

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:

CASE NOS: 21744, 21629

APPLICATION OF CIMAREX ENERGY COMPANY
FOR HEARING DE NOVO OF CASE 21629,
EDDY COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS
Agenda Item 5
April 15, 2021
Via Webex Platform
Santa Fe, New Mexico

BEFORE: ADRIENNE SANDOVAL, CHAIRWOMAN
GREG BLOOM, COMMISSIONER
CHRIS MOANDER, ESQ.

This matter came on for hearing before the New Mexico Oil Conservation Commission on April 15, 2021, via Webex Virtual Platform, hosted by New Mexico Energy, Minerals, and Natural Resources Department.

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1 CHAIR SANDOVAL: Next up on the agenda is Case
2 Number 21744, application of Cimarex Energy Company for
3 hearing of de novo Case 21629. Do we have Mr. Savage and
4 Mr. Padilla?

5 MR. SAVAGE: Good morning, Madam Chair, Darin
6 Savage here.

7 CHAIR SANDOVAL: Good morning.

8 MR. PADILLA: (Inaudible.)

9 CHAIR SANDOVAL: I think maybe, Mr. Padilla, are
10 you muted?

11 MR. PADILLA: Not now. Ernest Padilla for
12 Colgate Energy -- or, I'm sorry -- Colgate Operating LLC.

13 CHAIR SANDOVAL: All right. So we have received
14 additional information following the last OCC hearing where
15 we requested sort of additional documentation from both
16 parties, and that was submitted, and I believe it's been
17 reviewed by both commissioners as well as counsel.

18 I will give you each, you know, a brief moment to
19 sort of add any additional information, and keep in mind
20 that commissioners have read the documentation, and if there
21 is any information you would like to add, Mr. Padilla,
22 please go ahead.

23 MR. PADILLA: Madam Chair, Commissioner Bloom, I
24 think the preceding conversation and discussion in the
25 rulemaking preceding was very educational as far as our

1 position is concerned. For a party to participate in a
2 rulemaking proceeding, and especially in an adjudicatory
3 proceeding as compulsory pooling, a person such as Cimarex
4 has to make an appearance beforehand in the original
5 proceeding.

6 I heard Mr. Moander say, quote, what he says is,
7 "This is my name, and this is my topic," in the rulemaking
8 procedure that you just had before you, and that's exactly
9 what we are arguing.

10 In order to become a party, you have to sign up
11 and you have to say something -- you don't have to saying
12 anything, but you have to sign up before the hearing.
13 Everything that was discussed before in your rulemaking case
14 requires some procedure for the benefit of the parties.

15 The word was thrown around multiple times about
16 parties in your prior case, and that's exactly what we are
17 arguing. You can't simply say, after an order is issued by
18 the Division, "Oh, by the way, you weren't fair or you --
19 we have this problem with not having a hearing, not being in
20 the hearing."

21 Because essentially what Cimarex is arguing is,
22 "The dog ate my homework, so therefore I ought to be allowed
23 to come in after the hearing and come before the
24 Commission."

25 The Commission has real important proceedings

1 before it. This rulemaking procedure is illustrative of
2 that. If you open the door to anyone after an initial order
3 is issued, other than for lack of notice -- and this is not
4 a lack of notice case. Cimarex had notice, they did not
5 participate, and -- and they offer some -- a pretty good
6 excuse.

7 But Cimarex is a big company. I have litigated
8 against Cimarex in the federal district court and
9 they're -- they're tough. They hire top-notch lawyers to
10 represent them, and I don't think there is an excuse for
11 them not appearing at the original hearing before the
12 Division.

13 I think the rules are clear. They require that a
14 person who asks for review at the Commission be a party of
15 record. I think we tried to do that in the supplemental
16 brief. We -- I don't want to go read the rules all over
17 again, I think it's very clear, but I do think that the
18 Commission is going to open a can of worms for anybody to
19 come back and say, "I don't like that compulsory pooling
20 order."

21 Now, Cimarex argues waste and correlative rights
22 and that kind of stuff, that's not -- that's not even
23 relevant here. What's relevant is that they should have
24 participated in the original hearing of which they had
25 notice. They are not entitled to a Commission hearing, and

1 I will stop there, because I think, to go into what I wrote
2 and what we filed on the supplemental brief is very clear.

3 The cases we cited support the fact that someone
4 who does not become a party does not have a right to appeal.
5 And in this case, they don't have the right to -- Cimarex
6 does not have the right to a review by the Commission in a
7 compulsory pooling case. They are protected by the order
8 that was issued. Their correlative rights are protected. I
9 will stop there. Thank you.

10 CHAIR SANDOVAL: Thank you. Commissioner Bloom,
11 my thought here is let both parties make their statements,
12 and then we can ask questions as needed. Does that work
13 for you?

14 COMMISSIONER BLOOM: That's fine. Thank you.

15 CHAIR SANDOVAL: Okay. Mr. Savage, do you have
16 anything like you would like to say in response?

17 MR. SAVAGE: Yes, thank you, Madam Chair,
18 Commissioner Bloom, Mr. Moander, good morning. Darin Savage
19 on behalf of Cimarex. So this has been fully briefed, as
20 you point out. If the Commission still has concerns about
21 policy, this case should be decided in Cimarex's favor based
22 on the very narrow fact that Colgate failed to fulfill its
23 statutory mandate of 72-13.

24 This is really all you would have to look at.
25 The statute requires that the Division shall cause a

1 complete record to be made prior to the issuing of an order.
2 That is that provision of the New Mexico Supreme Court has
3 ruled that shall in a statute denotes a mandatory -- that
4 the provision is mandatory, and Colgate failed to provide a
5 complete record on which to base the order. At this point
6 it should be clear that the order as issued is invalid.

7 The decision to grant Cimarex a de novo hearing
8 under this basis alone would in no way threaten the existing
9 policy and current procedure and would not set any new
10 precedence, but would uphold existing precedence by making
11 it clear to applicants what is required under the statute,
12 that applicant cannot expect the Division to issue an order
13 until they submit all necessary documentation and complete
14 the record in conformity with the statutes mandate.

15 The basis for granting a de novo hearing on this
16 basis would be limited to this one fact and one issue, and
17 there is no excuse for Colgate to not have completed the
18 record and satisfied the statutory mandate. It promised the
19 Division it would do, but it did not. Whatever consequence
20 Colgate now faces for this failure, Colgate brings it upon
21 itself.

22 That's, that's really the strongest argument in
23 this. In response to Mr. Padilla's comment on that
24 proceeding is only the hearing and that entry of appearances
25 need to be made prior to the hearing or at the hearing,

1 clearly the regulations do not state that. They make it
2 very clear they have to separate independent phrases,
3 independent clauses. One clause is that a party can make an
4 appearance at any time in the case to be a party to the
5 proceeding.

