

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

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

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

COMMISSION HEARING

DAY TWO

PAGES 111-203

THURSDAY, MARCH 10, 2022

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

PRESENT

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GREG BLOOM	COMMISSIONER (SLO)
WILLIAM AMPOMAH	COMMISSIONER (ENMRD)
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A P P E A R A N C E S

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

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

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

9 Mr. Savage, can we hear you.

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

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

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

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

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

1 briefly present on it at that time.

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

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

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

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

16 COMMISSION CHAIR SANDOVAL: Okay. Thank you.

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

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

23 COMMISSION CHAIR SANDOVAL: Okay.

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

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

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

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

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

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

11 COMMISSION CHAIR SANDOVAL: Hadik?

12 THE WITNESS: Yes.

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

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

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

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

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

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

4 COMMISSION CHAIR SANDOVAL: Okay.

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

6 MR. SAVAGE: Thank you, Madam Chair.

7 CROSS EXAMINATION

8 BY MR. SAVAGE:

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

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

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

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

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

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

25 Mr. Hajdik, are those available to you?

1           A.    Uh, yes.

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

4   **(Note:  Pause.)**

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

6           MR. MOANDER:  I was going to --

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

11          THE WITNESS:  Okay.

12          COMMISSION CHAIR SANDOVAL:  Thank you.

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

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

20          THE WITNESS:  I have all that pulled up.

21          MR. SAVAGE:  Thank you.

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

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

3 Do you agree with that?

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

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

7 A. (Inaudible)

8 (Note: Reporter inquiry.)

9 COMMISSION CHAIR SANDOVAL: Noted.

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

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

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

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

20 A. I --

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

23 A. Yes.

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

1                   Do you have that?

2           A.    Yes.

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

5           A.    Yes.

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

9                   It basically describes the offsetting --

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

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

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

18          Q.    **The first sentence.**

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

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

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

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

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

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

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

8           **Q.    Thank you.**

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

13          THE WITNESS:  Okay.

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

16          All right.  Go ahead, Mr. Savage.

17          MR. SAVAGE:  Thank you, Madam Chair.

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

22          A.    Yes.

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

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

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

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

4 A. Yes.

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

11 Would you agree with that?

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

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

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

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

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

22 A. It does not appear that way.

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

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

5 Would that have been a possibility?

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

8 Q. I agree.

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

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

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

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

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

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

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

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

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

5 **Q. All right. You --**

6 **(Note: Reporter interruption.)**

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

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

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

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

15 A. I think that was the hypotheticals again.

16 **Q. It is a hypothetical.**

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

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

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

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

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

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

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

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

13          A.    Possibly.  What are you asking about?

14          **Q.    Excuse me.  Go ahead please.**

15          A.    I said:  In theory, yes.

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

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

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

25                COMMISSION CHAIR SANDOVAL:  Go ahead, and then I

1 will make my decision.

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

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

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

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

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

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

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

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

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

9 A. Sure.

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

11 Do you have that in front of you?

12 A. I don't.

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

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

19 A. Yes.

20 Q. I'm sorry?

21 A. Yes.

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

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

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

6                         **Who initiated those emails, Colgate or**  
7 **Cimarex?**

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

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

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

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

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

17          **Q.    Cimarex sent the first email.**

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

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

25                         COMMISSION CHAIR SANDOVAL:  Mr. Savage, reminder

1 on the metaphor.

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

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

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

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

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

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

1 please.

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

5 COMMISSION CHAIR SANDOVAL: All right.

6 MR. SAVAGE: Okay.

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

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

11 A. Yes.

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

15 A. Yes.

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

19 A. (Note: No audible response.)

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

22 A. Correct.

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

1 A. Yes.

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

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

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

7 A. (Note: No audible response.)

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

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

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

13 A. Yes.

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

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

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

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

25 Q. Okay. I'll move on.

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

4           A.    Correct.

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

7                   **Do you agree with that?**

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

10                   The answer is no. I mean yes.

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

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

19           A.    Yes, I heard that.

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

23           A.    Yes.

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

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

2                               Two years ago.

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

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

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

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

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

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

1 Q. Thank you, Mr. Hajdik.

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

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

8 A. Yes.

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

12 A. Correct.

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

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

19 Q. Can you qualify it, then?

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

24 (Note: Reporter interruption.)

