

**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 COLGATE OPERATING, LLC
FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO**

**OCC Case No. 21744
OCD Case No. 21629
OCD Order No. R-21575
OCC Order No. R-21679
OCC Order No. R-21679-A
OCC Order No. R-21679-B
OCC Order No. R-21679-C**

**CIMAREX ENERGY CO.'S RESPONSE TO COLGATE OPERATING LLC'S
MOTION TO AFFIRM COMMISSION ORDER [NO. R-21679-C]**

Cimarex Energy Co., and its affiliate Magnum Hunter Production Inc. (collectively “Cimarex”), respectfully submits their Response to Colgate Operating LLC’s (“Colgate”) Motion to Affirm Commission Order [No. R-21679-C] (“Colgate Motion”). In support thereof, Cimarex states the following:

I. Relevant Procedural History and Facts:

1. Colgate filed an application in Case No. 21629 for compulsory pooling with the New Mexico Oil Conservation Division (“Division” or “OCD”) to pool a 320-acre horizontal spacing unit in the Bone Spring formation comprised of the N/2 N/2 of Sections 2 and 3, Township 20 South, Range 29 East, NMPM, Eddy County, New Mexico.
2. On January 19, 2021, Cimarex entered an appearance in Case No. 21629.

3. On January 20, 2021, before Colgate had submitted its final exhibits in Case No. 21269, the Division issued Order No. R-21575, granting Colgate’s application for compulsory pooling.

4. Colgate did not submit its final exhibits to its application in Case No. 21269 until January 27, 2021.

5. On February 17, 2021, Cimarex filed a timely Application for a Hearing *De Novo*. In response, Colgate filed a motion to dismiss Cimarex’s Application.

6. The New Mexico Oil Conservation Commission (“Commission” or “OCC”) denied Colgate’s motion to dismiss based on its conclusion that Cimarex is a “party-of-record” and granted its request for a *de novo* hearing. Order No. R-21679, which was issued on April 30, 2021.¹

7. On June 1, 2021,² in compliance with Order 21679-B, Cimarex filed competing applications seeking compulsory pooling orders to pool horizontal spacing units in the Bone Spring formation, docketed as OCD Case Nos. 22018 and 22019, which partially overlapped Colgate’s proposed Bone Spring horizontal unit.

¹ In Case Nos. 22191-92, the OCD has subsequently relied on OCC’s precedent and policy in the present Case and OCC Case Nos. 21277-78 to uphold the necessity of hearing competing applications submitted by a party who made its entry of appearance after the OCD hearing had been held. *See* Order on Motion to Reopen, Case Nos. 22191-92 ¶¶ 7-8 (*citing* Colgate Operating, LLC, Order No. R-21679, and Ascent Energy, LLC, Order No. R-21454); clearly, under currently established OCC policy, Cimarex’s Application to Reopen Case No. 21629 would have been granted by the OCD and its competing applications heard, same as they should be heard on the merits by the OCC in the present Case.

² It should be noted that Cimarex submitted its competing applications on June 1, 2021, and the OCD approved the submission on June 3, 2021. Ex. 5, attached hereto; *see also* Ex. 3 of Cimarex’s Application to Rehear.

8. The OCD continued these cases until the Commission determined the proper forum for hearing the applications as part of Cimarex's vested right to the *de novo* hearing. *See* Transcript of the July 1, 2021, OCD Hearing in Case Nos. 22018 and 22019. (Copies of the pertinent pages of transcript of the July 1, 2021 Hearing are attached hereto as Exhibit 1.)

9. On June 2, 2021, Cimarex filed a Motion to Invalidate and Vacate Colgate's Order No. R-21575 with the Commission ("Motion to Vacate Order" based on the argument that Colgate did not meet the good faith negotiation requirement that is a statutory and regulatory predicate to filings an application for compulsory pooling. On that same day, Colgate filed a Motion to Dismiss Cimarex's Applications, evidencing that Cimarex had met the OCC's June 3, 2021, deadline for filing its competing applications.