6 And then the other option in the alternative is
7 that the party can make an appearance at the hearing. And
8 there is a very important reason for this distinction, and
9 that is because a proceeding by definition, like, for
10 example, if you look at the Black Law's Dictionary on the
11 definition of proceeding, proceeding is clearly defined as
12 the natural, a natural and orderly progression of an
13 adjudication from the point of commencement to the point
14 where there is an entry of judgment.

15 And that's, the scope of that basic definition
16 encompasses more than just the hearing, and that's why the
17 regulations are drafted and constructed in this manner. The
18 proceedings did not conclude under that definition until
19 January 20, and we made our entry of appearance prior to
20 that. January 20 is when the entry of the judgment was made
21 into the public record.

22 And also Cimarex would argue, in this particular
23 case the actual proceeding did not end until January 27 and
24 that is when Colgate finally completed the record. It seems
25 conclusive there needs to be a ruling in favor of Cimarex

1 under these facts and circumstances.

2 Cimarex also provided a full outline if the
3 Commission should decide it wants to expand its -- expand
4 its authority, it can do so under the -- expand the policy,
5 if it decides to do that it can do so, and there is good
6 reason why to do that. And there is benefits why to do
7 that, but that would be something the Commission would have
8 to decide.

9 They can do that and still maintain proper due
10 process and proper procedure. So with either basis that we
11 provide, we ask that the Commission grant Cimarex's request
12 for a de novo hearing.

13 CHAIR SANDOVAL: Thank you. Mr. Bloom, do you
14 have questions for the parties?

15 COMMISSIONER BLOOM: I may, Madam Chair, but if
16 you have questions, I would ask that you ask them now and I
17 might follow up.

18 CHAIR SANDOVAL: Okay. So Mr. Padilla -- sorry,
19 I'm trying to get over to the right page here -- Cimarex, in
20 their brief, asserts that not all of the requirements for
21 compulsory pooling were followed, and there was not good-
22 faith efforts to contact and get the other parties on board.
23 Do you have any response to that?

24 MR. PADILLA: Yes. Very often there are
25 supplemental requirements that come out at a hearing. For

1 example, I think in this case, if I'm not mistaken, it was
2 the C-102 that was needed to be supplemented, so there is
3 room to supplement a hearing officer's requirements. It
4 doesn't change the -- it's not a jurisdictional defect, it's
5 just one of those things that slips by every once in a
6 while.

7 But the -- but on the record itself, the record
8 is complete and the hearing examiner will ask for
9 supplemental material that, that was not turned in, but it
10 doesn't go to the merits of the case. It doesn't go to the
11 notice.

12 If that was required, then I would agree that a
13 notice issue would definitely have to be satisfied or at
14 least additional time had to be made in order to comply with
15 the rules of the Division. Notice is something that I would
16 easily concede if Cimarex had not had notice. That's a
17 jurisdictional issue, and that is -- but in terms of a
18 ministerial type of supplementation, that happens quite
19 often where, where someone asks for -- and C-102 is
20 generally where, where there might be a well change and
21 testimony at the hearing will say that the location, say the
22 bottom hole location has, has changed, but it's still a
23 standard well location. And so you have to have an amended
24 C-102 or something of that nature, but it doesn't change the
25 substance -- the substantive nature of the case.

1 So in this case, it was nothing that Colgate
2 couldn't supplement, everything was in there. The, you
3 know, to try to make a case that the record wasn't complete
4 when clearly there is a custom and practice of the Division
5 to supplement minor stuff, and this is what Cimarex is
6 arguing now, that it didn't complete the record, but in fact
7 an order was issued before all of that.

8 An order would not have been issued had that been
9 a, a jurisdictional problem or something of that nature. So
10 to say that the record was not complete the way it is custom
11 and practice of the Division does not -- does not change the
12 matter. The fact of the matter is that Cimarex did not
13 appear at the hearing, and I think the law is clear that in
14 order to ask for review of this court or administrative
15 proceeding, you have to be a party.

16 They are not a party. They are not entitled
17 to -- they are not entitled to the review before this
18 Commission. Now, understandably if there is a legitimate de
19 novo hearing, you can start all over again before the
20 Commission. But for the Commission to not follow the party
21 of record regulations and the statutes, it's not a policy,
22 it's what the rules and the statute say.

23 CHAIR SANDOVAL: So, Mr. Padilla, I'm going to --

24 MR. PADILLA: It's not understanding the policy,
25 I'm sorry.

1 CHAIR SANDOVAL: -- I think we went well past my
2 question. And so walking back to what my original question
3 was, though, I think you started talking about notice, which
4 notice is different than sort of the obligation or the
5 requirement not to -- not the requirement, but the -- one of
6 the standards in compulsory pooling to engage in good-faith
7 negotiations. Was that done by Colgate?

8 MR. PADILLA: Well, as far as Colgate is
9 concerned, there was. That's what their position is.
10 Cimarex should have come and argued that at the hearing.

11 CHAIR SANDOVAL: Okay.

12 MR. PADILLA: We litigated that issue before the
13 Division often where we contend in some cases, I know I have
14 argued that, that good-faith negotiations did not occur.

15 CHAIR SANDOVAL: Okay. So my next question then
16 would be --

17 MR. PADILLA: If you don't appear -- forgive me,
18 Commissioner -- if you don't appear, then you waive the
19 right to make that challenge.

20 CHAIR SANDOVAL: So what is your interpretation
21 of party of record, is that you believe that that term is
22 solidly defined by the rules.

23 MR. PADILLA: I think it's solidly defined the
24 way that we -- I quoted a lot from the rule itself as to
25 what a party is and what a party of record is. A party of

1 record that does not appear does not even get an order. And
2 the rules that we cited in the supplemental brief, and we
3 had already done that before, was 19.15.4.24, dealing with
4 copies to Commission and Division orders, who gets those and
5 parties of record.

6 Now, if you go to the definition of parties of
7 adjudicatory proceedings under 19.15.4.10, they got notice,
8 and they should have appeared. That's very clear, and
9 it's in harmony with 70-2-13. And I don't know, in order to
10 argue, in order to argue that you did not get, Cimarex in
11 this case did not or Colgate did not in good faith make
12 efforts to seek joinder, then we have to argue that in the
13 Division case.

14 Now, if they had appeared and argued that and
15 they still lost, then you could go seek review before the
16 Commission.

17 CHAIR SANDOVAL: Thank you, Mr. Padilla.
18 Mr. Savage, I will ask you the same question. Do you feel
19 like party of record is clearly defined in the OCD rules or
20 the Oil & Gas Act?

21 MR. SAVAGE: If I could answer that, Madam Chair,
22 by in the context of addressing Mr. Padilla's comments, I
23 would like to do that, and I will get to that question
24 directly.

25 So the -- there is some flexibility in the

1 submission of the exhibits and, and, you know, the, these
2 cases are really complicated. They involve lots of
3 information.

4 I myself have put on a checklist that I would,
5 you know, submit the client's exhibits the day after, after
6 the same way Colgate has. And you know, and at times before
7 the OCD we appreciate that kind of flexibility because, you
8 know, a lot of times these cases can be very unwieldy.