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

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

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

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

11 Is that correct?

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

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

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

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

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

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

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

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

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

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

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

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

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

10          A.    No, I would disagree.

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

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

19          A.    I believe so.

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

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

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

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

10 Would you agree with that?

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

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

16 A. (Note: No response.)

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

19 A. Sure.

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

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

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

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

11 A. I answered your question.

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

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

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

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

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

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

3 Q. Thank you, Mr. Hajdik.

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

6 A. (Note: No audible response.)

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

13 Would you agree you said that statement?

14 A. Correct.

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

17 A. Okay.

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

21 A. Yes.

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

23 A. Yes.

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

1     **respond. Is that correct?**

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

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

9           A.    Sure.

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

15          A.    What's the question?

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

19          A.    Yes.

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

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

1 were in conversation.

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

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

10 Q. Thank you, Mr. Hajdik.

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

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

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

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

22 Q. Okay. Well --

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

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

1 couple more questions before that.

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

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

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

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

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

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

24           Do you agree with that?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 A. Yes.

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

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

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

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

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

1 I asked Mr. McDonald; is that correct?

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

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

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

13 Q. Okay.

14 A. Sorry.

15 Q. I'm going to move on.

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

18 A. Yes.

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

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

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

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

7           A. What's the question?

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

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

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

19          A. We already went down this.

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

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

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

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

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

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

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

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

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

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

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

19 Q. Okay.

20 A. -- the hearing.

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

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

24 Q. I don't believe we have.

25 Your series of emails with Mr. McDonald

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

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

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

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

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

14 A. What are you saying?

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

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

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

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

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

4           A.    Sure.

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

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

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

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

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

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

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

4 A. (Note: No response.)

5 (Note: Reporter inquiry.)

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

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

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

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

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

19 Q. Generally speaking is that correct?

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

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

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

1 question?

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

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

10 Q. Prior to --

11 A. In the de novo proceedings.

12 Q. Thank you, Mr. Hajdik.

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

20 A. Correct.

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

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

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

2           A.    No.

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

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

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

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

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

16                        May I proceed?

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

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

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

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

1     **you only sent one email, correct?**

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

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

7           A.     I believe so.

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

10          A.     Sure.

11          **Q.     So the record shows that --**

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

14                 THE WITNESS:  Yes.

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

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

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

24                 THE WITNESS:  Yes.

25                 MR. SAVAGE:  Yes, Madam Chair.

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

5                            Is that correct?

6           A.    Yes.

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

10          A.    I would not agree with that assessment.

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

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

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

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

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

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

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

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

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

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

20 Would that be correct?

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

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

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

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

6                    I have no more questions, Madam Chair.

7           COMMISSION CHAIR SANDOVAL:  Thank you.

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

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

11                    Do you want to go first?

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

15           COMMISSIONER AMPOMAH:  Thank you.

16                    CROSS EXAMINATION

17 BY COMMISSIONER AMPOMAH:

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

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

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

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

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

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

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

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

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

1 we end up going to the hearing.

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

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

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

10 COMMISSIONER AMPOMAH: Thank you, Mr. Hajdik.

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

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

16 CROSS EXAMINATION

17 BY COMMISSIONER CHAIR SANDOVAL:

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

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

1 understanding of the process and the implications.

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

5 A. Correct.

6 **Q. Okay.**

7 A. Like I already -- sorry.

8 **Q. Go ahead.**

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

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

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

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

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

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

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

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

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

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

17 A. Not with Cimarex.

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

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

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

24 A. Yes.

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

1 any further questions.

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

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

6 COMMISSIONER AMPOMAH: No, Madam Chair.

7 COMMISSION CHAIR SANDOVAL: All right.

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

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

12 REDIRECT EXAMINATION

13 BY MR. PADILLA:

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

17 A. Yes.

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

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

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

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

1 the subject is Meridian Proposal.

2 A. Correct.

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

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

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

8 A. Yes.

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

13 A. Yes.

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

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

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

22 A. Right.

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

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

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

7           A.    Correct.

8           **Q.    Yes?**

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

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

13           A.    Yes.

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

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

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

20           A.    Yes.

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

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

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

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

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

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

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

11 I mean, sorry, filing for hearing.

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

15 A. What do you mean?

16 Q. Well, let me ask the question.

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

19 A. Yes.

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

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

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

1 of emails that he sent to you, right?

2 A. Correct.

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

5 COMMISSION CHAIR SANDOVAL: Thank you.

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

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

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

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

18 COMMISSION CHAIR SANDOVAL: Okay.

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

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

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

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

8 MR. PADILLA: That's correct.

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

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

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

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

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

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

22 MR. SAVAGE: Yes.

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

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

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

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

25           But that's how it stands.

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

3                   Mr. Padilla.

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

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

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

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

1 coming from.

