

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

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

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS
COMMISSIONER HEARING
Agenda Item 5
May 13, 2021
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 Thursday, May 13, 2021, via Webex Virtual Platform, hosted by New Mexico Energy, Minerals, and Natural Resources Department.

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APPEARANCES

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1 CHAIRWOMAN SANDOVAL: Awesome. Moving to the
2 status conference in de novo Case 21744, Mr. Padilla and
3 Mr. Savage, are we able to hear both of you?

4 MR. SAVAGE: Good morning, Madam Chair. This is
5 Darin Savage.

6 CHAIRWOMAN SANDOVAL: Good morning. Mr. Padilla,
7 I think you might be muted.

8 MR. PADILLA: How is that?

9 CHAIRWOMAN SANDOVAL: Perfect.

10 MR. PADILLA: Okay. I lost you temporarily there
11 when Commissioner Bloom lost everything, so -- but, anyway,
12 what I wanted to say is thank you for accommodating my
13 schedule this morning and moving this around.

14 CHAIRWOMAN SANDOVAL: No problem. All right.
15 Well I will give each of you an opportunity to provide the
16 Commission with an update starting with Mr. Padilla.

17 MR. PADILLA: Madam Chair and Commissioner Bloom,
18 Mr. Savage and I had a discussion yesterday about how we
19 should proceed, and frankly, we may be filing motions -- I
20 am not sure. I don't have any plan right now, but we both
21 need some time to evaluate whether or not motions are
22 appropriate.

23 And I think the Commission should give us a
24 deadline for submitting and filing motions ahead of a
25 scheduled hearing. I don't have a complete indication of my

1 client's availability for the de novo hearing. I know that
2 they have problems, and I have had to move some hearings in
3 August, but I think July or September would, would work.

4 Mr. Savage has some thoughts about going back to
5 the Division, but I don't think that would be appropriate.
6 I think that, that the Commission's ruling is that they
7 would -- they would get a de novo hearing, Cimarex would,
8 but he can speak to that, I'm sure.

9 CHAIRWOMAN SANDOVAL: Okay, thank you.
10 Mr. Savage, would you like to provide an update, and then
11 Commissioner Bloom can --

12 MR. SAVAGE: Yes, good morning. Cimarex
13 submitted its final well proposal with all the criteria for
14 that proposal on April 29 or sent it out April 29. We would
15 like 30 days to -- before we file any applications, and it
16 looks like Memorial Day hits in there, so we are looking at
17 possibly June 1st to file a competing application.

18 We really appreciate that the process provided a
19 mechanism for Cimarex to move forward to a position prior to
20 the harm or -- and it was able to address the harm. We
21 would respond to any motion that was -- and we would like
22 the opportunity to respond to any motion that's, that was
23 submitted.

24 I don't know how much you want me to go into the
25 question of the best forum for any kind of competing

1 application, but I would be glad to talk about that briefly
2 if you want.

3 CHAIRWOMAN SANDOVAL: Sure. If you want to just
4 provide a brief update on that or what your thoughts are on
5 that.

6 MR. SAVAGE: Okay. So last night I was looking
7 again at the case Property Tax Department versus Molly Corp,
8 it's a Supreme Court case, and I kind of feel that in this,
9 under these circumstances there is a proper procedure to go
10 back to the Division to have these -- the case heard, but
11 based on this case, it seems to me like it turns on --
12 well, one of the things that I would be concerned about, you
13 know, I have an obligation to protect the long-term interest
14 of Cimarex. And I'm a little concerned that Colgate has
15 suggested it may challenge the decision in district court,
16 we would want to proceed and not be vulnerable to any kind
17 of challenge. If Cimarex is fortunate enough to prevail in
18 the end, we would want a decision secure from challenge.

19 According to the Molly Corp court, you can go
20 back to -- you can go back and have a relitigation providing
21 that the order is, is considered invalid versus valid, and
22 under the circumstances of this case, because Cimarex did
23 not fulfill its statutory requirements for proper
24 application, I believe that there is grounds to invalidate
25 the order, and I believe that that would allow a return to

1 the Division.

2 If the order stands as it is without being
3 invalidated, it would be viewed as a, as a valid order, and
4 I believe that would be vulnerable to the challenge based on
5 collateral attack type issues. That's the concern that I
6 would have.

7 So in that case I would agree with Mr. Padilla
8 that you would need to move forward to the de novo hearing
9 before the Commission under those circumstances.

10 CHAIRWOMAN SANDOVAL: Okay. Mr. Bloom, do you
11 have any questions for either party?

12 COMMISSIONER BLOOM: Madam Chair, I do not at
13 this time. If you have some questions you would like to ask
14 first, please go ahead.

15 CHAIRWOMAN SANDOVAL: Mr. Savage, so Mr. Padilla
16 mentioned potentially scheduling a de novo hearing either in
17 July or September. Do you have any thoughts on that?