10. After these motions were fully briefed, the Commission held a hearing on both motions on July 8, 2021. At that hearing, the Commission agreed to bifurcate the proceeding and set an evidentiary hearing for the Commission's regular September 2021 meeting on the issue of whether Colgate engaged in good faith negotiations with Cimarex before it filed its compulsory pooling applications.³ The Commission set the *de novo* hearing on the merits of the competing applications for the Commission's regularly scheduled October 21 meeting, subject to the Commission's determination after the evidentiary hearing of the proper forum to hear the applications. *See* Transcript of the July 8, 2021 Commission Hearing at 45. (Copies of the pertinent pages of transcript of the July 8, 2021 Hearing are attached hereto as Exhibit 2.)

11. After the submission of evidence and arguments by the parties, the Commission voted to find that Colgate satisfied the good-faith negotiations requirement by sending Cimarex

³ After the hearings were continued, the Commission held the evidentiary hearing on February 22 and March 10, 2022

an AFE and Well Proposal. *See* Transcript of the March 10, 2022 Hearing at 194:12 – 195:14. (Copies of the pertinent copies of the March 10, 2022 Hearing are attached hereto as Exhibit 3.) Based on that finding, the Commission held that it was proper for Colgate to obtain a forced pooling order from the OCD. *Id.* Thus, the Commission denied Cimarex’s Motion to Vacate. *Id.* at 195:15 – 196:10.

12. The Commission set a status conference for April 14, 2022. *See*, Transcript of the April 14, 2022 Commission Hearing at 13:22-23 and 14:1-6. (Copies of the pertinent pages of the April 14, 2022, Hearing are attached hereto as Exhibit 4).

13. The Commission adopted Order No. R-21679-C at the April 14, 2022 status conference. *See* Ex. 4 at 9:4 – 25. In its Order, the Commission held that Colgate satisfied the good-faith negotiations requirement (Order ¶¶ 102 and 103), which was consistent with its vote at the end of the March 10 hearing. *See* Ex. 3 at 194:12 – 195:14.

14. However, Order No. R-21679-C also denied Cimarex’s application for *de novo* hearing in this matter (*Id.* at ¶ 111) despite that fact that the Commission had agreed at the July 8, 2021 hearing to bifurcate the case (Ex. 2 at 45) and, after voting to find that Colgate had met the good faith negotiations requirement at the March 10 hearing, recognized that there would be a hearing *de novo* on the merits of competing applications for the Subject Lands. Ex. 3 at 197:17 – 198:17; and 201:19 – 202:2.

II. Colgate misconstrues how the outcome of the evidentiary hearing impacts whether a *de novo* hearing would be necessary.

15. Colgate correctly notes that the outcome of the evidentiary hearing on the issue of whether Colgate satisfied its obligation to engage in good faith negotiations with Cimarex would affect whether a *de novo* hearing would be necessary. *See* Colgate’s Motion at § B, p. 2. However, Colgate, contrary to the clear statements of the Commission and against all logic,

suggests that since the Commission held that Colgate engaged in good faith negotiations with Cimarex, there is no need for a *de novo* hearing. *Id.*

16. As an initial matter, Colgate inaccurately represents that the Commission Chair and Mr. Moander concluded at the July 8, 2021 hearing, “that a merits hearing will be unnecessary should Colgate satisfy the good faith negotiation requirement at the evidentiary hearing.” Colgate’s Motion at § B, p. 2. 2, citing Page 40, lines 2-8 of the July 8 Hearing (Ex. A to Colgate’s Motion). The cited portion of the transcript only supports the Commission’s recognition that a *de novo* hearing may not be necessary depending on the outcome of the evidentiary hearing; it does not support Colgate’s assertion that the Commission concluded that a *de novo* hearing would be unnecessary in the event that Colgate prevailed on the good-faith negotiation issue.

17. The relevant discussion of the procedural posture of the case is found at the end of the March 10, 2022 Hearing when, after finding that Colgate satisfied the good-faith negotiation requirement, the Commission recognized that there would be a *de novo* hearing on the merits of the parties’ competing applications that was set for June 9. Ex. 3 at 197:17 – 198:17; and 201:19 – 202:2, attached hereto.

