarex is
6 listed in your written testimony, is that true?

7 A. Yes.

8 Q. And based on your testimony that we submitted --
9 that you submitted, Cimarex was the party that reached out
10 to Colgate about the Well Proposal, not Colgate; is that
11 correct?

12 A. Yeah, that's correct.

13 Q. The question that you posed in your email,
14 colgate stated in its prehearing statement that you
15 dropped the ball by not responding to Colgate. Do you
16 believe that Colgate had the obligation to reach out to
17 answer the question; and if so, why?

18 A. Yeah, I did. I think, if I remember correctly,
19 Colgate has a 27percent working interest and we have a 25
20 percent, and it's kind of industry standard to reach out
21 to the larger working interest owner, especially when they
22 are of equal, I guess, share of the well. At least a few
23 times, if you haven't heard back from them, to, you know,
24 engage in good faith negotiations.

25 Q. And Mr. Hajdik is the landman for Colgate you

1 **had the email exchange with; is that correct?**

2 A. That's correct.

3 **Q. How do you feel like he responded to your**
4 **question posed?**

5 A. I don't think he answered my initial question.
6 It was kind of an open-ended response on throwing ideas
7 around at some point in the future.

8 **Q. Okay. And this is shown by the sole email**
9 **exchange you had with Colgate as reflected in Cimarex's**
10 **Exhibit C; is that correct?**

11 A. Correct.

12 **Q. And in your experience as a landman dealing with**
13 **(inaudible) and pooling applicants, would you have**
14 **expected Colgate to have provided additional information**
15 **based on this exchange?**

16 A. Yeah. I think it's also an industry standard to
17 send an operating agreement, or at the very least, you
18 know, a contract area, to know, hey, what our working
19 interest would be in the unit, and what that unit would
20 outline.

21 I know we do for our proposals, so it's a
22 pretty common practice.

23 **Q. And that practice that you have that you use for**
24 **your proposals, are those based on anything? For example,**
25 **are those based on guidance from the OCD or any regulatory**

1 **guidance?**

2 A. Yeah, I do believe that's part of some OCD
3 statutes. I couldn't quote them, but I think it has to
4 be -- an OA has to be sent with the proposal for it to be
5 I guess, quote "a valid proposal," in my mind.

6 **Q. And did Cimarex fail or refuse to enter an**
7 **agreement with Colgate?**

8 A. No. We weren't given an opportunity to...

9 **Q. What about the Well Proposal? Wasn't that an**
10 **opportunity to enter into an agreement?**

11 A. No. Like I said, I don't think that one single
12 Well Proposal was sufficient to enter into an agreement
13 without more information.

14 **Q. And Mr. Coffman, under the Good Faith Practices,**
15 **based on your experience as landman what is the minimum**
16 **communication you would have expected from Colgate if they**
17 **had reached out?**

18 A. At least another follow-up to see if we had, you
19 know, ideas of trades, anything like that. But, you know,
20 at least a courtesy call before pooling.

21 **Q. And they did not make any attempts in that**
22 **regard?**

23 A. No, they did not.

24 **Q. And have you reviewed the assertions in**
25 **Colgate's application and testimony at the hearing, and**

1 Colgate's communication Timeline? That would be Cimarex
2 Exhibits F, G and H.

3 A. Yes.

4 Q. And how would you describe Colgate's statements
5 and assertions regarding their attempts to communicate and
6 reach an agreement with Cimarex?

7 A. I would say that the communication was lacking
8 compared to the statement.

9 MR. SAVAGE: Madam Chair, at this point I ask
10 the Commission to accept Exhibit A, Mr. Coffman's
11 Self-Affirmed Statement, into the record along with
12 Exhibits C, F and H, and I make Mr. Coffman available for
13 further questioning.

14 COMMISSIONER CHAIR SANDOVAL: Just to confirm,
15 you said Exhibit A, C and H?

16 MR. SAVAGE: That's correct. Exhibit A,
17 Exhibit C, and Exhibit F and Exhibit H.

18 COMMISSIONER CHAIR SANDOVAL: Okay. Any
19 objections, Mr. Padilla or Rankin?

20 MR. PADILLA: No, your Honor -- or no, Madam
21 Chair.

22 MR. RANKIN: No.

23 COMMISSIONER CHAIR SANDOVAL: I'll take that.

24 Okay. Commissioners, any questions before
25 we enter those into the record?

1 COMMISSIONER AMPOMAH: No, Madam Chair.

2 COMMISSIONER BLOOM: No, Madam Chair.

3 COMMISSIONER CHAIR SANDOVAL: Okay. Cimarex
4 Exhibits A, C, F and H are entered into the record.

5 Go ahead, Mr. Savage.

6 MR. SAVAGE Mr. Coffman is available for
7 questioning by Colgate.

8 COMMISSIONER CHAIR SANDOVAL: Okay.

9 Mr. Padilla? Oh, go ahead.

10 MR. SAVAGE: I would assume that would be the
11 proper procedure at this point instead of going forward
12 with my next witness.

13 COMMISSIONER CHAIR SANDOVAL: Yes. If you are
14 done with questions.

15 All right. Mr. Padilla, do you have
16 questions for Mr. Coffman?

17 MR. PADILLA: Yes, I do.

18 CROSS EXAMINATION

19 BY MR. PADILLA:

20 Q. Mr. Coffman, how long have you worked for
21 Cimarex?

22 A. Coming up on four years.

23 Q. At the time of this proposal how long had you
24 worked there?

25 A. Probably around two years.

1 Q. Okay. How do you handle compulsory pooling --
2 let me ask first proposals, Well Proposals made by other
3 operators.

4 A. Could you repeat the question? It kind of cut
5 out.

6 Q. How do you handle Well Proposals made to Cimarex
7 by other operators?

8 A. We send them out to our team and have them on an
9 OBO list.

10 Q. In your Self-Affirmed Statement you say that you
11 had team meetings regarding proposals and regarding well
12 applications and development plans. How many -- what did
13 you do with this particular application in terms of your
14 team meetings?

15 A. I couldn't speak to a specific time, but we go
16 over upwards of 30 proposals at a time with our team.

17 Q. I'm asking about this particular proposal. What
18 did you do with it?

19 A. In what meeting?

20 Q. Well, after you received the proposal from
21 Colgate, what did you do with this application in terms of
22 discussing it with your team?

23 A. We put it on our spreadsheet, like I said, and
24 then discussed it. You know, we have a hierarchy of what
25 comes up as a fire drill versus not a fire drill.

1 Q. Did you have a priority for evaluating these
2 pending proposals as they come up?

3 A. Could you repeat the question?

4 Q. Well, let me rephrase.

5 Do you prioritize proposals as they come
6 into your office?

7 A. Yes.

8 Q. What ranking did you give this particular
9 proposal?

10 A. Since it wasn't under an existing Operating
11 Agreement it would not be the first on our list.

12 Q. Okay. You would look at the proposals that
13 already were subject to a JOA, correct?

14 A. Correct. With a 30-day --

15 Q. And so you didn't put this at the top of the
16 list.

17 A. No, we did not have a time clock under an
18 Operating Agreement for this well proposal.

19 Q. Now, it's fair to say that the ball was in your
20 court to get back to Cimarex concerning your well
21 configurations and the questions you asked in your email.
22 Correct?

23 A. Could you rephrase the question?

24 Q. What I'm saying is: Wasn't the ball in your
25 court to make a response, based upon what you've said in

1 your email to Mr. Hajdik?

2 A. I didn't feel like my question was answered in
3 Mr. Hajdik's response.

4 Q. But he did answer that the north half/north half
5 of both Sections 2 and 3 was their Unit Proposal, right?

6 A. I think he mentioned that was where the well was
7 going to be drilled, which I do agree with, but that
8 doesn't necessarily mean it would be the contract
9 agreement.

10 Q. But you also talked about a potential trade,
11 right?

12 A. I'd have to review.

13 Q. Well, in preparation for this hearing did you
14 look at your email, your exhibit?

15 A. I don't think I mentioned trade in my email.

16 Q. Well, you said you were going to look at your
17 acreage, didn't you, or something to that effect?

18 A. I do not believe so.

19 Q. That would include the south half/north half.

20 A. I do not believe I mentioned a trade.

21 Q. But you're saying, just trying to get at a feel
22 for what your plans are in the area. And you weren't --
23 you didn't ask any questions to speak of, right?

24 A. I think I asked if it would be in the north half
25 JOA.

1 Q. Did you ask for Mr. Hajdik to send you the JOA?

2 A. I asked what the JOA would cover.

3 Q. In your Well Proposals do you always send a JOA.

4 A. Yes, we do.

5 Q. Other operators sometimes send one and sometimes
6 they don't, correct?

7 A. Majority do.

8 Q. How do you know that?

9 A. Because I receive them. The majority that I
10 receive do.

11 Q. At the time of this thing, how many Well
12 Proposals had you worked on for Cimarex?

13 A. I couldn't even give you a good number. Four or
14 five dozen.

15 Q. How many of those proposals ended up in a
16 compulsory pooling application hearing?

17 A. I'm not sure.

18 Q. Tell us about how many wells Cimarex operates in
19 Southeast New Mexico.

20 A. What about them? How many?

21 Q. Yes.

22 A. I don't think I can give an accurate number.

23 Southeast -- we're limited to Southeast New
24 Mexico?

25 MR. SAVAGE: Madam Chair, I'm going to object to

1 that question. Uh, it's a broad general question, and I'm
2 not sure where this is going. It seems to be outside the
3 scope of Direct.

4 COMMISSIONER CHAIR SANDOVAL: Yes, it seems like
5 a rather simplistic question that either he can answer it
6 or he can't.

7 A. I don't know the exact number.

8 Q. Well, let me put it this way: Cimarex has a
9 whole bunch of wells down there, don't they? They drill a
10 lot of wells. You would agree to that, right?

11 A. Correct.

12 Q. And you would say that Cimarex is a prudent
13 operator, right?

14 A. I would.

15 Q. They are a successful operator, as well, right?

16 A. Yes.

17 Q. You're saying that one more email from Mr.
18 Hajdik would have satisfied the good-faith requirement
19 that Cimarex is bringing up today?

20 A. I'd say at the very least one more follow-up
21 email before pooling, yes.

22 Q. So you're saying that two emails would have
23 satisfied that rather than just one?

24 A. I'm not sure how many emails it would take. I
25 guess it depends on the substance of the emails.

1 Q. So you have a compulsory pooling application in
2 your court here, and is there any diligence on your part
3 to make sure that you don't get force pooled?

4 A. Yes.

5 Q. And what was your diligence in this case?

6 A. In this case when I took over the specific
7 proposal it was moved to Riley Morris, so I don't know
8 what passes the time that it was in, I guess, my,
9 quote/unquote "box". Other than that, we get a lot of
10 proposals that are trade-inviting that aren't ever going
11 to necessarily get pooled -- or drilled, for that matter.
12 This came across as one of those proposals.

13 Q. So what do you do when you get a Notice of
14 Application for Hearing?

15 A. I did not receive that Notice in this case.

16 Q. But Cimarex did get it, right?

17 A. Not when I was working this --

18 MR. SAVAGE: Madam Examiner, I'm going to object
19 to this. This is something that we discussed regarding at
20 the beginning regarding procedural matters. This has
21 already been reviewed by the Commission and decided upon
22 and we know what the outcome of that is.

23 MR. PADILLA: May I respond, Madam Chair?

24 COMMISSIONER CHAIR SANDOVAL: Go ahead.

25 MR. PADILLA: Same thing. It goes to the weight

1 of the evidence. Good faith is a very broad issue in this
2 case. We are talking about the practice and custom in the
3 oil industry, and there's -- they're the ones who brought
4 up lack of good faith, and I'm just trying to figure out
5 how this would have -- how it fell through the cracks.

6 MR. SAVAGE: Madam Chair, the focus of good
7 faith in this evidentiary hearing is good faith
8 negotiations, whether Colgate engaged in them or not.

9 Whether or not Cimarex accidentally
10 misplaced a Notice is not a question of good faith, it's
11 an accident, there was no intent involved. And in the
12 case of negotiations there is a very prominent question of
13 intent.

14 And the Commission has already decided on
15 the Notice issue.

16 COMMISSIONER CHAIR SANDOVAL: I mean, the
17 Commission decided to hear the case to see whether or not
18 there is enough evidence to -- uhm, from those original
19 Orders should not have been issued because they didn't
20 meet the requirements.

21 Uhm, I think I'm inclined here to allow
22 this line of questioning. We -- I think we need all of
23 the information in order to make an informed agreement.
24 Agreement? Informed decision.

25 Mr. Moander, do you have any additional

1 input?

2 MR. MOANDER: Yes. So Mr. Savage, you know, he
3 is correct there's been some Commission rulings that touch
4 on some of these issues. I think the Commission is
5 apprised of its own ruling, and it is to the benefit of
6 the Commission to see where the evidence goes.

