

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

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

Application of Cimarex Energy Company
for Hearing De Novo of Case 21629
Eddy County, New Mexico DE NOVO CASE NO. 21744

COMMISSION HEARING

DAY TWO

PAGES 111-203

THURSDAY, MARCH 10, 2022

This matter came on for hearing before the New Mexico Oil and Gas Commission on Thursday, March 10, 2022, via Webex Virtual Conferencing Platform hosted by the New Mexico Energy, Minerals and Natural Resources Department

PRESENT

ADRIENNE SANDOVAL
GREG BLOOM
WILLIAM AMPOMAH
CHRISTOPHER MOANDER
FLORENE DAVIDSON

COMMISSION CHAIR
COMMISSIONER (SLO)
COMMISSIONER (ENMRD)
COMMISSION COUNSEL
COMMISSION CLERK

REPORTED BY: Mary Therese Macfarlane, CCR
New Mexico CCR No. 122
PAUL BACA PROFESSIONAL COURT REPORTERS
500 4th Street, Suite 105
Albuquerque, NM 87102
(505) 843-9241

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A P P E A R A N C E S

FOR CIMAREX ENERGY: Darin C. Savage, Esq.
Abadie & Schill, PC
214 McKenzie Stree
Santa Fe, NM 87501
(970) 385-4401
darin@abadieschill.com

FOR COLGATE OPERATING, LLC: Ernest L. Padilla, Esq.
P.O. Box 2523
Santa Fe, NM 87504
(505) 988-7577
padillalawnm@outlook.com

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1 (Time noted 8:22 a.m.)

2 COMMISSION CHAIR SANDOVAL: All right. Moving
3 on to Agenda Item No. 5, which is a continuance of the
4 evidentiary hearing on invalidation of the Division Order.
5 It was de novo Case No. 21744. It was Application by
6 Cimarex Energy for a de novo hearing of Case No. 21629.

7 We started this evidentiary hearing on
8 February 22nd and continued it to today.

9 Mr. Savage, can we hear you.

10 MR. SAVAGE: Yes. Good morning, Madam Chair.

11 COMMISSION CHAIR SANDOVAL: Good morning.
12 Mr. Padilla, can we hear you.

13 MR. PADILLA: Yes. I'm here.

14 COMMISSION CHAIR SANDOVAL: Okay. All right.
15 let's make sure that -- well, when we get there I can move
16 over any people that need to be made panelists, but first
17 I want to address the motions that were filed initially by
18 Mr. Savage and Cimarex, and then a response made by
19 Mr. Padilla and additional reply by Mr. Savage.

20 You know, we received those and reviewed
21 those, but at this point I would like to deal with that
22 motion after we close the evidentiary hearing portion of
23 this. So I would like to go ahead and continue the
24 evidentiary hearing piece of this and then we can discuss
25 that, and I will give each of you an opportunity to

1 briefly present on it at that time.

2 So received, but let's get through the
3 evidentiary part and then we can address it.

4 All right. Any initial statements, Mr.
5 Savage and Padilla before we continue with Mr. Padilla's
6 witnesses?

7 MR. SAVAGE: Madam Chair, Riley Morris, Mr.
8 Riley Morris is present. I just want to point that out.

9 Mr. John Coffman who was one of our
10 witnesses, he's available and he's present. He is
11 traveling. He had a commitment to a trip that he had
12 made, and he is traveling. And he will be available,
13 though we may need to give him just a text or a quick
14 heads up if the Commission decides to recall him for
15 further questioning.

16 COMMISSION CHAIR SANDOVAL: Okay. Thank you.

17 Anything before we get started back up with
18 your witness, Mr. Padilla?

19 MR. PADILLA: No, Madam Chairman. I think we
20 were -- I had finished with Mr. Hajdik and had tendered
21 him for cross-examination. I think that's where we were
22 when we recessed.

23 COMMISSION CHAIR SANDOVAL: Okay.

24 All right. I think we will go ahead and
25 recall your witness, Mr. Padilla. I think we were just

1 finishing up with your questions, so if you have any
2 additional questions I'll give you that opportunity and
3 then I'll go ahead and move to Mr. Savage for any cross,
4 and then the commissioner questions.

5 All right. Can you remind me how to state
6 your witness' name so that I can state it correctly.

7 MR. PADILLA: Hadik, Haj-kik (phonetic).

8 Maybe it's better he identify or told us
9 how to pronounce his name.

10 THE WITNESS: Ha-dik. The J is silenced.

11 COMMISSION CHAIR SANDOVAL: Hadik?

12 THE WITNESS: Yes.

13 COMMISSION CHAIR SANDOVAL: All right. I
14 believe you are already -- were already sworn in
15 previously.

16 Mr. Moander, just for clarification, does
17 that, that still applies here; is that correct?

18 MR. MOANDER: Yes, Madam Chair, because the
19 hearing was continued and all the sort of rules
20 (inaudible) for the hearing overall, Mr. Hajdik is still
21 under oath.

22 COMMISSION CHAIR SANDOVAL: Okay. Just a
23 reminder you're still under oath, Mr. Hajdik.

24 Go ahead, Mr. Padilla. You can continue
25 with any remaining questions that you have.

1 MR. PADILLA: I don't have any remaining
2 questions, Madam Chairman. I think if I have anything I
3 will do it on redirect.

4 COMMISSION CHAIR SANDOVAL: Okay.

5 All right. Then Mr. Savage, you're up.

6 MR. SAVAGE: Thank you, Madam Chair.

7 CROSS EXAMINATION

8 BY MR. SAVAGE:

9 Q. Mr. Hajdik, good morning. Thank you again for
10 your testimony today, this second part of the hearing.

11 As I mentioned last time, if you do not
12 understand a question or feel like you didn't hear it
13 correctly, please ask me to repeat it. We do not want you
14 to answer a question you did not hear, or feel you
15 misunderstood.

16 Mr. Hajdik, do you have copies of Cimarex's
17 exhibits and Colgate's exhibits in front of you at this
18 time? They are attached to the Prehearing Statements that
19 were submitted. (Note: Pause.)

20 Mr. Hajdik? I'm sorry, did I...

21 A. I'll have to pull them up.

22 Q. We will be looking at Cimarex Exhibits C, H
23 and E today. Do you have those available? (Note:
24 Pause.)

25 Mr. Hajdik, are those available to you?

1 A. Uh, yes.

2 Q. Okay. And also we will be looking at Colgate's
3 Exhibit 3, specifically paragraph 8. Do you have that?

4 (Note: Pause.)

5 Okay. I'm going to assume that you do.

6 MR. MOANDER: I was going to --

7 COMMISSION CHAIR SANDOVAL: All right. Mr.
8 Hajdik, when you're addressed can you please respond
9 either yes, no, I'm looking for it, et cetera, so that we
10 know that you can hear us?

11 THE WITNESS: Okay.

12 COMMISSION CHAIR SANDOVAL: Thank you.

13 Mr. Moander, did you have anything to say?
14 Sorry.

15 MR. MOANDER: No, Madam Chair. I just wanted to
16 make sure we've got a connection here, and I appreciate
17 you outlining the need for verbal responses. That's very
18 helpful for Ms. Macfarlane, as well, to make a good
19 record.

20 THE WITNESS: I have all that pulled up.

21 MR. SAVAGE: Thank you.

22 Q. Mr. Hajdik, I believe we left off with a
23 question about Division Rule 19.15.4.12A(b)(vi). This is
24 the rule that requires the applicant to show evidence of
25 attempts the applicant made to gain voluntary agreement,

1 including but not limited to copies of relevant
2 correspondence.

3 Do you agree with that?

4 A. I'm not sure what the question is.

5 Q. That we left off there. That we left off at
6 that point.

7 A. (Inaudible)

8 (Note: Reporter inquiry.)

9 COMMISSION CHAIR SANDOVAL: Noted.

10 COMMISSION CHAIR SANDOVAL: Did we lose
11 Ms. Macfarlane?

12 THE WITNESS: I'll try to speak loudly.

13 Q. Had you said in your previous answers that you
14 are generally familiar with the pooling process in filing
15 for proceedings pursuant so the rules of the OCD. The
16 rule I mentioned is stated in Colgate's Exhibit 3,
17 paragraph 8. Have you had a chance to look at that?

18 Have you had a chance to look at this rule
19 I referenced?

20 A. I --

21 Q. And you're familiar with this particular rule,
22 is that correct?

23 A. Yes.

24 Q. Now let's look at your email exchange with
25 Cimarex. That would be Cimarex's Exhibit C.

1 Do you have that?

2 A. Yes.

3 Q. You're email response consists of only two
4 sentences; is that correct?

5 A. Yes.

6 Q. The first sentence is an attempt -- the first is
7 not an attempt to gain voluntary agreement, it's basically
8 descriptive. Would you agree?

9 It basically describes the offsetting --

10 A. He asked me a question that was out of the scope
11 of the Proposal, so I responded in a manner neither
12 that's --

13 Q. The first question is not -- first sentence does
14 not represent a chance to attempt to gain voluntary
15 agreement.

16 A. No. I'm answering his question as to what's
17 going on.

18 Q. The first sentence.

19 A. Correct. I'm answering his question.

20 Q. Is it a voluntary attempt to gain agreement or
21 is it not?

22 A. I would say it's part of the process of
23 attempting to gain voluntary agreement, because you're
24 explaining what you're doing.

25 Q. Can you read that sentence to me, please.

1 A. (Reading) Operatorship in north half/north half,
2 which abuts the other additional operating units due
3 north.

4 **Q. So it's basically descriptive in nature.**

5 A. I told you that, yes. I told you that it was
6 descriptive and it's describing what we were looking to do
7 and work out here.

8 **Q. Thank you.**

9 COMMISSION CHAIR SANDOVAL: Okay. There doesn't
10 need to be any attitude. He's asking questions at this
11 point that are appropriate. Please respond
12 professionally.

13 THE WITNESS: Okay.

14 COMMISSION CHAIR SANDOVAL: This is part of an
15 evidentiary hearing.

16 All right. Go ahead, Mr. Savage.

17 MR. SAVAGE: Thank you, Madam Chair.

18 **Q. The second sentence in your response ends with,**
19 **quote, "We would be happy to talk some options for the**
20 **offsetting acreage in order to fully maximize development**
21 **of the area"; is that correct?**

22 A. Yes.

23 **Q. And would you describe the second sentence as a**
24 **statement that you were open to discussion? Is that fair?**

25 A. Correct. I put the discussion back in their

1 camp to figure out what they were wanting to do.

2 Q. It's basically that you were open to discussion.
3 You expressed that in this second sentence.

4 A. Yes.

5 Q. And more specifically, the discussion with
6 Cimarex, based on your email, would be a discussion about
7 the offsetting acreage, not a discussion about the
8 uncommitted acreage of the unit you wanted to pool, would
9 you agree? Based specifically on the expression of that
10 second sentence.

11 Would you agree with that?

12 A. I would say that I was answering Mr. Coffman's
13 questions.

14 Q. And you were expressing that you're open to
15 discuss the offset acreage; is that correct?

16 A. Correct. Because he was bringing up discussions
17 about acreage that we didn't have an interest in.

18 Q. Yeah. Thank you. I agree with that.

19 So is there any attempt in your second
20 sentence to ask or request Cimarex to enter an agreement
21 for the north half/north half unit to be pooled?

22 A. It does not appear that way.

23 Q. In your email -- in your email, in your
24 response, could you have responded, for example by writing
25 "We would be happy to talk some option for operating

1 offsetting acreage in order to fully maximize the
2 development of the area, and I would like to start talking
3 about a JOA for your uncommitted 25 percent working
4 interest in the north half/north half?"

5 Would that have been a possibility?

6 A. Probably, uh, you know, a million different ways
7 you could reword that.

8 Q. I agree.

9 A. But I'm not going to play --

10 Q. If you had responded in that manner, do you
11 agree that that would have satisfied an attempt to
12 negotiate an agreement?

13 A. No, because I was answering his questions that
14 he asked.

15 Q. Hypothetically speaking, if you had said "I
16 would like to start talking about a JOA for your
17 uncommitted 25 percent working interest in the north
18 half/north half," would that have satisfied an attempt
19 under the rules to negotiate an agreement?

20 A. I don't know how I can answer hypotheticals.

21 Q. I'm going to go on, Madam Chair.

22 You said in your testimony negotiations are
23 a two-way street, and that you didn't know from the email
24 what Cimarex needed. Is that correct?

