

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

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

Application of Colgate
Operating, LLC for
Compulsory Pooling,
Eddy County, New Mexico

OCD Case No. 21629
De Novo Case No. 21744

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, APRIL 14, 2022

REGULAR MEETING
AGENDA ITEM NO. 5
STATUS CONFERENCE AND RULING ON CASE 21629

This matter came on for hearing before the New Mexico Oil Conservation Commission on Thursday, April 14, 2022, via Webex Virtual Conferencing Platform hosted by the New Mexico Energy, Minerals and Natural Resources Department.

PRESENT :

COMMISSION CHAIR: Adrienne Sandoval
COMMISSIONER: Greg Bloom (State Land Office)
COMMISSIONER: William Ampomah (ENMRD)
COMMISSION COUNSEL: John Kreienkamp, Esq.
COMMISSION SECRETARY: Florene Davidson

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A P P E A R A N C E S

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C O N T E N T S

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1 (Time noted 9:21 a.m.)

2 COMMISSION CHAIR SANDOVAL: Do we have Mr.
3 Savage and Mr. Padilla?

4 MR. PADILLA: Yes. Ernest Padilla for Colgate
5 Energy -- or Colgate Operating. I'm sorry.

6 MR. SAVAGE: Yes.

7 COMMISSION CHAIR SANDOVAL: All right. We will
8 move on to Agenda Item No. 5, which is the Status
9 Conference and Adoption of Final Order in Case No. 21629
10 and de novo case No. 21744.

11 Let's go ahead and do the status conference
12 piece first and then we can move into voting on the Final
13 Order from last hearing.

14 Mr. Padilla and Mr. Savage, can you just
15 briefly provide, starting with Mr. Savage, basically an
16 update for the Commission on the next case. I believe,
17 the next case. I can't even remember when it's set for
18 now. But when we are set for, and then, you know, what
19 the next steps are. I believe this is a competing
20 compulsory pooling case.

21 So can you just provide a brief update, Mr.
22 Savage, on behalf of your clients.

23 MR. SAVAGE: Yes. Thank you. Good morning,
24 Madam Chair, members of the Commission, counsel. Darin
25 Savage appearing on behalf of Cimarex Energy Company.

1 As I understand it in regards to this case,
2 Cimarex thus far has been granted -- has been recognized
3 as a party of record, it's application for de novo hearing
4 has been granted.

5 I believe that there were some issues
6 regarding the evidentiary hearing, that Mr. Moander said
7 the possibility of doing some motion pleadings to clarify,
8 but as I understand it in the last evidentiary hearing the
9 Commission ruled that the email exchange between Cimarex
10 and Colgate satisfied negotiations, and therefore the
11 existing Order stays in place as an Order subject to de
12 novo review.

13 Cimarex as a part of record has submitted
14 its completing applications for the Crest wells in Case
15 Nos. 22018 and 22019 whose submissions have been approved
16 by the OCD. They are currently waiting to be reviewed for
17 the proper forum, and I believe that is one of remaining
18 questions to be addressed possibly by a motion pleadings.

19 I apologize, I don't know the exact date
20 set for the hearing on the merits but I believe it was in
21 June, if I'm not mistaken, but I could be corrected on
22 that.

23 COMMISSION CHAIR SANDOVAL: Ms. Davidson, can
24 you confirm that it's still on the June docket? I think
25 you're muted.

1 MS. DAVIDSON: Yes, it's still on the June
2 docket.

3 COMMISSION CHAIR SANDOVAL: It is?

4 MS. DAVIDSON: Yes.

5 MR. SAVAGE: Yes. Thank you, Madam Chair.
6 That's all I have at this point.

7 COMMISSION CHAIR SANDOVAL: Mr. Padilla.

8 MR. PADILLA: I'm a little confused because I
9 didn't realize that -- I don't think that we have
10 competing applications. We certainly haven't been noticed
11 on that.

12 The competing application that was filed by
13 Cimarex was withdrawn for lack of Notice. Our contention
14 is going to be that the de novo hearing was simply based
15 on the record before the Oil Division, therefore competing
16 applications are not applicable, simply because they were
17 inappropriately filed, uh, without Notice.

