

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

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

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

**Commission Case No. 21744  
Case No. 21629  
Order No. R-21575  
Order No. R-21575-A  
Order No. R-21575-B**

**PREHEARING STATEMENT**

Cimarex Energy Co., and its affiliate Magnum Hunter Production, Inc. (collectively “Cimarex”), submits the following Prehearing Statement pursuant to the rules of the Oil Conservation Division (“Division”).

**APPEARANCES**

**APPLICANT OF *DE NOVO* HEARING**

Cimarex Energy Co., and affiliate  
Magnum Hunter Production, Inc.

**ATTORNEY**

Darin C. Savage  
William E. Zimsky  
Andrew D. Schill  
Abadie & Schill, PC  
214 McKenzie Street  
Santa Fe, New Mexico 87501  
Telephone: 970.385.4401  
Facsimile: 970.385.4901  
darin@abadieschill.com  
bill@abadieschill.com  
andrew@abadieschill.com

PARTY IN OPPOSITION

Colgate Operating, LLC  
(Colgate Energy)

ATTORNEY

Ernest L. Padilla  
P.O. Box 2523  
Santa Fe, NM 87504  
Telephone: (505) 988-7577  
Email: PadillaLawNM@outlook.com

INTERESTED PARTIES

EOG Resources, Inc.

Michael H. Feldewert  
Adam G. Rankin  
Julia Broggi  
Holland & Hart LLP  
Post Office Box 2208  
Santa Fe, New Mexico 87504  
Tel: (505) 988-4421  
Fax: (505) 983-6043  
mfeldewert@hollandandhart.com  
agrarkin@hollandhart.com  
jbroggi@hollandhart.com

Trustee of the J.M. Welborn Trust

Jessica Freedson  
Senior Vice President, Legal Counsel  
Prosperity Bank f/k/a American  
State Bank, Trustee of the J.M.  
1401 Avenue Q  
Lubbock, TX 79401  
Telephone: (806) 741-2371  
jessica.freedson@prosperitybankusa.com

**STATEMENT OF CASE**

This case began with Colgate Operating, LLC, (“Colgate”) filing its application for pooling with the Division on December 8, 2020, in Case No. 21629. In its application, Colgate asserted that it “*sought, but was unable to obtain, a voluntary agreement from all interest owners*” in the proposed unit. *See* Colgate’s Pooling Application, ¶ 6 (emphasis added) (attached

hereto as Exhibit F). At the hearing, Colgate testified that it “contacted the interest owners being pooled regarding the proposed well; the pooled working interest owners have failed or refused to voluntarily commit their interests in the well.” *See* Colgate’s Exhibit B, Affidavit of Mark Hajdik, ¶ 4, Case No. 21629 (attached hereto as Exhibit G).

Under the statewide rules, an applicant is required to provide “evidence of *attempts* the applicant made to gain voluntary agreement including but not limited to copies of relevant correspondence.” NMAC 19.15.4.12A(b)(vi) (emphasis added). Colgate had not contacted Cimarex in a manner where it “sought” a voluntary agreement from Cimarex, nor had Cimarex been provided, through good-faith negotiations, an opportunity to fail or refuse to commit to a voluntary agreement. A well proposal, as the initial expression of intent to drill a well, is an invitation to negotiate, that in and of itself, does not constitute negotiations. Operators often send out numerous well proposals without ever drilling a well or filing for a pooling hearing. Colgate never followed up with Cimarex on its well proposal in Case No. 21629. *See* Exhibit C, attached hereto, representing the sole communication between Colgate and Cimarex, an email which Cimarex initiated on August 18, 2020, with Colgate responding with a short email on August 31, 2020, but providing no follow-up to the information requested.

Furthermore, notice required to be sent to owners as part of the pooling process only provides notice that a hearing will be conducted on a particular date. *See* NMAC 19.15.4.9 (stating that notice “shall include a copy of the application; the hearing’s date, time and place; and how protests may be made.”) The letter notice, and its contents, provide no evidence of attempts to gain a voluntary agreement, and the dearth of Colgate’s email correspondence and communications with Cimarex prior to the hearing provides conclusive evidence that Colgate

failed to make attempts to reach a voluntary agreement, directly contradicting Colgate's statements to the Division in its application and testimony.

