

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

**APPLICATION OF ELIZABETH KAYE DILLARD
TO REOPEN CASE NO. 21226 (ORDER R-21354),
EDDY COUNTY, NEW MEXICO.**

Case No, 22323

**RESPONSE TO COLGATE’S MOTION TO VACATE
PRE-HEARING ORDER AND FOR STATUS CONFERENCE**

Elizabeth Kaye Dillard (“Dillard”) responds to Colgate Operating, LLC’s (“Colgate”) Motion to Vacate Pre-Hearing Order and for Status Conference (the “Motion”) filed in this matter on January 21, 2022. In support of this Response, Dillard states the following:

FACTUAL BACKGROUND

1. Colgate’s attempt to further delay any hearing in this matter is simply its latest action in what has been a long line of dilatory and unprofessional conduct.
2. On March 3, 2020 Colgate filed an Application for Compulsory Pooling and Non-Standard Spacing and Proration Unit (the “Original Application”), with the Oil Conservation Division as Case No. 21226, seeking an order pooling all mineral interests in the Winchester Bone Spring Pool underlying Sections 33 and 34, Township 19 South, Range 38 East, N.M.P.M., Eddy County, New Mexico. The purpose of pooling these lands was to drill the Dawson 34 Fed State Com 123H well, the Dawson 34 Fed State Com 133H well, the Dawson 34 Fed State Com 124H well, and the Dawson 34 Fed State Com 134H well (collectively, the “Dawson Wells”).
3. Dillard owns a working interest in the Dawson Wells. Dillard did not receive notice of the proceedings in Case No. 21226, the Original Application, or of the order entered in Case No. 21226 on September 25, 2020 pooling her interest (the “Order”).

4. Upon learning about the Dawson Wells and the Original Application, Dillard contacted Colgate regarding participating in the Dawson Wells.

5. On August 25, 2021, Colgate informed Dillard that they would send Dillard proposal letters for the Dawson Wells which would give her 30 days to elect.

6. For nearly two months, Dillard awaited new well proposal letters from Colgate on the Dawson Wells. The new proposal letters were never sent.

7. On October 11, 2021, counsel for Dillard contacted Colgate regarding Colgate's failure to provide Dillard notice of the compulsory pooling proceedings in Case No. 21226.

8. On October 11, 2021 Colgate informed Dillard that they would not send Dillard new proposals for the Dawson Wells. Colgate's August 25th assurance that they would give Dillard 30 days to elect was made in bad faith.

9. As a result of Colgate's refusal to give Dillard any opportunity to participate in the Dawson Wells as required by law, Dillard informed Colgate, in writing, on October 19, 2021 that she would be filing to reopen Case No. 21226 for a failure of notice.

10. Colgate informed counsel for Dillard on October 19, 2021 that Dillard should provide notice of its Application to reopen Case No. 21226 to Mr. Ernest Padilla, attorney for Colgate in this matter. (See October 19, 2021 Email attached as **Exhibit A**).

11. On October 29, 2021 Dillard filed her Application to Reopen for Lack of Notice (the "Application") and notice of the Application, along with a copy of the same, was sent to Mr. Ernest L. Padilla, counsel for Colgate, as reflected on the Certificate of Service attached to the Application.

12. On October 29, 2021 the OCD set this matter for an administrative hearing on December 2, 2021. Notice of this hearing date was provided to Mr. Ernest Padilla, counsel for Colgate, on October 29, 2021.

13. From October 29, 2021 to December 2, 2021 Colgate failed to file a pre-hearing statement, or any other document, in this matter.

14. At the December 2, 2021 Hearing in this Matter, Mr. Padilla formally entered his Appearance on behalf of Colgate, admitted to receiving service of the Application, and admitted that he had been in discussions with Colgate regarding this matter for at least two weeks prior to the December Hearing. (*See Reporter's Transcript of Virtual Proceedings Examiner Hearing December 2, 2021 attached as **Exhibit B**, p. 3, lines 8-15; p. 5, lines 17-19*).

15. At the December Hearing counsel for Colgate agreed that the February 3, 2022 hearing date worked for Colgate. (*See **Exhibit B**, p. 8, line 2*).

16. Between December 2, 2021 and January 4, 2022 counsel for Dillard contacted counsel for Colgate multiple times regarding evidence to be presented in this matter at the hearing set for February 3, 2022, but received no response.

17. On December 29, 2021 counsel for Dillard informed Colgate, in writing, that Dillard intended to move forward with the February 3, 2022 hearing date.

18. In summary, Colgate has known of its failure to provide Dillard notice for more than 5 months; Colgate has had notice of Dillard's Application in this matter for approximately 3 months; and Colgate has retained and conferred with its counsel in this matter for more than 3 months.