7 Of course, Madam Chair, if you hit a point
8 where you feel like this matter has been thoroughly
9 covered, you can of course direct the parties to move on.

10 This is also, I should point out to the
11 Commission, the first time the Commission has had an
12 opportunity to really have the lawyers dig into the
13 material with witnesses. Everything else has been largely
14 paper at this point.

15 So there is some value in hearing what the
16 individuals who submitted affidavits, these statements
17 have been used by parties, to have these statements tested
18 and evaluated.

19 COMMISSIONER CHAIR SANDOVAL: And we haven't had
20 the opportunity to question the witnesses. Previously
21 they were just status conferences.

22 So I think in that case, Mr. Padilla, you
23 can continue with your line of questioning, and the
24 objection from Mr. Savage is overruled -- sustained?
25 Which one?

1 MR. MOANDER: I think that would be overruled,
2 Madam Chair.

3 COMMISSION CHAIR SANDOVAL: Overruled. Great.
4 Right. Thank you.

5 Go ahead.

6 **Q. Mr. Coffman, I'm not sure where I was, but I**
7 **think I was asking you about how the Notice of the hearing**
8 **fell through the cracks, and what your knowledge of that**
9 **is.**

10 A. So at the time of, I guess -- I'm not sure what
11 time that Notice was sent, but I was moved off of this
12 project into Lea County, specifically, so that after the
13 Notice I was not working on this proposal.

14 **Q. It was Mr. Norris -- I mean Morris, who took**
15 **over for you?**

16 A. Correct.

17 **Q. And you were working under Mr. Morris all along?**

18 A. No.

19 MR. PADILLA: Okay. I don't think I have any
20 further questions. Thank you, Mr. Coffman.

21 COMMISSIONER CHAIR SANDOVAL: Mr. Rankin, do you
22 have any questions?

23 MR. RANKIN: No questions.

24 COMMISSIONER CHAIR SANDOVAL: Commissioners, do
25 you have any questions for Mr. Coffman?

1 COMMISSIONER BLOOM: No, Madam Chair, I do not.

2 COMMISSIONER AMPOMAH: Madam Chair, I do have a
3 quick one for Mr. Coffman.

4 COMMISSIONER CHAIR SANDOVAL: Okay.

5 COMMISSIONER AMPOMAH: Thank you.

6 CROSS EXAMINATION

7 BY COMMISSIONER AMPOMAH:

8 Q. I do have a quick one.

9 Uhm, so when Cimarex received the proposal,
10 Well Proposal from Colgate, I want to know what decision
11 was made as to this actual proposal when you guys -- when
12 your team met. What was the decision that you made on
13 this particular proposal?

14 A. We did not have enough information to make a
15 decision, so in the proposal sent by Colgate we were
16 required or asked to send an election before an Operating
17 Agreement was sent back to us, which is not usually how
18 that works. We don't like to commit capital to a project
19 before we know the terms of the Operating Agreement and
20 other contracts that might happen.

21 So during -- when we received the proposal,
22 There was not enough information for us to make a decision
23 either way.

24 Q. So in that case did you follow up with Mark to
25 make sure that your question was answered, you know, to

1 **your satisfaction? Because I think faith goes in both**
2 **ways, right? So did you guys do that?**

3 A. So after I received the proposal, realized there
4 wasn't enough information, then I reached out to Mark,
5 yes, that's correct, and Mark responded back with his
6 response that did not, in my mind, answer my question.

7 Q. Yeah. But did you make a follow-up to make sure
8 that your question was addressed?

9 A. After that email, no.

10 Q. You said "that email no," but was there any
11 other medium?

12 A. No.

13 COMMISSIONER AMPOMAH: Okay. Thank you.

14 Thank you, Madam Chair.

15 COMMISSION CHAIR SANDOVAL: Thanks.

16 CROSS EXAMINATION

17 BY COMMISSION CHAIR SANDOVAL.

18 Q. Just to confirm, so Exhibit C, which is that
19 email exchange from August, that was it? There was no
20 additional follow-up?

21 A. Are you asking me?

22 Q. Yes.

23 A. Yes, that's correct.

24 Q. Okay.

25 **(Note: Reporter inquiry.)**

1 A. There was no follow-up on my part, at least.

2 Q. So even though Mr. Hajdik said he would be happy
3 to talk some options for the offsetting acreage in order
4 to fully maximize the development of the area, you never
5 followed up with a phone call or to this email?

6 A. Correct.

7 COMMISSIONER CHAIR SANDOVAL: Okay. Thank you.

8 Mr. Savage, do you have --

9 COMMISSIONER BLOOM: May I?

10 COMMISSIONER CHAIR SANDOVAL: Go ahead.

11 COMMISSIONER BLOOM: May I ask a question of Mr.
12 Coffman?

13 CROSS-EXAMINATION

14 BY COMMISSIONER BLOOM:

15 Q. Mr. Coffman, I'm looking at some of the previous
16 records here, and one of the things that was cited was
17 19.15.4.12(a) which relates to compulsory pooling
18 applications.

19 And these call for, quote, "Evidence
20 of attempts the applicant made to gain voluntary
21 agreement, including but not limited to copies of relevant
22 correspondence."

23 Correct me if I am wrong, but in this case
24 we just have the one attempt, it was a single email to Mr.
25 Hajdik at Colgate; is that correct?

1 A. Correct.

2 COMMISSIONER BLOOM: Okay. No further
3 questions. Thank you.

4 COMMISSIONER CHAIR SANDOVAL: Mr. Savage, do you
5 have any follow-up questions?

6 MR. SAVAGE: I do, Madam Chair. Thank you. I'd
7 like to continue that line of thought that the
8 Commissioner brought up.

9 REDIRECT EXAMINATION

10 BY MR. SAVAGE:

11 Q. Mr. Coffman, you're familiar with the exhibit,
12 the Chronology of Contacts that applicant is required to
13 list all the contacts that we've been reaching out to the
14 owners and showing a chronology and history of
15 interactions.

16 A. Correct.

17 Q. And would you agree that that -- the reason for
18 that exhibit corresponds directly to the rule that the
19 Commissioner brought up, 19.15.4.12, in which the
20 applicant is required to show evidence of attempts made to
21 gain a voluntary agreement?

22 A. Yes.

23 Q. And under that plain language, who has the
24 burden or the obligation to make the attempt, the
25 applicant or an owner?

1 A. Applicant.

2 Q. How many Well Proposals do you receive -- do you
3 receive numerous Well Proposals? Can you give an idea of
4 the volume that you receive?

5 A. Quite a few.

6 Q. And you have a full system, in-house system
7 that's very detailed, in which you place these proposals
8 in, you tag them with the information, and then you
9 monitor them; is that correct?

10 A. That's correct.

11 Q. And is that monitoring based in large part on
12 the obligation of the applicant to provide -- to make
13 affirmative attempts under the rules of the OCD?

14 A. Correct. We can tell how pertinent and how
15 likely a well proposal -- I guess a project is going to be
16 drilled, based on the amount of correspondence we have
17 received from that operator.

18 So an operator -- they send out a well proposal,
19 and it follows up pursuant to the obligations under the
20 rules and the statute. They send you a -- they
21 affirmatively send you a JOA or Operating Agreement to try
22 to satisfy the rules of (inaudible) a voluntary agreement.
23 Those would be registered in your system as a higher
24 priority than somebody who sends out a well proposal, you
25 reach out, you try to reach out, they give one response,

1 it seems to be off the mark of actually addressing the
2 question of the JOA that you raised and they speak in
3 generalities, and then you hear nothing from them again.

4 Would that be the reason why a well
5 proposal such as that would take a lower priority?

6 A. Yes.

7 Q. Based on the actions and behavior of the
8 operator?

9 A. Absolutely.

10 Q. Where it looks like it's not going to go to
11 hearing.

12 A. Yes.

13 Q. Since we are allowed for some line of
14 questioning regarding Notice, is it true that the Notice
15 was sent and received on Christmas Eve?

16 A. Yes.

17 Q. And was that not in the throes of the lockdown
18 and chaos going on in companies dealing with the Covid
19 emergency?

20 A. Yes.

21 Q. And if I remember right, all the employees of
22 your team were having to work at home; is that correct?

23 MR. PADILLA: I'm going to object at this point.

24 Mr. Savage is the one testifying here, asking leading

25 questions, and I think he ought to direct that his witness

1 answer questions that are not leading.

2 COMMISSIONER CHAIR SANDOVAL: I tend to agree.
3 Mr. Savage, can you reframe the questions, please.

4 MR. SAVAGE: Yes. Thank you, Madam Chair. I
5 withdraw those questions.

6 Q. Can you describe the conditions, Mr. Coffman,
7 under which you received and misplaced, or Cimarex
8 received and misplaced by accident the Notice that Colgate
9 sent?

10 A. We did receive that on Christmas Eve, and during
11 Christmas Eve obviously a lot of people take vacation
12 time. And during that time, as well, we were working from
13 home per Cimarex' safety guidelines during the pandemic.

14 MR. SAVAGE: And -- yes. And, Madam Chair, I
15 know that the Commission ruled on this question, but the
16 circumstances are certainly informative of the situation,
17 we believe.

18 Q. Mr. Padilla brought up the fact -- the question
19 about whether one additional email would have satisfied
20 the criteria for good faith negotiations, and you
21 responded that it would depend on the content and the
22 substance of that email; is that correct?

23 A. Yes.

24 Q. So do you agree that -- I mean, there could be
25 any number of emails that were exchanged, but if the

1 substance of the content is not in good faith or misses
2 the mark, that would not necessarily satisfy the criteria?

3 A. Correct.

4 Q. And certainly in the instances of these two
5 emails, there is nothing -- would you agree that there is
6 nothing of a...

7 How would you describe those two emails in
8 terms of seeking an agreement or substance of a discussion
9 discussing an agreement, a voluntary agreement?

10 A. I would not say there was any content of coming
11 to an agreement within those two emails, no.

12 MR. SAVAGE: I have no further questions. Thank
13 you.

14 COMMISSIONER CHAIR SANDOVAL: Thank you, Mr.
15 Savage. Do you have an additional witness you would like
16 to call?

17 MR. SAVAGE: I do.

18 COMMISSIONER CHAIR SANDOVAL: I would say that I
19 don't think we are formally dismissing Mr. Coffman. We
20 may have further questions later.

21 MR. SAVAGE: Thank you.

22 Let me -- yes, okay.

23 Uhm, Mr. Riley Morris. I'd like to call
24 Mr. Riley Morris for some questions regarding direct on
25 the same topics.

1 COMMISSIONER CHAIR SANDOVAL: Mr. Morris I just
2 made you a panelist so you should be able to -- oh,
3 there's feedback.

4 (Note: Discussion off the record.)

5 COMMISSIONER CHAIR SANDOVAL: When you're muted
6 it's okay; when you're unmuted we get two of everybody.

7 If we can make sure everybody is muted when
8 you're speaking, and then you need to mute it after you're
9 done speaking. We will try that. (Note: Pause.)

10 Okay. We are just going to have to be
11 really good with muting and unmuting and just take it a
12 little bit slower on questions, et cetera.

13 So, Mr. Morris, just stay muted until after
14 Mr. Savage or the commissioners or whoever ask you a
15 question, and then whoever is asking the question I need
16 you to please mute yourself right after you ask the
17 question and just, like, take a breath.

18 RILEY MORRIS,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. SAVAGE:

22 **Q. Mr. Morris, good afternoon. You are the primary**
23 **landman on the land team that dealt with this particular**
24 **application with Colgate; is that correct?**

25 A. Yes. Once it was applied for.

1 Q. And you have testified before the OCD, you have
2 been involved in numerous pooling applications, you have
3 been on both sides of the fence in pooling applications
4 over the years. Can you just kind of describe a little
5 bit about your experience?

6 A. Yes, sir. I have worked for Cimarex, now
7 C-terra (phonetic) for approximately three and half years.
8 I've been a landman for almost 12, and working in New
9 Mexico for the last three and a half years for Cimarex.
10 In that time I have worked North Lea County, North Eddy
11 County, and now I work all of Eddy County.

12 Q. In this particular case you had a very high
13 volume of workload, you brought in Mr. Coffman to assist.
14 Is that correct.

15 A. Yes, sir, that is correct.

16 Q. And then at some point it sounds like, based on
17 Mr. Coffman's testimony, that the case transferred back to
18 you.

19 A. Yes, sir, that's correct. Uhm, I couldn't give
20 you an approximate time that it did, uhm, but by the time
21 that we received Notice of Application it was, you know,
22 within my camp, yes, sir.

23 Q. And you provided your testimony in Cimarex's
24 Exhibit B. Is this testimony true and accurate to the
25 best of your understanding and knowledge?

1 A. Yes, sir.

2 Q. It's -- have you reviewed the self-affirmed
3 statement of Mr. Coffman in Exhibit A?

4 A. Yes.

5 Q. And based on your discussions with Mr. Coffman
6 during the time leading up to the filing of Colgate's
7 application and having the hearing, do you find his
8 testimony to be fully accurate and true, to the best of
9 your knowledge?