25 A. Uhm, I think what I was intending to state there

1 is that they were -- that they are on a two-way street,
2 and that I responded not knowing exactly what they needed,
3 and I thought I answered his questions. I would have
4 needed additional --

5 Q. All right. You --

6 (Note: Reporter interruption.)

7 A. I would have needed further response from Mr.
8 Coffman to figure out what they were wanting to do in the
9 area.

10 Q. And you did say in your testimony that you
11 didn't know what they needed. Go ahead.

12 A. Well, it was in their camp to respond, correct.

13 Q. Could you have asked what they needed to reach
14 an agreement in your email?

15 A. I think that was the hypotheticals again.

16 Q. It is a hypothetical.

17 A. Like I said earlier, I would need better
18 explanation on how to answer hypotheticals, because there
19 is a million hypotheticals we could go down.

20 Q. Simple question: Could you have asked what they
21 needed to reach an agreement?

22 A. I guess I could ask any number of things,
23 correct.

24 Q. Yes. And if you had, even that would have been
25 at least one attempt to negotiate an agreement. Correct?

1 A. If I had asked for a hypothetical that would be
2 one way that you could agree by a mechanism of asking that
3 (inaudible) data.

4 Q. But you did not ask any question that could
5 qualify as an attempt to gain voluntary agreement in those
6 two sentences. Would you agree with that?

7 A. No. I would agree -- I believe that I had asked
8 what they were wanting to do with their acreage in the
9 area.

10 Q. Mr. Hajdik, are you familiar with figures of
11 speech, such as metaphors, euphemisms, hyperbole,
12 personification?

13 A. Possibly. What are you asking about?

14 Q. Excuse me. Go ahead please.

15 A. I said: In theory, yes.

16 Q. When you say negotiations are a two-way street,
17 do you agree that that is a metaphor used to describe your
18 position?

19 MR. PADILLA: Objection. That is totally
20 speculative in terms of the question. For God's sake, you
21 can answer that any which way in terms of figures of
22 speech and that kind of thing.

23 MR. SAVAGE: Madam Chair, I believe -- go ahead.
24 Excuse me. I'm sorry.

25 COMMISSION CHAIR SANDOVAL: Go ahead, and then I

1 will make my decision.

2 MR. SAVAGE: Madam Chair, I believe it is true
3 that there's only one way to answer that question. It is
4 a metaphor. It is a metaphor that Colgate has brought up
5 numerous times, and they used it to support their
6 position. And they have also brought up another important
7 metaphor, and that is Mr. Padilla has repeatedly said
8 "dropped the ball."

9 They are using these broad metaphors to
10 address their obligations under very specific legal
11 criteria, and I would like an opportunity to explore the
12 applicability of these metaphors by a more precise and
13 accurate metaphor during my questioning.

14 COMMISSION CHAIR SANDOVAL: A more precise and
15 accurate metaphor would be?

16 MR. SAVAGE: Since Colgate brought up the
17 metaphor of dropping the ball I would like to compare the
18 obligations under Rule 19.15.4.12A(b)(vi) to the metaphor
19 of a tennis game, to a tennis game involving serving and
20 volleying a tennis ball, as illustrating what's required
21 under this rule and what's required in negotiations.

22 COMMISSION CHAIR SANDOVAL: All right. I think
23 Mr. Padilla's objection is sustained.

24 Mr. Savage, let's try to keep this as
25 straightforward and simple as possible without going down

1 rabbit holes. Like, if you want to ask questions about
2 going back and forth in terms of negotiations, feel free,
3 but I don't think we need to go down a metaphorical rabbit
4 hole.

5 MR. SAVAGE: All right. Thank you, Madam Chair.

6 Q. Mr. Hajdik, would you agree that negotiations
7 are similar to a game of tennis where parties volley back
8 and forth seeking some advantage to their side?

9 A. Sure.

10 Q. So let me look at Rule 19.15.4.12.A (b)(vi).

11 Do you have that in front of you?

12 A. I don't.

13 Q. Okay. It's not -- it's in your Exhibit 3 at
14 paragraph 8, if you want to look at it.

15 Looking at this rule, do you agree that
16 under the rule Colgate is the party required to serve the
17 ball; that is, make attempts to gain voluntary
18 agreement that starts the volley of negotiations?

19 A. Yes.

20 Q. I'm sorry?

21 A. Yes.

22 Q. Okay. By this one and only email exchange
23 occurring more than four months before the hearing, did
24 Colgate make a good faith effort of serving the ball into
25 Cimarex's court?

1 A. I felt I had sent the ball back into their court
2 with my correspondence, and if they had any objections or
3 concerns with the development plan, then they -- you know,
4 it was in their court to come back to me and...

5 Q. Okay. So let's look at those emails.

6 Who initiated those emails, Colgate or
7 Cimarex?

8 A. Well, it was a communication that was initiated
9 with the initial Well Proposal.

10 Q. Correct. And then in terms of those emails,
11 simply those e-mails --

12 A. I don't really know what you're asking.

13 Q. Did Colgate send the first email or did Cimarex
14 send the first email?

15 A. They sent the first correspondence with the Well
16 Proposal, and then Cimarex sent the first email.

17 Q. Cimarex sent the first email.

18 So your response, that was part of the
19 volley of -- part of the volley of correspondence. It was
20 not an attempt of a good faith effort to reach an
21 agreement. Correct? It was a response. It was not a
22 serve of the ball.

23 A. The serve of the ball is the Well Proposal. I'm
24 not sure what your question is.

25 COMMISSION CHAIR SANDOVAL: Mr. Savage, reminder

1 on the metaphor.

2 MR. SAVAGE: I'm sorry, Madam Chair. Can you
3 say that again?

4 COMMISSION CHAIR SANDOVAL: We decided no
5 metaphors here. Like, let's keep it simple and
6 straightforward, no tennis.

7 MR. SAVAGE: Madam Chair, if Colgate is using
8 metaphorS with "drop the ball" and "two-way street" and I
9 don't think those metaphors are applicable, I really need
10 to be able to address their metaphors with an
11 understanding of what the rules really mean under an
12 appropriate metaphor.

13 MR. PADILLA: If I may, Madam Chairman, this is
14 a ridiculous argument. I mean, when I use the term
15 "dropped the ball," that was in a Prehearing Statement
16 essentially saying that it was an omission. I suppose I
17 could have used the word "omission" rather than "dropped
18 the ball," but I agree with your rulings on metaphors.
19 This is ridiculous.

20 MR. SAVAGE: Madam Chair, if I could just
21 maintain reference to the metaphor but keep it at a
22 minimum so it does not become overwhelming in the
23 questions.

24 COMMISSION CHAIR SANDOVAL: Can you not just
25 reframe your questions so they are straightforward,

1 please.

2 MR. SAVAGE: I will reframe my questions and I
3 will try to maintain a more straightforward approach
4 without a full (inaudible) of the metaphor.

5 COMMISSION CHAIR SANDOVAL: All right.

6 MR. SAVAGE: Okay.

7 Q. Mr. Hajdik, let's talk about the Well Proposal.

8 Are you familiar with the Compulsory
9 Pooling Checklist that the OCD requires applicants to
10 submit?

11 A. Yes.

12 Q. In this checklist, under Joinder, the OCD
13 requires a sample copy of the Proposal Letter. Do you
14 agree?

15 A. Yes.

16 Q. And the OCD also requires as a separate item a
17 Chronology of Contacts. That's communications with
18 nonjoinder working interests. Do you agree with that?

19 A. (Note: No audible response.)

20 Q. And in fact in your exhibits you called this
21 your communication timeline, correct?

22 A. Correct.

23 Q. The events leading up to a hearing involve some
24 form of interactions with uncommitted working interest
25 owners, do you agree?

1 A. Yes.

2 Q. Basically a pooling is a game that starts with a
3 Well Proposal and leads to the hearing. Correct?

4 A. I guess. You call it a game. Sure.

5 Q. Colgate made a first attempt with Cimarex, sent
6 the Well Proposal. Agreed?

7 A. (Note: No audible response.)

8 Q. But this wasn't really voluntary, was it? I
9 mean the copy of the Well Proposal was something you have
10 to show to get to the pooling process, correct?

11 A. Very initial part of the process, correct.

12 Q. The initial part. It's a requirement?

13 A. Yes.

14 Q. So this will be -- the Well Proposal would be
15 more of a mandatory requirement rather than an act of good
16 faith negotiations. Would that be fair to say?

17 A. That's a -- I don't know how to respond to that.
18 I guess over -- you know, I don't agree with your
19 statement, no.

20 Q. It's something would be required to be sent to
21 initiate the process, but in terms of voluntary good faith
22 negotiations it really kind of sets the parameters but is
23 not part of that process. Would that be fair to say?

24 A. No, I don't agree with your statement.

25 Q. Okay. I'll move on.

1 You acknowledge that Colgate's Well
2 Proposal did not include a JOA for Cimarex to review; is
3 that correct?

4 A. Correct.

5 Q. Would you agree that including the JOA would
6 have helped initiate and facilitate negotiations?

7 Do you agree with that?

8 A. I think you are kind of answering my questions
9 for me.

10 The answer is no. I mean yes.

11 Uhm, as part of our normal negotiations
12 process, I mean, we provide the JOA upon request, or if
13 someone asks then we would have sales discussions or a
14 proprietary (phonetic) agreement in terms of an agreement.

15 Q. During his direct examination Mr. Padilla had
16 asked if you heard Mr. Morris's testimony that Cimarex
17 always sends out a JOA with its Well Proposal. Is that
18 correct, that you heard that?

19 A. Yes, I heard that.

20 Q. And you stated in your testimony that there was
21 a period in the past when Colgate did not send out JOAs
22 with their Well Proposal. Is that correct?

23 A. Yes.

24 Q. And this would be the recent past and includes
25 the Well Proposal to Cimarex, obviously. Agreed?

1 A. This was almost three years ago, but...

2 Two years ago.

3 Q. And you stated that now you are making it a
4 common practice to send out JOAs with your Well Proposal;
5 is that correct? That is what you stated in your Direct?

6 A. When possible. I mean, it's not a mandatory
7 requirement, so if we are able to get JOAs out on the
8 initial mailing, then sure it simplifies the discussion
9 process.

10 Q. Didn't you say that it's becoming a more common
11 practice for you?

12 A. Yes, that's what I just said.

13 Q. Okay. Does your new practice, this new
14 practice, the change in your practice of including a JOA
15 with the Well Proposal arise from your acquiring a better
16 understanding of the OCD rules and the risks of not
17 abiding by them?

18 A. No, I would not agree with that statement. It
19 is an administrative simplification. If my team is able
20 to work up these, you know, documents like JOAs and Com
21 Agreements in advance of Well Proposals, it just makes
22 everyone's job easier and more streamlined, but I receive
23 proposals regularly from operators in New Mexico,
24 Mewbourne, EOG, the list can go on, that do not include
25 JOAs.

1 Q. Thank you, Mr. Hajdik.

2 I'm going to ask about four questions to
3 clarify the steps you used in your negotiations with
4 Cimarex.

5 Mr. Hajdik, would this be an accurate
6 description of your negotiations: First you sent out the
7 Well Proposal. Correct?

8 A. Yes.

9 Q. After that you had one email exchange with
10 Cimarex in August, 2020 that Cimarex, not Colgate,
11 initiated. Correct?

12 A. Correct.

13 Q. Your sole two-sentence email response to Cimarex
14 did not include an attempt to gain voluntary agreement for
15 that unit but did show you were open to discussions
16 regarding offset acreage. Correct?

17 A. I would not agree with your full assessment
18 there.

19 Q. Can you qualify it, then?

20 A. I would -- I answered his question regarding a
21 fact statement and then put the ball into their court, if
22 you want to keep using the metaphors -- I mean the same
23 metaphor, that is.

24 (Note: Reporter interruption.)

25 Q. In the months leading up to the hearing, about

1 four months, excluding the Well Proposal you never
2 initiated communication with Cimarex in an attempt to gain
3 a voluntary agreement. Do you agree with that?

4 A. Did not communicate with them after that email,
5 correct.

6 Q. You stated in your Direct, in your testimony
7 that -- well, it's not uncommon for working interest
8 owners to go radio silent on you until Hearing Notices go
9 out, and then at that point they do realize that you're
10 serious.

11 Is that correct?

12 A. Right. That was in response to Mr. -- Cimarex's
13 statement that they didn't believe we were a serious
14 operator.

15 Q. But you said it's not uncommon for the interest
16 owners to go radio silent on you until Hearing Notices go
17 out, and then at that point they do realize that you're
18 serious. Correct? Before that, based on your statement,
19 they probably don't think you're serious, based on that
20 statement. Correct?