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

10 So I just don't see a connection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25                   I can't see statutory authority to remand

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

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

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

14 MR. PADILLA: I'm done.

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

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

20 COMMISSIONER AMPOMAH: Madam Chair, I do not.

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

23 So you're saying the third option.

24 What would that practically do for your  
25 clients?

1 MR. SAVAGE: Madam Chair, thank you.

2 I think there's some misunderstanding here.

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

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

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

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

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

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

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

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

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

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

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

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

7                   Do we want to get to that?

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

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

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

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

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

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

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

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

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

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

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

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

1 could be done.

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

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

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

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

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

21 COMMISSION CHAIR SANDOVAL: Okay.

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

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

3 Does that sound like a plan for everybody?

4 COMMISSIONER BLOOM: That works.

5 COMMISSIONER AMPOMAH: That works for me.

6 MR. PADILLA: Works for me.

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

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

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

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

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

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

25 EXAMINER BRANCARD: All right. Thank you for

1 checking.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 waiting for Colgate to serve the ball.

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

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

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

1 mean for the interest.

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

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

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

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

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

18 Thank you.

19 COMMISSION CHAIR SANDOVAL: Mr. Padilla.

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

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

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

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

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

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

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

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

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

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

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

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

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

25                   I can't understand why Prosperity Bank is

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

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

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

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

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

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

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

11 Thank you.

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

14 Hold on. All right.

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

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

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

1 COMMISSIONER BLOOM: Madam Chair, I so move.

2 COMMISSION CHAIR SANDOVAL: Is there a second?

3 COMMISSIONER AMPOMAH: Madam Chair, I do second.

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

6 MR. MOANDER: Yes, Madam Chair.

7 Commissioner Ampomah.

8 COMMISSIONER AMPOMAH: Approved.

9 MR. MOANDER: Commissioner Bloom?

10 COMMISSIONER BLOOM: Approved.

11 MR. MOANDER: Madam Chair?

12 COMMISSION CHAIR SANDOVAL: Approved.

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

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

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

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

25 All right. Thanks, everyone.

1 MR. SAVAGE: Thank you.

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

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

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

7 COMMISSION CHAIR SANDOVAL: Yeah.

8 MR. MOANDER: Just making sure.

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

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

13 COMMISSION CHAIR SANDOVAL: Is there a second?

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

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

23 COMMISSIONER BLOOM: Madam Chair, I so move.

24 COMMISSION CHAIR SANDOVAL: Is there a second?

25 COMMISSIONER AMPOMAH: I second.

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

3           MR. MOANDER: Yes, madam Chair.

4                   Commissioner Ampomah.

5           COMMISSIONER AMPOMAH: Approved.

6           MR. MOANDER: Commissioner Bloom.

7           COMMISSIONER BLOOM: Approved.

8           MR. MOANDER: Madam Chair.

9           COMMISSION CHAIR SANDOVAL: Approved.

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

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

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

1 forward and force pool 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 first?

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

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

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

23 (Note: Pause.)

24 MR. MOANDER: Madam Chair?

25 COMMISSION CHAIR SANDOVAL: I was the one who

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

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

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

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

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

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

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

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

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

12 MR. MOANDER: Yes.

13 COMMISSION CHAIR SANDOVAL: Okay.

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

15 COMMISSION CHAIR SANDOVAL: All right.

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

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

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

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

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

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

21 MS. DAVIDSON: Yes, we can.

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

24 COMMISSIONER BLOOM: Thank you all.

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

1 STATE OF NEW MEXICO )

2 : ss

3 COUNTY OF TAOS )

4

5

REPORTER'S CERTIFICATE

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I, MARY THERESE MACFARLANE, New Mexico Reporter

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CCR No. 122, DO HEREBY CERTIFY that on Thursday, March 10,

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2022, the proceedings in the above-captioned matter were

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taken before me; that I did report in stenographic

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shorthand the proceedings set forth herein, and the

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foregoing pages are a true and correct transcription to

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the best of my ability and control.

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I FURTHER CERTIFY that I am neither employed by

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nor related to nor contracted with (unless excepted by the

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rules) any of the parties or attorneys in this case, and

16

that I have no interest whatsoever in the final

17

disposition of this case in any court.

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19

\_/s/ Mary Therese Macfarlane\_\_\_\_\_

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