Despite the only communication between Colgate and Cimarex being the email in Exhibit C, as initiated by Cimarex, Colgate painted for the Division a picture of extensive communications with Cimarex and the other parties leading up to the application and hearing. *See* Colgate's Exhibit B.3, Communication Timeline, Case No. 21629 (attached hereto as Exhibit H). Colgate stated that from August 2020 through January 2021, it responded to various email questions from WPX, Cimarex and others. Given that Colgate only responded to Cimarex once on August 31, 2020, and did not follow up with the information requested, this assertion is a misrepresentation. In actuality, the time from September 1, 2020, to January 2021, and to the notice of the hearing, Colgate did not communicate, nor attempt to communicate, with Cimarex.

Colgate's assertions in its Exhibit B.3 (Exhibit H herein) also contradict the Pre-hearing Statement ("PHS") filed by Prosperity Bank f/k/a American State Bank, Trustee of the J.M. Welborn Trust ("Bank Trustee"). The Bank Trustee, who points out it "invested time and money in determining a market value for an assignment of the interest," shows that Colgate was substantively unresponsive to its efforts to communicate and negotiate. After receiving the well proposal dated July 10, 2020, the Bank Trustee reached out to Colgate by email on July 16, 2020, receiving no response. *See* Exhibit C, attached hereto. Consequently, the Bank Trustee sent a follow-up email on July 30, 2020, without a response, which prompted a third email from the Bank Trustee on August 19, 2020. *See id.* The third email finally prompted a single response from Colgate, with vague language that Colgate would have "a meeting with management to 'see what we can offer.'" *Id.*

According to the Bank Trustee, that was the last communication that it received from Colgate prior to the hearing until receipt of Colgate's notice letter on December 21, 2020. *See id.* Prior to the filing of the PHS, Colgate failed to send a formal offer, failed to enter into good-faith negotiations or make any direct attempts to acquire the Bank Trustee's interest, and failed to send the Bank Trustee any form of assignment for the Trustee to review. Thus, as with Cimarex, Colgate's assertions in its application and testimony are in fact misrepresentations. Prior to the PHS, the time period during which Colgate had a statutory obligation to engage in good-faith negotiations, Colgate did not seek to obtain a voluntary agreement, nor did Colgate provide conditions, as by which the Bank Trustee could fail or refuse to enter into a voluntary agreement. As clearly stated by the Bank Trustee, "The Trustee has shown its willingness to assign its interest. Colgate indicated they would make an offer, but to date [January 4, 2021, the filing of the PHS], an offer has not been received."

However, Colgate stated in its hearing exhibit that from July 2020 through January 2021, it had "various email exchanges with JM Welbourn Trust," which misrepresented to the Division that it engaged in good-faith negotiations multiple times; Colgate further states that on December 31, 2020, it provided [an] offer to purchase [the] JM Welborn Trust interest that aligns in price with others accepted in the spacing unit." *See* Exhibit H, attached hereto. Colgate's alleged offer was asserted as being made on December 31, 2020, but this directly contradicts the statements filed by the Bank Trustee, on January 4, 2021, that no offer had been made as of that date.

The efforts of the Bank Trustee, filing the PHS and making an appearance at the hearing, finally prompted Colgate to make a formal offer. At the hearing, counsel for Colgate stated that it was its understanding that an agreement has been reached between Colgate and J.M. Wellborn Trust. *See* Transcript of Case No. 21629, January 7, 2021, p. 5, 8-25 (attached hereto as Exhibit

E). If this is the case, then based on the statements in the Bank Trustee's PHS, Colgate did not reach out with a formal offer until the date of the PHS, January 4, 2021, and before the hearing on January 7, 2021, a last-minute effort by Colgate that does not demonstrate good-faith negotiations prior to its application and that fully inconvenienced the Bank Trustee.