18 I think EOG filed a Motion to Dismiss and
19 Cimarex withdrew their application, so I don't think they
20 are there.

21 And another thing is that based on the
22 Commission's ruling on the good faith issue, I don't know
23 what there is to review before the Commission. I mean, it
24 seems to me that this whole issue was whether or not
25 Colgate Operating made a good faith effort to join

1 Cimarex.

2 As to Prosperity Bank, I don't know where
3 they are, and I think -- well, I think those issues were
4 pretty clearly resolved by the Commission's ruling on good
5 faith.

6 So maybe motions would be appropriate at
7 this time. And I think Mr. Moander had tried to avoid a
8 motions battle here, but I don't see how we can not have
9 motions to either limit or have what really is before the
10 Commission.

11 COMMISSION CHAIR SANDOVAL: Mr. Savage, do you
12 have any response to that?

13 MR. SAVAGE: Yeah, I believe this is a very
14 complicated case. Cimarex is a party of record in the
15 underlying case. It's Cimarex's understanding that the
16 Commission has established precedent and policy in some
17 prior cases, in particular Case Nos. 21277, 21278, that a
18 Pooling Order can be challenged in a de novo proceedings
19 by new pooling applications submitted by a party of record
20 after the Division has heard the original applicant's case
21 and has issued a Pooling Order in the applicant's favor.

22 The applications that we submitted, EOG --
23 we did dismiss the first set of applications based on
24 EOG's motion, but then we applied for new applications and
25 we provided Notice for those.

1 So those applications are in the wings in a
2 holding pattern.

3 Cimarex respectfully asks the Commission to
4 exercise the same grant of authority to allow a hearing of
5 these competing applications as it did for the competing
6 applications in its prior cases. It is clear from
7 established precedent and policy that the prevention of
8 waste and protection of correlative rights is paramount in
9 the proceedings before the Commission and take priority
10 over any risk to the security or potential finality of an
11 Order issued by the Division until the Division and
12 Commission have had the opportunity to complete their
13 two-tier review process of all applications submitted by
14 the parties of record and until the Commission makes its
15 final decision regarding waste and correlative rights.

16 Cimarex is really asking its opportunity
17 and the opportunity for the Commission to prevent waste
18 not be denied at this point.

19 COMMISSION CHAIR SANDOVAL: Okay. Mr. Padilla,
20 any response from you, and then I think we can move
21 forward.

22 MR. PADILLA: I think I've said my -- made my
23 points.

24 COMMISSION CHAIR SANDOVAL: So it looks like at
25 this point we are still on for June. I'm expecting there

1 might be some motions out of both of you prior to that
2 date that can be decided on at the June hearings.

3 Is there any -- is June still the expected
4 date or are we looking at having to continue this again?
5 I think we've continued it multiple times and would like
6 to sort of get a set schedule.

7 MR. PADILLA: Madam Chairman, this is Ernie
8 Padilla. I think if we filed motions there would be a
9 period of at least maybe a month and a half. We may have
10 to continue these cases, but I think as we hone in on the
11 issues raised by the motions then at that time we may
12 decide, or jointly decide that we need to move the cases
13 down the line.

14 COMMISSION CHAIR SANDOVAL: Okay. All right.
15 Well, that's helpful, I think.

16 Commissioners do you have any questions for
17 either Mr. Savage or Mr. Padilla as to where we are on the
18 next piece of this case?

19 COMMISSIONER BLOOM: Madam Chair, I do not. I
20 think the motions will be helpful. We have June meetings
21 June 9th, so that's about seven weeks. I think that
22 should give us plenty of time to have motions prepared and
23 for us to go over them. Thanks.

24 COMMISSION CHAIR SANDOVAL: Dr. Ampomah?

25 COMMISSIONER AMPOMAH: No, I do support the same

1 talk from Commissioner Bloom.