21 A. I'll try to answer the best I think where you're
22 going with this.

23 I mean, there are frequently parties that
24 don't wish to sell or don't wish to sign a JOA until the
25 hearing has been filed for, because they don't want to

1 commit to something that is subject to change, because, as
2 we all know here, the, uhm, time between Proposal and
3 actual Orders can vary widely. And what happens with the
4 parties, trades happen, et cetera, and oftentimes, you
5 know, filing for the Hearing Notice is -- filing for
6 hearing shakes those stalemates loose and gets the
7 conversations going, because everyone then knows that
8 there is a real situation to be addressed.

9 Q. Yeah. But if you don't mind, if I could read
10 the full exchange in the Direct. Mr. Padilla said:

11 (Reading) Well, Cimarex is saying that
12 burden -- saying that burden was on you to
13 follow up. What do you have to say to that
14 argument?

15 And Mr. Hajdik, you said: I would say,
16 well, I answered their question and if they had
17 further questions I never received those.

18 Then, you said, you know: It's not
19 uncommon to -- for the working interest owners
20 to go radio silent on you until Hearing Notices
21 go out, and then at that point they do realize
22 that the applicant, that you the applicant, is
23 serious.

24 Do you agree with that, that was in the
25 Direct and is your statement?

1 A. I don't have the transcript in front of me, but
2 if that is what the transcript states then I will agree
3 that that's correct.

4 Q. So before Notice is received it seems apparent
5 that a lot of working interest owners wouldn't have taken
6 your Well Proposal seriously, saying that Cimarex,
7 especially since it didn't include the JOA.

8 Is that fair to say, based on your specific
9 statement?

10 A. No, I would disagree.

11 Q. Mr. Morris in his testimony said because
12 Colgate's Well Proposal didn't include a JOA and because
13 Colgate did not reach out to Cimarex with any attempts to
14 gain voluntary agreement that Cimarex did not take the
15 proposal seriously and gave it a lower priority ranking as
16 a result.

17 Is that what you remember of Mr. Morris's
18 testimony?

19 A. I believe so.

20 Q. Therefore based on your own statement and your
21 experience, isn't Cimarex's practice of how it assesses
22 the seriousness of the Well Proposal not uncommon in the
23 industry, based on your statement?

24 A. I would actually disagree. I think that Cimarex
25 is the only company I've ever heard of that has a ranking

1 system whereby they don't -- where they throw proposals at
2 the bottom of the list and don't review them or don't
3 follow up.

4 Q. Well, Mr. Hajdik, if you said that it's not
5 uncommon for working interest owners to go radio silent on
6 you until Hearing Notices go out, isn't that implicitly a
7 ranking system, that they push the Well Proposal aside and
8 give it a lower priority, and then give it a higher
9 priority once the Hearing Notices are received?

10 Would you agree with that?

11 A. I'm not privy to every working interest owners'
12 individual evaluation process, so I can't answer that.

13 Q. Mr. Padilla and you point out that Colgate sent
14 timely Notice for hearing and it was the fault of Cimarex
15 to have not received Notice. Is that correct?

16 A. (Note: No response.)

17 Q. Cimarex never said that Colgate's Notice wasn't
18 timely. Do you recognize that?

19 A. Sure.

20 Q. Do you also recognize that Cimarex received the
21 Notice on Christmas Eve under very chaotic working
22 conditions when staff were mandated to work from home in
23 lockdown conditions in the midst of a Covid pandemic?

24 A. I think Mr. Morris's statement in some earlier
25 filings is that there was -- that it was received and

1 there was images sent via email. I think we also
2 established earlier that there were no Covid protocols. I
3 mean, I have no control over when the OCD sets their
4 hearing dates. We just -- they have had one in the first
5 week of January since as long as I can recall, and it
6 was -- I -- you have two months of Holiday Season there.
7 I have no control over when those dates are set. That was
8 completely in the hands of the OCD.

9 **Q. And I believe Cimarex agrees with that, that**
10 **that was not your fault, but --**

11 A. I answered your question.

12 **Q. Do you recognize there was a Covid pandemic**
13 **going on, that they were in lockdown, that it was a**
14 **chaotic situation amplified by the Christmas season.**

15 A. I don't -- I'm not going to agree with -- I
16 don't know Cimarex's internal protocol. As far as we were
17 aware the OCD was operating normally just virtually. I'm
18 not really sure what you are asking.

19 **Q. That's fair enough. I'll move on.**

20 **Although not excusable and the Commission**
21 **did not find Cimarex's excuse valid, is it at least**
22 **understandable how Cimarex missed the Notice Letter during**
23 **this time?**

24 A. Sure. Accidents happen. I -- you know, I think
25 if the shoe was on the other foot I would have the same --

1 there would be implications against us, as well if we
2 missed something.

3 Q. Thank you, Mr. Hajdik.

4 Let's talk about Mr. McDonald. Are you
5 familiar with his testimony?

6 A. (Note: No audible response.)

7 Q. Didn't you say in your testimony that unlike
8 Cimarex, unlike Cimarex a person like Mr. McDonald, and I
9 quote from the testimony, from your testimony, "needs much
10 more follow-up communication to appreciate their rights."
11 That someone like Mr. McDonald who was inexperienced needs
12 much more follow-up to perpetuate their rights.

13 Would you agree you said that statement?

14 A. Correct.

15 Q. In your timeline -- do you have that in front of
16 you? It's Cimarex Exhibit H.

17 A. Okay.

18 Q. You state that you had various email exchanges
19 with J.M. Welborn Trust from July, 2020, through January,
20 2021. Is that correct?

21 A. Yes.

22 Q. And that's over six months, correct?

23 A. Yes.

24 Q. In fact, based on Mr. McDonald's testimony he
25 sent you two emails in July, 2020, to which you did not

1 **respond. Is that correct?**

2 A. Uh, sure. I did not respond in July, but we
3 were, you know, at issue and we came to an agreement in
4 January.

5 Q. So the whole month that you had listed as having
6 email exchanges with Mr. McDonald, you did not have email
7 exchanges during the whole month of July but just received
8 emails from him. Correct?

9 A. Sure.

10 Q. In fact is it true, based on Mr. McDonald's
11 testimony as documented by his Prehearing Statement that
12 he filed at the hearing, that you did not respond to him
13 until August 19, 2020, more than a month after he tried,
14 on several occasions, to contact you?

15 A. What's the question?

16 Q. Is it true that you did not respond to
17 Mr. McDonald until August 19, 2020, more than a month
18 after he tried on several occasions to contact you?

19 A. Yes.

20 Q. And do you agree with Mr. McDonald's testimony
21 that after August 19 he did not receive any emails or
22 communications from Colgate until December 31st, 2020, a
23 full four months later and just a week before the hearing?

24 A. I don't remember exactly when in December we
25 re-engaged emails, but yes, it was in December when we

1 were in conversation.

2 Q. I believe Mr. Padilla in his questioning points
3 out that Colgate sent -- I'm sorry, Mr. McDonald sent an
4 email to Colgate December 22nd, and that is what initiated
5 the response on December 31st in which you provided an
6 offer. Is that correct?

7 A. I don't have that in front of me, but generally
8 speaking mid to late December conversations came back and
9 I was able to give him the offer that he asked for.

10 Q. Thank you, Mr. Hajdik.

11 Does this lack of communication all through
12 July and most of August, and the subsequent silence from
13 August 19th to December 31st represent the much more
14 follow-up information that you stated someone like Mr.
15 McDonald needs to perpetuate his rights?

16 A. I believe we got an agreement then with him, and
17 it only did not close because of Cimarex's objections.

18 Q. It did not close because of Cimarex's
19 objections?

20 A. Once Cimarex filed objections in this case is
21 when both parties agreed to pause.

22 Q. Okay. Well --

23 A. Mr. McDonald stated that in his testimony the
24 other day.

25 Q. I'd like to address that, but I might have a

1 couple more questions before that.

2 Would it be fair to say that your timeline
3 of communications with respect to Mr. McDonald stating
4 that you had communications from July, 2020, to January,
5 '21, misrepresented the facts to the OCD during your
6 pooling hearing?

7 A. I don't believe that. I don't agree with your
8 statement.

9 Q. Given the fact that you had one email from July,
10 2020 to December 31st, and then you had the second email
11 on December 31st, you represented to the OCD that you had
12 email exchanges over this more-than-six-month period, but
13 it looks like a number of months you had no exchanges. Do
14 you not think that's misleading to the OCD?

15 A. It could have been a clearer statement to give
16 the exact months, but we had ongoing conversations with
17 him, so...

18 I would not agree that it's misleading. I
19 would say that it may be overly general or not specific
20 enough.

21 Q. Fair enough. Mr. McDonald stated, on December
22 31st, 2020, he finally received an offer for the trust
23 interest and the parties reached a basic agreement.

24 Do you agree with that?

25 A. There was some back and forth, because we had a

1 disagreement on price and disagreement in terms of
2 paperwork, but we did eventually get those impasses
3 resolved.

4 Q. So, Mr. Hajdik, if I could direct your attention
5 to Cimarex's Exhibit E, as an Edward. Do you have that in
6 front of you? (Note: Pause.)

7 In this transcript Colgate's counsel states
8 that the Trust and Colgate had reached an agreement. Do
9 you agree with that? That was during the original hearing
10 on January 7th.

11 A. Correct. Because Mr. McDonald entered an
12 appearance and, uhm, had initially requested a continuance
13 until we -- but then we were able to, either in the
14 middle -- or I don't remember exactly, but pricing issues
15 were resolved. We still didn't have paperwork. He was
16 satisfied proceeding forward.

17 Q. And it was this fact regarding the agreement
18 that allowed Colgate to go forward with the hearing by
19 affidavit. Do you agree? (Note: No audible response.)

20 And during the hearing Colgate had pooled
21 the Trust's interest; is that correct?

22 A. They were not -- they had not signed a
23 definitive document. We had a verbal email, high-level
24 agreement, but no paperwork in place.

25 Q. And Mr. McDonald said -- Mr. McDonald said he

1 did not realize the Trust interest was pooled. Did you
2 explain -- do you agree with that?

3 A. I don't know what you're talking -- I don't know
4 what you're...

5 Q. And during the testimony of Mr. McDonald, during
6 Direct Mr. McDonald said he did not realize the Trust
7 interest was pooled. Do you agree with that, that he said
8 that?

9 A. I told you before I don't have the transcript in
10 front of me from the previous. If that's what it says,
11 then sure.

12 Q. Did you explain to Mr. McDonald that despite
13 reaching an agreement you went ahead and pooled the Trust
14 subjecting its interest to the 200 percent risk penalty
15 and the economic consequences of that?

16 A. I was probably -- those exhibits were filed
17 before we had reached an agreement with him as far as
18 working interest ownership.

19 Q. In your discussions with Mr. McDonald, did you
20 explain that his interest was pooled and it was subject to
21 a 200 percent risk penalty and the economic consequences
22 of that?

23 A. We were purchasing it so it would have been a
24 nonissue.

25 Q. But if you had listed him to be a party to be

1 pooled on the application, would it not be an issue?

2 A. We had reached an agreement to buy his interest,
3 and that would have -- it would have been nonapplicable to
4 that interest because it would have belonged to Colgate.

5 Q. Mr. Hajdik were you aware that during
6 Mr. McDonald's Direct I asked a basic question about the
7 pooling hearing, asking whether based on testimony at the
8 hearing, both Mr. McDonald and Colgate's counsel relied on
9 the fact that an agreement was in place in order to allow
10 the hearing to go forward by affidavit?

11 Are you aware that I asked that question of
12 Mr. McDonald?

13 A. Yes.

14 Q. Do you agree that this is a basic question about
15 pooling procedure?

16 A. I'm not sure where you're going. I'm not sure
17 what the question or where you're going.

18 Q. The question I asked is that if they had reached
19 an agreement there was no objection, this allowed the
20 pooling to go forward by affidavit. I asked you: Do you
21 agree that that would be a basic question, a basic
22 question about the pooling procedure?

23 A. Sorry, I'm really confused on what your question
24 is.

25 Q. You would have been able to answer that question

1 I asked Mr. McDonald; is that correct?

2 A. You've kind of been rambling. I don't remember
3 the question you asked me now at this point.

4 Q. Okay. So if I asked you -- if I asked you,
5 uh -- the fact that you had reached an agreement with
6 Mr. McDonald, uhm, Colgate counsel at the hearing relied
7 on that fact that the agreement was in place in order to
8 allow the hearing to go forward, if I had asked you if
9 that was the case would you understand that question as a
10 basic question on pooling procedure?