18. The only logical and rather simple algorithm that explains why the Commission bifurcated the case in the first instance is as follows:

Did Colgate satisfy the good faith negotiation requirement?

If YES, then:

OCD Order No. R-21575 is valid and Cimarex, as a party of record, is entitled to a hearing *de novo* on the competing applications of Colgate and Cimarex pursuant to NMSA 1978 §70-2-13 and Rule 19.15.4.23(A)

If NO, then:

The OCD Order No. R-21575 is invalid and the OCD must conduct a hearing on the competing applications of Colgate and Cimarex

19. The discussion between Mr. Moander and the Commission Chair that occurred immediately before the discussion cited by Colgate supports this algorithm:

Commission Chair Sandoval: In your proposal, in the August OCC [hearing that was rescheduled to February 22, 2022 and concluded on March 10, 2022] we would hear evidence and testimony of the first issue of whether or not the Order from the Division should be **invalidated** because Colgate didn't follow the good faith negotiation requirement. Is that correct? (Emphasis supplied.)

Mr. Moander: Yes.

Colgate's Motion at Ex A: 39:17-23. In other words, if Colgate failed to satisfy the good faith negotiation requirement, Order No. R-21575 would be **invalid** thereby obviating the need to conduct a *de novo* hearing since there would be no operative OCD Order from which to appeal. Instead, the parties would need to present the merits of their respective applications before the OCD.

III. Colgate's suggestion that Cimarex did not comply with the OCD's deadline for filing competing applications is without merit.

20. Colgate suggests that Cimarex did not meet the June 3, 2021, deadline for submitting its competing applications. *See* Colgate's Motion, § C, pp. 2-3. This suggestion is simply untrue.

21. In its Order No. R-21679-B, ¶ 3, the OCC stated, "Cimarex shall file all competing pooling applications by 5:00 PM June 3, 2021." Cimarex complied with the Commission's directive, timely filing its competing applications June 1, 2021, at 3:28 PM and 3:46 PM, as evidenced by the date stamped copies of those applications, copies of which are attached hereto as Exhibit 5. After the OCD received these applications, it continued these cases on July 1, 2021, holding them in place until the Commission decided the proper forum for their review. *See* Ex. 1 at 6:10-14, attached.

22. Colgate received proper notice and made an entry of appearance in these cases and participated in the OCD's review of forum considerations, during which Colgate opined that the cases should be heard by the Commission. Ex. 1 at 5:8-12, attached. At the hearing, the OCD continued the cases in order to reserve them for further consideration by the Commission. *Id.* at 6:10-14, attached.

23. Given that Cimarex's applications in Case Nos. 22018 and 22019 were to be heard either by the OCD or OCC, depending on the outcome of the evidentiary hearing, the applications were timely filed in their proper place and reserved for the second part of the *de novo* hearing as the parties waited for the Commission's determination of the proper forum.

24. Contrary to Colgate's assertion that Cimarex's applications in Case Nos. 22018-19 were an afterthought, *see* Colgate's Motion, § A, p. 2, selecting the best development plan in a *de novo* hearing on the merits for the prevention of waste and protection of correlative rights is never an afterthought under the Act. In sum, the competing applications submitted by Colgate and Cimarex form the centerpiece of these proceedings that allows the Commission, through its review, to complete its statutory obligation in the second part of the present Case.

V. Conclusion:

For the foregoing reasons, Cimarex respectfully requests that Colgate's Motion to Affirm Commission Order [No. R-21679-C] be denied and that Cimarex's Application for Rehearing the Decision in Order No. 21679-C be granted to preserve for review the issues raised and contemplated by the Commission at the April 14, 2022, status conference.