Furthermore, it should be noted that Colgate did not remove the J.M. Wellborn Trust from the parties that were pooled. Currently, the status of the agreement is not publicly known. If Colgate has not to date honored the agreement, as referenced in the testimony before Division, which allowed Colgate to proceed by affidavit and pool the Trust, then it would have pooled the Trust under misleading pretenses, subjecting the Trust to a 200% risk penalty that diminishes the value of the Trust's interest below market value. In this evidentiary hearing, Cimarex respectfully requests that the New Mexico Oil Conservation Commission ("Commission") review the facts surrounding this agreement to determine the manner in which it arose and its current status.

Overall, the evidence provided in this hearing reflects Colgate's absence of communications and correspondence. When there is such a dearth of communication, it takes only a couple of exhibits to outline when the communications occurred and Colgate's unresponsiveness that ensued. Exhibits C and D, herein, document when Colgate communicated with Cimarex, as well as the Bank Trustee, and demarcate the months of Colgate's radio silence leading up to the filing of the application and the hearing, thereby, confirming Colgate's lack of good-faith negotiations. The Exhibits stand in stark contrast to the assertions and misrepresentations inherent in Colgate's application, testimony, and exhibits.

**APPLICANT’S PROPOSED EVIDENCE**

WITNESSES	ESTIMATED TIME	EXHIBITS
John Coffman - Landman See Exhibit A for credentials	Approx. 30 min	Approx. 6
Riley Morris – Landman See Exhibit B for credentials	Approx. 30 min	Approx. 2

**PROPOSED EVIDENCE OF PARTY IN OPPOSITION**

WITNESSES	ESTIMATED TIME	EXHIBITS
To be determined		

**PROCEDURAL MATTERS**

Exhibits that will be utilized and referred to in the Evidentiary Hearing are attached hereto pursuant to NMAC 19.15.4.13B(2). They include: (1) Self-Affirmed Statement of John Coffman (attached hereto as Exhibit A); (2) Self-affirmed Statement of Riley Morris (attached hereto as Exhibit B); (3) Cimarex’s Exhibit 1 from Application to Reopen Case No. 21629 (attached hereto as Exhibit C); (4) Cimarex’s Exhibit 2 from Application to Reopen Case No. 21629 (attached hereto as Exhibit D); (5) Transcript of Case No. 21629, January 7, 2021, p. 5, 8-25 (attached hereto as Exhibit E); (6) Colgate’s Pooling Application, ¶ 6, (attached hereto as Exhibit F); (7) Colgate’s Exhibit B, Affidavit of Mark Hajdik, ¶ 4 (attached hereto as Exhibit G); and (8) Colgate’s Exhibit B.3, Communication Timeline, Case No. 21629 (attached hereto as Exhibit H).

Furthermore, in its final “Commission Conclusions” issued in response to the Motion Hearings of these proceedings, the Commission ruled: “The Commission does find Cimarex’s accusations of material misrepresentation by Colgate to be not only *compelling* but also concerning given that misrepresentations in pleadings undermine both the administrative and

judicial legal systems, specifically as to any particular case. Cimarex supported its misrepresentation allegation with documentary evidence.” Commission Order No. R-21679, §II, ¶ j (emphasis added).

Black’s Law Dictionary defines “compelling” as “convincing.” See Black’s Law Dictionary, 7<sup>th</sup> Ed. (“compel, vb. . . . 2. (Of a legislative mandate or *judicial precedent*) to convince (a court) that there is *only one possible resolution* of a legal dispute.”) (emphasis added).

Cimarex therefore respectfully submits that the Commission in its adjudicatory capacity has made a judgment on Cimarex’s arguments, as supported by its documentary evidence, that the Commission finds Cimarex’s position compelling, and therefore, convincing, subject to the legal definition that, at this point in the proceedings, there is only one possible resolution of this legal dispute. Accordingly, Cimarex respectfully requests that the Commission acknowledge, based on its own conclusion, that a rebuttal presumption has been established that Colgate did engage in false representations before the Division and acted in bad faith by failing to properly negotiate and seek a voluntary agreement with Cimarex. Cimarex submits that the burden in this evidentiary hearing is on Colgate to show that it did not engage in misrepresentations before the Division, nor did it act in bad faith through its lack of negotiations and communications. Colgate’s failure to convince the Commission otherwise, and overcome this presumption, should result in a ruling for Cimarex.