11 A. I don't know what your question is. I don't
12 (inaudible) answering.

13 Q. Okay.

14 A. Sorry.

15 Q. I'm going to move on.

16 You were here when Mr. McDonald gave his
17 overall testimony. You were present; is that correct?

18 A. Yes.

19 Q. And in your view, in your opinion would it be
20 fair to say that Mr. McDonald really didn't understand
21 much about the pooling process?

22 MR. PADILLA: Objection. That -- it's a
23 question that is not even objective, in terms of that
24 question should have perhaps been asked to Mr. McDonald.
25 This is just speculative.

1 MR. SAVAGE: I'll withdraw that question, Madam
2 Chair. I agree with that.

3 Q. Mr. Hajdik, in dealing with Mr. McDonald and
4 reading his Prehearing Statement, it was an accurate
5 statement for the time period covered, that is up until
6 December 31st, do you agree?

7 A. What's the question?

8 Q. In dealing with Mr. McDonald and reading his
9 Prehearing Statement which he filed on December 31st --
10 when he filed the Prehearing Statement, you read that
11 statement; is that correct?

12 A. No. I believe he omitted a couple of --
13 inadvertently omitted a couple of things. I mean, he
14 didn't reference the offer or several communications, if I
15 remember correctly.

16 Q. So he said that -- he said that he sent two
17 emails in July, did not receive a response until August
18 19th; is that correct?

19 A. We already went down this.

20 Q. I know. Excuse me. Please allow you to answer
21 that.

22 A. You're asking me the same question earlier. I'm
23 not really sure what you're asking me again.

24 Q. Mr. Hajdik, I believe in the -- when we
25 discussed this before and addressed that question, I

1 believe that you inferred that the Prehearing Statement
2 was accurate.

3 A. I -- you're saying -- you're making inferences
4 on my behalf. I don't really know what you're asking.

5 Q. Do you agree that Mr. McDonald's Prehearing
6 Statement accurately reflected your two emails which were
7 the only emails you sent over the six-month period from
8 July, 2020 to December 31st, 2021?

9 A. I think you're taking our communication out of
10 context and putting it in a vacuum, you know, silo-ing
11 (phonetic) it around a very limited amount of discussion.

12 Q. Am I not just pinpointing the objective facts of
13 when the emails were sent or not sent?

14 A. You're not completing the balance of the facts.

15 Q. What is the balance of the facts, Mr. Hajdik?

16 A. That if we -- we resumed conversations in
17 December and reached an agreement on price and were
18 working on a formal agreement for --

19 Q. Okay.

20 A. -- the hearing.

21 Q. Let's talk about the series of emails that you
22 sent Mr. McDonald after December 31st. Can we do that?

23 A. I thought we did that already, but sure.

24 Q. I don't believe we have.

25 Your series of emails with Mr. McDonald

1 after December 31st began a week before the hearing
2 occurring January 4th, 5th and 7th. Correct?

3 A. I think they started on the 22nd of December,
4 but yes.

5 Q. If I remember right, based on Mr. Padilla's
6 statements, Mr. McDonald sent you an email on December
7 22nd, to which you responded December 31st. Do you agree
8 with that?

9 A. Sure. I don't have that transcript in front of
10 me, but yes, that sounds generally correct.

11 Q. And then the emails continued for a few weeks
12 after the hearing, emails exchanged on January 11th, 19th
13 and 27th, and then on February 1st. Is that correct?

14 A. What are you saying?

15 Q. Okay. And not realizing he had already been
16 pooled, Mr. McDonald said that he and you finished
17 negotiations sometime after February 1st, 2021, and in
18 February he sent you a signed form to consummate the
19 agreement. Is that correct?

20 A. I believe so. But at that point Cimarex had
21 already filed their -- these matters that we are now
22 doing, that we are here today on, so...

23 Q. When did you respond to Mr. McDonald, to his
24 sending you the signed form? When did you respond to him?

25 A. I don't have that in front of me.

1 Q. You don't remember. If I said you did not
2 respond until four months later, June, 2021, would you
3 agree with that?

4 A. Sure.

5 Q. So, Mr. Hajdik, this is an agreement that you
6 negotiated in good faith with Mr. McDonald, who clearly is
7 inexperienced with OCD proceedings, and that is the kind
8 of person that you say needs much more information to help
9 them perpetuate their rights. You negotiated in good
10 faith an agreement and then you did not consummate it.
11 Correct?

12 A. Well, this whole Order was in question at that
13 point. It still is.

14 Q. Well, Mr. Hajdik, why would that make a
15 difference to honoring an agreement that you had agreed
16 on, that you relied...

17 A. Because there was a material change in
18 circumstances prior to, you know, closing that
19 transaction.

20 Q. And that's from your perspective, correct?

21 A. Well, it's not a perspective. Cimarex had filed
22 proceedings that were calling this whole spacing unit into
23 question, and, as even Mr. McDonald said, he wasn't that
24 interested in going forward at that point because he was
25 aware of those.

1 Q. Okay. So when you responded to Mr. McDonald in
2 June and said you were ready to proceed, as you point out
3 these de novo proceedings were in progress. Correct?

4 A. (Note: No response.)

5 (Note: Reporter inquiry.)

6 Q. Mr. Hajdik, please respond to that. Please take
7 the opportunity to respond to that.

8 A. What was the question? Was there a question or
9 just a statement?

10 Q. Okay. I'm going to move forward with my
11 questions here and withdraw that last one.

12 In your experience with the pooling
13 process, when a party makes an appearance and consents to
14 pooling by affidavit, it would be very difficult to
15 overturn the Pooling Orders. Would you agree with that?

16 A. It's on the circumstances. I don't know what --
17 are you just saying generally when someone makes an
18 appearance?

19 Q. Generally speaking is that correct?

20 A. Someone enters an appearance and has effective
21 Notice, entering an appearance, correct.

22 Q. So would the fact that you pooled Mr. McDonald's
23 interest have any bearing on the delayed response after he
24 sent you the form, the signed form?

25 A. Sorry. You cut out for a second. What was that

1 question?

2 Q. Would the fact that you pooled Mr. McDonald's
3 interests have any bearing on your delayed response,
4 four-month response after you sent the signed form?

5 A. No. As we already discussed, the de novo
6 component put a lot of things on hold because management
7 wanted -- didn't give me authorization to do anything else
8 here until we have some sort of bearing on what was going
9 to happen.

10 Q. Prior to --

11 A. In the de novo proceedings.

12 Q. Thank you, Mr. Hajdik.

13 Prior to the filing of Mr. McDonald's
14 Prehearing Statement on December 31st, 2020, you had only
15 one email exchange with Mr. McDonald. That was August
16 19th. But after he filed his Prehearing Statement you
17 suddenly had multiple email exchanges with Mr.
18 McDonald during that last week before the hearing. Is
19 that correct?

20 A. Correct.

21 Q. Those email exchanges, which occurred on
22 January 4th, 5th and 7th, how many emails did you send on
23 each day? Do you know how many emails that represented?

24 A. I have already told you I don't have that email
25 chain in front of me.

1 Q. But quite a few, would you agree?

2 A. No.

3 Q. In fact I believe Mr. Padilla said that you had
4 responded with more than one email on the same day,
5 responding to Mr. McDonald. So --

6 COMMISSION CHAIR SANDOVAL: Mr. Savage, one,
7 the witness hasn't responded, so please don't move on.
8 Two, can you keep your testifying to a minimum, please?

9 MR. SAVAGE: I just have three more questions.

10 COMMISSION CHAIR SANDOVAL: Right. That's fine.
11 You can ask as many questions as you need to, but keep
12 them as questions and limit your testifying for the
13 witness.

14 MR. SAVAGE: Thank you, Madam Chair. I will
15 watch that.

16 May I proceed?

17 COMMISSION CHAIR SANDOVAL: Yes. Please go
18 ahead.

19 Q. So did you suddenly shift gears to reach out and
20 respond to Mr. McDonald because he had actually filed a
21 Prehearing Statement that threatened your application and
22 you knew he was serious?

23 A. Be that we had engaged with him prior to his
24 Prehearing Statement, I believe.

25 Q. Okay. Over the course of that six months prior

1 you only sent one email, correct?

2 A. I wasn't talking about that. I was talking
3 about the December emails.

4 Q. Correct. So that was December 31st. You
5 received his Prehearing Statement on December 31st,
6 correct?

7 A. I believe so.

8 Q. And that's when the flurry of emails began.
9 Correct?

10 A. Sure.

11 Q. So the record shows that --

12 COMMISSION CHAIR SANDOVAL: Sorry. What did you
13 say? Did you say "Sure"?

14 THE WITNESS: Yes.

15 COMMISSION CHAIR SANDOVAL: Can you give a yes
16 or a no.

17 THE WITNESS: He's answering my questions. He
18 asked the question and makes a -- and then says, Correct,
19 yes or no, and doesn't add -- he asked let's rephrase
20 that. He asks the question and then answers it for me.

21 COMMISSION CHAIR SANDOVAL: Mr. Savage, will you
22 re-ask the question, and Mr. Hajdik will you re-answer the
23 question, please.

24 THE WITNESS: Yes.

25 MR. SAVAGE: Yes, Madam Chair.

1 Q. Did you suddenly shift gears to reach out and
2 respond to Mr. McDonald because Mr. McDonald actually
3 filed a Prehearing Statement that threatened your
4 application and you knew he was serious?

5 Is that correct?

6 A. Yes.

7 Q. So prior to filing his Prehearing Statement,
8 would it be fair to say that you did not take him
9 seriously?

10 A. I would not agree with that assessment.

11 Q. Would you agree that the flurry of emails that
12 occurred from December 31st to the hearing, that week,
13 were in response to the filing of his Prehearing Statement
14 in an effort to protect your interests in the pooling
15 hearing?

16 A. To reach an agreement with him so that we could
17 proceed.

18 Q. And those did not occur until you realized you
19 could possibly not be able to go through with your pooling
20 hearing; is that correct.

21 A. No. I'm not really sure -- I'm not following
22 the questions, then.

23 Q. All right. Prior to December 31st you sent one
24 email on August 19th to Mr. McDonald. After December
25 31st, you sent multiple. During that week you sent

1 multiple emails. Would it be fair to say that those were
2 motivated by your concern that you would not be able to go
3 to the pooling hearing unless you resolved this issue with
4 Mr. McDonald?

5 A. It's a standard practice to work with the
6 parties all the way up through the hearing process. Or
7 sorry, from the filing to the actual hearing. And, as you
8 know, many times they get continued because discussions
9 are ongoing.

10 Q. So the record shows that when you are motivated
11 to get all of your interests in order for the pooling
12 hearing and the subsequent Pooling Order, would it be fair
13 to say you're very capable of reaching out and responding
14 immediately numerous times to working interest owners?

15 A. I believe you're inferencing again, and I
16 couldn't agree or -- with your statement.

17 Q. The statement basically says that the record
18 shows that you have the capability when you wanted to, to
19 reach out numerous times and negotiate in good faith.

20 Would that be correct?

21 A. I already answered that, but I'm not going to
22 agree with that statement.

23 Q. Mr. Hajdik, overall would it be fair to say that
24 Colgate dropped the ball with Mr. McDonald in the same way
25 that it dropped the ball with Cimarex?

1 A. Strongly disagree with all of your statements
2 there.

3 MR. SAVAGE: Thank you, Mr. Hajdik. I
4 appreciate your time and efforts to answer all my
5 questions.

6 I have no more questions, Madam Chair.

7 COMMISSION CHAIR SANDOVAL: Thank you.

8 Commissioners, do you have questions for
9 the witness?

10 COMMISSIONER AMPOMAH: Yeah, madam Chair, I do.

11 Do you want to go first?

12 COMMISSIONER BLOOM: I have no questions, Madam
13 Chair, so Commissioner Ampomah, please go ahead. Thank
14 you.

15 COMMISSIONER AMPOMAH: Thank you.

16 CROSS EXAMINATION

17 BY COMMISSIONER AMPOMAH:

18 **Q. Mr. Hajdik, I do have a couple of questions for**
19 **you.**

20 **Can you tell the Commission how many**
21 **interest owners did receive -- did you send the Well**
22 **Proposals to.**

23 A. I don't have the exact count of parties in
24 there, but anyone who was a working interest owner in that
25 spacing unit would have gotten a Well Proposal.

1 Q. So how many of them were you able to get
2 agreement with them to participate under the JOA?

3 A. I acquired several parties via purchase, and
4 then several parties, Concho being one of them, indicated
5 they wanted to participate under the Order and were fine
6 proceeding with the hearing.