9 But the point of the statute, the clear point of
10 the statute and statutory mandate is not that an exhibit can
11 be submitted after, you know, in a timely manner after the
12 hearing. The point of the statute is that the OCD cannot
13 render a decision until it causes a complete record to be
14 made.

15 And, in this case, Colgate had the opportunity to
16 complete the record prior to a decision being made and even
17 promised and assured the Division that it would, but then it
18 did not do that.

19 And unfortunately the Division issued the order
20 and made it of record before the statute was satisfied. And
21 Mr. Padilla even points out that a lot of times C-102s are
22 submitted after the -- after the hearing is because during
23 the hearing things come up when there are material changes
24 made within the location and the C-102s change.

25 So if there is material change on a C-102, that

1 is something that's essential for the Division to review
2 prior to issuing the order because all material changes must
3 be accounted for in the complete record prior to, prior to
4 an order being issued.

5 So the C-102 is not just some kind of ancillary
6 supplement that's trivial, it's very critical to the -- to
7 the nature of the development of the unit.

8 CHAIR SANDOVAL: Mr. Savage, do you know if that
9 change or what you would term was a material change or not?

10 MR. SAVAGE: We don't know because it was not --
11 it was not adjudicated, so we don't know if there was a
12 material change or not. That's -- that's left unanswered.
13 I mean, you could probably review it at this point and, and
14 see if there was an obvious material change, but of record,
15 we don't know. That is something that has not been
16 determined.

17 So if I could point out -- so if I could answer
18 the question directly or respond to the question directly,
19 is, is Cimarex a party of record under the statute, so here
20 is how I would answer that. So Cimarex made a written
21 appearance in the case on January 19, and this was prior to
22 the entry of the judgment.

23 So under the basic definition of proceedings,
24 Cimarex became a party to the proceeding under the
25 regulations. The record was not complete. The record would

1 never have become complete because the OCD had issued an
2 order, so there was no incentive for Colgate to complete the
3 record, and they did not do so until Cimarex made an entry
4 of appearance of record.

5 So Colgate responded to Cimarex's appearance by
6 submitting documentation of record, so that is a direct
7 response that extended the scope of the proceedings to that
8 date, and they did it directly in response to a party who
9 made an entry of appearance of record.

10 So based on that context, it looks to me like,
11 since a statute does not really define what record is, and
12 neither do regulations and past Commission orders
13 acknowledge this, within that context and the facts of that
14 context, clearly Cimarex is a party of record.

15 CHAIR SANDOVAL: You believe the Division made an
16 error in issuing that order?

17 MR. SAVAGE: I believe that -- I believe that the
18 Division is very busy and they deal with a lot of cases, and
19 I believe it's the responsibility of the applicant to ensure
20 that the Division has all the materials, documentation and
21 exhibits on which to base a decision. So it was an easy
22 oversight given the burden of the docket that the
23 Commission -- that the Division deals with. It's
24 unfortunate, but I think it's a critical event in the
25 proceeding.

1 CHAIR SANDOVAL: In your supplemental brief you
2 bring up a New Energy case, I think it's New Energy Economy.

3 MR. SAVAGE: That's correct.

4 CHAIR SANDOVAL: And in that case, it sort of
5 goes into a test for determining a party of record is, one,
6 did the aggrieved party submit any evidence or argument in
7 writing, did the parties examine witnesses at the hearing,
8 did the parties -- did the aggrieved party enter an
9 appearance prior to the closing of the record and failed to
10 supply acceptable excuses for the untimely entry of
11 appearance, and four, was the aggrieved party moved to
12 reopen the record of the case or offer to submit any new
13 evidence. I mean, do you believe that Cimarex sort of the
14 meets that test?

15 MR. SAVAGE: Madam Chair, at this point we are
16 looking at two options that would provide the basis on which
17 a de novo hearing should be granted. One, as I pointed out
18 is the failure to satisfy the Statute 72-13, which, which
19 those factors do not come into play. That's a very narrow
20 set of facts. And you know, there is justification based on
21 a de novo hearing on that alone.

22 On the other hand, if the Commission decided that
23 it wanted to expand its policy, Cimarex submits that this
24 would -- that this would help the Commission and benefit the
25 Commission in a number of ways to help them pursue the goals

1 of the Oil & Gas Act, then those factors could be used and
2 then they would be strictly applied and be narrowly
3 tailored, but they could be used to triage applicants and
4 then, you know, summarily dismiss those that do not make the
5 threshold.

6 So, yes, I do think that the statute, the
7 standard of that particular case, New Energy, New Energy
8 Economy versus Vanzi is whether or not in the end the, the
9 party participated in a legally significant manner within
10 the case, and you know, and that tracks the regulations
11 about whether to make an attempt -- how to make an
12 appearance, you make an appearance within the case.

13 And, you know, so what Cimarex did was they were
14 diligent, and they made an appearance before the case was
15 closed. They submitted the basis and new evidence of the
16 wrongdoing that Colgate committed against -- its misfeasance
17 against Cimarex. Colgate had an opportunity to respond to
18 that and show evidence to the contrary. They did not.

19 In fact, they acknowledged that it was a failure,
20 but their only excuse was that the failure should have been
21 addressed at the hearing. You know, we showed there is
22 sufficient evidence to reopen the case, and there is -- in
23 this case there is no need to reopen the case because the
24 case was not closed when Cimarex made the appearance.

25 So I would say we satisfy all of those four

1 threshold factors, and therefore there is two -- there is
2 really two bases on which the Commission should grant the de
3 novo hearing. One basis does not change precedence at all.
4 The other basis expands policy a little bit, but I believe
5 it does it in a favorable and beneficial way.

6 CHAIR SANDOVAL: Thank you. Mr. Padilla, sort
7 of, again on that, that tends to play out in the New Energy
8 Economy case, do you believe that Cimarex met that test in
9 participating in a legally significant manner?

10 MR. PADILLA: Madam Chair, yes, and if you are
11 asking, I say no.

12 CHAIR SANDOVAL: Can you explain why you say no?

13 MR. PADILLA: Well, they just didn't appear at
14 the hearing, and the order was issued the same date Cimarex
15 filed for a new hearing. So had there been something
16 significant or deficiency in the hearing, I don't think the
17 Division is that busy to where it can't make that
18 distinction at a hearing.

19 For one thing, at all hearings, there is a
20 technical examiner and the procedural examiner, I don't know
21 which of the examiners was here, but I think that
22 Commissioner or Hearing Examiner Orth is very thorough in
23 terms of procedural matters, and I don't think we can escape
24 anything with the technical hearing examiners that
25 participate in these hearings.

1 And often there are more than just the two, two
2 people that are generally assigned to each case. Often
3 there are three people who, who participate in the hearing
4 process. I know Ms. Murphy is very keen on catching stuff
5 that she -- on that -- if she is hearing cases or as she's
6 in -- participates in any hearing, even if she's not the
7 designate technical examiner.