2 COMMISSION CHAIR SANDOVAL: Okay. Thank you,
3 Mr. Savage and Mr. Padilla.

4 With that let's move on to the second half
5 of No. 5, which was adoption of a Final Order in Case No.
6 21629.

7 Commissioners, have you reviewed the Final
8 Order and is there a motion to adopt it?

9 COMMISSIONER BLOOM: Yes, Madam Chair, I was
10 able to review the Final Order and I would move to adopt
11 it.

12 COMMISSION CHAIR SANDOVAL: Is there a second?

13 COMMISSIONER AMPOMAH: Madam Chair, I do second.

14 COMMISSION CHAIR SANDOVAL: Thank you.

15 Mr. Kreienkamp, would you please do a roll
16 call vote on the Order.

17 MR. KREIENKAMP: Yes, Madam Chair.

18 On the motion, Chair Sandoval.

19 COMMISSION CHAIR SANDOVAL: Approved.

20 MR. KREIENKAMP: Commissioner Bloom.

21 COMMISSIONER BLOOM: Approve.

22 MR. KREIENKAMP: And Dr. Ampomah.

23 COMMISSIONER AMPOMAH: Approved.

24 MR. KREIENKAMP: Madam Chair, the motion is
25 unanimous.

1 COMMISSION CHAIR SANDOVAL: Thank you.

2 Ms. Davidson, would you please circulate
3 the Final Order with the Commissioners so we can get that
4 signed and finalized today.

5 MS. DAVIDSON: Right. I will do that.

6 COMMISSION CHAIR SANDOVAL: Thank you.

7 COMMISSIONER BLOOM: Madam Chair, permit me. Do
8 we need to establish dates by which motions would be due?
9 I know in some cases we've limited the length of those,
10 and I don't know if we will allow replies to motions
11 either.

12 COMMISSION CHAIR SANDOVAL: For the June case?

13 COMMISSIONER BLOOM: Yes.

14 COMMISSION CHAIR SANDOVAL: I would be fine with
15 that if we want to put some structure around it.

16 Let me look at the calendar again.

17 So if we're looking, you know, at least
18 four weeks out, that would put motions due by at least the
19 12th of May, or we could push it off to the 5th.

20 We could do motions by the 5th, Replies by
21 the 19th, and then that gives us three weeks, I guess, to
22 review everything.

23 Mr. Savage and Mr. Padilla, do you have any
24 concerns with that?

25 MR. PADILLA: No. No. Madam Chairman, I am

1 trying to figure out -- May 5th would be the deadline for
2 filing motions?

3 COMMISSION CHAIR SANDOVAL: Yes.

4 Mr. PADILLA: And then response would be due on
5 the 12th?

6 COMMISSION CHAIR SANDOVAL: Yes. No, 19th.

7 MR. PADILLA: Oh, 19th.

8 And then will there be an opportunity to
9 file Replies, or as Commissioner Bloom said, you may limit
10 that just to simply a motion and a response?

11 COMMISSION CHAIR SANDOVAL: I think we do have
12 time for Replies. Let's see. So if we do the Response on
13 the 19th, uhm, we could do Replies by the 30th. Or
14 actually maybe the 27th.

15 COMMISSIONER BLOOM: Madam Chair, I feel that
16 just motions and an initial response would be sufficient,
17 and we limit them to 10 pages. I'm sorry.

18 COMMISSION CHAIR SANDOVAL: I was about to say
19 I'm okay with doing like motion responses and then
20 allowing a Reply if we limit the page numbers on them. We
21 don't need a thesis, I think.

22 COMMISSIONER BLOOM: Madam Chair, I'm fine with
23 that if this is how you would like to proceed.

24 COMMISSION CHAIR SANDOVAL: Five pages, eight
25 pages, ten, I think, of the core documents. If you have

1 any sort of exhibits, that will be extra.

2 We can split the middle and say seven.

3 Seven? Okay. All righty.

4 Ms. Davidson, do you happen to know the
5 case number for this in June so I can motion it with a
6 case number? Or if Mr. Savage or Padilla has it on hand.