7 Q. Yes. So I want to ask how does Colgate describe
8 their good faith efforts in this particular situation, or
9 in general?

10 A. Typically, I mean -- in my view is we send the
11 Proposal, it's the initial trigger of communication to let
12 people know what we want to do; and then this is --
13 usually -- this is an old area, so there's typically lots
14 of parties, so you have -- you get -- that usually
15 triggers phone calls and emails from parties, because it
16 will have our contact on there.

17 And then, you know, sometimes it's a simple
18 question and they just -- and you don't ever hear from
19 them again, or sometimes the parties want to participate.
20 If they request a JOA, we will send a JOA. If they don't,
21 they just prefer to participate under the Order, then we
22 will force pool them.

23 And then a number of times parties want to
24 sell, and if we can reach an agreement there, then we'll
25 probably buy their interest. If they pass on terms then

1 we end up going to the hearing.

2 **Q. Yeah. So my last question is: Was there a**
3 **timeline for companies to respond to the Well Proposal?**

4 A. Uhm, well, I mean you can't file for hearing
5 until there's been at least 30 days lapsed since Notice of
6 Hearing. I mean -- sorry. You can't file for hearing --
7 my brain isn't working.

8 You have to wait 30 days after sending the
9 Well Proposal before you can proceed to hearing.

10 COMMISSIONER AMPOMAH: Thank you, Mr. Hajdik.

11 Madam Chair, I have no further questions
12 for the witness.

13 COMMISSION CHAIR SANDOVAL: Thanks. I just have
14 sort of one additional question, building, I think, upon
15 Dr. Ampomah's question.

16 CROSS EXAMINATION

17 BY COMMISSIONER CHAIR SANDOVAL:

18 **Q. So what would you expect if this were flipped,**
19 **if you were the one being pooled? What is your**
20 **expectation for the interactions from the other operator?**

21 A. Operator to operator, uhm, a -- if he didn't
22 respond or had very limited response, I would not be at
23 all surprised that they proceeded to hearing without
24 further contact. In fact that happens all the time
25 operator to operator where the parties have an

1 understanding of the process and the implications.

2 Q. So what you're stating is if you didn't respond
3 or ask questions or engage, then you would expect the
4 other operator to just move forward?

5 A. Correct.

6 Q. Okay.

7 A. Like I already -- sorry.

8 Q. Go ahead.

9 A. Like, I would almost say that's a standard
10 practice. You get from a Mewbourne or EOG Proposals, and
11 that typically might entail one or two emails at tops, or
12 no emails before a Hearing Notice is sent.

13 Q. So do you believe that in this pooling
14 application you engaged in good faith efforts with
15 Cimarex?

16 A. I would believe so, because historically when I
17 work with another operator, if I responded to them and
18 they don't respond back, I assume they don't have any
19 other questions or objections to what we sent. So I felt
20 that they were fine with proceeding forward, and...

21 Q. So building on that, it sound like you take no
22 response as agreement?

23 A. Or not objection. No objection to proceeding.
24 Or in the case of not being taken seriously, then usually
25 the Hearing Notice will then trigger a real conversation,

1 because what we've seen historically is a lot of times
2 parties don't want to commit unless there is a hearing
3 pending, and then that results a in a number of
4 continuances and actual negotiations at that point,
5 because parties don't want to move their lands around or
6 sell their lands unless it's truly going to go to hearing
7 and it's not just a (inaudible) proposal.

8 **Q. So -- sorry. Go ahead.**

9 A. Because there was a period of time over the
10 years where kind of fly-by-night operators would send out
11 Proposals to try to shake down interested parties.

12 So I can understand potentially why certain
13 parties may not take it seriously until a Hearing Notice
14 is filed.

15 **Q. So after you did -- after this was noticed for**
16 **hearing did you have any additional contacts with Cimarex?**

17 A. Not with Cimarex.

18 **Q. Did you with other operators?**

19 A. Yes. We've had Concho, Mr. McDonald, we bought
20 out a couple of other parties in there, as well.

21 **Q. So, again from your perspective, there were**
22 **multiple opportunities for Cimarex to have engaged and**
23 **they did not?**

24 A. Yes.

25 COMMISSION CHAIR SANDOVAL: Okay. I don't have

1 any further questions.

2 Commissioners, anything else before I pass
3 back to Mr. Padilla?

4 COMMISSIONER BLOOM: Madam Chair, I did have a
5 question but then you asked it.

6 COMMISSIONER AMPOMAH: No, Madam Chair.

7 COMMISSION CHAIR SANDOVAL: All right.

8 Mr. Padilla, do you have redirect for your
9 witness?

10 MR. PADILLA: Just a few questions, Madam
11 Chairman.

12 REDIRECT EXAMINATION

13 BY MR. PADILLA:

14 Q. Mr. Hajdik, looking at our Exhibit 2, which is
15 the email stream of the two emails that went back and
16 forth -- do you have that in front of you?

17 A. Yes.

18 Q. Okay. Can you tell us what the subject matter
19 of that -- those emails were?

20 A. The intention was to verify what our development
21 plan was and ask what --

22 Q. So, I want you to -- let me ask you this.

23 I want you to look at the email that you
24 sent out. At the top of the email it identifies who the
25 email is from, who it was sent to, and the subject. And

1 the subject is Meridian Proposal.

2 A. Correct.

3 Q. What is that about? That's about this
4 particular well, right?

5 A. Yes, that's the name of the well.

6 Q. And when Mr. Coffman sent you his email it also
7 referenced the Meridian Proposal, right?

8 A. Yes.

9 Q. And in Mr. Savage's questions to you he implied
10 that perhaps you were talking about some other Proposal,
11 but clearly you would agree that you were talking about
12 that Meridian Proposal. Correct?

13 A. Yes.

14 Q. Okay. You also testified in an answer to Mr. --
15 or to Mr. Savage's questions about JOAs. And I think you
16 mentioned Mewbourne and another company that don't
17 typically send JOAs. Which companies were those, again?

18 A. I believe EOG doesn't always send, or they used
19 to not. I haven't received one recently. And then not
20 always received JOAs with Mewbourne's Proposals, either.

21 Q. And they're big guys, right?

22 A. Right.

23 Q. Tell us the Concho decision. You stated in
24 cross that they told you that they would proceed under the
25 terms of the Order. Is that correct?

1 A. Correct. We had been in discussions to buy
2 their interest or trade it, and they decided they would
3 want to participate, but hadn't -- uh, didn't request a
4 JOA and agreed to let the hearing go forward.

5 **Q. So they would participate under the terms of a**
6 **Compulsory Pooling Order, right?**

7 A. Correct.

8 **Q. Yes?**

9 A. Yes. Sorry. Excuse me. (Note: Coughing.)
10 Uh, yes.

11 **Q. Essentially anyone can participate under a**
12 **Compulsory Pooling Order, right?**

13 A. Yes.

14 **Q. And how do you go about doing that?**

15 A. Send out Post-Order Proposals. You know,
16 pursuant to the Order.

17 **Q. If I was a working interest owner who got**
18 **pooled, could I participate under the terms of a**
19 **Compulsory Pooling Order?**

20 A. Yes.

21 **Q. And do Orders have a time period to elect to**
22 **participate?**

23 A. Yes, they are very similar to the terms of the
24 JOA.

25 **Q. So when you -- in questions posed to you by I**

1 think the Chair, you essentially said that these -- Notice
2 of Hearing triggers discussions. Right?

3 A. Yeah, correct. Any discussions that haven't
4 been resolved, it usually triggers the parties to continue
5 discussing or object.

6 Q. Would you characterize that as practice and
7 custom in the industry?

8 A. Yes. There's a number of cases we are involved
9 in that have been pending for years because parties have
10 had discussions ongoing following the filing of the Order.

11 I mean, sorry, filing for hearing.

12 Q. Now, you were questioned extensively by Mr.
13 Savage about the Prosperity Bank issue. Who followed up
14 on your proposal to Prosperity Bank?

15 A. What do you mean?

16 Q. Well, let me ask the question.

17 Mr. McDonald followed up on your proposal,
18 correct?

19 A. Yes.

20 Q. And he didn't just sit on it. Is that fair to
21 say?

22 A. Yes. I mean to the extent that it did sit, he,
23 uh -- you know, we resumed conversations after the Hearing
24 Notice.

25 Q. Mr. McDonald was pretty persistent in the number

1 of emails that he sent to you, right?

2 A. Correct.

3 MR. PADILLA: Madam Chair, I think that's all I
4 have.

5 COMMISSION CHAIR SANDOVAL: Thank you.

6 Okay. So I just wanted to do kind of a
7 scheduling update here, and maybe take a five-minute
8 break. We've almost been going two hours. And we are
9 going to need to break today from 11:15 to 12:45. It's
10 10:40 almost.

11 Commissioners, are there any of the
12 previous witnesses you would like to recall before we ask
13 for closing and we talk about the motion?

14 COMMISSIONER BLOOM: Madam Chair, I have no
15 witnesses that I need to recall. Thank you.

16 COMMISSIONER AMPOMAH: Madam Chair, I do not
17 have any witnesses that I would like to recall.

18 COMMISSION CHAIR SANDOVAL: Okay.

19 All right. So it sounds like we are
20 probably done with witnesses, we could move into closing,
21 and we also need to hear the motions.

22 MR. MOANDER: Madam Chair, if there's no -- I
23 haven't heard you ask, and assuming there are no
24 additional witnesses for the parties, I think you could
25 close the evidentiary record at this point and then --

1 because closings are not evidence, they are argument, and
2 the motion is not evidence nor is it going to proffer any
3 evidence, I don't think. You might check with the parties
4 on that, as well.

5 COMMISSION CHAIR SANDOVAL: Mr. Padilla, am I
6 correct that was your one-and-only witness? Is that
7 correct?

8 MR. PADILLA: That's correct.

9 COMMISSION CHAIR SANDOVAL: All right. Then
10 let's close the evidentiary hearing portion of this.

11 Let's take a quick five-minute break, be
12 back here a 10:45, and then let's talk about that motion.

13 I will ask that the counselors be somewhat
14 brief, because we do have your motions. But I'll give you
15 both an opportunity to discuss that when we come back at
16 10:45. Okay.

17 (Note: In recess from 10:41 a.m. to 10:45 a.m.)

18 COMMISSION CHAIR SANDOVAL: All right. Let's
19 get going, then.

20 All right. So on this motion, Mr. Savage
21 would you like to discuss it?

22 MR. SAVAGE: Yes.

23 Madam Chair, I think the motion, you know,
24 speaks for itself. For the past several weeks I was
25 working on another project, unrelated, and I ran across

1 some cases that talked about the effect on the Pooling
2 Order when there's a defect. We had been operating off
3 the premise that if good faith negotiations were not
4 maintained or there is a defect in the attempts to reach a
5 voluntary agreement that the Pooling Order would be
6 invalid as a whole. And so we had this kind of, this
7 two-part premise: One, going back to the Division for
8 hearing. That was one of Cimarex's preferences. The
9 other, you know, staying at the Commission if the Order
10 was fully valid. But then there's this third option is
11 that the Commission could look at an Order as being void
12 to particular parties, particular pooled owners.

13 And I thought that was important to the
14 Commission to consider, to give the Commission full
15 options. I did not intend this to be a -- to blow up into
16 a relitigation or, you know, consume the Commission's
17 time, I just wanted to get the information to the
18 Commission, and I believe that Mr. Moander said the motion
19 practice was the way to do that.

20 So that's basically why the motion was
21 submitted, and I think it's a valid motion. You know, the
22 Commission sua sponte, once they are aware of those cases
23 and that option, they could adopt it independent of the
24 motion.

25 But that's how it stands.

1 COMMISSION CHAIR SANDOVAL: Thank you, Mr.
2 Savage.

3 Mr. Padilla.

4 MR. PADILLA: Uhm, Members of the Commission,
5 the statutory procedure and the rules require starting in
6 the Divisional level. If you are not a satisfied party,
7 or an aggrieved party then file a de novo Appeal to the
8 Commission. If you are not satisfied then, you go to ask
9 for rehearing and ultimately judicial review of the Order
10 of the Commission. That is the process.

11 In his Reply Mr. Savage talks about venue.
12 Well, a venue, as far as I know, involves where you may
13 file a proceeding, and I don't know what -- we're here
14 before the Commission and there's no way that the
15 Commission may have ultimate or initial jurisdiction over
16 a compulsory pooling case. You clearly start at the
17 Division and you go up once you're an aggrieved party.