Respectfully Submitted,

ABADIE & SCHILL, PC

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed with the New Mexico Oil Conservation Commission and was served on counsel of record, via electronic mail on May 12, 2022:

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

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

Application of Cimarex Energy Co.
for a Horizontal Spacing Unit and
Compulsory Pooling,
Eddy County, New Mexico Case Nos. 22018, 22019

Application of Colgate
Operating, LLC for Compulsory
Pooling, Eddy County, New Mexico Case No. 21629

REPORTER'S TRANSCRIPT OF PROCEEDINGS

STATUS CONFERENCE

JULY 1, 2021

This matter came on for hearing before the New Mexico Oil Conservation Division, William Brancard, Esq. Hearing Examiner, and John Garcia, Technical Examiner, on July 1, 2021, via the Webex Virtual Conferencing Platform hosted by the New Mexico Department of Energy, Minerals and Natural Resources.

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EXHIBIT

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C O N T E N T S

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1 week. If the Commission decides, I hope not, to send it
2 back to the Division, you-all could file hopefully some
3 sort of motion requesting a particular hearing date. And
4 As I mentioned, we're looking at, you know, October now,
5 so...

6 MR. SAVAGE: Right.

7 EXAMINER BRANCARD: Mr. Padilla, any concerns?

8 MR. PADILLA: I agree with you, Mr. Examiner, I
9 don't think that this case should go back to the Division
10 at all. I think that the competing applications should be
11 heard between -- before the Commission. That was my
12 understanding of where we were going.

13 Now, there's Motions to Dismiss by both
14 parties for different reasons, but you're correct, there
15 is already a September hearing to hear these cases in the
16 event that the dispositive motions are not approved. So I
17 think it makes sense that they all proceed to the
18 Commission level and be heard there, and not bifurcate
19 these cases between the Division and the Commission.

20 So that's my take on it, but I think a lot
21 can be resolved next week since we have hearings on the
22 respective motions that have been filed by both sides.

23 But, again, I think that this application
24 should be heard by the Commission at this point, because
25 we are in a de novo situation with the Commission, so that

1 would be heard there.

2 EXAMINER BRANCARD: Correct. You would have to
3 start all over anyway before the Commission.

4 MR. PADILLA: Yeah.

5 EXAMINER BRANCARD: Ms. Luck, any comments,
6 concerns?

7 MS. LUCK: No additional comments. EOG has
8 entered an appearance to preserve its rights in this case.
9 That is the only position it's taking at this point.

10 EXAMINER BRANCARD: Okay. We will -- I don't
11 know what we will do. We will continue this indefinitely
12 in hopes that the Commission gives us clear direction as
13 to how to handle this matter. So we will leave this next
14 week in the Commission hearing.

15 MR. SAVAGE: Thank you.

16 (Time noted 9:34 a.m.)

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

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

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

Case No. 21744

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

THURSDAY, JULY 8, 2021

AGENDA ITEM NO. 5

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

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

Reported by: Mary Therese Macfarlane
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EXHIBIT

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I N D E X

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

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

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

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

15 COMMISSION CHAIR SANDOVAL: Thank you.

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

17 MR. MOANDER: Yes, Madam Chair.

18 Commissioner Warnell?

19 COMMISSIONER WARNELL: Approved.

20 MR. MOANDER: Commissioner Bloom.

21 COMMISSIONER BLOOM: Approved.

22 MR. MOANDER: And Madam Chair.

23 COMMISSION CHAIR SANDOVAL: Approved.

24 MR. MOANDER: The motion carries.

25 COMMISSION CHAIR SANDOVAL: Well, Mr. Savage and

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

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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

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EXHIBIT

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C O N T E N T S

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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 Cimarex.

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 Cimarex. 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 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 ENERGY, MINERALS, AND NATURAL RESOURCES DEPARTMENT
3 OIL CONSERVATION COMMISSION.