19. On January 21, 2022 Colgate filed the Motion seeking to vacate the February 3 Hearing and giving Notice that Colgate had “recently” decided to substitute its counsel in this matter and claimed prejudice to its interest as a result.

ARGUMENT

20. In the Motion, Colgate claims that counsel was “recently engaged in this matter” and, as a result, Colgate needs “additional time” to avoid unfair “prejudice”. Such a claim is blatantly false. As reflected above, counsel for Colgate was served with the Application on October 29, 2021, approximately 3 months ago; said counsel advised Colgate regarding this matter, appeared on Colgate’s behalf at the December 2nd Hearing, and agreed to the February 3rd hearing date. [See, ¶¶ 10, 14, 15]. Colgate’s business decision to switch counsel weeks before a substantive hearing is its decision to make, but it is not grounds for delay. The record clearly reflects that counsel has not been recently engaged in this matter; counsel for Colgate has been engaged since October 19, 2021 at the latest – counsel for Colgate has merely been substituted. The Motion is yet another example of Colgate’s dilatory approach to this issue. Given Colgate’s own dilatory approach, its claim of unfairness is questionable. Granting Colgate’s Motion would provide an incentive to parties before the OCD to swap counsel prior to hearings in order to delay or gain extra time. The Motion is not supported by the record and should be denied.

21. In the Motion, Colgate claims that its request should be granted because Colgate is unaware of any reason why further delay would “impair Dillard’s correlative rights or result in waste”. The OCD balances correlative rights and the prevention of waste when reviewing pooling applications and entering orders, not when determining whether notice has been provided. Notice is a statutory and constitutional requirement. Dillard’s constitutional rights to due process do not turn on her ability to show that her correlative rights have also be violated. Moreover, the Motion

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via e-mail on January 24, 2022 to the following:

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By: /s/ Brandon D. Hajny
Brandon D. Hajny

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

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

CASE NOS: 22323

APPLICATION OF ELIZABETH KAYE DILLARD
TO REOPEN CASE NO. 21226 REGARDING THE
APPLICATION OF COLGATE OPERATING FOR
COMPULSORY POOLING AND NON-STANDARD
SPACING AND PRORATION UNIT,
EDDY COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS
EXAMINER HEARING
DECEMBER 2, 2021
SANTA FE, NEW MEXICO

This matter came on for virtual hearing before
the New Mexico Oil Conservation Division, HEARING OFFICER
WILLIAM BRANCARD and TECHNICAL EXAMINERS DEAN McCLURE and
DYLAN ROSE-COSS on Thursday, December 2, 2021, through the
Webex Platform.

Reported by:

Irene Delgado, NMCCR 253
PAUL BACA PROFESSIONAL COURT REPORTERS
500 Fourth Street, NW, Suite 105
Albuquerque, NM 87102
505-843-9241



1 HEARING EXAMINER BRANCARD: With that, let's go
2 to Case 22323, Elizabeth Kaye Dillard.

3 MR. MORGAN: Good morning, Mr. Examiner. Scott
4 Morgan with Cavin & Ingram now (unclear) on behalf of
5 Elizabeth Kaye Dillard.

6 HEARING EXAMINER BRANCARD: Do we have any other
7 entries of appearance for Case 22323?

8 MR. PADILLA: Yes, Mr. Examiner, Ernest L.
9 Padilla for Colgate Operating LLC.

10 HEARING EXAMINER BRANCARD: Mr. Padilla, did you
11 file an entry, or are you entering right now?

12 MR. PADILLA: I'm entering right now. I thought
13 I was in this case to begin with since it's an application
14 to reopen a prior hearing that I handled.

15 I was served with the motion to reopen. There
16 was some confusion recently because Colgate has moved to the
17 Hinkle Firm some of its cases, and so I didn't file a
18 response. After looking at the worksheet yesterday, I
19 realized that this case was going forward. My information
20 has been that up to two weeks ago, approximately two weeks
21 ago, Colgate was first (unclear) of the applicant in this
22 case, but apparently not.

23 HEARING EXAMINER BRANCARD: Okay. Let me just
24 see, are there any other interested persons in this case
25 that were other parties to the original hearing?

1 (No audible response.)

2 HEARING EXAMINER BRANCARD: Hearing none,
3 Mr. Morgan, can you give us any update on the status of this
4 case?

5 MR. MORGAN: So briefly, we don't need to
6 necessarily go through the application to reopen for lack of
7 notice, I think it speaks for itself. With respect to Mr.
8 Padilla's comment, Colgate had indicated it might be
9 interested in purchasing, and our client indicated she might
10 be willing to sell, but to date Colgate has never sent an
11 offer over. We let them know that we would request an offer
12 in writing, they have not done so with respect to that.