18 And so I don't understand where we are
19 headed with this kind of thing. The venue thing, it just
20 baffles me. The District Court if you are filing a
21 lawsuit against somebody, the venue statutes are very
22 clear to where a Plaintiff might file a proceeding.
23 Generally it's where either the Plaintiff or Defendant
24 lives. That's what venue is.

25 Here I just don't understand where we're

1 coming from.

2 Now, in terms of the citation of the Udhen
3 case, that case involved the unit agreement where the
4 participation for royalty owners and overriding royalty
5 owners who were not Noticed in a hearing was going to be
6 changed because of the contraction or expansion of the
7 unit -- I think it was an expansion case -- therefore the
8 interests of the overrides and the royalty owners is going
9 to be polluted.

10 So I just don't see a connection.

11 You can have a third option here, some kind
12 of choice of going back to the Division. And obviously we
13 are going to abide by whatever the Commission is going to
14 do in this case.

15 I don't want to -- we were very repetitive
16 in our response in terms of the procedural history and
17 argument, but I don't think there's a third option here.
18 You either -- you're either before the Division initially,
19 then the Commission, then if we get to that point, and
20 it's serious enough, we can have judicial review of it.

21 I think that we have some judicial review
22 in this Order because I think when Cimarex did not appear
23 at a hearing and they had Notice, then they -- they --
24 they're out. The Commission has ruled that they are
25 entitled to a de novo hearing, so we will abide by that.

1 That's what we're here for. But this question in this
2 case is solely on the issue of good faith.

3 So I don't want to argue closing at this
4 point, but as far as a motion is concerned, I think it
5 definitely needs to be denied.

6 First of all, I mean at this late stage
7 you're bringing that up as a procedural issue when
8 everybody has had Notice?

9 So I'm -- I implore the Commission to deny
10 the motion.

11 MR. MOANDER: Mr. Padilla, this is Mr. Moander.

12 I just want to clarify, make sure I
13 understand your position on this.

14 Independent of the motion is it your
15 position that the Commission does not have the power to
16 sever a party out of a Division-level Order?

17 MR. PADILLA: I don't understand the question
18 entirely.

19 MR. MOANDER: Okay. Let me kind of lay this out
20 for you. This is again based on my understanding, because
21 I'm not necessarily -- I'm not adopting Mr. Savage's
22 position.

23 So generally like with agreements and
24 contracts, or even Orders, courts usually retain --
25 speaking of courts not necessarily the Commission here,

1 but courts like sever positions out, remand or alter lower
2 court or lower-level Order. I've seen that done with both
3 Orders and contracts in my career.

4 And so what I'm asking you is, that
5 regardless -- and I'm looking for a more general concept
6 here -- whether it's you or your client's position that
7 the Commission, taking the subject Order, would be
8 prohibited or barred from, say for example, severing
9 out -- shoot I'm going to get the names wrong, is it
10 Cimarex and the Trustee. Is the Commission barred from
11 doing that, removing them out of the Order, and just for
12 the sake of completeness remanding the matter to the
13 Division?

14 MR. PADILLA: That's what the Commission is
15 doing, remanding or may remand what is effectively we're
16 here at this evidentiary hearing on some sort of remand to
17 determine whether on the issue of good faith. But that is
18 before the Commission, and I think a remand to determine
19 good faith before the Division after the hearing has
20 already occurred before the Division is inappropriate,
21 simply because the statutes don't call for that kind of
22 remand or review. The procedure is for a de novo hearing,
23 and it goes before the Commission and you retry a case,
24 and so it's a new case but it's before the Commission.

25 I can't see statutory authority to remand

1 back, or even the rules don't say that.

2 Now, I suppose we would be breaking new,
3 uh -- or precedent if the Commission ruled that it
4 would remand for determination as to Cimarex and
5 Prosperity Bank. But I don't see how in the world
6 Prosperity Bank can complain here, in claiming with
7 Cimarex and the practice and custom between companies. I
8 think Mr. Hajdik's statements is that the Hearing Notice
9 triggers a lot of discussion afterwards. That has been my
10 view. That's when I get engaged, not at any other time,
11 in compulsory pooling cases.

12 COMMISSION CHAIR SANDOVAL: Commissioners, or --
13 Mr. Padilla, are you done?

14 MR. PADILLA: I'm done.

15 COMMISSION CHAIR SANDOVAL: Commissioners, do
16 you have any questions for either Mr. Savage or
17 Mr. Padilla on this motion?

18 COMMISSIONER BLOOM: Madam Chair, I do not, no.
19 Thank you.

20 COMMISSIONER AMPOMAH: Madam Chair, I do not.

21 COMMISSION CHAIR SANDOVAL: I have just have one
22 question, Mr. Savage.

23 So you're saying the third option.

24 What would that practically do for your
25 clients?

1 MR. SAVAGE: Madam Chair, thank you.

2 I think there's some misunderstanding here.

3 Let me go over the three options that are
4 available to the Commission and when we started out with
5 this idea of an evidentiary hearing.

6 So the first option is Colgate is found not
7 to have negotiated in good faith and failed to make
8 attempts. Under those conditions when we started this
9 proceeding, we, uh -- it was on the premise that that
10 would invalidate the Order as a whole, and that would
11 require -- because there's no standing Order to be heard
12 de novo, that would require a return to the Division to
13 start from scratch to allow the competing applications
14 between the two parties. Okay.

15 The second option, and this was under the
16 original premise, is that Colgate is found to have engaged
17 in good faith negotiations and to have made attempts to
18 reach an agreement. Under this condition the Order would
19 stand, and with a standing Order the Commission would have
20 full jurisdiction as a forum to have the de novo hearing
21 and to hear the competing applications.

22 Then there is this third area, and that
23 would be that Colgate is found not to have engaged in good
24 faith negotiations or made attempts. In that case the
25 Order would be void, as opposed -- in regard to Cimarex,

1 but the Order would still be valid and standing for the
2 remaining owners.

3 Now, with a valid and standing Order for
4 the remaining owners, even though it may be it is void as
5 to Cimarex it does not need to be returned to the
6 Division. It could be -- the Commission could assume
7 jurisdiction and have the de novo hearing and hear the
8 competing applications.

9 I think that that provides the full scope
10 of authority for the Commission.

11 How that benefits Cimarex? It would
12 benefit Cimarex in the scenario where if the Commission is
13 on the fence and is having a very difficult time deciding
14 whether or not Colgate engaged in good faith negotiations
15 and made attempts or whether it did not, it would relieve
16 any pressure or consequences of where that forum would end
17 up based on a decision by the Commission. The Commission
18 would be free, without pressure, because they would know
19 that they could choose whatever forum.

20 That's basically the benefit as I see it.

21 COMMISSION CHAIR SANDOVAL: Okay. Maybe I'm
22 not understanding that. I'm not sure.

23 MR. MOANDER: Mr. Savage, let's just say -- I
24 mean I've been using severance because that's the legal
25 term that seemed to stand out to me, or be applicable.

1 So what happens if, as you described,
2 Colgate is not found to have acted in good faith and the
3 Commission finds that the Order is void as to Cimarex.
4 Where does that -- where does that leave Cimarex here?
5 Because I don't think that's the end of the story. In
6 fact I think that's the beginning of a brand-new story.

7 Do we want to get to that?

8 MR. SAVAGE: Yes that -- because of the Order
9 standing, I believe that the Commission would still have
10 jurisdiction over the de novo hearing, and I think that
11 the Commission would have authority and power to address
12 at the Commission level that defect through a hearing of
13 the competing applications, which would ultimately decide
14 who was bound by what Order.

15 The Commission has concurrent jurisdiction
16 with the Division. I don't think that it's absolute but I
17 think it's very broad, and I think the Commission has
18 interpreted it to be very broad.

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

20 COMMISSIONER BLOOM: Madam Chair, Mr. Moander,
21 how do we proceed from here? Is this something we can
22 discuss in deliberations?

23 MR. MOANDER: This would be a motion, so let me
24 just double check. But I think this would not fall under
25 an exception, so this would need to be discussed on the

1 record. But if you will give me just one moment to do one
2 double check, I will opine a little further.

3 COMMISSION CHAIR SANDOVAL: Okay. While you're
4 opining, my other question is: The way that Mr. Savage
5 lays it out, it's more of a third option after we've sort
6 of decided where we are -- in deliberations. However --
7 well, I will just make that statement.

8 MR. MOANDER: Madam Chair, I would describe
9 this, and either counsel is free to correct me in this,
10 but this appears to be a variation of a remedy would be
11 applied or not applied after the Commission makes
12 substantive findings.

13 I'm not going to take a position on the
14 merits, but does that sound correct to either side?

15 MR. SAVAGE: Mr. Moander, I think that is a very
16 good description. It does not affect the substance of the
17 evidentiary hearing but it gives the Commission options of
18 what to do after a finding or conclusion.

19 COMMISSION CHAIR SANDOVAL: So it's maybe
20 something we should discuss after deliberations is what
21 I'm hearing, but we may have to discuss that after
22 deliberations. On the record and not during
23 deliberations.

24 MR. MOANDER: I suspect you could go that route
25 here. I mean, Madam Chair if you have got -- yeah, that

1 could be done.

2 Madam Chair, I'm going to need a couple of
3 minutes here. I just want to check on one narrow issue in
4 the nature of this motion. Could we maybe take five
5 minutes here?

6 COMMISSION CHAIR SANDOVAL: Yeah, we can take
7 five. I'm going -- we are going to have to break from
8 about 11:15, we could steal a couple of extra minutes to
9 about 12:45, or to 12:45.

10 MR. MOANDER: It's up to you, Madam Chair, how
11 you want to do this.

12 COMMISSION CHAIR SANDOVAL: I mean, we could go
13 ahead and break now and you could research that, and we
14 can discuss when we get back.

15 MR. MOANDER: That's fine, because I think I
16 will have an answer, or at least we will know what we need
17 to do next, next steps in terms of addressing the motion.
18 So I'm okay with that, recognizing that there's still a
19 ruling that needs to get made and deliberations to conduct
20 today.

21 COMMISSION CHAIR SANDOVAL: Okay.

22 So why don't we do that. When we come back
23 at 12:45 Mr. Moander will update us on kind of where we
24 are at with the process for the motion discussion and
25 decision, and then, Mr. Savage and Mr. Padilla, you can do

1 your closing, and then likely the Commission will go into
2 deliberations, potentially.

3 Does that sound like a plan for everybody?

4 COMMISSIONER BLOOM: That works.

5 COMMISSIONER AMPOMAH: That works for me.

6 MR. PADILLA: Works for me.

7 COMMISSION CHAIR SANDOVAL: All right. I will
8 see everybody again at 12:45. Thanks.

9 (Note: In recess from 11:10 a.m. to 12:45 p.m.)

10 COMMISSION CHAIR SANDOVAL: All right. Let's
11 get started again. It's 12:47.

12 So I think where we ended was, Mr. Moander,
13 you were looking some stuff up and then we were going to
14 get started on closing statements.

15 MR. MOANDER: All right. So Madam Chair, I just
16 wanted to be sure. My main concern was a motion that's in
17 the middle of a hearing versus a regular motion hearing.
18 So it's my understanding of the law that the Commission
19 can go to closed session and deliberate on the motion, so
20 that there's no prohibition on that deliberation happening
21 within the confines or context of a larger hearing.

22 So the Commission may deliberate in closed
23 session momentarily to include both the merits of the case
24 as well as the motion.

25 EXAMINER BRANCARD: All right. Thank you for

1 checking.

2 With that I think it sounds like since we
3 can talk about that in closed session during
4 deliberations, we can discuss that, as well.

5 Okay. All right. Mr. Savage, would you
6 like to make a closing statement?

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

8 Madam Chair, Commissioners, Mr. Moander,
9 Counsel, the idea of negotiations being a two-way street
10 applies in a general sense to the meaning of negotiations,
11 but it does not fully capture the legal criteria of the
12 Oil and Gas Act and the rules that uphold the intent of
13 the Act.

14 It is very clear under the rules that the
15 applicant, Colgate, must make and show attempts to gain
16 voluntary agreement. That part of the Division's mandate
17 is the short one-way street the applicant must go down
18 before it can exit onto the two way-street where
19 negotiations are held.

20 Clearly by a preponderance of the evidence
21 Colgate failed to do this. During this evidentiary
22 hearing we looked closely at the one email exchange
23 between Cimarex and Colgate, which Cimarex, not Colgate,
24 initiated. Now, there is no expression of an intent to
25 gain voluntary agreement in Colgate's very short email

1 response, not even the implication of an intent. After
2 the email exchange Colgate never made an attempt to even
3 negotiate with Cimarex.