8 So it's not like we go in there and Colgate went
9 in there and hoodwinked the Division into granting an order.
10 I don't think that ever happens. And yeah, I think they are
11 busy, and I think it's harder in terms of virtual hearings,
12 but you can't escape the notice issue. I would readily
13 concede this case if we were involved in a notice issue.

14 CHAIR SANDOVAL: Thank you. Those are my
15 questions for the moment. Commissioner Bloom, do you have
16 questions?

17 COMMISSIONER BLOOM: Yes, Madam Chair, thank you.

18 Mr. Padilla, looking at -- going back to -- see
19 if I can find the document. Looking at Cimarex's --
20 Mr. Savage's closing brief, Page 2, procedural background.

21 I'm going to read this. It says, Mr. Savage
22 writes, "Touchdown for obtaining a compulsory pooling order
23 pursuant to the New Mexico Oil & Gas Act or Act is a
24 statutory obligation to seek a voluntary agreement with
25 working interest owners as required by NMSA 1978 70-2-17B

1 and related regulations. At a minimum the applicant is
2 required to provide," quote, "Evidence of attempts applicant
3 made to gain voluntary agreement including but not limited
4 to copies of correspondence," end quote.

5 "NMAC 19.15.4.12(A)(b)(6)" -- let's see -- "the
6 obligation to engage in good-faith negotiations during the
7 time prior to filing an application for a compulsory pooling
8 order and leading up to the hearing is illustrated by recent
9 decisions of both the Division and the Commission in order
10 Numbers R-20223 and R-21416A respectively.

11 "Colgate LLC did not have standing to apply for,
12 let alone receive a pooling order because it ignored its
13 statutory and regulatory obligations, never made an attempt
14 to enter a voluntary agreement, let alone engage in good
15 faith negotiations to reach such an agreement."

16 Mr. Padilla, can you react to that, please?

17 MR. PADILLA: Mr. Examiner, I did not handle this
18 case before the Division. In reviewing the record, Colgate
19 always submits a summary of contacts, and that is prima
20 facie evidence of good faith in terms of making contact with
21 the parties that it is trying to pool and in a compulsory
22 pooling case.

23 So I can't speak to my handling of the case or
24 anything, but I do know that every case I have handled for
25 Colgate has been -- I have always included an exhibit

1 indicating a summary of negotiations. That is prima facie
2 evidence that has to be rebutted at a hearing by somebody
3 who disagrees that that does not constitute good faith
4 negotiations.

5 So that's why Cimarex needed to have challenged
6 at the hearing the -- the contention that, that Colgate did
7 not deal in good faith or did not seek to obtain voluntary
8 joinder.

9 CHAIR SANDOVAL: Thank you, Mr. Padilla. Mr.
10 Padilla, a couple of other issues in the record here that
11 show perhaps a lack of communication between Colgate and
12 Cimarex. One of these is Exhibit 1 to Cimarex's application
13 for de novo hearing and the application to reopen. It shows
14 the extent, limited extent of the e-mail exchanges between
15 Colgate and Cimarex.

16 And there was also Exhibit 2 where we see
17 Prosperity Bank stating that Colgate told the bank that it
18 had not been able to obtain, quote, a voluntarily agreement
19 from Cimarex. Cimarex asserts that Colgate did not make
20 attempts to, to reach out to get a voluntary agreement.

21 Any response to those allegations or concerns,
22 Mr. Padilla?

23 MR. PADILLA: Well, as I said in response to your
24 earlier question is that, those things, if there is
25 disagreement whether or not the statement that Colgate made

1 were erroneous or deceptive, then those have to be
2 challenged at a hearing.

3 I mean, you go to a hearing and say, "No, Colgate
4 did not try, for example, did not send us a joint operating
5 agreement," or things to that effect, and so you make a
6 case. You have to make a case that there was not any good
7 faith. But if you don't participate, then I think the sole
8 discussion of party of record is, is very clear, contrary to
9 what Mr. Savage argues. But I think once an order has been
10 issued, it's very easy to appeal a case to the Commission,
11 but you can't do it after the fact.

12 We cited in this last supplemental brief, Gila
13 Resources Information Project versus the New Mexico Water
14 Quality Commission, what I cited was a paragraph in that
15 case that says, "Any party who participates in the
16 permitting procedure before the department may appeal the
17 department's decision by filing a petition before the review
18 commission." That's exactly what we have here.

19 And earlier in the rulemaking procedure -- and I
20 am not trying to get into the merits of this case, the fact
21 of the matter is that -- and I don't think that the -- that
22 the motion initially was to reopen this case. That was
23 denied by the Division, and I think it was denied correctly
24 because they said they did not participate in the hearing.

25 Now, if -- if it had been a notice issue, then I

1 think the Division would have had to reopen the case, but to
2 argue that they didn't comply on, on substantive issues
3 that, that Colgate presented at the hearing is no excuse for
4 not-participation -- for not participating.

5 COMMISSIONER BLOOM: Thank you, Mr. Padilla. I
6 hear you loud and clear on the concerns about party of
7 record having entered an appearance. I guess the last --
8 the last piece of the record I want to look at here is also
9 from Cimarex de novo -- or request for de novo hearing, and
10 that's on Page 7, Paragraph 6.

11 It says, "Colgate's landman falsely testified
12 that its case," quote "involved a request for an order from
13 the Division compulsory pooling of interest owners who have
14 refused to voluntarily pool their interest," end quote.

15 "Affidavit of Mark Hajdik, Exhibit B, Paragraph
16 30, goes on to say, 'However, Colgate never made the
17 requisite attempts to enter into a voluntary agreement with
18 Cimarex and never made good-faith efforts to engage in any
19 prior negotiations for that purpose, therefore Cimarex was
20 never provided the opportunity to refuse or fail to enter a
21 voluntary agreement as is required under the pooling statute
22 and regulations before an application for a pooling hearing
23 can be submitted and qualified for approval.'"

24 Again, Mr. Padilla, do you have any reaction to
25 that? And I will ask Mr. Savage for his response.

1 MR. PADILLA: Well, I think my answer is pretty
2 much the same as what I have responded to you before. It's
3 that you have to come into a hearing and say, "They only
4 contacted me once or twice," or something like that. "They
5 sent us an e-mail, and that's not good enough."

6 Colgate came in and said, "We attempted to get
7 everybody hooked up in drilling this well," and somebody's
8 got to come in and say, "No, you didn't."

9 And in this case, Cimarex didn't come in, and,
10 you know, what I'm arguing is that Cimarex had a system for,
11 for culling their applications and they messed it up. They
12 did not -- you know, that's not Colgate's fault.

13 And I think, if you go by the rules and the
14 procedural rules, you have to appear. And I don't know,
15 I -- I can't speak to, to whether or not a good faith was
16 actually done by, by Colgate. And that's something that has
17 to be tried before the Division in a compulsory pooling
18 case. Nothing was said by Cimarex at the hearing until way
19 after when they said, "Oh, we blew it," and that's
20 jurisdictional.