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

7 Application of Colgate
8 Operating, LLC for
9 Compulsory Pooling,
10 Eddy County, New Mexico
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OCD Case No. 21629
Commission Case No. 21744

11 REPORTER'S TRANSCRIPT OF PROCEEDINGS
12 THURSDAY, APRIL 14, 2022

13 REGULAR MEETING
14 AGENDA ITEM NO. 5
15 RULING AND STATUS CONFERENCE

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

21 PRESENT:

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

26 Reported by: Mary Therese Macfarlane.
27 New Mexico CCR #122
28 PAUL BACA COURT REPORTERS
29 500 Fourth Street NW, Suite 105
30 Albuquerque, New Mexico 87102
31 (505) 843-9241

EXHIBIT

4

A P P E A R A N C E S

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C O N T E N T S

CASE NOS. 21621, 21744	PAGE
CASE CALLED:	3
STATUS UPDATE BY MR. SAVAGE:	3
STATUS UPDATE BY MR. PADILLA:	5
MOTION TO APPROVE ORDER IN CASE NO. 21621:	9
ORDER APPROVED:	10
APPROVAL OF MOTIONS/REPLIES/RESPONSES SCHEDULE:	15

1 COMMISSIONER AMPOMAH: No, I do support the same
2 talk from Commissioner Bloom.

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

5 With that let's move on to the second half
6 of No. 5, which was adoption of a Final Order in Case No.
7 21629.

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

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

13 COMMISSION CHAIR SANDOVAL: Is there a second?

14 COMMISSIONER AMPOMAH: Madam Chair, I do second.

15 COMMISSION CHAIR SANDOVAL: Thank you.

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

18 MR. KREIENKAMP: Yes, Madam Chair.

19 On the motion, Chair Sandoval.

20 COMMISSIONER CHAIR SANDOVAL: Approved.

21 MR. KREIENKAMP: Commissioner Bloom?

22 COMMISSIONER BLOOM: Approve.

23 MR. KREIENKAMP: And Dr. Ampomah.

24 COMMISSIONER AMPOMAH: Approved.

25 MR. KREIENKAMP: Madam Chair, the motion is

1 responses and replies a maximum of seven pages, not
2 including any attachments or exhibits.

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

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

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

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

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

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

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

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

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

21 COMMISSIONER AMPOMAH: Is denied.

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

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

7 COMMISSIONER AMPOMAH: Thank you, Madam Chair.

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

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

12 COMMISSIONER BLOOM: The prior case was 21629.

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

15 De novo Case No. 21744, motions are due May
16 5th, responses are due by the 19th of May, replies are due
17 by the 27th. All of these are limited to seven pages of
18 the core response or reply or motion, and that does not
19 include attachments and/or exhibits.

20 Is there a second to that motion?

21 COMMISSIONER BLOOM: Madam Chair, I second.

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

24 MR. KREIENKAMP: Yes, Madam Chair.

25 On the motion. Chair Sandoval?

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

**APPLICATION OF CIMAREX ENERGY CO.
FOR A HORIZONTAL SPACING UNIT AND
COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO**

Case No. _____

APPLICATION

Cimarex Energy Co. ("Cimarex"), OGRID No. 215099, through its undersigned attorneys, hereby files this Application with the Oil Conservation Division ("Division") pursuant to the provisions of NMSA 1978, Section 70-2-17, for an order (1) creating a standard 479.39-acre, more or less, spacing and proration unit comprised of the S/2 N/2 of Sections 2 and 1, Township 20 South, Range 29 East; and the S/2 N/2 of Section 6, Township 20 South, Range 30 East; NMPM, Eddy County, New Mexico, and (2) pooling all uncommitted mineral interests in the Bone Spring formation underlying said unit.

In support of its Application, Cimarex states the following:

1. Depending on the Oil Conservation Commission's ("Commission") decision in Case No. 21744, this application may be a competing application, and alternative development plan, in relation to the pooling application filed by Colgate Operating, LLC, in Case No. 21629.
2. The well proposal was initially sent out February 25, 2021 with AFEs, followed by updates, during which time Cimarex began good-faith negotiations; the final updated well proposal was sent April 29, 2021, containing all specifications pursuant to Order No. R-13165, including the recommended 30-day period from the updated proposal prior to filing the application.
3. Cimarex is a working interest owner in the proposed horizontal spacing and proration unit ("HSU") and has a right to drill a well thereon. Cimarex proposes to drill a well to a sufficient depth to test the Bone Spring formation.