18 MR. SAVAGE: I would be agreeable to September.
19 I talked to my client and they talked about August, but I
20 think they would be happy with September if August was not
21 available.

22 CHAIRWOMAN SANDOVAL: Okay, thank you. I don't
23 have any other questions.

24 COMMISSIONER BLOOM: Madam Chair, Mr. Moander,
25 I'm wondering how we get out the question or decision around

1 whether we push this back to the Division or have a de novo
2 hearing at the Commission.

3 MR. MOANDER: So responding to that, and I
4 probably do have a question that may come out of this, it
5 sounds to me that what I'm hearing from Mr. Savage, even if
6 we get this set for de novo, there may be motions filed in
7 the interim at least from Mr. Savage, I suspect, would be
8 the party or the counsel filing these to invalidate the
9 order which would then render the de novo hearing at least
10 moot for the short term. Is that, is that correct,
11 Mr. Savage?

12 MR. SAVAGE: Mr. Moander, I believe that would be
13 a proper procedure.

14 MR. MOANDER: So it sounds like there needs to be
15 a briefing cycle here of some sort. Madam Chair, have you
16 put in detailed scheduling orders on such cases similar to
17 this before? This is where I will plead a little bit of
18 constitutional ignorance.

19 CHAIRWOMAN SANDOVAL: I have not. At least not
20 in my tenure. Not to say there haven't been before my
21 tenure, but --

22 MR. MOANDER: Sure. Because I'm thinking here, I
23 mean, there are all sorts of deadlines that are not anywhere
24 near as onerous as rulemaking, but if there needs to be
25 some -- this would fall into a temporary dispositive motion.

1 It sounds like putting in some deadlines for that, a
2 scheduled hearing out in September would give enough time to
3 get those motions filed.

4 It also preserves the ability if a de novo
5 hearing is where this whole matter is headed, to put in a
6 small scheduling order with the deadline based out of the
7 regulations, so that way the parties have that, they will
8 have that fall-back position assuming the matter doesn't end
9 up back at the Division,.

10 So I think putting in, you know, motion
11 deadlines, I mean two-week response, two-week reply, and
12 then set it probably for July for the -- for the motion
13 hearing, that seems to me the route to take at this point.
14 And then at that point if a decision is made one way or the
15 other with the case, it happens to go to de novo, then we
16 can slap on -- I will have it in advance some draft
17 scheduling order to make sure the parties are up to speed
18 and the Commission is satisfied.

19 CHAIRWOMAN SANDOVAL: That would make it the
20 cleanest, whether we have done it in the past or not, it
21 would lay out the expectations and time lines very clearly.

22 MR. MOANDER: Agree, Madam Chair.

23 MR. PADILLA: It follows a procedure that the OCD
24 has adopted for contested cases for prehearing orders
25 issuing the deadlines.

1 CHAIRWOMAN SANDOVAL: Thank you.

2 MR. MOANDER: That is correct, Mr. Padilla.

3 There is -- I'm not going to rattle off the citations, but
4 I have the regs in front of me now, and the deadlines would
5 end up in some sort of scheduling order, so it would be
6 consistent with the regulations.

7 CHAIRWOMAN SANDOVAL: Okay. So sort of taking
8 that into account, Commissioner Bloom, does September for
9 the de novo tentatively -- well, I guess schedule it in
10 September for the de novo hearing assuming we get to that
11 point, and then July for the motions hearing, and then if we
12 plan on that, then we can work backwards from the July date.

13 COMMISSIONER BLOOM: That sounds good.

14 CHAIRWOMAN SANDOVAL: So July our hearing date
15 is, I think it's the 8th. July 8th is a regularly scheduled
16 OCC hearing. So let's see, I'm just thinking working
17 backwards, we would want responses -- Mr. Moander, how
18 early do we typically want responses? I'm sort of thinking
19 by the second at least.

20 MR. MOANDER: So what day are we agreeing for the
21 or are you setting for the motion, the factual motion
22 deadline.

23 CHAIRWOMAN SANDOVAL: That's what I'm trying to
24 work backwards to.

25 MR. MOANDER: Oh, from the July.

1 CHAIRWOMAN SANDOVAL: If we started the July 8
2 date, we need to have responses, and my thought would be by
3 the 2nd.

4 MR. MOANDER: Give me just a second and -- I do
5 prefer giving the parties about two weeks for responsive
6 pleadings just because I know what happens if they are put
7 under more than that. Or under less time it's not as
8 appealing for the outcome, so let me see here.

9 You said July 8 is -- July 1 -- so response
10 reply would be due on the 24 of June, response due on the
11 10th, and that would set a motion deadline for two weeks
12 from today, the 27th.