21 COMMISSIONER BLOOM: Thank you, Mr. Padilla. And
22 I hear you on those issues and see where you cited that Gila
23 Resource Information Project case. On other side of course
24 we have New Energy Economy versus Vanzi.

25 Mr. Savage, any reaction to the questions or

1 information that I posed to Mr. Padilla regarding lack of
2 outreach to working interest owners here?

3 MR. SAVAGE: Yes. Thank you, Commissioner Bloom.
4 The first thing I would like to add, if it's conceded that
5 we can't determine whether a good-faith effort was made, and
6 Cimarex shows clear evidence that a good-faith effort was
7 not made, and the other party acknowledges that that may be
8 the case, I believe that it can be established that good
9 faith was not engaged in, and therefore, the requirements of
10 their standing to receive a pooling order under the statutes
11 is clearly eliminated. And I think you know that. That is
12 very significant.

13 Looking at the summary of contacts, when Cimarex
14 first discovered that the hearing had been held, and when
15 they talked to their former counsel and found out, you know,
16 the misrepresentations that Colgate had made to its counsel,
17 which is also the counsel of Cimarex, then they began
18 looking into the hearing itself and proceedings. They
19 contacted us and we started examining the exhibits and
20 summary of contacts, and we noticed that the contacts
21 extended well toward the -- beyond what the e-mails
22 represented -- of record represented, and so we saw these as
23 misrepresentations made to the Division.

24 And this also occurred with other owners, and I
25 think that was clear in the filings made in McDonald versus

1 Prosperity Bank. And then when we looked into the actual
2 exchange attempts or lack thereof attempts to enter
3 voluntary agreement, we looked at Colgate's testimony in the
4 case, and that also appeared to be a misrepresentation
5 asserting false claims that, you know, that the e-mails and
6 the correspondence and record of communications did not
7 reflect.

8 Commissioner Bloom, I just -- you can look at
9 the -- the behavior and actions of Colgate in this case, and
10 you can actually see a template for what had become often
11 the practices and strategies that the parties are taking
12 before the Division and the Commission, and that is, they
13 send out a well proposal well in advance, they file -- and
14 then that would be -- and that would be a one of many well
15 proposals, some of them will go to pooling, some of them
16 won't, a lot of them won't. Colgate is known for, as we
17 understand, sending out lots of well proposals, and not all
18 of them go to hearing. So Cimarex was involved in trying to
19 manage the well proposals.

20 And then it seems like -- and you see this in
21 examples that the applicants or the ones who -- the parties
22 who sent out the well proposal, proposed the well, they kind
23 of lay low, they lay low and they try to avoid, you know,
24 communicating and e-mailing unless the person who receives a
25 well proposal reaches out, and Cimarex did in this case, and

1 received one response after Cimarex -- cimarex initiated the
2 communication. And so -- and then they send out notice,
3 and yet notice is important, but what's more important is
4 the overall framework of the Oil & Gas Act.

5 And so once, once the party gets past notice,
6 that formal notice, they are home free, and they can avoid
7 both the letter and spirit of the Oil & Gas Act. If the, if
8 the Oil & Gas Act, the way it's set up, if the Oil & Gas Act
9 was truly pursued in good faith and followed, there is no
10 reason why any owner of any interests, especially
11 substantial interest, would not be fully aware of the -- of
12 the efforts leading up to the hearing of the applicant to
13 develop the unit in good faith.

14 There is all kinds of complicated issues that
15 need to be discussed, not only, I mean, of course the
16 primary interests of waste and correlative rights and the
17 parties are pretty much involved in the economic interests
18 and their self-interest, but there is also a lot of other
19 liabilities. There is environmental concerns. There is a
20 whole, you know, set of factors that the parties need to be
21 encouraged, and they need incentive to discuss these matters
22 prior to a hearing.

23 And the ruling in favor of Cimarex today would
24 set that, would establish those -- that incentive. It
25 really would establish that incentive that, from this point

1 on, all applicants would know that they need to engage in a
2 good-faith manner to address all of the concerns that the
3 parties face prior to a hearing, and I think this would only
4 benefit the Division and Commission.

5 And I think, after this ruling, I think that no
6 other party would, again, fail to submit all the
7 documentation for a complete record. And I think those are
8 important factors in the equation for this decision.

9 COMMISSIONER BLOOM: And, Mr. Savage, thank you.
10 Mr. Padilla, thank you. Madam Chair, no further questions
11 at this point on my end. Turn it back to you.

12 CHAIR SANDOVAL: Thanks. I have one additional
13 follow-up that came out of the questions. So I think, Mr.
14 Padilla, what you have asserted is that Cimarex should have,
15 if they thought that Colgate had not, you know, met their
16 obligation to, to negotiate and agree upon something ahead
17 of time, that Cimarex should have appeared at the hearing
18 and that would be place to rebut it; is that correct?

19 MR. PADILLA: That's correct. And you know,
20 it's -- and let me comment on Mr. Savage's latest thing
21 saying that the Division essentially is running some kind of
22 corrupt procedures here in terms of for compulsory pooling,
23 and there are a lot of factors. Of course there are a lot
24 of factors, but those are generally addressed, for example,
25 on federal land, if there is some area that needs

1 protection, you've got to move a surface hole location or
2 something.

3 So all of those things are looked at, and that
4 includes state lands where -- where regulatory agencies have
5 jurisdiction. But to say that the OCD is running some kind
6 of corrupt -- I take it that way -- is that companies are
7 not doing it right and that if you reopen this case, then
8 you would correct all sorts of Division practices that are
9 not proper. I don't think that's -- that's a -- that's
10 correct.

11 But going back to your, to your question, I don't
12 think -- and I think that you have highlighted this,
13 participation in a significant manner, there's been no
14 participation in the New Energy Case. That's a great case
15 for us because at -- I have to go back to your rulemaking
16 case where parties have to register. People have to
17 register to present technical evidence or to -- and that's
18 in the rulemaking procedure which is less stringent in terms
19 of notice and participation.

20 But you have to require some kind of -- some kind
21 of sign-up. You can't simply ignore proceedings, and then
22 not come in and say, "I disagree." And Cimarex should have
23 done that. If they had done that, no question, and the
24 order issued against -- for Colgate, then they would have a
25 right to a de novo hearing before the Commission.

1 CHAIR SANDOVAL: Okay. So I want to ask my
2 question real quick, and so --

3 MR. SAVAGE: Madam Chair, I'm sorry, I feel like
4 I need to respond to that allegation.

5 CHAIR SANDOVAL: Can you respond like at the end?
6 I will give you a --

7 MR. SAVAGE: I think it's important if there is
8 accusations that I'm saying that the Division is corrupt.
9 That is not true in any way, and I will explain that, and I
10 wish to have time to explain that. Thank you.

11 CHAIR SANDOVAL: That's fine. I will give each
12 of you a couple of minutes at the end after, I just want to
13 finish my questions.