10 A. Yes.

11 Q. And have you reviewed the assertions in
12 Colgate's application and testimony at the hearing and
13 Colgate's communication timeline that we have presented at
14 as Exhibits F, G and H?

15 A. Yes, I have.

16 Q. And how would you describe Colgate's statements
17 and assertions regarding their attempts to communicate and
18 reach an agreement with Cimarex?

19 A. You -- it kind of went out there at the first.
20 Could you repeat that, please?

21 Q. Yes. And how would you describe Colgate's
22 statements and assertions regarding their attempts to
23 communicate and reach an agreement with Cimarex?

24 A. I would say that they are not indicative of the
25 conversations that I have had with John Coffman on this

1 matter, or the post dealings with Colgate after
2 application, and I don't feel that Colgate ever entered
3 into good faith negotiations where we could, you know,
4 come to voluntary agreement, whether that be through JOA
5 or trade.

6 Q. And as has been mentioned previously, good faith
7 negotiations are a two-way street. You have done numerous
8 poolings with the OCD and you're familiar with the rules;
9 is that correct?

10 A. Yes, sir.

11 Q. And then this particular rule that has been
12 brought up and referenced, 19.15.4.12(a), in which the
13 Applicant must provide evidence of attempts made to gain
14 voluntary agreement, including but not limited to copies
15 of relevant correspondence, is it your understanding,
16 based on your experience as a landman and doing the
17 exhibits, such as the Chronology of Contacts, that the
18 burden is on the Applicant to gain a voluntary agreement?

19 A. Yes, sir. That's how we operate at Cimarex.

20 Q. That -- in your experience is that how other
21 prominent operators operate, as well?

22 A. Yes, sir. We feel like we have a pretty open
23 line of communication with the vast majority of operators
24 that we overlap with, and we are instructive as to our
25 plans coming forward over the next calendar year and what

1 type of wells we are planning to drill, and how we are
2 planning to drill, whether it be through voluntary
3 agreement or pooling.

4 Q. And you can confirm that every well proposal you
5 send out you send out a copy of the operating agreement so
6 there's no question?

7 A. Yes, sir, that's our standard operating
8 procedure.

9 Q. I'm curious, Mr. Morris. Did you meet with Mr.
10 Hajdik on other matters or projects after the Meridian
11 well proposal but before the filing of Colgate's'
12 application in the hearing, during that...

13 A. Yes, sir. We were working on a trade for some
14 small nonop interests that we own within I think three or
15 four of their proposals for some of their nonop interests,
16 and one of our proposals.

17 Q. So you had one-on-one contact during those
18 times.

19 A. Yes, sir.

20 Q. And can you give an estimate of how many times
21 you did meet, and when during that time period?

22 A. It was primarily through email and over the
23 phone. We never met in person. I think we met in person
24 once to trade the trade documents and instruments, but I
25 would estimate somewhere -- gosh, over that time period

1 maybe three or four dozen exchanges of email.

2 Q. And this would have been during a time after Mr.
3 Hajdik had decided to go forward with the pooling in the
4 Meridian case?

5 A. I think that the pooling was sent out in the
6 middle of December. I think we closed our trade the end
7 of November, if I'm recalling that correctly. But I --
8 there was a little bit of overlap there, if I recall that
9 correctly.

10 Q. So are you familiar with Exhibit H? That's our
11 Exhibit H. That is the communication timeline on...

12 A. Yes, sir.

13 Q. That Colgate provided.

14 Do you have that, access to that?

15 A. Yes, sir.

16 Q. The top of the entry, the -- is there an --

17 (Note: Reporter interruption.)

18 COMMISSIONER CHAIR SANDOVAL: Mr. Savage I am
19 manually muting and unmuting you. What would be helpful
20 is if you can, between each one of your questions, instead
21 of staying unmuted, mute when Mr. Morris is answering.

22 So ask your question, mute, Mr. Morris
23 unmutes, answers the question, and then you unmute, then
24 you ask your question.

25 I know it's a pain but --

1 MR. SAVAGE: I understand.

2 COMMISSIONER CHAIR SANDOVAL: But that's what I
3 think we have to do at the moment.

4 MR. SAVAGE: I agree.

5 Q. Okay. Mr. Morris, the first entry of Colgate,
6 it says October and November, 2020. It looks like -- and
7 do you agree that that's when Colgate began negotiations
8 for the purposes of pooling the Meridian well?

9 A. Uhm, I'm seeing my October/November, 2020. That
10 is in regards to Concho. I would assume that it was
11 somewhere around that time period that they started
12 entering into negotiations for other parties. I think
13 Concho has quite a bit of an interest. Between them and
14 ConocoPhillips I think it's about 23 percent, if I'm not
15 mistaken.

16 Q. So if Mr. Hajdik was aware he was going forward
17 with the pooling of the Meridian well and he met with you
18 several times before filing the application and the
19 hearing, he would have had the opportunity to negotiate
20 and reach a voluntary agreement; is that correct?

21 A. Yes, sir, that is correct. And to my knowledge
22 there was never any discussion of Meridian wells. Because
23 we were working on getting the previous trade closed, we
24 didn't start other one from scratch.

25 MR. SAVAGE: Thank you, Mr. Morris.

1 At this time, Madam Chair, I ask the
2 Commission to accept Exhibit B, that would be Mr. Morris'
3 self-affirmed statement, into the record, and I tender
4 Mr. Morris as a witness available for further questions.

5 COMMISSIONER CHAIR SANDOVAL: Thank you.

6 Mr. Padilla or Rankin, do you have any
7 concerns with entering Exhibit B?

8 Mr. Padilla? Mr. Rankin? Maybe you're
9 both muted.

10 MR. PADILLA: No. Colgate does not have an
11 objection. Can you hear now?

12 COMMISSIONER CHAIR SANDOVAL: Yes.

13 MR. PADILLA: Good.

14 COMMISSION CHAIR SANDOVAL: And Mr. Rankin?
15 (Note: No response.)

16 I'm going to take that as not having an
17 objection.

18 Commissioners, any objection to entering in
19 Exhibit B?

20 COMMISSIONER AMPOMAH: No, Madam Chair.

21 COMMISSIONER BLOOM: No, Madam Chair.

22 COMMISSIONER CHAIR SANDOVAL: Okay. Cimarex
23 Exhibit B is now entered into the record.

24 And Mr. Savage, you are done with your
25 initial questions for the witness, correct?

1 You're muted.

2 MR. SAVAGE: That's correct, Madam Chair. Thank
3 you.

4 COMMISSIONER CHAIR SANDOVAL: Thank you.

5 Mr. Padilla, would you like to question the
6 witness? Please keep in mind you need to mute and unmute
7 each time you ask a question. Don't just leave it
8 unmuted, please.

9 CROSS EXAMINATION

10 BY MR. PADILLA:

11 **Q. Mr. Morris, I'm looking at paragraph 4 of your**
12 **Self-Affirmed Statement, which is Exhibit B.**

13 A. It states: (Reading) After the dates of Mr.
14 Coffman's email exchange, I had meetings and discussion
15 with Mr. Coffman regarding the status of our interest with
16 Colgate as required by our land team, and I reviewed
17 copies of his email exchange with Colgate.

18 How many meetings did you have concerning
19 this particular proposal?

20 A. Team meetings or meetings specifically with
21 Mr. Coffman?

22 **Q. Well, you said you had meetings and discussions**
23 **with Mr. Coffman.**

24 A. I would say that less than five would be an
25 accurate statement.

1 Q. And what was the consensus of your discussions?

2 A. That it was most likely not a serious proposal
3 because it didn't contain a JOA, didn't define the
4 contract area, and there was no real follow-up to the
5 emails that they had exchanged.

6 Q. Did you tell Mr. Coffman to get more
7 information?

8 A. No, sir, I don't believe I did.

9 Q. The next sentence in your paragraph 4 says:
10 (Reading) Landmen are required to inform the team of any
11 communications they receive regarding our interest in
12 poolings which affect our interests.

13 Let me ask this: Since you had a
14 compul- -- well, you didn't have a compulsory pooling
15 application on the table, but generally if you are the
16 target of a proposal, isn't it incumbent upon you to
17 follow up asking more questions about the proposal, given
18 your stature in the industry?

19 A. I would say it falls solely on the operator,
20 because they're the one proposing the operation. And to
21 define that more clearly, my thought that the email from
22 Mr. Coffman to Mr. Hajdik was an attempt to do that, and
23 that attempt went nowhere.

24 Q. You read that email. Wasn't the ball in Mr.
25 Coffman's court?

1 A. No, sir, I do not believe it was, because
2 Mr. Hajdik had thrown out that there would be things to
3 talk about within the area. I think that put the onus on
4 Mr. Hajdik to follow that up with any type of trade
5 proposal or something of that nature.

6 **Q. Were you dealing with Colgate and other trades**
7 **at the time?**

8 A. Yes, sir, I was.

9 **Q. And you never brought up this particular**
10 **proposal?**

11 A. No, sir. We were in the process of getting an
12 80-acre proposal closed that had taken quite some time,
13 and because we were working on keeping some nonop interest
14 in one of the proposals. And, like I said, it's incumbent
15 on the operator or applicant to bring up any trade
16 proposals on a case that they are considering to pool.
17 There was not a JOA provided so I did not think it was a
18 serious proposal.

19 **Q. So what did you have to trade? You later on did**
20 **trade acreage, did you not?**

21 A. No, sir, we never made a trade.

22 **Q. Was there a problem with the title in your trade**
23 **proposal that you had?**

24 A. Yes, sir. We had some of our acreage defect
25 out.

1 Q. And that's why you couldn't settle this case,
2 right?

3 A. Yes, sir. We tried multiple other trade
4 iterations and we couldn't come to a resolution.

5 Q. So going on to your paragraph 5, you mention in
6 there that you have been a landman for Cim -- or you're a
7 landman for Cimarex involved with well projects, and
8 Colgate knows your contact information. But isn't it a
9 fact that you were communicating anyway on these other
10 trades?

11 A. Yes, sir, that's correct.

12 Q. So going back to the priority for this
13 particular proposal that Mr. Coffman testified about, you
14 valued this proposal pretty low. Do you agree with that
15 (inaudible)?

16 A. Yes, sir.

17 Q. So does that --

18 A. The reasons that we valued it low are the
19 mitigating reasons that I've already mentioned, being that
20 there was not a JOA proposed nor a contract area, and
21 there wasn't any follow up to the questions posed.

22 Q. Wasn't the well proposal, didn't the well
23 proposal define -- uh, the AFE define the acreage that
24 would be committed to the well proposal?

25 A. Yes, committed to that proration unit but not

1 what's committed to the contract area, and those are two
2 totally different things. Because once you commit your
3 interest to a contract area then you're on the hook for
4 future capital spin, and that wasn't detailed in the
5 proposal.

6 **Q. The only proposal that was made by the well**
7 **proposal made by Colgate was drilling wells in the north**
8 **half/north half of Sections 2 and 3, correct?**

9 A. Yes, sir, that is correct. And there was no
10 further information about the contract area, not just the
11 proration unit.

12 **Q. Well, isn't it a two-way policy here? I mean,**
13 **as I understand your testimony, you're saying that the**
14 **burden was on Colgate to do everything, and you had no**
15 **obligation to communicate back. Is that what you're**
16 **saying?**

17 A. No, sir. I'm saying that there's an obligation
18 from the proposing party to clearly define their proposal,
19 and within that is what area is going to be included
20 within their overall proposal.

21 If it's only going to be the north
22 half/north half then proposing that that's the contract
23 area, this is the working interest, NRI, that would be a
24 different level of proposal in our mind, if we would have
25 gotten a copy of the operating agreement and it was

1 clearly defined.

2 Q. Did you ask -- define the contract area for
3 Colgate?

4 A. I was not the original landman receiving the
5 proposal.

6 Q. At any time did you define the contract area
7 after you (inaudible).

8 A. Well, at that point we had already been pooled.
9 So this is back in early January there was no point in
10 looking at what would be a proposed contract area when we
11 had a competing proposal across portions of that contract
12 area.

13 Q. Okay. So we're talking about two different
14 things here, correct? A contract area and the spacing
15 unit.

16 A. Yes, sir.

17 Q. So you never got back to Colgate about the
18 contract area that you wanted to develop and drill, right?

19 A. Yes, we did. We sent competing proposals along
20 with the JOA encompassing a portion of the proposed
21 Meridian well.

22 Q. Wasn't that after you were already force pooled?

23 A. That was after application had been made and had
24 been heard before the Commission, yes.

25 Q. Now, to your knowledge was there any suspension

1 of rules about compulsory pooling or timeliness in terms
2 of Covid, as it relates to the Oil Conservation Division?