13 CHAIRWOMAN SANDOVAL: Okay. Sorry, say that
14 again. Motion deadline is May 27?

15 MR. MOANDER: Yes. That's when the motions would
16 need to be filed, and then responses would be due on June
17 10 -- wait, did I do that right? No, I went too far. My
18 apologies.

19 Well, I guess it depends on how much time the
20 Commission wants. Do you want these provided or the replies
21 filed a week before to give you time?

22 CHAIRWOMAN SANDOVAL: I mean, that would be
23 helpful.

24 MR. MOANDER: If we work back from the July 1, so
25 that would be responses to the replay is July 1, response

1 would be 17th of June, and motion deadline would be June 3.

2 CHAIRWOMAN SANDOVAL: Okay. Commissioner Bloom,
3 does that make sense to you?

4 COMMISSIONER BLOOM: Could you say those dates
5 one more time?

6 MR. MOANDER: I'm no good at math, what are you
7 trying to do to me. July 1 is reply, June 17 is response,
8 and June 3 is motions.

9 COMMISSIONER BLOOM: And motion hearing on July
10 8, okay.

11 MR. MOANDER: That way everyone has ample time,
12 and no one is getting shorted here, and the Commission will
13 have the necessary time to review you the pleadings.

14 COMMISSIONER BLOOM: That looks okay to me.

15 CHAIRWOMAN SANDOVAL: Do we need to make a motion
16 on that, Mr. Moander?

17 MR. MOANDER: Let's go ahead and adopt these and
18 I will prepare an order so that way we've got it in the
19 record.

20 MR. SAVAGE: Madam Chair, could I ask one
21 question about the proposed filing of the pooling
22 applications? Would it be appropriate to be able to file
23 those in June and have them available for the Commission to
24 decide what to do with that?

25 CHAIRWOMAN SANDOVAL: I mean, that's sort of

1 going to hinge on what we do with the motions hearing, but
2 you are just saying --

3 MR. SAVAGE: Have it on a -- if we need to
4 dismiss it we will dismiss it, but if we go forward we go
5 forward.

6 CHAIRWOMAN SANDOVAL: I'm fine with that. I
7 mean, what about having those available by that June 3 date?

8 MR. SAVAGE: That would be great.

9 CHAIRWOMAN SANDOVAL: With the motions.

10 MR. SAVAGE: I'm agreeable to that.

11 CHAIRWOMAN SANDOVAL: Mr. Padilla, do those dates
12 work for you?

13 MR. PADILLA: Those dates work fine for me. I
14 think we can work around that.

15 CHAIRWOMAN SANDOVAL: Okay. All right.

16 COMMISSIONER BLOOM: What did we add on June 3,
17 what (poor audio).

18 CHAIRWOMAN SANDOVAL: For Cimarex to submit their
19 pooling application.

20 Is there a motion?

21 COMMISSIONER BLOOM: When I make a motion here
22 and would that include Cimarex's pooling application by June
23 3?

24 CHAIRWOMAN SANDOVAL: I think, yeah, we want to
25 include that in there.

1 MR. MOANDER: I would recommend that.

2 COMMISSIONER BLOOM: Madam Chair in de novo case
3 21744, I move that on June 3 we have a motions deadline and
4 Cimarex will submit the pooling application by that date,
5 that responses to the motions will be due June 17, replies
6 will be due July 1. A motion hearing will be held on our
7 regular July 8 meeting, and the de novo hearing will be
8 scheduled for our September 16 hearing.

9 CHAIRWOMAN SANDOVAL: I second that motion.
10 Mr. Moander, would you please do a roll call vote?

11 MR. MOANDER: Yes, Madam Chair. Commissioner
12 Bloom?

13 COMMISSIONER BLOOM: Approved.

14 MR. MOANDER: And Madam Chair?

15 CHAIRWOMAN SANDOVAL: Approved.

16 MR. MOANDER: Motion passes unanimously.

17 CHAIRWOMAN SANDOVAL: All right. Well, it sounds
18 like, Mr. Padilla and Mr. Savage, we will be seeing you
19 again in July.

20 MR. SAVAGE: Thank you, Madam Chair. Thank you
21 everybody.

22 CHAIRWOMAN SANDOVAL: Thank you.

23 MR. PADILLA: Thanks again for rescheduling the
24 docket. Thank you.

25 CHAIRWOMAN SANDOVAL: No problem, thank you.

1 MR. PADILLA: I can get to the mediation now.

2 MR. MOANDER: Madam Chair, I think at this point
3 the Commission can take a recess until we have Mr. Rankin --
4 oh, he's here.

5 CHAIRWOMAN SANDOVAL: He just joined us.

6 MR. MOANDER: Well, look at that.

7 (Status conference concluded.)

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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 reasonable quality.

Dated this 13 day of May 2021.

/s/ Irene Deglado

Irene Delgado, NMCCR 253
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