**EXHIBIT
5**

4. Cimarex proposes to dedicate the HSU to its **Crest 2-1-6 State Fed Com 2H Well**, an oil well, proposed to be horizontally drilled from a surface location in the SW/4 NW/4 (Unit E) of Section 2 to a bottom hole location in the SE/4 NE/4 (Unit H) of Section 6. Sections 2, 1 and 6 are correction sections.

5. The well is orthodox, and the completed interval and first and last take points for the well meet the setback requirements set forth in the Division's statewide rules and regulations for horizontal oil wells.

6. Cimarex has sought in good faith, but has been unable to obtain, voluntary agreement from all interest owners to participate in the drilling of the well or in the commitment of their interests to the well for its development within the proposed HSU.

7. The pooling of all interests in the Bone Spring formation within the proposed HSU, and creation of the spacing unit, will avoid the drilling of unnecessary wells, prevent waste and protect correlative rights.

8. In order to provide for its just and fair share of the oil and gas underlying the subject lands, Cimarex requests that all uncommitted interests in this HSU be pooled and that Cimarex be designated the operator of the proposed horizontal well and HSU.

WHEREFORE, Cimarex requests that this Application be set for hearing before an Examiner of the Oil Conservation Division on July 1, 2021, and after notice and hearing as required by law, the Division enter an order:

A. Approving the creation of a standard 479.39-acre, more or less, spacing and proration unit comprising the S/2 N/2 of Sections 2 and 1, Township 20 South, Range 29 East; and the S/2 N/2 of Section 6, Township 20 South, Range 30 East; NMPM, Eddy County, New Mexico;

B. Pooling all uncommitted mineral interests in the Bone Spring formation underlying the proposed HSU.

- C. Designating the **Crest 2-1-6 State Fed Com 2H Well** as a well dedicated to the HSU.
- D. Designating Cimarex as operator of this HSU and the horizontal well to be drilled thereon;
- E. Authorizing Cimarex to recover its costs of drilling, equipping and completing the well;
- F. Approving actual operating charges and costs of supervision, to the maximum extent allowable, while drilling and after completion, together with a provision adjusting the rates pursuant to the COPAS accounting procedures; and
- G. Setting a 200% charge for the risk assumed by Cimarex in drilling and completing the well in the event a working interest owner elects not to participate in the well.

Respectfully submitted,

ABADIE & SCHILL, PC

/s/ Darin C. Savage

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Attorneys for Cimarex Energy Co.

Application of Cimarex Energy Co. for a Horizontal Spacing and Proration Unit and Compulsory Pooling, Eddy County, New Mexico. Applicant in the above-styled cause seeks an order from the Division: (1) creating a standard 479.39-acre, more or less, horizontal spacing and proration unit comprised of the S/2 N/2 of Sections 2 and 1, Township 20 South, Range 29 East; and the S/2 N/2 of Section 6, Township 20 South, Range 30 East; NMPM, Eddy County, New Mexico, and (2) pooling all mineral interests in the Bone Spring formation underlying the unit. Said horizontal spacing unit is to be dedicated to the **Crest 2-1-6 State Fed Com 2H Well**, to be horizontally drilled from a surface location in the SW/4 NW/4 (Unit E) of Section 2 to a bottom hole location in the SE/4 NE/4 (Unit H) of Section 6. The completed interval and first take and last take point for the well meets the Division's statewide setback requirements for horizontal oil wells. Also to be considered will be the cost of drilling and completing the well and the allocation of the costs thereof; actual operating costs and charges for supervision; the designation of the Applicant as Operator of the well and unit; and a 200% charge for the risk involved in drilling and completing the well. The well and lands are located approximately 12 miles northeast of Carlsbad, New Mexico.

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

**APPLICATION OF CIMAREX ENERGY CO.
FOR A HORIZONTAL SPACING UNIT AND
COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO**

Case No. _____

APPLICATION

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- G. Setting a 200% charge for the risk assumed by Cimarex in drilling and completing the well in the event a working interest owner elects not to participate in the well.

Respectfully submitted,

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