Respectfully submitted,

ABADIE & SCHILL, PC

/s/ Darin C. Savage

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Darin C. Savage  
William E. Zimsky  
Andrew D. Schill  
214 McKenzie Street



Santa Fe, New Mexico 87501  
Telephone: 970.385.4401  
Facsimile: 970.385.4901  
darin@abadieschill.com  
andrew@abadieschill.com  
bill@abadieschill.com

**Attorneys for Cimarex Energy Co., and  
affiliate Magnum Hunter Production, Inc.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was filed with the New Mexico Oil Conservation Commission and was served on counsel of record via electronic mail on February 15, 2022:

Ernest L. Padilla  
P.O. Box 2523  
Santa Fe, NM 87504  
Telephone: (505) 988-7577  
Email: PadillaLawNM@outlook.com  
*Attorney for Colgate Operating, LLC  
And Colgate Energy*

Michael H. Felderwert  
Adam G. Rankin  
Julia Broggi  
Kaitlyn A. Luck  
Post Office Box 2208  
Santa Fe, NM 87504  
505-998-4421  
505-983-6043 Facsimile  
mfelderwert@hollandhart.com  
agrarkin@hollandhard.com  
jbroggi@hollandhart.com  
kaluck@hollandhart.com  
*Attorneys for Matador Production Company*

Jessica Freedson  
Senior Vice President, Legal Counsel  
Prosperity Bank f/k/a American  
State Bank, Trustee of the J.M.  
1401 Avenue Q  
Lubbock, TX 79401  
Telephone: (806) 741-2371  
jessica.freedson@prosperitybankusa.com  
*Attorney for the W.H. Welborn Trust*

/s/ Darin C. Savage

\_\_\_\_\_  
Darin C. Savage

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**Commission Case No. 21744  
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Order No. R-21575  
Order No. R-21575-A  
Order No. R-21575-B**

**SELF-AFFIRMED STATEMENT OF JOHN COFFMAN**

STATE OF TEXAS            )  
  ) ss.  
COUNTY OF MIDLAND    )

I, being duly sworn on oath, state the following:

1. I am over the age of eighteen years and have the capacity to execute this Affidavit, which is based on my personal knowledge.
2. I graduated from Texas Tech University with a bachelor’s degree in Energy Commerce in 2018. I am employed as a Landman with Cimarex Energy Co. (“Cimarex”) and have worked at Cimarex for approximately 4 years. I have not previously testified before the New Mexico Oil Conservation Commission (“Commission”), and I am attaching a one-page resume of my credentials for the Commission’s review that show my experience as a landman.
3. My testimony is submitted to provide an accurate overview, facts, and history of my experience and communications with Colgate Energy (“Colgate”) during the time after receiving the Meridian well proposal dated July 10, 2020, and the time leading to Colgate’s filing its pooling application and the hearing itself.

**EXHIBIT  
A**

4. When Cimarex received Colgate's well proposal, for its Meridian well, as proposed in the Case No. 21629, I was the Landman who reached out to Colgate and initiated contact with my email dated August 18, 2020. Exhibit 1, from Cimarex's Application to Reopen Case No. 21629, included herein as Exhibit C, is an exact copy of my email exchange with Colgate. As you can see in my email, I asked a specific question about Colgate's plans for the Meridian well and mentioned the possibility for a JOA for the entire north half. At that time, based on the descriptions in well proposal, we could not determine Colgate's plans, whether they planned a unit in the N/2 N/2 of the sections or the S/2 N/2, or a unit that would encompass all of the N/2.

5. As you can see from Colgate's email response dated August 31, 2020, Colgate did not answer my question but said generally that our operated strip is the N/2 N/2, which abuts several units due north, and that Colgate would be happy to talk some options for the development of the area. Based on this response, I assumed, as I believe it was reasonable for me to do given the standards and customs of the industry, that if Colgate decided to go forward with the well proposal, that Mr. Hajdik would reach out to me with additional information and seek an agreement as every operator who works in New Mexico and goes before the Oil Conservation Division ("Division") is required to do.