3 A. I'm not really understanding the question.

4 Q. Well, in Covid did the Oil Conservation Division
5 suspend rules about timing of compulsory pooling hearings?

6 A. I'm sure they went -- you know, some of the
7 rules, whether they would have to go remotely, but I'm not
8 sure of the time lines if they were changed. No, sir, I'm
9 not.

10 Q. Mr. Coffman testified that Cimarex received the
11 Notice of Hearing on Christmas Eve, but that Notice has to
12 be made 20 days ahead of the time of the hearing. Do you
13 agree with that?

14 A. Yes, sir, I do.

15 Q. So effectively you had probably -- I'm not
16 counting Christmas or Christmas Eve, but you had
17 substantial amount of time after that to handle the Notice
18 of the hearing, correct?

19 A. Could you remind me what day the hearing was?

20 Q. Sometime in January. 20 days after...

21 A. I believe that the hearing was on the 7th.

22 Q. Yes.

23 A. Because --

24 Q. Yes.

25 A. Okay. So from the 24th, that would be seven

1 days, and then that would actually be 14 days not 20. Is
2 that correct?

3 Q. Something like that. I'll take your word for
4 it?

5 But in any event, you had 14 days to enter
6 an appearance in the case, or ask for a continuance, or do
7 something to mitigate the impact of the compulsory pooling
8 hearing.

9 MR. SAVAGE: Madam Chair, I don't understand
10 this line of questioning. The Commission has already
11 ruled that Cimarex is a Party of Record and qualified as a
12 Party of Record for the De Nova hearing and for the
13 original hearing. So I'm not sure where this line of
14 questioning is going. If we could, you know, get to the
15 point, maybe. Thank you.

16 COMMISSIONER CHAIR SANDOVAL: Mr. Padilla?

17 MR. PADILLA: I'll move on, Madam Chair. I
18 think I've made the witness -- the witness has answered my
19 question. (Note: Pause.)

20 I think that's all I have.

21 COMMISSIONER CHAIR SANDOVAL: Thank you.

22 Commissioners, do you have questions,
23 keeping in mind you need to mute and unmute, please, after
24 each question.

25 COMMISSIONER BLOOM: Dr. Ampomah, please go

1 ahead, if you would like.

2 COMMISSIONER AMPOMAH: Thank you, Commissioner.

3 I do have a quick question for Mr. Morris.

4 CROSS EXAMINATION

5 BY COMMISSIONER AMPOMAH:

6 Q. So you talked about you met Mr. -- you met the
7 landman for Colgate on numerous occasions on other
8 projects, you know. So I wanted to know why did you
9 decide not to sort of get additional about this particular
10 well.

11 A. I'm sorry. What did you ask?

12 Q. Okay. Let me repeat my question.

13 So why did you not ask the landman for
14 Colgate, when you met him on several occasions about other
15 projects, about the additional information that you
16 needed, you know, to make a decision on this particular
17 well?

18 Let me mute.

19 A. I didn't think that the onus was on us as a
20 proposed party. They were the applicant or operator under
21 those proposals, and, like I said, we didn't take it
22 seriously because there was no governing documents or
23 contact area defined. It seemed like a trade-inducing
24 proposal like we had just closed the previous trade.

25 Q. So is it a normal practice for Cimarex to ignore

1 well proposals from time to time where there is not much
2 follow up?

3 A. I wouldn't say "ignore". I would say you ranked
4 them in order of what you would think would be a valid
5 proposal, meaning that are they prepared to actually
6 drill. And one of the prerequisites to that is to define
7 your contract area in which you're going to drill in, and
8 supply a JOA so people can make their elections and sign
9 the JOA.

10 COMMISSIONER AMPOMAH: Thank you, Madam Chair.
11 No further questions.

12 COMMISSIONER CHAIR SANDOVAL: Commissioner
13 Bloom.

14 COMMISSIONER BLOOM: Thank you, Madam Chair.

15 Mr. Morris, just one question to you, I
16 believe.

17 CROSS EXAMINATION

18 BY COMMISSIONER BLOOM:

19 Q. Did you or anyone else you know at Cimarex
20 receive any emails or other communications from Colgate
21 about this area, other than the one email that we've seen
22 in the documentation here?

23 A. No, sir, not to my knowledge.

24 COMMISSIONER BLOOM: Thank you, Mr. Morris.

25 Madam Chair, no further questions.

1 COMMISSIONER CHAIR SANDOVAL: Thanks.

2 I just have one maybe quick question.

3 CROSS EXAMINATION

4 BY COMMISSION CHAIR SANDOVAL:

5 Q. Can you walk me through the process that Cimarex
6 follows when you're trying to negotiate in good faith
7 effort? Like, what does that process look like for
8 Cimarex?

9 THE WITNESS: Uhm, in a well proposal-focused
10 type of negotiation?

11 COMMISSIONER CHAIR SANDOVAL: Yeah. Yeah.

12 A. So first we work by supplying the proposal,
13 operating agreement, our contact information. We have a
14 schedule of all of our working interest owners, overriding
15 owners within the project.

16 And 9 times out of 10 we receive contact
17 from the proposed party, at which point we talk about what
18 their interest is across the contract area and across the
19 proration unit, which can be separate areas.

20 And then we go about talking timing: When
21 we expect it to spud, complete, first produce.

22 And then that's kind of the very beginning
23 of it. Once we get to that point people usually are
24 determining whether they would like to participate or not
25 once they know their interest. At that point they either

1 talk offers on termsiting (phonetic) their acreage,
2 primary acreage, or having them sign the JOA and
3 participate.

4 Q. Thank you. Do you consider Colgate's efforts
5 constitute good faith negotiations?

6 A. In this case, I do not.

7 Q. How many -- how many of these have you done in
8 the past?

9 A. How many times have I proposed and then pooled,
10 or received nonop proposals?

11 Q. I'm sorry. Have you received nonop proposals.

12 A. Just limiting my time to Cimarex, I would say
13 separate proposals, even multi-well projects, probably two
14 dozen, I think would be a fair, maybe conservative number.

15 Q. So would you describe how this scenario went
16 down for the nonproposal out of the ordinary?

17 A. Yes, it was. You know, I have to say, you know,
18 I wasn't in direct communication with Colgate at the time
19 Mr. Coffman was working the area, but it was out of the
20 ordinary to not have a lot of follow up to any of the
21 questions, especially given the amount of interest that we
22 had within the proposal.

23 COMMISSIONER CHAIR SANDOVAL: Thank you. I have
24 no further questions.

25 Mr. Savage, do you have redirect?

1 MR. SAVAGE: I do, Madam Chair. Thank you.

2 REDIRECT EXAMINATION

3 BY MR. SAVAGE:

4 Q. Mr. Morris, we can agree under the regulations
5 that Colgate had the regulatory burden to initiate and,
6 uh, (inaudible) pursue attempts to reach a voluntary
7 agreement through good faith negotiations?

8 A. Yes, sir.

9 Q. And there seems to be a lot of questions, both
10 from Mr. Padilla and others asking questions, why didn't
11 Cimarex follow up. But wasn't it a fact that Cimarex --
12 or why didn't Cimarex reach out in various instances? But
13 wasn't it in fact Cimarex who initiated communications to
14 begin with?

15 A. Yes, sir. John Coffman reached out to Mr.
16 Hajdik.

17 Q. Is it true that that was followed basically by
18 four months of radio silence leading up to the filing of
19 the application and the hearing?

20 A. Yes, sir, that's correct.

21 Q. And is that not highly unusual for owners of
22 substantial interests and operators dealing with other
23 owners of substantial interest?

24 A. Yes, sir, it is highly unusual.

25 Q. So therefore when you were meeting with

1 **Mr. Hajdik on these other projects, other trades, there**
2 **actually was very good reason for you to believe that this**
3 **particular well proposal did not go forward.**

4 A. I mean, I -- honestly, I didn't consider it a
5 valid well proposal because there wasn't a JOA, so I
6 didn't put it even in the realm of trade bait at that
7 point because I didn't think it would ever get drilled.

8 Q. And therefore because you knew that Colgate had
9 the regulatory burden to seek and initiate communications
10 and seek a voluntary agreement, it was fair to believe
11 that if it was going to go forward that Mr. Hajdik would
12 bring it up and address it, because they needed to get
13 that exhibit -- that information into the exhibit for the
14 final pooling.

15 A. Yes, sir, that's correct.

16 Q. And how many well proposals -- what percentage
17 of well proposals that you receive actually go to hearing?

18 A. I would say it's been on the uptick over the
19 last couple of years, but I would say about half, maybe.
20 Usually we -- you know, the proposed party and the
21 proposing party will make some type of agreement on a
22 trade if we have similar interests, and if we have a
23 minority interest then we usually don't protest or
24 anything.

25 Q. So there was a good probability that this would

1 **not even go, make it to hearing?**

2 A. Correct. I would not anticipate that a proposal
3 where we had similar interests would have been, you know,
4 taken to this level.

5 **Q. And this particular proposal went into your**
6 **detailed monitoring system in which you monitor all well**
7 **proposals; is that correct?**

8 A. Yes, sir, that's correct.

9 **Q. And this would have gained higher priority had**
10 **Colgate satisfied its regulatory burden and reached out to**
11 **you with an operating agreement?**

12 A. Yes, sir.

13 MR. SAVAGE: Thank you. I have no further
14 questions.

15 COMMISSIONER CHAIR SANDOVAL: Thank you, Mr.
16 Savage. Do you have additional witnesses?

17 MR. SAVAGE: I do, Madam Chair. I'd like to
18 call Mr. Brent McDonald. He is vice president of
19 Prosperity Bank, and that is the bank trustee for the J.M.
20 Wellborn Trust.

21 COMMISSIONER CHAIR SANDOVAL: Okay. I moved him
22 to a panelist.

23 Mr. Morris, we are not dismissing you yet,
24 but you're off for now.

25 (Note: Reporter inquiry. Discussion off the

1 record.)

2 (Note: In recess from 2:37 p.m. to 2:45 p.m.)

3 COMMISSIONER CHAIR SANDOVAL: Mr. Padilla, are
4 you ready?

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

6 COMMISSIONER CHAIR SANDOVAL: All right.

7 I guess we are starting back with
8 Mr. McDonald.

9 MR. SAVAGE: That is correct. I believe he has
10 to be sworn in.

11 COMMISSIONER CHAIR SANDOVAL: Mr. McDonald, we
12 can't see you. Can we hear you? You're muted, if you can
13 hear us.

14 THE WITNESS: Yes. Can you hear me? I do not
15 have a camera.

16 COMMISSIONER CHAIR SANDOVAL: Okay. All right,
17 Ms. Macfarlane.

18 MR. SAVAGE: Good afternoon, Mr. McDonald. This
19 is Darin Savage, attorney for Cimarex in this matter. I
20 want to thank you for your participation in this hearing.
21 I realize it may have been a bit inconvenient, but
22 understanding your interactions with Colgate I believe is
23 important to these proceedings.

24 BRENT McDONALD,

25 having been duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MR. SAVAGE:

3 Q. Could you state your name and your position with
4 the bank and your position in this matter.

5 A. My name is Brent McDonald. I'm a senior vice
6 president with Prosperity Bank. My role within the trust
7 department of Prosperity is that I manage real estate and
8 oil and gas assets.

9 Q. Thank you. I plan to ask you a series of
10 questions about your Prehearing Statement and interactions
11 with Colgate. If you don't understand the question or
12 feel like you didn't hear it correctly, do not hesitate to
13 ask me to restate it or rephrase it. We do not want you
14 to answer a question that you feel you didn't fully
15 understand or fully hear.

16 Also, don't feel obligated to state an
17 answer right away if you think you need to think about it
18 for a moment or two.

19 Mr. McDonald, do you have a copy of
20 Cimarex' Prehearing Statement with the Exhibits A
21 through H?

22 A. Yes.

23 Q. Okay. Thank you. In Exhibit H, that's
24 Cimarex' -- Colgate's timeline that they used in their
25 January 7th, 2021 hearing. It states -- one of the

1 entries regarding the J.M. Wellborn Trust states Colgate
2 exchanged various emails with the trust from July '20 to
3 January, 2021.

4 Your Prehearing statement states that you
5 sent two emails in July, but that's part of the period
6 covered by the timeline, one on July 16th and the other on
7 July 30th, and Colgate did not respond to these two
8 emails. Is that correct?

9 A. That's correct.

10 Q. Then you also stated that Colgate finally
11 responded to your email dated August 19, 2020. Is that
12 correct?

13 A. That's correct.

14 Q. Okay. So therefore it is fair to say that
15 Colgate was actually unresponsive during the first full
16 month of its timeline in which Colgate claimed that emails
17 were -- exchanges were going on. Exchanges I would
18 define as that you sent them an email or they sent an
19 email, and received a response.