14 Okay. So, Mr. Padilla, what I understand is you
15 said, to my question, that you believe if, if Cimarex
16 thought that Colgate had not, you know, sought the voluntary
17 agreement with working interest owners as is required by
18 70-2-17C, then they -- their obligation is to reflect that
19 at a hearing? Yes or no.

20 MR. PADILLA: Yes.

21 CHAIR SANDOVAL: Okay. So in -- is it not the
22 obligation of the applicant at that hearing, which would
23 have been Colgate in this manner, to accurately represent
24 whether or not they sought a voluntary agreement with
25 working interest owners as is required by 70-2-17C? Yes or

1 no.

2 MR. PADILLA: Yes, but let me --

3 CHAIR SANDOVAL: Do you -- give me moment here.

4 MR. PADILLA: Yes, they do. They have that
5 obligation.

6 CHAIR SANDOVAL: So if that information was
7 inaccurately represented, then wouldn't that be an issue on
8 the applicant, in this case Colgate, if it's
9 misrepresented -- I'm not saying it was misrepresented, I'm
10 saying if it is misrepresented? Yes or no.

11 MR. PADILLA: Yes, if it's misrepresented and
12 it's false, then they are not entitled to that, but it's up
13 to the trier of fact to decide whether or not that
14 representation is accurate. The Division thought it was
15 accurate.

16 CHAIR SANDOVAL: And am I also correct in saying,
17 yes or no, you said earlier that you aren't privy really as
18 to whether or not the information that was represented at
19 that hearing was accurate? Yes or no.

20 MR. PADILLA: Yes, it was accurate. I mean, I --
21 I didn't -- I didn't do that case, but I'm defending that
22 case and my review is that it's accurate.

23 CHAIR SANDOVAL: Earlier it sounded as if you
24 said you weren't a part of that case, and so you can't, you
25 know, fully represent what was said there. Is that accurate

1 or not?

2 MR. PADILLA: Well, I have to go by what's in the
3 record, and the practice and procedure where I handled
4 Colgate cases in the past, I have been satisfied with what
5 they presented in terms of making a case.

6 I just had a case yesterday where the mineral
7 owner was not given a proposal, and we are going to hearing
8 next week, but obviously we have to explain that to the
9 Division, so --

10 CHAIR SANDOVAL: I think you answered my
11 question.

12 MR. PADILLA: Okay.

13 CHAIR SANDOVAL: All right. I have no further
14 questions at this time. Commissioner Bloom, do you have
15 anything further?

16 COMMISSIONER BLOOM: Madam Chair, I do not. I
17 have no further questions at this point.

18 CHAIR SANDOVAL: Okay. Mr. Padilla, you've got a
19 couple of minutes if you have anything final to say.

20 MR. PADILLA: No, I think I have argued this
21 case, and I didn't mean to attack Mr. Savage's -- and
22 probably my characterization of his comments were that -- I
23 didn't -- I didn't mean to say that companies are corrupt in
24 their practices -- let me put it this way -- not the
25 Division, but the companies are are corrupt in their

1 practices.

2 I think there is a lot of competition out there
3 between companies in terms of assuring that no -- nobody
4 gets away with anything, and that's for the Division to say,
5 but I do think it's disingenuous to say that companies
6 traditionally come in there and use the Division as a means
7 to acquire properties.

8 I have had that argument in the past that -- and
9 I had mentioned earlier. I was in court in the federal
10 district court against Cimarex, basically they were filing a
11 pooling action on the same day that they sent out a
12 proposal, and that's why this idea of 30 days between notice
13 and an application for a hearing, that got instituted
14 because of that kind of practice.

15 So I think the Division at some point catches
16 on to anything that is not kosher. So I don't know, maybe
17 my characterization was too broad and too pointed, but,
18 yeah, I think if somebody -- if somebody comes in there and
19 says the well cost in one case, the Wolfcamp wells cost \$16
20 million, then I want to cross-examine that landman and who
21 said that in an affidavit, but I was participating in the
22 case.

23 CHAIR SANDOVAL: Thank you, Mr. Padilla.

24 Mr. Savage, do you have anything -- I think you
25 do -- further?

1 MR. SAVAGE: I just want to say I appreciate Mr.
2 Padilla acknowledging that I did not say or claim or assert
3 that the Division is corrupt in any way. I think the
4 Division does a lot of good work. It's hard work. It's
5 technical. They give good feedback. I have had good
6 experiences with the Division. They have always been up
7 front.

8 And I shouldn't say there is incentive in the
9 process, I should say there is -- there is opportunity at
10 this point in some of the proceedings if the parties choose
11 in bad faith to pursue these opportunities. And I think
12 that this particular case represents facts and circumstances
13 where it seems clear that Colgate has abused the process.
14 And the Division would never have known because they take
15 the testimony as being true and accurate, and they should
16 because we are all under ethical obligations to provide that
17 to the Division.

18 But once that has been exposed as not being
19 accurate or factual or a misrepresentation or false claims,
20 and once it has been exposed that the applicant has not met
21 the statutory criteria, I think there needs to be some kind
22 of mechanism in which the Division or the Commission can
23 address those concerns or the disclosure of those facts.

24 So I really think this is like an important case
25 to -- to continue -- I mean, the Division and Commission,

1 they raise standards, they implemented more accountability,
2 they even increased policy, I think this is an important
3 step in that ongoing process.

4 CHAIR SANDOVAL: Thank you, Mr. Savage.

5 All right, Commissioner Bloom, I think we're up.
6 I think for me at this point it all hinges upon really the
7 good-faith effort of, and the obligation to seek voluntary
8 agreement with working interest owners as is required by
9 70-2-17C.

10 While I understand Mr. Padilla's statement that
11 Cimarex, you know, their best opportunity to rebut, you
12 know, whatever Colgate is saying is at that hearing, that
13 Division hearing, I also think the obligation is on the
14 applicant to present factual and accurate information, and
15 whether that was done or not, I still feel somewhat unclear.
16 Cimarex is asserting they haven't. Colgate is saying,
17 "Well, maybe we have, but I can't exactly say."

18 I feel like there is still uncertainty in that
19 factor, but I feel like there is enough uncertainty and
20 enough potential -- there is enough potential that the
21 Division order should not have been executed, that it is
22 worth rehearing under a de novo appeal, but I welcome your
23 take on it.

24 COMMISSIONER BLOOM: Madam Chair, thank you for
25 the comment. I agree with what you said and second that.

1 That's obviously one of the major responsibilities and
2 sources of power of the OCC is charged to prevent waste and
3 protect correlative rights, and I believe the best way to
4 prevent waste in this case is grant the de novo hearing on
5 this compulsory pooling case.

6 Having the two largest working interest owners
7 among others involved in a new hearing would make sure that
8 we get the best plan for this pool and potentially prevent
9 any waste or minimize waste. And I will just say for the
10 record that I don't want to see OCD hearings being used
11 unfairly to get a compulsory pooling ruling. That's not
12 what this is here for, and if things aren't done correctly
13 we end up in these sorts of situations.