6. The Commission should know that oil companies receive well proposals all the time, more than are actually drilled or go to a pooling hearing. As a result, we try to identify and triage the best we can those well proposals that are moving forward. As Landmen, we have to rely on the operator who proposes a well to reach out and enter into good faith negotiations prior to proceeding with pooling or drilling the unit. It's the only way to manage the volume of well proposals that we receive. Not only is this duty codified in the pooling rules, but it's just how we expect things should be done so that we can all get along and respect everyone's interests.

7. However, in this case, Mr. Hajdik did not reach out or communicate with any of the landman at Cimarex, including me, after this one short exchange, resulting in a four-month period without a word. Our land team has regular meetings to discuss any new developments or communications, and I would have heard if any of our landmen received communications or proposed agreements.

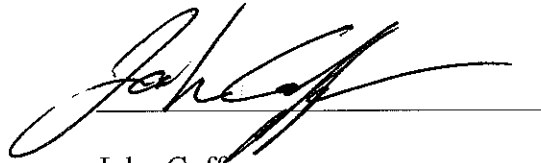
8. I have reviewed Colgate's pooling application and testimony in Case No. 21629 had have reviewed its exhibits. I can state that Colgate did not seek a voluntary agreement from Cimarex, nor were we provided a voluntary agreement that we could refuse or fail to enter.

9. I can further state that Colgate did not respond to various questions after the one email exchange in August 2020, which does not correspond with Colgate's representations in its Exhibit B.3 where it stated it responded to questions with Cimarex through January 2021.

10. This testimony is true and accurate to the best of my understanding knowledge.

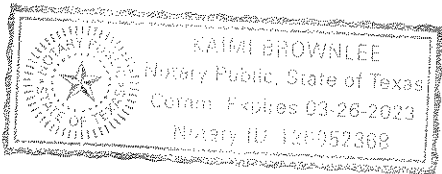
*[Signature page follows]*

FURTHER AFFIANT SAYETH NAUGHT



John Coffman

Subscribed to and sworn before me this 10 day of February 2022.



Notary Public

# John Coffman

710 W. Nobles Ave • Midland, TX • jcoffman@cimarex.com • 720-320-7285

## *Education*

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Texas Tech University, Rawls College of Business  
Bachelor of Business Administration in Energy Commerce  
GPA: **3.10**

Lubbock, TX  
August 2013-May 2018

## *Energy Experience*

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### **Cimarex Energy Co.**

Landman

Midland, TX  
June 2018-Present

- Oversee Delaware Basin assets in Lea County.
- Analyze and facilitate trades between other operators in both Eddy and Lea Counties.
- Assist in future drilling development program through leasing, Joint Operating Agreements, title review and curative.
- Manage non-operated assets by reviewing proposals, transactions, and other agreements throughout Northern Lea County.
- Determine leasehold and royalty ownership throughout company owned assets.
- Acquire and divest leasehold and wellbores in the Permian Basin.

### **Conquest Energy**

Contract Landman

Houston, TX  
May 2017 – August 2017

- Contact, and lease mineral owners in North Dakota , Texas and New Mexico.
- Analyze, draft and negotiate Oil and Gas Leases and various other contracts for the clients past and future operations.
- Evaluate client Joint Operating Agreements for onerous Preferential Rights, consents or other requirements.
- Perform due diligence for client acquisitions.
- Research, identify and determine the status of title for open, leased and HBP acreage.

### **Infinity Oil and Gas**

Internship

Denver, CO  
May 2014-August 2015

- Studied and discussed leases, JOA's, Surface Use Agreements, Exploration Agreements, Division Orders, and resolved Bureau of Land Management issues.
- Analyzed title to find available leasehold ownership of producing properties with split depth ownership in order to secure land needed for key portions of the lease.
- Learned basic petroleum geology and workstation mapping from an in-house geologist to gain a better understanding of where and why the land is valuable.
- Completed full due diligence report with a team for a land acquisition to ensure accuracy in title and improve the efficiency of the deal.