20 This is actually not correct. They were
21 unresponsive for that first month. Do you agree with
22 that?

23 A. Yes.

24 Q. Okay. So it would be fair to say that there was
25 only one email exchanged, not various exchanges with

1 Colgate during the first month of the timeline, and this
2 one exchange occurred August 19th.

3 A. Yes.

4 Q. And then after the August 19th exchange, you
5 stated that this was the last email exchange until you
6 received Notice of the hearing on December 21, 2020. Is
7 that correct?

8 A. Yes.

9 Q. Okay. So after the one -- after the first month
10 of nonresponsiveness and then the one email that was
11 prompted after two emails that you sent, then for over a
12 month afterwards in Colgate's timeline describing ongoing
13 email exchanges, there were none, including no formal
14 offer to enter into an agreement to acquire the interest.
15 Is that correct?

16 A. That is correct.

17 Q. Okay. And is this what prompted you to go out
18 of your way and enter a Prehearing Statement in the
19 proceedings?

20 A. I entered the Prehearing -- I entered the
21 statement because I wanted to make sure -- we wanted to
22 make sure that it was known that we were not interested in
23 participating in the well.

24 Q. Okay. And you stated at the end of your
25 Prehearing Statement that Colgate indicated they would

1 make an offer, and then you say, "But to date an offer has
2 not been received."

3 Is that correct?

4 A. That is correct. As of that date.

5 Q. As of that date. And there seemed to be some
6 ambiguity about what date that's referring to. On the
7 Prehearing Statement there's a date stamp, looks like it
8 was received on January 11, 2021, but when you look in the
9 OCD data base it gives a date of filing as of January 4,
10 2021. Can you clarify for us and identify the date you
11 were actually referring to in your statement that
12 indicates by what date you had not yet received the offer?

13 A. It would have been December 31st.

14 Q. Okay. So you had not received an offer on
15 December 31st?

16 A. Yes, that's right.

17 Q. You did not receive the offer on December 31st.

18 Did you have -- so after -- so you had no
19 email exchanges, except for that one August 19th one, all
20 the way up through December 31st; is that correct?

21 A. That's correct.

22 Q. Okay. Then it looks like at some point you
23 again had some email or some kind of communication after
24 December 31st with Colgate, because it looks like that you
25 finally arrived at some kind of agreement. Is that

1 correct?

2 A. We did. I did hear from Mr. Hajdik and we began
3 negotiating, yes.

4 Q. And then what date was that, this first
5 negotiations or communications take place?

6 A. I do not have that date in front of me right
7 now.

8 Q. It was after December 31st; is that correct?

9 A. That's correct.

10 Q. Can you look at Exhibit H of Cimarex' Prehearing
11 Statement? And it's Colgate's timeline.

12 They say on December 31st they provided an
13 offer to purchase the J.M. Wellborn Trust interest and
14 other accepted offers in the spacing unit.

15 But this did not occur on December 31st,
16 right, it actually occurred after December 31st.

17 A. I believe it was after December 31st, because we
18 sent the statement in on the 31st.

19 Q. You sent the statement, the Prehearing Statement
20 in on the 31st.

21 A. The Prehearing Statement, yes.

22 Q. So in all you experienced -- so in all, based on
23 the communications, and I think that Colgate describes the
24 communications as occurring all the way from July, 2020,
25 to January, 2021, it looks like -- you agree that it looks

1 like it represents ongoing communications, but in all you
2 experienced a month of unresponsiveness from Colgate from
3 July, 2020 to August 18, 2020, and then you had one email
4 exchange on August 19th, and that was followed by another
5 full month of unresponsiveness. And then it looks like
6 right before the hearing, sometime after December 31st,
7 you know, sometime in January, you came to an agreement.

8 And that reflects accurately the
9 communications you had with Colgate; is that correct?

10 A. I just found an email dated December 31st from
11 Mr. Hajdik.

12 Q. Okay. So that --

13 A. He did state -- he made an offer at that point.

14 Q. So that's when the offer occurred, and that was
15 right before the January 7th hearing, about a week before
16 the January 7th hearing; is that correct?

17 A. Yes.

18 Q. And do you remember -- let's see. Excuse me.

19 And based on your testimony at the hearing,
20 based on testimony at the hearing both you and counsel for
21 Colgate relied on the fact that an agreement was in place
22 in order to allow the hearing to go forward by affidavit;
23 is that correct?

24 A. I'm not sure I understand the question.

25 Q. So I direct your attention to Exhibit E in our

1 Prehearing Statement.

2 This is a transcript of the hearing -- at
3 least it's an excerpt from that hearing, and counsel for
4 Colgate -- I'm reading this on line 8 on the second page,
5 page 5:

6 (Reading) Mr. Examiner, I believe the
7 parties, J.M. Wellborn Trust and Colgate, have
8 reached an agreement, that -- let's see --
9 that's what drew the Division to set it for a status
10 conference, Colgate is prepared to present this
11 matter by affidavit this morning.

12 So would you agree that the agreement that
13 you have reached is what you and counsel for Colgate
14 relied on to allow the hearing to proceed by affidavit?

15 A. I'm reading that.

16 Q. Okay. Take your time.

17 In other words, if you had not reached an
18 agreement, it sounds to me like based on that testimony
19 that it would not be -- the case could not have gone
20 forward by affidavit. Do you agree with that?

21 A. I am not sure how the procedure would work on
22 that. I was just saying within that statement that we had
23 arrived at an agreement on the basic terms of the
24 assignment and we were reviewing the assignment in the
25 form that they had sent us.

1 Q. Okay. Yeah, thank you for that clarification.

2 Do you realize that the interest of the
3 J.M. Wellborn Trust was effectively pooled by the Division
4 Pooling Order because Colgate did not remove the Trust
5 from the list of uncommitted owners after stating that the
6 agreement had been reached?

7 A. No, sir.

8 Q. Did Colgate explain to you in any way the
9 consequences of pooling under an Order versus assignment?

10 A. No, sir.

11 Q. Did Colgate live up to its agreement?

12 A. We have not finalized an agreement with Colgate.

13 Q. So they have not acquired the interest and they
14 have not been able to assign it to Colgate?

15 A. That's right.

16 Q. And is that because of your reservations or is
17 it because of their reservations?

18 A. We finished negotiations in February of 2021 and
19 I sent a signed form to Mr. Hajdik; we do that by email so
20 that we can request the payment. And I did not get a
21 response from him until June.

22 Q. And what was --

23 A. Saying that -- at that point I knew there was
24 ongoing issues with the Commission, and I had reservations
25 at that point.

1 Q. So it was Colgate's failure to acquire that
2 after you guys reached an agreement; is that correct? Is
3 that a fair statement?

4 A. In June Mr. Hajdik said they were ready to
5 proceed at that time, but I did not respond to that.

6 MR. SAVAGE: Okay. Mr. McDonald, I thank you for
7 your time on this, and your clarification.

8 Madam Chair, I ask that Cimarex Exhibits D
9 and E be admitted into the record, and I have no further
10 questions for Mr. McDonald at this point.

11 COMMISSIONER CHAIR SANDOVAL: Any objections
12 from the parties of entering I you think you said Exhibits
13 D and E?

14 MR. SAVAGE: That's correct. That's Mr.
15 McDonald's Prehearing Statement and the excerpt from the
16 transcript of the hearing.

17 COMMISSIONER CHAIR SANDOVAL: Mr. Padilla or
18 Rankin any objections?

19 MR. PADILLA: No objections from Colgate.

20 MR. RANKIN: No objections.

21 COMMISSIONER CHAIR SANDOVAL: Commissioners any
22 questions about Exhibits D and E before they are entered
23 into the record.

24 COMMISSIONER BLOOM: No objections, Madam Chair.

25 COMMISSIONER AMPOMAH: No objections, Madam

1 Chair.

2 COMMISSIONER CHAIR SANDOVAL: Thank you.

3 Exhibits D and E are now entered into the record.

4 Mr. Padilla, do you have questions for Mr.
5 McDonald?

6 MR. PADILLA: Yes, I do.

7 CROSS EXAMINATION

8 BY MR. PADILLA:

9 Q. Mr. McDonald, are you saying you never finalized
10 the agreement between yourself and --

11 A. There was never a finalized agreement with
12 Colgate.

13 Q. And in your Prehearing Statement you say that
14 you had two emails. Is that right? I'm reading that
15 correctly?

16 A. Yes.

17 Q. Okay. I'm looking at a string of emails between
18 you and Mr. Hajdik. On July 16th, you sent an email
19 acknowledging receipt of the Proposal, correct?

20 A. That's correct.

21 Q. Then on July 30th you sent a follow-up email.

22 A. Yes.

23 Q. You were saying essentially, "Just following up
24 on this request. Thank you." Correct?

25 A. Yes.

1 Q. Then on August 19th you sent the same email
2 essentially saying you're following up. Right?

3 A. Yes, sir.

4 Q. Then on the same day Mr. Hajdik sent you an
5 email sending his apologies for not responding quicker.

6 A. Correct. I do not remember the content of his
7 email but I did receive a response from him, yes.

8 Q. Then on the same day, August 19th, you indicated
9 in an email that you would be interested in an assignment
10 of the trust's interest, and you desired not to
11 participate. Is that right?

12 A. Yes, sir.

13 Q. Now we jump to December 22nd, and you're
14 following up on the proposal again. Correct?

15 A. Uhm -- uh, December 22nd, yes.

16 Q. Then on December 31st Mr. Hajdik told you he
17 could offer cover \$3100 for the Trust's interest in the
18 well, and he further says, "Please let me know if there's
19 something that you are agreeable to." Correct?

20 A. Yes, sir.

21 Q. Then on January 4th you said you wanted \$10,000
22 for the Trust's interests, right?

23 A. Yes, sir.

24 Q. And January 4th, same day, Mr. Hajdik told you
25 that was significantly higher than actual market pricing

1 for this area, and he said, "I cannot accept your
2 counter."

3 Do you have that?

4 A. Yes.

5 Q. Same day, on January 4th, you indicated that you
6 want to come to an agreement and you're offering a 20
7 percent discount.

8 I'm not going to read the entire email but
9 that's essentially what your economics were saying.

10 A. The engineer that we used to value the asset
11 recommended a 20 percent discount.

12 Q. Then on January 5th Mr. Hajdik sent you another
13 email indicating that he understands your restrictions,
14 and he's saying he can't get approval to deviate from
15 actual or (inaudible) sections that they have seen in the
16 area.

17 And then there is another, a couple more on
18 January 5th back and forth, and then January 7th, Mr.
19 Hajdik tells you, he sent you another email asking -- he
20 says, in effect, to get a check cut I will need a scan of
21 the signed deed and a W-9, and he asks you further, "Are
22 you going to be agreeable with the pooling hearing going
23 forward today since we have reached an agreement here?"

24 And then on January 7th, you said, "Thank
25 you for forwarding the form. The form is under review."

1 You go on, more email exchanges on
2 January 11, January 19, January 27 and February 1st,
3 February 5th.

4 So even after the hearing Colgate was
5 trying to get agreement, right?

6 A. Yes, sir.

7 Q. Is it fair to say that you just wouldn't come to
8 an agreement, or what -- I don't understand why you didn't
9 go forward with this transaction.

10 A. We were negotiating the terms on the form as
11 part of that.

12 Q. One of the forms indicates from Mr. Hajdik that
13 if you have a lesser interest in the prospect then you
14 would be proportionately reduced. Correct?

15 A. He wanted to -- yes, that needed to be included,
16 the proportionate reduction language.

17 Q. But all this time that's contrary to what you're
18 saying in your Prehearing Statement that you didn't have
19 any discussions at all and you only had essentially two
20 emails.

21 That's incorrect, isn't it?

22 A. As of the day that I wrote the Prehearing
23 Statement, all we had was two.

24 Q. Well, afterwards why didn't you withdraw your
25 Prehearing Statement or amend it?

1 A. I didn't know I was supposed to withdraw it.

2 **Q. But it's inaccurate, correct?**

3 MR. SAVAGE: I'm going to object to that, Madam
4 Chair. It -- I feel like they're badgering a witness that
5 made a good faith effort to do an accurate Prehearing
6 Statement. His Prehearing Statement stance is true in
7 context, and I believe that Mr. McDonald is an experienced
8 Trustee but he doesn't have experience specifically with
9 the OCD, and I believe Mr. Padilla is trying to intimidate
10 him a little it.

11 COMMISSIONER CHAIR SANDOVAL: Mr. Padilla I
12 think you have asked these questions and the witness has
13 answered, so once he provides an answer, just move on to
14 the next question, please.

15 MR. PADILLA: All right. I don't have any
16 further questions.

17 COMMISSIONER CHAIR SANDOVAL: Do the
18 commissioners have questions for the witness?

19 COMMISSIONER AMPOMAH: No, Madam Chair.

20 COMMISSIONER BLOOM: Madam Chair, I do not.

21 COMMISSIONER CHAIR SANDOVAL: I do not either.

22 Mr. Savage, do you have any redirect for
23 the witness.

24 MR. SAVAGE: I have some quick redirect on this
25 if you don't mind.

1 REDIRECT EXAMINATION

2 BY MR. SAVAGE:

3 Mr. McDonald, in Colgate's communication
4 timeline they show that you had email exchanges from July,
5 2020 through January 21st. Your Prehearing Statement
6 sounds, based on the iteration that Mr. Padilla provided
7 prior to the hearing, it sounds right on point, very
8 accurate: two emails spaced between -- over the course of
9 a month were sent, Colgate was unresponsive.