4 Now, it is unheard of in the industry that
5 an applicant such as Colgate, faced with needing to commit
6 substantially the same amount of working interest from an
7 owner that the applicant itself owns, in this case a full
8 quarter of the unit, would not reach out to the owner,
9 Cimarex, with attempts to voluntarily pool this
10 substantial amount of working interest.

11 Colgate has had a history of past dealings
12 with Cimarex, knows that Cimarex routinely objects to and
13 protests Colgate's attempts to pool its interests, and
14 knows very well that Cimarex would have never agreed to
15 having its substantial 25 percent working interest pooled.
16 No way would that have happened, which is maybe why
17 Colgate didn't engage in good faith negotiations.

18 What Colgate is asking the Commission to do
19 is to put the burden and obligation on Cimarex to make
20 attempts to reach a voluntary agreement. Putting the
21 burden and obligation on Cimarex to reach out to Colgate
22 instead of vice versa turns the Oil and Gas Act and the
23 Division rules on their head. Under the rules the burden,
24 that is the clearly stated obligation, is on Colgate to
25 affirmatively reach out to Cimarex with efforts to gain

1 voluntary agreement. Colgate did not. Colgate initiated
2 the pooling process with its mandatory Well Proposal that
3 lacked a JOA, and then failed to play by the rules, or
4 more seriously, to play at all; therefore, Colgate has
5 forfeited its right to have an Order, a Pooling Order that
6 binds Cimarex's working interest.

7 Colgate's argument that Cimarex dropped the
8 ball by not reaching out to Colgate after the August,
9 2020, email exchange is untenable, irrelevant and
10 immaterial. By Colgate's own admission it is common for
11 working interest owners not to take seriously a Well
12 Proposal that is missing a JOA without evidence of further
13 serious negotiations initiated by the party who sent the
14 Proposal.

15 Colgate's admission corresponds exactly
16 with the process that Cimarex uses, and by clear
17 implication with what other working interest owners use to
18 triage and assess the numerous Well Proposals that working
19 interest owners receive in order to determine if the
20 proposals are serious or not. A high percentage of the
21 Well Proposals received never go to hearing.

22 Under the facts of this case, by all
23 indications it was reasonable for Cimarex to have assumed
24 that Colgate's proposal was not serious. Cimarex did not
25 drop the ball by using its ranking process, it was just

1 waiting for Colgate to serve the ball.

2 Colgate has repeatedly pointed out
3 Cimarex's fault for missing Notice, and we assume Colgate
4 will again point this out in its closing statement, but
5 this fact, which Cimarex has never denied, only proves
6 Cimarex's point, that without a Notice in hand, for
7 whatever reason, whether it wasn't mailed or whether it
8 was accidentally missed by the intended recipient, it is
9 reasonable for a working interest owner not to take a
10 proposal seriously if it does not have a JOA or if the
11 operator does not demonstrate through good faith
12 negotiations an intent to gain an agreement that the
13 proposal is in fact serious.

14 Colgate did neither. It did not provide a
15 JOA, neither did it reach out to Cimarex to engage in
16 good-faith negotiations. Instead, after sending the
17 mandatory Well Proposal Colgate laid low under the radar.
18 Applicants can often get away with this strategy, it often
19 works, unless the applicant is challenged on the practice,
20 as it was in this case.

21 By asserting its rights Cimarex has shown
22 that it is not the only victim of such practices, that
23 Mr. McDonald also fell victim as, unwittingly for him, the
24 working interest he holds in trust has been force pooled
25 without his full understanding of what that means or could

1 mean for the interest.

2 What we've seen by Colgate is apparently a
3 misrepresentation. You see it in Colgate's Communication
4 Timeline that excessively overstates the scope of
5 communications that actually did take place, and you see
6 it in Colgate's Pooling Application and exhibits when you
7 compare its statements that it sought voluntary agreement
8 with Cimarex, when you compare that to Colgate's actual
9 absence of attempts to gain voluntary agreement from
10 Cimarex.

11 And Madam Chair, this is why this case
12 should be important to the Commission. It is a clear
13 opportunity to affirm the standard of, first, what
14 constitutes attempts by the applicant to gain a voluntary
15 agreement; and second, what constitutes good faith
16 negotiations, both under the rules and the intent of the
17 Oil and Gas Act. Is the standard a bare-minimum standard
18 consisting only of sending out a Well Proposal without a
19 JOA, and then offering a two-sentence generic email
20 response that makes no attempt to negotiate an agreement,
21 followed by months of complete radio silence. This is
22 what Colgate argues.

23 Cimarex submits that adopting Colgate's
24 position would result in no standard at all. Or should
25 the standard be slightly higher; that is, at least a Well

1 Proposal with a JOA followed by at least one good faith
2 attempt to gain voluntary agreement. Or if the Well
3 Proposal does not include the JOA, then at least the
4 showing of a couple of good-faith attempts that indicate
5 the proposal is a serious proposal. This slightly higher
6 standard would be little, if any, burden on an applicant
7 who intends to act in good faith anyway, and it would
8 uphold and maintain the integrity of the pooling process.

9 To protect the correlative rights of
10 owners, Cimarex respectfully requests that the Commission
11 adopt the higher standard, at least slightly higher than
12 that what Colgate proposes, that will still keep the
13 burden on the applicants to a minimum. And, in doing so,
14 the Commission should find that Colgate failed to make
15 attempts to gain voluntary agreement, and because of
16 Colgate's silence and unresponsiveness the Commission
17 should find that Colgate did not negotiate in good faith.

18 Thank you.

19 COMMISSION CHAIR SANDOVAL: Mr. Padilla.

20 MR. PADILLA: This hearing involves what is good
21 faith under the compulsory pooling statute and the rules
22 of the Division.

23 I find it incredible that Mr. Coffman
24 testified that one more email would have been sufficient
25 to satisfy good faith. I mean, when you look at these

1 emails, which involved the Meridian proposal, the well
2 under consideration for which Colgate made the
3 application, uh, they could have come back and said, "We
4 propose a contract area larger than the spacing unit under
5 consideration."

6 Cimarex claims that the burden is on
7 Colgate in this case. If you're sent a Proposal and
8 you're the target of a Compulsory Pooling Application, I
9 think you have to act like Mr. McDonald did. He sent
10 emails to Mr. Hajdik. He chased the rabbit.

11 What did Cimarex do? They effectively
12 threw the proposal in the trash because it didn't have a
13 JOA, and yet testimony here today indicates that a JOA may
14 or may not be accompanied by a Well Proposal. But it is
15 clear that upon request a JOA is normally sent in the oil
16 industry by someone who is trying to force pool the
17 working interests.

18 Cimarex can't simply say: Well, the
19 ranking we gave this thing was very low because it didn't
20 have a JOA. Ultimately you're going to wind up in a
21 Compulsory Pooling Application, which happened in this
22 case, and like it handled the Well Proposal, they did
23 nothing in terms of -- they mishandled it. You can argue
24 all day long but the rules did not change because of
25 Covid, did not change in any significant manner as far as

1 hearings and applications and filings. We just went
2 online and did it that way, and went virtual on the
3 hearings.

4 Not only that, but when Covid was on the
5 Division actually suspended a lot of hearings. For a
6 period of time we didn't have any hearings and they were
7 all suspended. So even though Mr. Savage tries to make
8 this case into some kind of force majeure case that there
9 were circumstances that prevented their performance, they
10 still dropped the ball. They dropped the ball, and I'm
11 not trying to do a metaphor. Let me just say they omitted
12 handling the Well Proposal, they omitted handling the
13 Notice of Hearing. Custom and practice amongst the
14 Colgate/Cimarex/EOG/Mewbourne is that JOAs are not always
15 sent with a Well Proposal. I've been involved in many
16 compulsory pooling cases, and you don't always have, when
17 putting together a package for compulsory pooling, you
18 don't always have a JOA. You don't even have a JOA as
19 exhibits. What is required by the rule is a Well
20 Proposal, which generally contains an AFE and legend page
21 to elect or not to elect in drilling the well.

22 Cimarex didn't send anything back saying
23 they did not elect to participate, or do anything. They
24 trashed the application, because, as they say, it did not
25 have a JOA attached to it.

1 But going back to Mr. Coffman's testimony
2 one more email would have done it? I mean, that just
3 doesn't make any sense.

4 Now, going to the Prosperity Bank issue,
5 you can't even compare those. I mean, whether or not
6 Colgate communicated more often in December, that's just
7 the way things seemed to happen, and that's just the way,
8 especially amongst larger companies like Cimarex, Colgate,
9 Mewbourne, EOG. EOG'S a big player, and they apparently
10 don't send JOAs with their well applications. They
11 will -- I've represented EOG on compulsory pooling cases,
12 and I don't know, I can't remember specific cases, but
13 it's not a material issue as to whether or not a JOA was
14 sent. I've never handled a case that's where a JOA was
15 part and parcel of the evidence that had to be made by a
16 Well Proposal.

17 An AFE, of course, I think is required.
18 You need to know how much a well is going to cost or what
19 is proposed, and it depends on what formation and the
20 target of the application.

21 But I can't get away from this practice and
22 custom, and it's typical that people do things at the last
23 minute. I don't think that we're setting any precedent
24 here in terms of good faith amongst major operators.

25 I can't understand why Prosperity Bank is

1 even in this case, especially since Colgate continued
2 beyond the hearing date to contract with Prosperity Bank.
3 Mr. McDonald agreed with me that there were a whole bunch
4 of emails between the parties.

5 But the difference between Prosperity Bank
6 and their interest and Cimarex, an experienced major
7 player, are two different things.

8 So you can't take a good -- good faith is
9 relative to the experience in the industry. Cimarex had
10 it, and it's incredible that they did not pay attention.
11 They essentially trashed the proposal. You can't sit here
12 and come later and say: Well, we didn't consider it as
13 being credible, no JOA, so we are going to put it at the
14 bottom of the stack.

15 They didn't even discuss it in their team
16 meetings; they never even brought it up. But the proposal
17 was there. It never went away. Why they didn't appear at
18 the Division hearing is not Colgate's fault. If they had
19 handled it they would have probably gotten a continuance
20 from Colgate to discuss this further. And that happens
21 all the time.

22 So I don't see that we are breaking new
23 ground here or that the Division ought to set some kind of
24 lists, checklists of what is necessary and how many emails
25 have to be made. That's all an objective deal between

1 companies, especially where like Cimarex owned
2 approximately 25 percent of the prospect. They didn't lay
3 low. They made the Well Proposal, and Cimarex simply
4 ignored it.

5 The motion should be denied. Or for this
6 hearing, Colgate should not be penalized in any manner and
7 we should proceed to the de novo hearing, not any remand
8 back to the Division and try to decide how many options
9 there are in terms of how the Division handles or the
10 Commission handles hearings.

11 Thank you.

12 COMMISSION CHAIR SANDOVAL: Thank you,
13 Mr. Padilla.

14 Hold on. All right.

15 So we already closed the evidentiary
16 hearing, but I think the part of this application hearing
17 is now closed.

18 Commissioners, I would propose we go ahead
19 and deliberate on this case today, this afternoon,
20 immediately following this. We will need, I think, to
21 make a motion, but...

22 Is there a motion to close the meeting
23 pursuant to the administrative adjudicatory deliberations
24 exception to the Open Meetings Act, Sections 10-15-1H(3)
25 to deliberate in this case?

1 COMMISSIONER BLOOM: Madam Chair, I so move.

2 COMMISSION CHAIR SANDOVAL: Is there a second?

3 COMMISSIONER AMPOMAH: Madam Chair, I do second.

4 COMMISSION CHAIR SANDOVAL: Would you do a roll
5 call vote, please, Mr. Moander.

6 MR. MOANDER: Yes, Madam Chair.

7 Commissioner Ampomah.

8 COMMISSIONER AMPOMAH: Approved.

9 MR. MOANDER: Commissioner Bloom?

10 COMMISSIONER BLOOM: Approved.

11 MR. MOANDER: Madam Chair?

12 COMMISSION CHAIR SANDOVAL: Approved.

13 MR. MOANDER: With that the motion carries, and
14 the Commission may proceed into closed session.

15 COMMISSION CHAIR SANDOVAL: Okay. So I'm going
16 to leave this up and running. Commissioners I sent out a
17 separate meeting invite. You're welcome to cut off of
18 this if you would like. I'll stay logged on, so everybody
19 should just be able to stay on here.

20 It's 1:10 now, so I will pop back in an
21 hour at 2:10 just to give everybody an update, and we may,
22 depending on where we are in deliberating, or come back.