7 COMMISSIONER BLOOM: Is it still de novo Case
8 21744?

9 COMMISSION CHAIR SANDOVAL: I don't -- I'm not
10 sure.

11 COMMISSIONER BLOOM: That's where we're headed?

12 COMMISSION CHAIR SANDOVAL: I think so, but I'm
13 just --

14 MR. SAVAGE: Madam Chair, This is Darin Savage.
15 Looking at the agenda, it looks like it is -- the de novo
16 case is 21744.

17 COMMISSION CHAIR SANDOVAL: Okay. All right.

18 So in de novo Case No. 21744 we will set a
19 motions deadline of the 5th, Responses are due by the
20 19th, Replies are due -- I'm sorry. Why don't I give you
21 months for these days.

22 Motions are due by May 5th, Responses are
23 due by May 19th, and Replies are due by May 27th, at the
24 end of day for all of those. And for all of the Motions,
25 Responses and Replies a maximum of seven pages, not

1 including any attachments or exhibits.

2 COMMISSIONER AMPOMAH: Madam Chair, a quick
3 question.

4 So in the Final Order I think we made a
5 decision on the Cimarex application for hearing de novo,
6 so is that the same thing that we are going to talk about,
7 or the same number?

8 COMMISSION CHAIR SANDOVAL: We did. Hold on.
9 Let me pull up the Final Order.

10 COMMISSIONER AMPOMAH: Okay. (Note: Pause.)

11 COMMISSION CHAIR SANDOVAL: So I believe that
12 the -- we --

13 I've got an old copy up. (Note: Pause.)

14 COMMISSIONER BLOOM: Madam Chair, if you will
15 permit me.

16 COMMISSION CHAIR SANDOVAL: The -- oh, go ahead.

17 COMMISSIONER BLOOM: Yeah. My understanding, in
18 paragraph 111 we say that Cimarex's application in this
19 matter for a hearing de novo before OCC is denied.

20 COMMISSIONER AMPOMAH: Is denied.

21 COMMISSIONER BLOOM: Related back to the
22 question of whether proper Notice was given, but that this
23 was a bifurcation of the case, and that there is still a
24 de novo hearing potentially pending on the other side.

25 COMMISSION CHAIR SANDOVAL: Yes. So there's two

1 pieces to this case. We bifurcated it, back six, eight
2 months ago. So there was the case for the good faith
3 Notice effort that we decided on, which is this Order, and
4 then there's this additional de novo case. So there are
5 two separate issues.

6 COMMISSIONER AMPOMAH: Thank you, Madam Chair.

7 COMMISSION CHAIR SANDOVAL: Just for clarity's
8 sake I'll remake the motion.

9 Okay. For de novo Case No. 21744 -- I
10 actually don't know if that is the right case number.

11 COMMISSIONER BLOOM: The prior case was 21629.

12 COMMISSION CHAIR SANDOVAL: Okay. We'll get
13 there.

14 De novo Case No. 21744, motions are due May
15 5th, Responses are due by the 19th of May, Replies are due
16 by the 27th. All of these are limited to seven pages of
17 the core Response or Reply or Motion, and that does not
18 include attachments and/or exhibits.

19 Is there a second to that motion?

20 COMMISSIONER BLOOM: Madam Chair, I second.

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

23 MR. KREIENKAMP: Yes, Madam Chair.

24 On the motion. Chair Sandoval?

25 COMMISSION CHAIR SANDOVAL: Approve.

1 MR. KREIENKAMP: Commissioner Bloom?

2 COMMISSIONER BLOOM: Approve.

3 MR. KREIENKAMP: And Dr. Ampomah.

4 COMMISSIONER AMPOMAH: Approved.

5 MR. KREIENKAMP: Madam Chair, the vote was
6 unanimous.

7 COMMISSION CHAIR SANDOVAL: All right. Thank
8 you. We will hear from you soon, then, Mr. Savage and
9 Mr. Padilla.

10 MR. SAVAGE: Thank you, Madam Chair. Thank you
11 Commissioners.

12 MR. PADILLA: Thank you very much.

13 (Time noted 9:54 a.m.)

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

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5 REPORTER'S CERTIFICATE

6 I, MARY THERESE MACFARLANE, New Mexico Reporter
7 CCR No. 122, DO HEREBY CERTIFY that on Thursday, April 14,
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
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