10 Is that correct?

11 A. That's correct.

12 Q. August 19th is the only email that was responded
13 to. Is that correct?

14 A. That's correct.

15 Q. And then Mr. Padilla brings up an email from
16 you, which he did mention -- did not mention in the
17 Prehearing Statement that was December 22nd that you sent.
18 And you received no response from that email, correct? Or
19 immediate response.

20 A. The response was December 31st.

21 Q. December 31st. So that's over a week. Did you
22 respond to that? And that happens to correspond with the
23 approaching hearing and that's January 7th, so that's
24 within the week.

25 Would it be fair to say that your -- based

1 on your experience with Colgate that you had a Prehearing
2 Statement in, they were concerned about going forward with
3 the hearing?

4 A. Please restate.

5 Q. Would you agree that Colgate was concerned about
6 being able to go forward with the hearing with your
7 Prehearing Statements in place?

8 A. I don't know.

9 Q. Okay. But you did reach -- they did reach an
10 agreement, and it looks like in the transcript that
11 counsel for Colgate stated that because of the agreement
12 they were able to go forward by affidavit. Is that
13 correct, based on your review of the transcript?

14 A. On that transcript?

15 Q. Yes. Yes. I'm sorry.

16 A. Let me -- on line 8?

17 Q. That's exhibit -- Exhibit E. And that's line 8,
18 and at the top is page 5 on Exhibit E in the Prehearing
19 Statement.

20 Do you agree that counsel for Colgate
21 stated, "I believe the parties, J.M. Wellborn Trust and
22 Colgate, have reached an agreement..."

23 A. I see that, yes.

24 Q. Yes. (Reading) "And as a result they are able
25 to go forward by affidavit."

1 A. Yes, sir.

2 MR. SAVAGE: Okay. I have nothing -- Thank you
3 for your time, Mr. McDonald.

4 I have no further questions.

5 COMMISSIONER CHAIR SANDOVAL: Thank you, Mr.
6 Savage. Do you have any additional witnesses?

7 MR. SAVAGE: Madam Chair, that looks like it
8 concludes my witnesses.

9 COMMISSIONER CHAIR SANDOVAL: Thank you.

10 Mr. Padilla, do you have witnesses?

11 MR. PADILLA: I have one witness to be sworn.

12 COMMISSIONER CHAIR SANDOVAL: Would you like to
13 go ahead and call your witness?

14 MR. PADILLA: I call Mark Hajdik.

15 COMMISSIONER CHAIR SANDOVAL: Who is it?

16 MR. PADILLA: Mark Hajdik.

17 COMMISSIONER CHAIR SANDOVAL: Okay. I think he
18 is already a panelist.

19 MARK HAJDIK,
20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. PADILLA:

23 **Q. Mr. Hajdik, please state your name.**

24 A. Mark Hajdik with Colgate Energy. H-a-j-d-i-k is
25 the spelling of the last name.

1 Q. Mr. Hajdik, you're a landman for Colgate
2 Operating; is that right?

3 A. Correct.

4 Q. And how long -- I know that you have been
5 qualified as an expert landman before the Division, but
6 would you tell the Commission briefly what your work
7 experience is and where you received your education as a
8 petroleum landman.

9 A. I don't have a petroleum landman degree but I
10 have a law degree from South Texas in Houston. I've been
11 a landman forever and a decade. I've been previously with
12 Anadarko, and I've been at Colgate for about four years,
13 the last three working on our New Mexico properties.

14 Q. And you have been qualified as an expert landman
15 before the Oil Conservation Division, correct?

16 A. Yes, I have.

17 Q. Yes?

18 A. Yes, I have.

19 MR. PADILLA: Okay. Madam Chair, I've been
20 trying to -- I think I need your permission to share
21 documents.

22 COMMISSIONER CHAIR SANDOVAL: Yes, I can do
23 that. Give me a second. Okay? You should be able to
24 now.

25 MR. PADILLA: Ah, here it is. (Note: Pause.)

1 Q. Mr. Hajdik, Exhibit 1 is your portion of the
2 January 7, 20021 hearing that was offered at the hearing
3 for the Meridian 3 Federal state Com 1-31H well.

4 I want to take you to your affidavit and I
5 want you to look at paragraph 4. Do you see that?

6 A. I'm not seeing any shared screen, but...

7 COMMISSION CHAIR SANDOVAL: I don't see your
8 shared screen, Mr. Padilla.

9 MR. PADILLA: Maybe I need to tell it to share.

10 COMMISSIONER CHAIR SANDOVAL: I think so.

11 (Note: Pause.)

12 COMMISSIONER BLOOM: Mr. Padilla, do you see the
13 share button beside the video button?

14 MR. PADILLA: Yep.

15 COMMISSIONER BLOOM: It should work.

16 MR. PADILLA: It's not the right one.

17 Here. Can you see it now?

18 COMMISSIONER CHAIR SANDOVAL: Yeah. It's kind
19 of tiny.

20 The button is on the left-hand side of the
21 screen where you can make it bigger or smaller.

22 MR. PADILLA: Let me expand this. Is that
23 better.

24 COMMISSIONER CHAIR SANDOVAL: Yeah, that's
25 better. Thank you.

1 Q. Okay. Can you see it now, Mr. Hajdik?

2 A. Yes.

3 Q. Okay. You state in there in your affidavit:

4 Prior to filing its application Colgate made a good faith
5 effort to obtain voluntary joinder of the working interest
6 owners on the proposed well.

7 The first question I have is: Is Cimarex a
8 working interest owner for this proposal?

9 A. Yes.

10 Q. Now, there's been a lot of discussion about
11 whether one email from you to Mr. Coffman is sufficient or
12 is a lack of good faith and doesn't meet the requirements
13 of the regulations and the statute for compulsory pooling.

14 I want you to tell the Commission why you
15 made this statement and why you say you made a good faith
16 effort to obtain voluntary joinder with Cimarex.

17 With Cimarex, I mean, they -- I had no
18 indication from them that my last communication was
19 insufficient. And, you know, with the larger, more
20 sophisticated operators, you know it's not uncommon to get
21 some questions or -- and then, you know, you don't hear
22 from them again, especially if they have -- you know, I
23 don't know their internal review process, what their
24 decision (inaudible) are on these. I mean, for example, I
25 answered questions for Concho and then they didn't -- they

1 were satisfied to let this case go to hearing via an
2 affidavit, it would be force pooled, so I assumed that was
3 same case here since I hadn't heard from them.

4 There was a number of small owners like Mr.
5 McDonald who had reached out that I needed to -- that the
6 follow-up was in my camp and we made sure to get those
7 responded to, and there were a couple of other small
8 parties in here that we had acquired over the months
9 leading up to or right after the hearing.

10 Q. Do you typically sent a JOA on your well
11 proposals?

12 A. It depends. We will always provide it upon
13 request. I mean, that's an absolute must.

14 Q. So sometimes you send it, sometimes you don't;
15 is that right? Is that what you're saying?

16 A. We are making it a more common practice to send
17 them, if they don't -- there was, you know, probably a
18 period of time where we did not, we just provided it upon
19 request.

20 Q. What is the standard practice, in your
21 experience in the industry, as far as submitting a JOA
22 with a well proposal?

23 A. It's all over the -- it's, you know, any
24 variation. I mean, I've had proposals from EOG that don't
25 include a JOA and include the disclaimer that, you know,

1 one will be provided upon request; and then I have -- you
2 know, I've also received proposals that do have a JOA.

3 **Q. You heard Mr. Morris' testimony, correct?**

4 A. (Note: No audible response.)

5 **Q. You heard Mr. Morris' testimony.**

6 A. Yes.

7 **Q. Okay. He was talking about a spacing unit and a**
8 **contract area. He said that they were two different**
9 **things. Do you agree?**

10 A. (Note: No audible response.)

11 **Q. Tell us about what is a contract area in a JOA.**

12 A. A contract in a JOA is literally whatever you
13 want it to be and the parties are agreeable to, and it has
14 nothing to do with the OCD spacing unit that is outlined
15 in the proposal. You know. And in this case we weren't
16 proposing anything beyond the spacing unit of the well, so
17 there wasn't a contract area to discuss that exceeded what
18 was already in the letter.

19 **Q. When you are sent a proposal to drill a well,**
20 **what's your procedure?**

21 A. It depends on the nature of the acreage. If we
22 are agreeable to being nonop, then you either sign a JOA
23 or let it go straight to hearing. If it's something that
24 we're opposed to and would want to compete for
25 operatorship, then that goes into a different bucket, and

1 all those that we have, they have coordinators that put it
2 into our tracking system and then usually triggers some
3 sort of trade or other discussions where we open up, reach
4 out to the opposing operator to, you know, ensure our
5 rights don't get compromised.

6 **Q. Well, in this case the issue is that you did not**
7 **reach out and that one email is not enough. What do you**
8 **have to say to that?**

9 A. I felt that I had answered the question and I
10 didn't get any further questions, so I don't -- I'm not
11 aware of their inner workings, and at the time I wasn't
12 aware that they had discounted this as a "not real"
13 proposal. And, you know, I...

14 **Q. You heard the testimony of Mr. Morris and Mr.**
15 **Coffman saying that they didn't think you were serious.**
16 **How -- what is your response to that?**

17 A. We're both operating in the area. I mean,
18 that's their own prerogative to not take that into
19 consideration, if this could be a real proposal. I mean,
20 I don't -- we internally do not discount or, you know,
21 fail to evaluate proposals based to some internal ranking.
22 I mean, it's our acreage. We are going to do what we need
23 to do to preserve our rights or resolve the situation.

24 **Q. And that's when you're the target of a well**
25 **proposal or a compulsory pooling application, isn't that**

1 **right?**

2 A. (Note: No audible response.)

3 **Q. I guess you didn't hear my question.**

4 **If you're the target of a well proposal or**
5 **a pooling application that's not -- it doesn't have a JOA**
6 **attached to it, do you disregard it?**

7 A. No. If it meets the basic OCD requirements that
8 can result in a hearing being filed, and then we would not
9 disregard it.

10 **Q. Well, Cimarex is saying that burden was on you**
11 **to follow up. What do you have to say to that argument?**

12 A. I would say -- well, I answered their question,
13 and if they had further questions, I never received those.
14 Uhm, it's not uncommon to -- for working interest owners
15 go radio silent on you until Hearing Notices go out, and
16 then at that point they do realize that you're serious.

17 And I still didn't get a response. I just
18 assumed they were satisfied with seeing the hearing.

19 **Q. So you think it's a two-way street, or what do**
20 **you have to say about negotiations back and forth?**

21 A. I would assume it's a two-way street, because I
22 don't -- or I believe it's a two-way street, because I
23 don't know what they need. I don't know if they have,
24 working interest owner has accurate -- you know, I
25 don't -- I don't know what their questions are, can be all

1 the time. It's a wild array of questions I get from the
2 basic, "How do I even own this"? all the way up to, "What
3 is your (inaudible)?"

4 (Note: Reporter inquiry - no response given.)

5 **Q. You were also doing trade negotiations on other**
6 **acreage, correct?**

7 A. Correct. But it was with Riley, who wasn't
8 working this proposal at the time, at the time I was
9 communicating. I was under the impression that Mr.
10 Coffman was handling those wells, or the wells in
11 question.

12 **Q. Well, Mr. Riley says that you should have asked**
13 **him or somehow contacted him about this proposal. Do you**
14 **normally change from one landman to the other if that**
15 **occurs?**

16 A. No, not unless there is a reason to pass it
17 over. And as he already indicated, that trade was
18 already, uhm, approved and T'd up, there wasn't any
19 modification at that point, so I didn't see any reason to
20 talk to him about it.

21 **Q. And that was another trade?**

22 A. A completely unrelated matter, yes.

23 **Q. Let me take you to the next, uh -- well, before**
24 **I move from that, let me --let me just direct your**
25 **attention to the same exhibit as ours. It's the email**

1 that Mr. Pryor (sic) already introduced in here, including
2 the timeline of your discussions with the working interest
3 owners.

4 But our Exhibit 2 is that email exchange
5 from you and Mr. Coffman. Do you have it there in front
6 of you?

7 A. Uhm, I'm generally aware of it. I can pull it
8 up. (Note: Pause.) Okay.

9 Q. First of all let's look at your email. It says,
10 at the top of the page -- and, uh, you indicate that your
11 operating strip is the north half/north half, and I assume
12 that's for Sections 2 and 3. Right?