14 Madam Chair, that's all I have. If you would
15 like, I will be glad to introduce some motions to vote on.

16 CHAIR SANDOVAL: Go ahead.

17 COMMISSIONER BLOOM: Madam Chair, I would move to
18 deny the motion to dismiss the application for de novo
19 hearing.

20 CHAIR SANDOVAL: I second that motion.

21 Mr. Moander, would you do a roll call, please?

22 MR. MOANDER: Yes, Madam Chair.

23 Commissioner Bloom?

24 COMMISSIONER BLOOM: Yes.

25 MR. MOANDER: And Madam Chair?

1 CHAIR SANDOVAL: Agreed.

2 MR. MOANDER: The motion passes denying the
3 motion to dismiss.

4 COMMISSIONER BLOOM: Mr. Moander, Madam Chair, do
5 I need to move to grant the application for a de novo
6 hearing?

7 MR. MOANDER: That would be the next step. And
8 then, yes, then subsequent or following that is the motion
9 to stay because that would be procedurally proper.

10 CHAIR SANDOVAL: Yes.

11 COMMISSIONER BLOOM: Madam Chair, if I might, I
12 would move to grant the application for a de novo hearing in
13 this case.

14 CHAIR SANDOVAL: I second that motion.

15 Mr. Moander, would you do a roll call, please?

16 MR. MOANDER: Yes, Madam Chair. Commissioner
17 Bloom?

18 COMMISSIONER BLOOM: Agreed.

19 MR. MOANDER: Madam Chair?

20 CHAIR SANDOVAL: Agreed.

21 COMMISSIONER BLOOM: Finally, Madam Chair, I
22 would move to grant the stay petitioned for by Cimarex.

23 CHAIR SANDOVAL: I second that.

24 MR. MOANDER: I would recommend -- I'm realizing
25 that it does seem fairly logical to grant the stay at this

1 point. I would recommend soliciting the parties for
2 anything beyond their motion because I think the motion
3 response and reply were pretty straightforward. There isn't
4 a lot of complexity in any of those, at least from my
5 perspective.

6 I would solicit getting brief comments the
7 parties might have about the motion for a stay before
8 rendering a ruling and/or rendering a final decision.

9 CHAIR SANDOVAL: Okay. Mr. Padilla, given the
10 motion that Commission just made to grant Cimarex their de
11 novo application, do you have any comments on Cimarex's
12 request to stay the Division's compulsory pooling order?

13 MR. PADILLA: Well, I don't know what my client
14 wants or Colgate wants to do once an order is issued,
15 whether they want to ask me to do a motion for a rehearing
16 that I have to necessarily do if they want to proceed to the
17 district court.

18 I think it's fairly clear that if you -- and I
19 am not going to argue any more, you have made your ruling.
20 On the motion to stay, I just defer that to the Commission
21 because I know that Colgate is already moving down the line.

22 It's already sent well proposals under the order,
23 and I don't know where they are in terms of actually
24 preparing drilling, but theoretically that order is still
25 valid unless you stay it.

1 CHAIR SANDOVAL: Thank you, Mr. Padilla.
2 Mr. Savage, do you have any comments?

3 MR. SAVAGE: Just briefly. I mean, there is
4 mention that the order -- acknowledgement the order
5 shouldn't have been issued under the circumstances. I think
6 there is a risk here without the stay to act upon a
7 questionable order.

8 Commissioner Bloom brought up the question of
9 waste and correlative rights. There is still outstanding --
10 to me it's a safe route to, to exercise a precaution to
11 avoid any, you know, decisions that would undermine any
12 issues at issue right now.

13 CHAIR SANDOVAL: Thank you. I don't have any
14 questions. Commissioner Bloom, do you have any questions?

15 COMMISSIONER BLOOM: No questions. I just think
16 the stay pass should be (unclear) which would make our
17 previous votes meaningless.

18 CHAIR SANDOVAL: I think the stay, I think it's
19 the right decision considering that we are granting a de
20 novo appeal. It doesn't makes sense to me to allow the
21 Division order to stand, so I think having a stay is the
22 natural decision. Should we remake that motion?

23 COMMISSIONER BLOOM: Yes, Madam Chair. I would
24 like to move to grant the motion for a stay in this case.

25 CHAIR SANDOVAL: I second that. Mr. Moander,

1 would you do a roll call, please?

2 MR. MOANDER: Yes, Madam Chair. Commissioner
3 Bloom?

4 COMMISSIONER BLOOM: Agreed.

5 MR. MOANDER: Madam Chair?

6 CHAIR SANDOVAL: Agreed.

7 MR. MOANDER: The motion passes.

8 I do have one comment or request I would like to
9 make. Mr. Padilla, whatever your client decides to do next,
10 if for some -- if your client decides to proceed to district
11 court, would you please be sure to put me on the service
12 list as counsel for the Commission?

13 MR. PADILLA: I think the Commission would be a
14 party at this point. If you are asking to -- so, yes, you
15 are on the notice list.

16 MR. MOANDER: Awesome. And I only say that
17 because on occasion sometimes people have forgotten or they
18 don't even know who the AG is that's handling these things,
19 and in this case we do, and it will make things smoother, so
20 I appreciate that. Thank you very much.

21 MR. PADILLA: Thank you.

22 CHAIR SANDOVAL: So at this point, Mr. Moander,
23 we don't -- do we need to discuss scheduling at all?

24 MR. MOANDER: That, you know, I think at this
25 point, this might be something -- I hate to drag the parties

1 back, but it sounds like Mr. Padilla in particular has some
2 homework he needs to do, and I'm always open to the parties'
3 positions, but I'm thinking it might be worthwhile to
4 discuss scheduling in May.

5 But I don't -- again, I'm available for
6 everybody, everyone is not available for me. So I think
7 that's something we can briefly discuss on what should be
8 done next or what the parties and the Commission --

9 MR. SAVAGE: There is one other matter associated
10 with this that I would I like to address, and it involves
11 potential scheduling.

12 CHAIR SANDOVAL: Go ahead.

13 MR. SAVAGE: So we had competing applications at
14 the Division level that were designed to address a de novo
15 hearing, but EOG had made an appearance in that case, and
16 they did a motion to dismiss those cases.

17 And those -- those, you know, the well proposals
18 were sent by Cimarex, and even updated well proposals were
19 sent, and we were negotiating with the owners, including
20 EOG, but because of the extenuating circumstances of the
21 competing applications and the issues involved, there was
22 time constraints in which we were participating in that, and
23 EOG raised concerns there wasn't enough time to do full
24 good-faith negotiations.

25 To address those concerns, we dismissed,

1 voluntarily dismissed those cases. Those cases are integral
2 to the matter at hand. We would respectfully request some
3 opportunity to send out the well proposals or continue the
4 negotiations and resubmit those applications as competing
5 applications with Colgate's.

6 CHAIR SANDOVAL: Mr. Moander, do you have any
7 thoughts on that?

8 MR. MOANDER: Here is the issue I'm seeing
9 developing here is, it makes sense to want to get all
10 parties who may have some degree of interest brought in as
11 needed.