13 So really this case comes down to that she never
14 received notice of the opportunity to -- or notice of these
15 proceedings and the opportunity to appear at the
16 proceedings. At the end of the day she would like the
17 opportunity to present evidence of lack of good faith
18 efforts (unclear) voluntary unitization, the risk penalty is
19 too high, and ultimately she would like the opportunity to
20 participate which has been denied by Colgate.

21 HEARING EXAMINER BRANCARD: Okay. Mr. Padilla,
22 do you have any instructions from your client about which
23 way to proceed with this case or what your client would like
24 to put on?

25 MR. PADILLA: We would put on evidence that Ms.

1 Dillard probably is not the real party in interest in this
2 case any longer because our information is that she had sold
3 that interest now, and so the real party in interest would
4 be a third party. We don't know that for sure, but that's
5 the information that I got yesterday from Colgate.

6 Secondly, if you look at the Exhibit B that is
7 attached to the motion, it's a letter from one of Colgate's
8 contractors, land contractors, indicating an interest in
9 purchasing her interest, and we think there was actual
10 notice of this hearing despite the fact that the notice of
11 hearing was sent to Plano, Texas instead of (unclear)
12 Louisiana.

13 Now, there is an issue of diligence here, there
14 is an issue of -- but I think that she would nonetheless
15 have had actual notice of this hearing because of the
16 ongoing negotiations.

17 Even, even two weeks ago, as I mentioned before,
18 I had asked Colgate if I needed to file a response in this
19 case, and they said, no, we pretty much purchased this
20 interest.

21 So I suppose we could go to hearing and argue
22 whether or not she had actual notice and who the real party
23 in interest really is.

24 HEARING EXAMINER BRANCARD: Okay. So this is a
25 little unusual case here. I mean, I think what we are

1 notice.

2 Less than a month later, Colgate ultimately used
3 an address that didn't give her notice of the proceedings.
4 She has notice of the proceedings now after the fact, but
5 she didn't have an opportunity to participate.

6 HEARING EXAMINER BRANCARD: All right. So I see
7 us having a brief evidentiary hearing on the facts that you
8 have alleged, Mr. Morgan, where you can put them forward
9 however you would like, through affidavits, through
10 testimony, and Colgate can challenge or present its own
11 evidence about what happened with that particular hearing
12 and whether proper notice was given, and that would be the
13 issue, did the compulsory pooling order apply to this party,
14 or did it not apply, essentially, because there was not
15 proper notice to the party.

16 MR. MORGAN: I appreciate that, Mr. Examiner.

17 HEARING EXAMINER BRANCARD: So we just need to
18 come up with a date for this hearing.

19 MR. MORGAN: I was hoping that January 20 would
20 be --

21 HEARING EXAMINER BRANCARD: Yeah. Do you want to
22 try for February 3? I don't see this as being a terribly
23 detailed hearing. It's a pretty narrow issue.

24 MR. MORGAN: Mr. Examiner, February 3 works for
25 my client.

1 HEARING EXAMINER BRANCARD: Mr. Padilla?

2 MR. PADILLA: That works.

3 HEARING EXAMINER BRANCARD: All right. We will
4 set February 3 as a hearing on the issue of whether proper
5 notice was provided to Mr. Morgan's client and whether as a
6 result the compulsory pooling order needs to be amended to
7 reflect that. Any questions, Mr. Padilla?

8 MR. PADILLA: None.

9 HEARING EXAMINER BRANCARD: Thank you, Mr.
10 Examiner.

11 MR. MORGAN: Thank you, Mr. Examiner.

12 (Concluded.)

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Scott Morgan

From: Mark Hajdik <MHajdik@colgateenergy.com>
Sent: Tuesday, October 19, 2021 1:10 PM
To: Scott Morgan
Subject: RE: [EXTERNAL] Kaye Dillard Interests

Send to Padilla.

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300 N. Marienfeld St. | Suite 1000 | Midland, TX 79701
O: (432) 257-3886 | C: (832) 904-6006
Email: mhajdik@colgateenergy.com

From: Scott Morgan <smorgan@cilawnm.com>
Sent: Tuesday, October 19, 2021 2:09 PM
To: Mark Hajdik <MHajdik@colgateenergy.com>
Subject: RE: [EXTERNAL] Kaye Dillard Interests

***** Attention: This is an external email, use caution. *****

Thanks.

Do you have a preference on direct notice to you or Mr. Padilla?

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