13 A. Yes.

14 Q. You say: Due to our consolidated operational
15 efficiencies, we would be happy to talk some options for
16 the offsetting acreage in order to fully maximize
17 development of the area.

18 What did you get back?

19 A. I didn't get any follow-up questions or
20 proposals or thoughts.

21 Q. You didn't get anything back, right?

22 A. (Note: No audible response.)

23 Q. Did you hear my question?

24 A. Correct. I did not.

25 Q. Did you get anything back from Mr. Coffman?

1 A. No.

2 **Q. Do you know what acreage they would have in the**
3 **north half for a JOA contract area?**

4 A. Uhm, I'm sure we have information on it, but our
5 acreage didn't -- we weren't proposing a -- something
6 larger than our spacing unit, and that's why I said if
7 they wanted to work on something I would be happy to
8 discuss it.

9 **Q. Did you get anything back on the north half JOA?**

10 A. (Note: No audible response.)

11 **Q. Is that no?**

12 A. No.

13 **Q. So when you're dealing with somebody like**
14 **Cimarex, is there a different approach than just simply --**
15 **or say for example when you're dealing with Prosperity**
16 **Bank with Mr. McDonald.**

17 A. Yes. I would -- a company like Cimarex who has
18 extensive experience, you know, (inaudible) matters, you
19 know I'm going to, you know, assume they understand the
20 repercussions and -- for actions and timelining, and have
21 an understanding, and in-depth of the necessary timelines,
22 versus, excuse me, someone like Mr. McDonald who has a
23 very small interest and, you know, doesn't, you know,
24 need -- needs much more follow-up communication to
25 perpetuate their rights.

1 Q. In your opinion when you get a well proposal
2 that's not accompanied by a JOA, do you rank it as being
3 an unacc- -- a poor proposal, or give it no rank?

4 A. They are all treated the same. I mean, I would
5 assume that it -- that the operator could file for hearing
6 on any proposal we get, that -- you know, 30 days later is
7 the baseline assumption.

8 Q. Exhibit 3, is that, uh -- the application to
9 reopen this case, in there a highlighted portion where
10 Cimarex says that, uh, Covid, Christmas, and all of that
11 sort of thing somehow interrupted the compulsory pooling
12 process.

13 Did you -- were you aware of any
14 suspensions of compulsory pooling application, because of
15 covid or because of Christmas?

16 A. No. We filed in accordance with OCD schedules,
17 that's all.

18 Q. Did you purposely file the Notice of Hearing to
19 be received by Cimarex on Christmas Eve?

20 A. No. I mean, we would have put them in the mail
21 20 days out. I mean, I don't set the dates for when --
22 you know this is the OCD calendar, so...

23 Q. And it's your opinion that paragraph 4 is
24 accurate in terms of good faith when it comes to Cimarex;
25 is that correct?

1 A. Yeah, I believe that they -- you know, their
2 lack of response was an indication that they were fine
3 with us moving forward with our hearing.

4 MR. PADILLA: Okay. We offer Exhibits 1, 2 and
5 3.

6 That's all I have, Madam Chair.

7 COMMISSIONER CHAIR SANDOVAL: Do you have
8 objections to entering --

9 MR. MOANDER: Madam Chair, I just want to
10 clarify. Are these -- it looks like these are lettered
11 exhibits -- unless I've got the wrong document,
12 Mr. Padilla.

13 MR. PADILLA: No, we have Exhibit 1, 2 and 3.

14 MR. MOANDER: Oh, okay. I think I was confused
15 by the sub numbering.

16 Okay. Thank you, Mr. Padilla. My
17 apologies.

18 COMMISSIONER CHAIR SANDOVAL: Mr. Savage and Mr.
19 Rankin, any objections to entering Exhibits 1, 2 and 3?

20 MR. RANKIN: No objection.

21 MR. SAVAGE: No objection. Thank you.

22 COMMISSIONER CHAIR SANDOVAL: Commissioners, any
23 questions or objections?

24 COMMISSIONER BLOOM: No, objections, Madam
25 Chair.

1 COMMISSIONER AMPOMAH: No objection, Madam
2 Chair.

3 COMMISSIONER CHAIR SANDOVAL: All right.
4 Colgate Exhibits 1, 2 and 3 are entered into the record.

5 Mr. Savage, do you have questions for the
6 witness?

7 MR. SAVAGE: I do, Madam Chair. Thank you.

8 Mr. Hajdik, good afternoon. Thank you for
9 your testimony today. I want to ask you a number of
10 follow-up questions for clarification. If you do not
11 understand the question or feel that you didn't hear it
12 correctly, please do not hesitate to ask me to repeat it.

13 If a question lends itself towards a
14 yes-or-no answer, if you would to the best of your
15 ability, it would be helpful to answer that in that
16 manner, but of course you would have the opportunity to
17 provide any additional explanation.

18 I want to real quickly just talk about the
19 Notice issue that Mr. Padilla brought up.

20 CROSS-EXAMINATION

21 BY MR. SAVAGE:

22 Q. Is it true the OCD was under Covid emergency
23 conditions during that time?

24 A. I'm not sure what you're talking about.

25 Q. Did the OCD not issue emergency contingencies

1 **and emergency plans to handle and deal with Covid during**
2 **that time period?**

3 A. I'm not aware of any modifications to the Notice
4 (inaudible).

5 **Q. Because if I remember right, the OCD announced**
6 **that there may be opportunity for extension --**

7 COMMISSION CHAIR SANDOVAL: Mr. Savage, a
8 question, please.

9 MR. SAVAGE: Yes.

10 **Q. Are you aware that the OCD provided certain**
11 **exceptions during that time if they invoked Covid**
12 **emergency concerns or issues?**

13 A. I'm not aware what you're talking about. I
14 don't -- I don't know what you mean was there any...

15 MR. SAVAGE: Madam Chair, I believe we can take
16 Judicial Notice that we were under Covid emergency
17 conditions at that particular time and it was up to the
18 discretion of the OCD or OCC to grant any exceptions under
19 those based upon justification.

20 Can we agree to that?

21 COMMISSIONER CHAIR SANDOVAL: Mr. Moander,
22 what's the --

23 MR. MOANDER: Mr. Savage, could you repeat that
24 again? There was a lot in that sentence.

25 MR. SAVAGE: Yes, Mr. Moander.

1 It looks to me like it was clear that the
2 OCD and OCC were under Covid emergency conditions, and I
3 believe there is still a Notice on the OCD and OCC website
4 that you get that information. I was wondering if it's
5 possible to take Judicial Notice that during that time
6 period we were operating under Covid emergency health
7 conditions.

8 MR. MOANDER: Madam Chair, so I think my concern
9 with this is that I'm not sure I would call it emergency
10 Covid conditions, but given the fact that it is absolutely
11 no secret that we've been under the governor's Health
12 Order and OCC and OCD were governed by that Order, that
13 the Commission could take judicial notice of that.

14 I'm not sure that I -- I would not
15 recommend that it be described as Covid emergency
16 anything, other than there was a Covid Health Directive
17 from the Governor that impacted some of the functions of
18 the Commission, in particular the in-person meetings.

19 But I think that is probably the extent of
20 it at this point.

21 Now, as an alternative if there is any
22 version of the Health Order that was in place at the time
23 or has remained in place, that could also be judicially
24 Noticed and put into the record.

25 COMMISSIONER CHAIR SANDOVAL: Well, if I am

1 taking Notice of the Public Health Order, I mean we did
2 continue to have hearings, they were just electronically
3 as opposed to in person.

4 So I -- is there anything we need to do for
5 that, Mr. Moander?

6 MR. MOANDER: You're allowed to state
7 essentially that you're taking Judicial Notice of that,
8 and what it is effectively is it's recognizing and
9 establishing a fact.

10 COMMISSIONER CHAIR SANDOVAL: Okay.

11 MR. MOANDER: I would recommend that you permit
12 Mr. Padilla and Mr. Rankin, if they have a response to
13 this, as well, before you proceed.

14 But, yeah, you would essentially
15 acknowledge a Health Order was in effect at the time of
16 what is being discussed here. And I think that's correct,
17 and that that time is now established.

18 Again I'd let the other parties comment on
19 this if they wish.

20 COMMISSIONER CHAIR SANDOVAL: Any comments,
21 Mr. Padilla?

22 MR. PADILLA: Madam Chair and the Commission,
23 there's no question there were Emergency Orders,
24 continuances were granted, but the process for hearings or
25 Notice were not changed. If that is where Mr. Savage is

1 going with that, then I disagree that Emergency Orders,
2 suspended or otherwise, amended Notice requirements for
3 hearings.

4 Sure there were Emergency Orders and we
5 didn't have any hearings. We still don't have any
6 hearings that are in-place hearings.

7 So those are continuing.

8 So I don't have any problem, mask mandates
9 or the other policies about distancing and that kind of
10 thing, but to the extent that Notice requirements were
11 amended, if that's where Mr. Savage is going, I don't
12 think the emergency Orders went that far.

13 MR. MOANDER: Madam Chair, I would also agree
14 with Mr. Padilla's assessment of that, the Health Orders
15 concerned -- for purposes of OCD and OCC, those Health
16 Orders, like essentially every other entity in the state,
17 were prohibited from meeting in person. But it also is
18 true, as Mr. Padilla said, that that Health Order did not
19 abandon or otherwise alter any of the procedures or
20 processes for hearings for OCD or OCC.

21 See, here's the problem with this. We are
22 now starting to migrate further and further away from
23 Judicial Notice, Madam Chair, because we are getting
24 really, really specific here, which does cause me a little
25 concern. But I think if you found there was a Health

1 Order in place for the relevant time that for all intents
2 and purposes prohibited in-person meetings, hearings,
3 et cetera.

4 And I think you could also find that OCC,
5 and -- OCD and OCC procedures for hearings were not
6 altered outside that limitation of in-person meetings.

7 MR. SAVAGE: Madam Chair, I'm going to make
8 everybody happy here and I'm going to withdraw the
9 request.

10 MR. MOANDER: Mr. Savage, it --

11 MR. SAVAGE: It was an effort on my part to
12 attempt to address contingencies and considerations under
13 Covid conditions, but I think I'm going to move on,
14 because I think there's more important issues in here,
15 that we need to address and it's getting toward 5:00
16 o'clock.

17 MR. MOANDER: Mr. Savage, I appreciate that;
18 however -- and I don't intend to speak for the Commission
19 as a whole here, but I suspect that all of the
20 Commissioners are probably acutely aware, and especially
21 Madam Chair, about the particulars of the Covid Health
22 Orders and so on. So I will also make sure that's -- they
23 are reminded of that, if that is an issue.

24 MR. SAVAGE: Thank you. Thank you.

25 **Q. Mr. Hajdik, here on the communication**

1 timeline -- do you have a copy of that? That would be
2 Exhibit H in my Prehearing Statement, in Cimarex'
3 Prehearing Statement, and I think it's also Exhibit B-3 in
4 Exhibit 1, which you should have a copy of. That is your
5 exhibit.

6 Is it -- there's an entry on which you
7 point out the ongoing communications with Cimarex, and you
8 have a time frame for August, 2020, to January 2021. Is
9 that correct? Cimarex is included in the -- in that list
10 described as responding to various email questions; is
11 that correct?

12 A. Yes, that's what I had done, and then there
13 hadn't been -- it was just kind of open at that point. I
14 hadn't received a response, so that was the intention in
15 that statement.

16 Q. But as we know, based on looking at a single
17 mail exchange, it would be accurate to say there was just
18 one, one email exchange? No other emails representing
19 that time frame that you provide August to January.

20 A. (Note: No audible response.)

21 Q. Is that correct?

22 A. Yes. I already said that, but yes.

23 Q. And just to note the obvious, it was Cimarex not
24 Colgate that initiated the communication. Is that
25 correct?

1 A. That's pretty standard procedure. I initiate
2 the conversation with the well proposal.

3 **Q. Okay.**

4 A. And in your response to Cimarex, in your
5 communication timeline you describe that -- that you, uh,
6 addressed the decision to participate, it looks like, from
7 the decisions regarding participation by the willingness
8 to sell.

9 Uh, is that correct? In your description
10 of your entry for that August, 2020, January, 2021 entry,
11 that includes Cimarex?

12 A. That's what it says, yes.

13 **Q. And in your response to Cimarex, in the email**
14 **response did you ask of inquire about a decision regarding**
15 **Cimarex' participation or willingness to sell, as you**
16 **describe in your timeline?**

17 A. I sent an email (inaudible).

18 **Q. I'm sorry, I didn't understand that.**

19 A. I said no, the email was just asking what they
20 wanted to do, or what -- or we're open for discussion.

21 **Q. Okay. In fact is it not true that Cimarex**
22 **referenced a question regarding a potential JOA, which is**
23 **part of a discussion to reach an agreement, mentioning a**
24 **JOA? Would you agree with that?**

25 A. That -- we weren't even proposing wells in what

1 they were talking about, so I really don't understand the
2 question and why we're questioning that period.