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**APPLICATION OF COLGATE OPERATING, LLC  
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EDDY COUNTY, NEW MEXICO.**

**Commission Case No. 21744  
Case Nos. 21629  
Order No. R-21575  
Order No. R-21575-A  
Order No. R-21575-B**

**SELF-AFFIRMED STATEMENT OF RILEY MORRIS**

STATE OF TEXAS            )  
  ) ss.  
COUNTY OF MIDLAND    )

I, being duly sworn on oath, state the following:

1. I am over the age of eighteen years and have the capacity to execute this Affidavit, which is based on my personal knowledge.
2. I graduated in 2010 from Texas Tech University with a bachelor's degree in Business Administration with emphasis in Energy Commerce. I am employed as a Landman with Cimarex Energy Co. ("Cimarex") and have worked at Cimarex for three years and have worked in New Mexico for three years. I have testified previously before the New Mexico Oil Conservation Division ("Division") and my credentials and testimony has been accepted as credible.
3. I am the primary Landman for Eddy and John Coffman was assisting me due to the large volume of OBOs received in 2020. I work closely with John Coffman on well projects and attend team meetings during which we review and discuss our development plans and proposals for development plans provided by other operators that affect our interests.

**EXHIBIT  
B**



4. After the dates of Mr. Coffman's email exchange, I had meetings and discussions with Mr. Coffman regarding the status of our interests with Colgate as required by our land team, and I reviewed copies of his email exchange with Colgate. As a team policy, Landmen are required to inform the team of any communications they receive regarding our interests and poolings which affect our interests. Outside this one email exchange, Mr. Coffman was not able to provide any additional email or mention any communications with Colgate, as would have been required if any were received.

5. I am familiar with the Landmen of Colgate and have worked with them on other projects, including projects during the time after receipt of the Meridian well proposal involved in these matters. Colgate would have known that I am a Landman for Cimarex involved in well projects, and they know my contact information. I received no communications nor attempts to communicate or negotiate over these matters, and I did not receive a request to enter into a voluntary agreement, nor did our land team receive any agreement or attempts to reach an agreement. Our team had one email exchange with Colgate through Mr. Coffman, and this one exchange does not correspond to the representations made by Colgate in its Exhibit B.3, in which it stated that it responded to questions with Cimarex through January 2021.

*[Signature page follows]*

FURTHER AFFIANT SAYETH NAUGHT



---

Riley Morris

Subscribed to and sworn before me this 15 day of February 2022.



---

Notary Public

From: Mark Hajdik <MHajdik@colgateenergy.com>  
Subject: [External] RE: Meridian Proposal  
Date: August 31, 2020 at 9:28:14 PM MDT  
To: John Coffman <jcoffman@cimarex.com>

**WARNING:** This email originated from outside of Cimarex Energy. Do not click links or open attachments unless you recognize the sender, are expecting the content and know it is safe.

John,

As you probably noted, our operated strip is the N2 N2, which abuts to several additional operated units in the section due north. Due to our consolidated operational efficiencies we would be happy to talk some options for the offsetting acreage in order to fully maximize the development of the area.

Thanks,  
Mark

**Mark Hajdik | Colgate Energy | Senior Landman**  
**300 N. Marienfeld St. | Suite 1000 | Midland, TX 79701**  
O: (432) 257-3886 | C: (832) 904-6006  
Email: [mhajdik@colgateenergy.com](mailto:mhajdik@colgateenergy.com)

**From:** John Coffman <jcoffman@cimarex.com>  
**Sent:** Tuesday, August 18, 2020 1:38 PM  
**To:** Mark Hajdik <MHajdik@colgateenergy.com>  
**Subject:** [EXTERNAL] Meridian Proposal

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

Mark,

I just took over this proposal over here in our camp. Just had a quick question, are y'all planning on drilling just the N2N2 2 mile or are there any development plans for the S2N2 that might make this a N2 JOA? I know Mewbourne operates the S2N2 in Section 3. Just trying to get a

EXHIBIT  
C

feel of what your plans are in the area.