12 On the other hand, I -- I, at this point I am
13 suspect about negotiations, but I never discourage them.
14 But given the potential that Colgate is purportedly moving
15 forward to some extent, I would not want this to go very
16 long, and that's why -- well, two thoughts.

17 One, I'm going to request that the parties keep
18 me updated as to what's going on with this, this case to --
19 reasonably so.

20 The other thing is that it sounds like there may
21 be value in a status conference in May so that way we can --
22 by then, I would expect that Colgate would have made its
23 decisions and that Cimarex would have reached out and at
24 least had it necessary to have some evidence supporting
25 their effort to try to bring in who -- the parties who need

1 to be in the case, in order to really get a handle on the
2 size of hearing that may be needed, realizing that all
3 pooling hearings are pretty big.

4 I think -- because I don't want to hamper Colgate
5 any more than under the circumstances than they are, but at
6 the same time I -- I do think that it's valuable to make
7 sure everybody is brought in to avoid any further issues
8 with notice and party of record, et cetera.

9 So it might be wise to have a status conference
10 with the assumption here that in probably two weeks I would
11 hear from the parties respectively about what's going on.

12 CHAIR SANDOVAL: I think that makes sense. So we
13 can schedule a status conference in May and if needed
14 continue it.

15 MR. SAVAGE: Do we have permission then to refile
16 the competing applications in preparation of that status
17 conference?

18 CHAIR SANDOVAL: I see no issue with that.
19 Mr. Moander?

20 MR. MOANDER: We are getting all sorts of -- I'm
21 decent with the rules, but you guys are bringing up some
22 pretty narrow stuff on me and I'm saying I don't have the
23 right answer now for that.

24 Mr. Savage, like I'm all ears with a party's
25 counsel to help me help the Commission.

1 MR. SAVAGE: There is precedence for this. I
2 mean, in recent past, orders have been stayed to allow all
3 the parties to file applications and have in place proper de
4 novo hearing procedures.

5 I mean, I think this is a case that justifies
6 that -- I mean, that would have been -- had the original
7 case proceedings, had they been pursued under the -- in
8 conforming with the statute, this, the continuing -- then
9 Cimarex would have submitted applications. So basically
10 this is restoring things to a normalcy in preparation for
11 the de novo hearing.

12 MR. MOANDER: Mr. Padilla, aside from the motion
13 to dismiss, in reference to competing applications, do you
14 have any comments?

15 MR. PADILLA: Well, as you said, I have homework
16 to do in terms of finding out, for example, whether or not
17 Colgate has -- they could have actually started the wells
18 for all I know. I'm not trying to sound ignorant, but I
19 don't know what kind of preparations they have been doing.
20 I know they have sent out notices under the order to
21 participate in drilling the well or wells.

22 I don't know what kind of money has been
23 expended. I do know there have been negotiations between
24 Cimarex and Colgate, and there would have been a trade-out,
25 but apparently the Colgate interests are burdened by some

1 kind of agreement with Apache that they have to -- the
2 holder of that interest has to be applied by something that
3 that Apache requires, and that's not acceptable to Colgate.

4 So there are a lot of things out there, but in
5 any event, I guess what -- the case would not be ripe for a
6 rehearing until after the de novo hearing was held, simply
7 because it's not the final decision so that we could reach
8 some sort of remedies.

9 MR. MOANDER: So it sounds to me, Mr. Padilla,
10 and correct me if I'm wrong, that additional time for other
11 properties whether they are competing application or
12 otherwise is warranted here. Is that a fair description?

13 MR. PADILLA: I don't think Colgate is going to
14 agree with that, but I think they have to -- they have to
15 accept the Commission's ruling today, and if there is a stay
16 order, I will, you know, I think I would simply ask those
17 orders be entered so we can decide one way or the other what
18 we are going to do with it.

19 MR. MOANDER: Okay.

20 MR. SAVAGE: If I may add one more thing, if we
21 can go ahead and file the applications, Cimarex would cover
22 the cost of any continuances that are put in place while the
23 matter is being decided at the status conference. And if in
24 the end, for whatever reason, there needs to be like some
25 change of direction, that can be addressed at that point.

1 MR. MOANDER: That sounds good to me.

2 CHAIR SANDOVAL: That makes sense to me,
3 Mr. Moander.

4 MR. MOANDER: I think it's sound. And in
5 reviewing the rules here in front of me, I'm not seeing
6 anything in particular that sticks out that's going to
7 prevent that or cause an issue. And this is all the more
8 reason for everyone or all the parties to stay in touch with
9 me so I have a sense on where things are headed or not
10 headed.

11 CHAIR SANDOVAL: Okay. So do we need to do any
12 sort of motion on a status conference or no?

13 MR. MOANDER: No. At this point, no, but I would
14 suggest that the Commission formally take action to grant --
15 let's see. Actually, no, we're good at this point. If any
16 competing applications are submitted, we will deal with
17 those at that time because those are non-existent at this
18 point. So I think we should be good at this point if we are
19 just going to have a status conference set for May.

20 MR. PADILLA: Procedurally I have a question.
21 Don't those competing applications have to be heard before
22 the Division first?

23 CHAIR SANDOVAL: I would think so.

24 MR. SAVAGE: Madam Chair, I believe that the
25 Commission would have discretion whether to send them down

1 to the Division to be heard or whether to accept them to be
2 heard within the de novo hearing because it does concern the
3 same matters as the original hearing, in my opinion.

4 So I believe that there would be discretion
5 there, but of course the Commission would have to decide
6 that in the end.

7 CHAIR SANDOVAL: Mr. Moander, does that make
8 sense as to something that's decided at the status
9 conference, the Commission does always have the option to
10 pull items from the Division?

11 MR. MOANDER: Yes. I don't prefer to render any
12 guidance on that narrow issue today.

13 CHAIR SANDOVAL: I would like to discuss that at
14 the status conference, and maybe any incoming preparedness,
15 Mr. Savage, to discuss as to why or why not it's
16 appropriate. The Commission always has the option, but
17 whether we choose to invoke it or not is our discretion.

18 MR. SAVAGE: Yes, again, thank you Madam Chair.
19 I don't think it's an unlimited option, but I think the fact
20 and circumstances are correct, I think there is that option,
21 so I would be glad to discuss that from my perspective.

22 CHAIR SANDOVAL: Okay. All right. Anything else
23 in case Number 21744?

24 MR. PADILLA: Not for me.

25 MR. SAVAGE: No, thank you.

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

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REPORTER'S CERTIFICATE

I, IRENE DELGADO, New Mexico Certified Court Reporter, CCR 253, do hereby certify that I reported the foregoing virtual proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings to the best of my ability.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case and that I have no interest in the final disposition of this case.

I FURTHER CERTIFY that the Virtual Proceeding was of poor to good quality.

Dated this 15th day of April 2021.

/s/ Irene Delgado

Irene Delgado, NMCCR 253
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