3 Q. It is the only communication between Colgate and
4 Cimarex; is that correct?

5 A. (Note: No audible response.)

6 Q. It's the sole communication between Colgate and
7 Cimarex?

8 A. I said yes. I'm sorry.

9 Q. I'm sorry. I'm not hearing that. Thank you.

10 In your communication timeline, in another
11 entry you gave a specific month, December, 2020, for an
12 entry of a singular communication. That's December, 2020,
13 and you describe Conoco as agreeing to participate; is
14 that correct?

15 A. Right.

16 Q. Yet for Cimarex, with whom you had only one
17 communication, would you agree that the one email exchange
18 with Cimarex that occurred only in August, 2020, with the
19 other email exchanges that shows to the OCD "ongoing
20 communication from July, 2020, to January, 2021"; is that
21 correct?

22 (Note: Reporter request.)

23 Q. Yes. Mr. Hajdik, for Cimarex, with whom you
24 also only had one communication, you grouped that one
25 email exchange with Cimarex that occurred only in August,

1 2020, with other email exchanges that shows to the OCD
2 ongoing communications from July, 2020, to January, 2021.

3 Is that correct? You did group that one
4 email within that entry that shows or implies ongoing
5 communications over the course of --

6 A. I don't know that it would imply. That's not my
7 interpretation of it that it implies ongoing
8 communications. It says responded to various email
9 questions from, and lists off a number of parties. I
10 mean, I guess you could say a best-case scenario you could
11 say it's vague, but I wasn't trying to imply that...

12 Q. Best case scenario, it's possibly ambiguous. Is
13 that correct?

14 A. Sure.

15 Q. Do you think the accurate representation to the
16 OCD of your communication with Cimarex would have been to
17 separate out the email exchange as occurring in August,
18 2020, as you did with Conoco?

19 A. Conoco's has been ongoing, as well. It wasn't a
20 one-off situation.

21 Q. Well, there's something important, obviously,
22 about that December, 2020, entry; is that correct?

23 A. Yeah. They responded to our proposals, and we
24 had had -- and responded to my communication, and we
25 resulted in, uhm, them saying they would plan to

1 participate, and, uhm, rather than settle -- or I believe
2 "settle". Or I believe it's settle. I don't remember, I
3 don't have that communication in front of me.

4 Q. Well, is it fair to say -- can you see how
5 grouping your one communication with Cimarex within the
6 time frame of ongoing communications from July, 2020, to
7 January, 2021, would be misleading to the OCD?

8 A. I wouldn't say it's misleading based on the way
9 it's worded, but I could see how you would agree with it
10 being ambiguous.

11 Q. You've been involved in numerous poolings, looks
12 like, based on what I see on the docket. Are you
13 generally familiar with the customary process of filing
14 for hearing and proceeding with the hearing pursuant to
15 the rules of the OCD and OCC in general?

16 A. Yes.

17 Q. Are you familiar with the rule that applicant
18 must show, quote, "evidence of attempts the applicant made
19 to gain voluntary agreement, including but not limited to
20 copies of relevant correspondence"?

21 I direct you to paragraph 8 of your Exhibit 3. This
22 is Rule 19.15.4.12A (b)(vi).

23 A. What is your question --

24 Q. Are you familiar with this regulatory --
25 requirement for an applicant under a pooling?

1 A. Yes.

2 Q. Can you see that language? Do you have that
3 exhibit? It's your Exhibit 3, paragraph 8, if you want to
4 see the...

5 A. Just for you-alls record, this is gone on --
6 it's been a pretty long day, it's 5:00 o'clock in Texas
7 and so there's (inaudible) here restrictions for
8 obligations. So I just -- just not answer your question,
9 but...

10 COMMISSIONER CHAIR SANDOVAL: What are your
11 timing limitations?

12 THE WITNESS: We have 15 minutes.

13 COMMISSIONER CHAIR SANDOVAL: Okay. My guess is
14 that this is probably -- let's take a quick pause and talk
15 about timing.

16 Okay. So I mean it's already 4:00 o'clock
17 here. We need to finish Mr. Savage's questions, do
18 Commission questions, then Mr. Padilla's redirect. I do
19 not think we are going to get that done in 15 minutes.

20 Then -- I think, Mr. Padilla, this is your
21 only witness; is that correct?

22 MR. PADILLA: That's correct.

23 COMMISSIONER CHAIR SANDOVAL: Okay. I think
24 there is potential that the commissioners might want to
25 recall witnesses if they have further questions, there is

1 closing and all of those pieces, and then deliberations.
2 None of that I believe is going to get done before 5:00
3 today.

4 I also think that the way that these
5 hearings were scheduled, they were scheduled back to back.
6 There was the one we are doing in February and then the
7 one we have on the March docket, depending on how this one
8 goes. So we need to have this one concluded rather
9 judicially, like move it along. I don't think we are
10 going to finish it today.

11 I am somewhat limited on additional timing
12 this week and next week. This week really the only
13 availability that I could have -- uhm, I could probably
14 move things around and do 9:00 to 12:30 on Thursday to
15 continue this, or like 11:30 to 3:00 on Friday.

16 It sounds like we are going to need to
17 schedule a continuance date to finish this up, because I
18 do not think it's finishing today.

19 COMMISSIONER BLOOM: Madam Chair (inaudible).

20 (Note: Reporter inquiry.)

21 COMMISSIONER CHAIR SANDOVAL: I think
22 Commissioner Bloom said he's out Thursday, Friday this
23 week. You can probably always hear me because I am
24 exceptionally loud.

25 Okay. Well, that pushes it into next week.

1 I am out Monday/Tuesday. I could do from,
2 like -- I'm only from -- I could probably move things and
3 do things on Wednesday morning, or from like 9:00 to
4 2:00-ish on Thursday or Friday morning. That's about
5 where I am.

6 Commissioners, do any of those, and Mr.
7 Moander, do any of those times work for you, and then we
8 can work on the parties.

9 MR. MOANDER: Madam Chair I have a court hearing
10 on Wednesday the 2nd -- not a court hearing, but I have an
11 obligation related to some litigation. I probably
12 wouldn't be available till 10:30 on the 2nd, and I can
13 make myself available on the 3rd and the 4th.

14 COMMISSIONER CHAIR SANDOVAL: So let's look at
15 the 3rd or 4th.

16 On the 3rd I could do 9:00 to almost 3:00,
17 and Friday I've got most of Friday morning. Will that
18 work for the other commissioners?

19 COMMISSIONER AMPOMAH: Madam Chair, so Thursday
20 I do have a class, so I cannot, but I can do Friday any
21 time.

22 COMMISSIONER CHAIR SANDOVAL: Okay. What if we
23 do like 8:30 to I could do probably up until 1:00 o'clock
24 that day.

25 MR. PADILLA: What date is that, Madam Chair?

1 COMMISSIONER CHAIR SANDOVAL: The 4th.

2 MR. MOANDER: The Friday.

3 MR. PADILLA: I'm open. I'm open then.

4 COMMISSIONER CHAIR SANDOVAL: Mr. Savage?

5 MR. SAVAGE: That would work for me. Thursday
6 we have the OCD hearings.

7 COMMISSIONER CHAIR SANDOVAL: Right. Avoiding
8 Thursday would be good.

9 Will that work for witnesses? Can we make
10 it work for witnesses?

11 WITNESS HAJDIK: Really, I'm not -- I have some
12 personal matter on Friday.

13 COMMISSIONER CHAIR SANDOVAL: The 4th?

14 WITNESS HAJDIK: Yes.

15 COMMISSIONER CHAIR SANDOVAL: Okay. Thursday is
16 OCD, I'm assuming, and you've got a class, Dr. Ampomah
17 That means we're pushing it into the next week of the 7th,
18 which is fine. We would need to continue probably the
19 next case off of the 10th docket, or we could continue
20 this on the 10th at that point, because we are already
21 that week.

22 MR. MOANDER: You know, Madam Chair, that might
23 make sense to put this on essentially -- well, do we know,
24 or do we have any idea -- I haven't looked at, obviously,
25 the case that we are going to probably have on the 10th

1 yet because we've got to get through today, so I don't
2 know how long -- we could face the same problem again on
3 the 10th.

4 So continuing that case that's currently
5 set for the 10th and replacing it with this one is
6 probably our best bet. Alternatively if there's any
7 openings that week, I can tell you I'm available all day
8 the 8th and 9th and the morning only on the 11th.

9 COMMISSIONER CHAIR SANDOVAL: I could do the 7th
10 or the 9th. I cannot do the 8th or the 11th.

11 MR. MOANDER: How about the 9th? How does that
12 look?

13 COMMISSIONER CHAIR SANDOVAL: I'm wondering what
14 is the point of doing it if we are having a hearing the
15 next day anyway. Why don't we continue the case that's on
16 the 10th and have it all on the 10th.

17 Let me see if there's anything already on
18 the March docket other than this. (Note: Pause.)

19 We also have another, which could continue.
20 There is a de novo case for compulsory pooling application
21 of Spur Energy that day.

22 MR. RANKIN: Madam Chair?

23 COMMISSIONER CHAIR SANDOVAL: Yes.

24 MR. RANKIN: I may offer some relief to the
25 Commission's docket.

1 COMMISSIONER CHAIR SANDOVAL: Oh.

2 MR. MOANDER: I'm all ears now, Mr. Rankin.

3 COMMISSIONER CHAIR SANDOVAL: Yeah, we're
4 listening, Mr. Rankin.

5 MR. RANKIN: Well, we will be filing an
6 unopposed motion to continue the Spur case, so that docket
7 should have some additional flexibility.

8 MR. MOANDER: Hallelujah. Thank you, Mr.
9 Rankin.

10 COMMISSIONER CHAIR SANDOVAL: All right. So
11 let's -- since we're already in that week, let's continue
12 this to the 10th, and continue the case that's currently
13 on that docket to the next Commission hearing.

14 MR. MOANDER: Why don't we check with Mr. Hajdik
15 and see if he's available, just to make sure. It is a
16 little different here where you can't just strong-arm the
17 witness in.

18 Mr. Hajdik, do you know your availability
19 on the 10th?

20 WITNESS HAJDIK: You say the 10th. I don't see
21 anything on my calendar. I should be good.

22 MR. MOANDER: Perfect.

23 COMMISSIONER CHAIR SANDOVAL: Mr. Savage, how
24 about your witnesses? I think there's a chance we might
25 recall some of them.

1 MR. SAVAGE: Okay. Are they still online? I
2 believe they are.

3 Mr. Coffman?

4 WITNESS Coffman: Yeah, I'll make myself
5 available any time.

6 MR. SAVAGE: Mr. Morrison? I mean, Morris.
7 It's been a long day.

8 WITNESS MORRIS: Yeah, I'm available.

9 MR. SAVAGE: I believe we should be through with
10 Mr. McDonald, I would think. Is that correct, Madam
11 Chair?

12 COMMISSIONER CHAIR SANDOVAL: I believe so.

13 MR. SAVAGE: I do have one comment. Uh, we --
14 it's like -- you know, there are a number of wells in
15 those sections for the Crest well, for Cimarex' Crest well
16 which is competing applications. It looks like we ran
17 across an existing unit that overlaps in that
18 quarter/quarter section, and I think we are going to have
19 to do an amended application for that.

20 So, you know, this may work out that, you
21 know, we have some additional time. We will need some
22 time to do that application and deal with Notice for that.
23 Just to let you know, give you a heads-up on that.

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

25 COMMISSIONER CHAIR SANDOVAL: Okay. So at this

1 point do we continue the questioning of the witness until
2 the 10th?

3 MR. MOANDER: I think that's probably the way to
4 go, because given -- I hope I pronounce it correctly
5 because I feel like I'm not -- Mr. Hajdik's schedule, he
6 is going to be leaving in five minutes, or needs to be
7 leaving.

8 So I think at this point if you wanted to
9 state on the record under Rule 19.15.4.15 NMAC this matter
10 will be continued to March 10th at 9:00 a.m. to finish the
11 evidentiary record and then proceed with deliberations,
12 you would be okay in doing so.

13 COMMISSIONER CHAIR SANDOVAL: Yes. Let's do
14 that.

15 MR. MOANDER: So that's so ordered, Madam Chair?

16 COMMISSIONER CHAIR SANDOVAL: That is so
17 ordered.

18 MR. MOANDER: Excellent. And with that, I would
19 recommend we go ahead and proceed through the remainder of
20 the agenda and close out the hearing on completion of the
21 agenda.

22 COMMISSIONER CHAIR SANDOVAL: Okay. I mean the
23 remainder of the agenda is Other Business, so if the
24 witnesses need to drop, you can drop.

25 MR. MOANDER: They don't need to stay.

1 (Note: Proceedings continued to March 10,
2 2022.)

3 (Time noted 4:12 p.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 Tuesday,
8 February 22, 2022, 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
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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.

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