23 So at 2:10, please everybody plan to pop
24 back on for an update.

25 All right. Thanks, everyone.

1 MR. SAVAGE: Thank you.

2 (Note: In recess from 1:10 p.m. to 2:13 p.m.)

3 COMMISSION CHAIR SANDOVAL: All right. We can
4 get going. It's 2:13 on March 10, 2022.

5 MR. MOANDER: Madam Chair, we will need a
6 motion.

7 COMMISSION CHAIR SANDOVAL: Yeah.

8 MR. MOANDER: Just making sure.

9 COMMISSION CHAIR SANDOVAL: Is there a motion to
10 go back into open session?

11 COMMISSIONER BLOOM: Madam Chair, I move to go
12 back into open session.

13 COMMISSION CHAIR SANDOVAL: Is there a second?

14 MR. MOANDER: One second, Madam Chair. We need
15 to be more specific on that motion. The motion would need
16 to verify that the only matters discussed during the
17 closed session were those that were outlined in the motion
18 to enter deliberations.

19 COMMISSION CHAIR SANDOVAL: Is there a motion to
20 go back into open session, and that the discussion during
21 that closed session was limited to deliberation in Case
22 No. 21744?

23 COMMISSIONER BLOOM: Madam Chair, I so move.

24 COMMISSION CHAIR SANDOVAL: Is there a second?

25 COMMISSIONER AMPOMAH: I second.

1 COMMISSION CHAIR SANDOVAL: All right. Now will
2 you do a role call vote, please, Mr. Moander.

3 MR. MOANDER: Yes, madam Chair.

4 Commissioner Ampomah.

5 COMMISSIONER AMPOMAH: Approved.

6 MR. MOANDER: Commissioner Bloom.

7 COMMISSIONER BLOOM: Approved.

8 MR. MOANDER: Madam Chair.

9 COMMISSION CHAIR SANDOVAL: Approved.

10 MR. MOANDER: The motion carries, and we are
11 back in open session.

12 COMMISSION CHAIR SANDOVAL: Okay. All right.
13 In the matter of De Novo Case No. 21744, is there a motion
14 that Colgate did enter into a good faith effort to secure
15 voluntary unitization by sending out the AFE and Well
16 Proposal, as well as in the letter provided in Exhibit E-4
17 by Colgate, additional timelines and contact info; and
18 that the Commission readopt the standards set forth in
19 Order R-13165, which has been utilized in other Compulsory
20 Pooling cases and Orders since.

21 Based upon the timelines that were lined
22 out in Colgate Exhibit No. 5, Cimarex did not reach out
23 within the required 30-day timeline as indicated in the
24 letter; and therefore Colgate (sic) did not elect within
25 that timeline and Colgate was in their rights to move

1 forward and force pool Cimorex.

2 COMMISSIONER BLOOM: Madam Chair, I so move.

3 COMMISSION CHAIR SANDOVAL: Is there a second?

4 COMMISSIONER AMPOMAH: Madam Chair, I second.

5 COMMISSION CHAIR SANDOVAL: Would you do a roll
6 call vote, please, Mr. Moander.

7 MR. MOANDER: With pleasure, Madam Chair.

8 Commissioner Ampomah.

9 COMMISSIONER AMPOMAH: Approved.

10 MR. MOANDER: Commissioner Bloom?

11 COMMISSIONER BLOOM: Approved.

12 MR. MOANDER: Madam Chair.

13 COMMISSION CHAIR SANDOVAL: Approved.

14 MR. MOANDER: The motion carries.

15 COMMISSION CHAIR SANDOVAL: Additionally there
16 was a motion by Cimorex. This motion is denied and is
17 moot based on the evidence that was presented and ultimate
18 consideration by the Commission.

19 Is there a motion?

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

22 COMMISSION CHAIR SANDOVAL: Is there a second?

23 COMMISSIONER AMPOMAH: Madam Chair, I second.

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

1 MR. MOANDER: Absolutely, Madam Chair.

2 Commissioner Ampomah?

3 COMMISSIONER AMPOMAH: Approved.

4 MR. MOANDER: Commissioner Bloom?

5 COMMISSIONER BLOOM: Approved.

6 MR. MOANDER: Madam Chair.

7 COMMISSION CHAIR SANDOVAL: Approved.

8 MR. MOANDER: The motion carries.

9 COMMISSION CHAIR SANDOVAL: The motion to deny
10 the motion, just to be clear, carries.

11 MR. MOANDER: Madam Chair, did you intend to
12 discuss next steps in the original motion of your findings
13 or were you going to express that independently?

14 You can do it independently at this point,
15 if you want.

16 COMMISSION CHAIR SANDOVAL: As in like timing
17 for the Order and that?

18 MR. MOANDER: No. What next steps this case may
19 or may not have.

20 COMMISSION CHAIR SANDOVAL: Should that be
21 addressed in a motion or just...?

22 MR. MOANDER: You know what? You're right. It
23 probably shouldn't be, because I think that matter has
24 already been roughly decided.

25 Okay. I'll withdraw my comments on that.

1 Just trying to be extra thorough.

2 COMMISSION CHAIR SANDOVAL: Okay. I think we
3 will -- Mr. Moander, are you drafting the Order in this
4 case?

5 MR. MOANDER: Yes, Madam Chair.

6 COMMISSION CHAIR SANDOVAL: Okay. And we can
7 discuss and review that Order for potential approval at
8 the April 14, 2022, hearing date?

9 MR. MOANDER: Yes, Madam Chair.

10 COMMISSION CHAIR SANDOVAL: Okay.

11 Are there any other items we need to
12 discuss on this case before we move into the remaining
13 agenda items?

14 MR. MOANDER: That was what I was getting at,
15 Madam Chair, whether this case -- and now I realize I'm
16 drawing a blank on this.

17 Are there going to be further hearings in
18 this matter, in this case?

19 COMMISSION CHAIR SANDOVAL: I believe we have
20 another case.

21 Ms. Davidson, the next Cimarex/Colgate
22 case, when is that currently scheduled?

23 MS. DAVIDSON: It's scheduled for April.

24 MR. MOANDER: Okay.

25 COMMISSION CHAIR SANDOVAL: The April 14th date.

1 Okay.

2 Mr. Moander, are we allowed to ask the
3 parties if that is their intention?

4 MR. MOANDER: Sure. You can ask them about
5 anything you like at this point.

6 COMMISSIONER BLOOM: Madam Chair, just to
7 clarify, are we talking about in April doing the de novo
8 hearing related to 21744 or is this yet a separate Cimarex
9 versus Colgate issue?

10 COMMISSION CHAIR SANDOVAL: Uhm, I believe it's
11 related to this same issue but it's a separate case. But
12 maybe, Mr. Savage and Mr. Padilla, if you could just
13 provide a brief status update to the Commission on that,
14 and if the intent is still to move forward on the 14th.

15 MS. DAVIDSON: Chair Sandoval, I misspoke. That
16 was originally scheduled for April; it's been continued to
17 June 9th.

18 COMMISSION CHAIR SANDOVAL: Okay.

19 MS. DAVIDSON: I misspoke.

20 MR. PADILLA: I'm sorry, I didn't catch that.

21 COMMISSION CHAIR SANDOVAL: Ms. Davidson said
22 it's been continued to June 9th.

23 MS. PADILLA: Okay.

24 COMMISSION CHAIR SANDOVAL: Okay.

25 MR. SAVAGE: Madam Chair, do you want me to go

1 first?

2 COMMISSION CHAIR SANDOVAL: Yeah, if you just
3 want to provide a brief update on what -- on that.

4 MR. SAVAGE: So, as I would understand this now,
5 the status of the case, that we go forward with the de
6 novo and part of that de novo is the competing
7 applications of Cimarex in which they have proposed
8 competing applications and development plans that, in our
9 opinion, are superior to Colgate's plans and that they
10 promise greater production. We feel that the Commission
11 has an obligation to review those for the protection of
12 correlative rights and the prevention of waste.

13 I've been talking with a geologist, Kate
14 Pickford, about the pools in that area and in the subject
15 land for Cimarex, and there is some ambiguity about the
16 pool codes and we wanted to make sure that we do not have
17 overlapping units that have to be accounted for. So I'm
18 working with her, and I need to amend those applications
19 based on her feedback, and I will submit those as soon as
20 I can. But we would have to -- once submitted we would
21 have to provide for time For Notice for those
22 applications.

23 (Note: Pause.)

24 MR. MOANDER: Madam Chair?

25 COMMISSION CHAIR SANDOVAL: I was the one who

1 was muted. I'm just talking to the wall.

2 I was just asking, Mr. Padilla, if you had
3 any additional updates on the case.

4 MR. PADILLA: No, I don't. I would have to
5 confer with Colgate. But it seems to me we may have -- we
6 are going on now June 9th. There would -- I don't know
7 what the propriety is in terms of Colgate -- I mean,
8 Cimarex filing its applications, competing application,
9 and it did not file before the Division. The issue would
10 be whether or not, as far as I see it, based on the
11 Commission's ruling today that good faith was -- on good
12 faith, that I'm not sure that Cimarex can come now and
13 file for de novo on its application. There's no question
14 de novo on the Cimarex issue. They can contest that on a
15 de novo hearing. Whether or not they can now come and
16 file applications after the fact is questionable.

17 But I don't want to belabor the Commission
18 on that. If we do something, we would file a motion
19 addressing that issue.

20 MR. MOANDER: Mr. Padilla, I'm glad you pitched
21 that option, because this case is pretty heavy -- well,
22 it's extremely heavy on procedure, I think.

23 I think some motion practice on that, given
24 there's two months before the next setting, would be
25 appropriate. What I would recommend -- and obviously

1 Madam Chair can make the call on this, but is to have the
2 parties discuss -- what I would not like to see is two
3 motions and then the two replies and responses to the two
4 replies, and retread the same ground on that.

5 I'm not sure how we necessarily go about
6 that, Madam Chair, but I think that would be helpful here
7 in making -- because I do think there's some -- it will be
8 helpful for the Commission to get some more information
9 and some argument from the parties on that next step.

10 COMMISSION CHAIR SANDOVAL: So would those
11 motions be -- pick another date, right?

12 MR. MOANDER: Yes.

13 COMMISSION CHAIR SANDOVAL: Okay.

14 MR. MOANDER: No, I'm not -- there's --

15 COMMISSION CHAIR SANDOVAL: All right.

16 MR. MOANDER: There's been enough intellectual
17 horsepower between everybody involved in this for one day,
18 I think.

19 COMMISSIONER BLOOM: Madam Chair, Mr. Moander,
20 if I might. My recollection was, was that if Cimarex had
21 prevailed today, this case would have gone to the OCD, but
22 that based on where we left things previously we're now
23 going to get -- we would now have a de novo hearing at the
24 OCC. I don't know if we just need to go back and review
25 the Order and perhaps the transcript from where we left

1 off back in maybe it was April. That might spare another
2 round of motions.

3 MR. MOANDER: One thing we could do, and I know
4 that this maybe would cause a little tooth grinding,
5 perhaps we could set this matter for status conference
6 next month, like 10 minutes. That will give all the
7 parties time to take a look, and then if there is a need
8 for motion practice the Commission could assign that to a
9 party and say brief it, and then we can proceed from
10 there.

11 Because I recognize this case is big enough
12 with enough details and enough hearings on it that I think
13 everyone involved would benefit from a review. I do.
14 Just to make sure nothing is lingering here, because
15 there's been a lot going on, a lot of moving parts, and I
16 would be saddened if the Commission missed an opportunity
17 to address, say, a procedural issue that needs addressed.

18 COMMISSION CHAIR SANDOVAL: Okay. Can we -- Ms.
19 Davidson, can we add this to the April docket for a quick
20 status conference?

21 MS. DAVIDSON: Yes, we can.

22 COMMISSION CHAIR SANDOVAL: All right. Thank
23 you.

24 COMMISSIONER BLOOM: Thank you all.

25 (Time noted 2:08 p.m.)

1 STATE OF NEW MEXICO)
 2 : ss
 3 COUNTY OF TAOS)
 4

5 REPORTER'S CERTIFICATE

6 I, MARY THERESE MACFARLANE, New Mexico Reporter
 7 CCR No. 122, DO HEREBY CERTIFY that on Thursday, March 10,
 8 2022, the proceedings in the above-captioned matter were
 9 taken before me; that I did report in stenographic
 10 shorthand the proceedings set forth herein, and the
 11 foregoing pages are a true and correct transcription to
 12 the best of my ability and control.

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

18
 19 _/s/ Mary Therese Macfarlane_____

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