Thank you,

**John Coffman**



Landman

600 N. Marienfeld St., Suite 600

Midland, TX 79701

Direct: 432.571.7883

[jcoffman@cimarex.com](mailto:jcoffman@cimarex.com)

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



APPLICATION OF COLGATE OPERATING, LLC  
FOR COMPULSORY POOLING,  
EDDY COUNTY, NEW MEXICO

CASE NO. 21629

PRE-HEARING STATEMENT  
OF  
PROSPERITY BANK F/K/A AMERICAN STATE BANK  
AS TRUSTEE OF THE J.M. WELBORN TRUST

Prosperity Bank f/k/a American State Bank, Trustee of the J.M. Welborn Trust (“Trustee”) received a letter from Colgate dated July 10, 2020 notifying the Trustee of the proposed well and indicating that Colgate would be interested in acquiring the Trustee’s interest. The Trustee contacted Colgate by e-mail on July 16, 2020. Follow-up e-mails were sent on July 30, 2020 and August 19, 2020. On the latter date, Colgate responded to the Trustee’s inquiry. The Trustee sent another e-mail on August 19, 2020 notifying Colgate that the Trustee would be interested in an assignment of the interest held by the Trustee. Colgate promptly responded on the same date and notified the Trustee that there would be a meeting with management to “see what we can offer here.” That was the last communication that the Trustee received from Colgate until a letter from Colgate’s attorney regarding this Application and the hearing was received on December 21, 2020.

The Trustee has invested time and money in determining a market value for an assignment of the interest. The Trustee does not desire to participate in the well and wishes to reach an agreement with Colgate for an assignment of the interest at a market rate. In its Application, Colgate indicated that it “has been unable to obtain” a voluntary agreement from all interested owners. The Trustee has shown its willingness to assign its interest. Colgate indicated they would make an offer, but to date, an offer has not been received.

Respectfully submitted,

Prosperity Bank f/k/a American State Bank, Trustee  
of the J.M. Welborn Trust

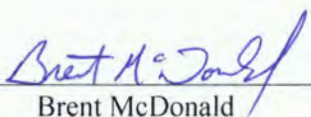
By:   
Brent McDonald  
Senior Vice President  
1401 Avenue Q  
Lubbock, TX 79401  
Telephone: 806.741.2371  
[brent.mcdonald@prosperitybankusa.com](mailto:brent.mcdonald@prosperitybankusa.com)

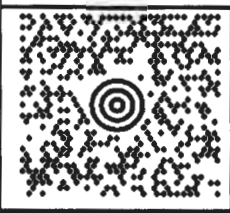
EXHIBIT  
D

BILLIE MCMINN  
806-741-2370  
PROSPERITY BANK 227  
1401 AVENUE Q  
LUBBOCK TX 79401

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1 OF 1

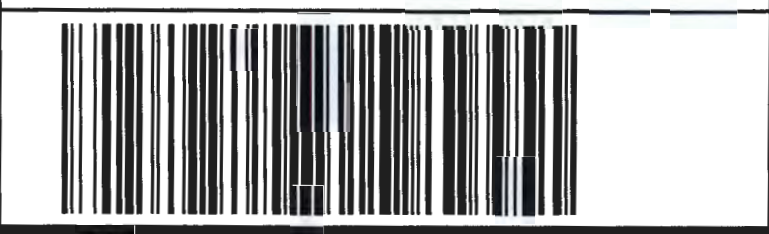
**SHIP TO:**  
OIL CONSERVATION DIVISION  
DEPT. OF ENERGY, MINERALS, NAT. RES  
1220 SOUTH ST., FRANCIS DRIVE  
**SANTA FE NM 87505-4225**



**NM 875 0-03**



**UPS NEXT DAY AIR** **1**  
TRACKING #: 1Z F7F 455 01 9163 7794



BILLING: 3RD PARTY

Reference # 1: 311  
Reference # 2: J. M. Welborn

CS 22.0.12. WNTNVS0 39.0A 11/2020\*



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

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

CASE NO. 21629

APPLICATION OF COLGATE OPERATING, LLC  
FOR COMPULSORY Pooling,  
EDDY COUNTY, NEW MEXICO

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

THURSDAY, JANUARY 7, 2021

This matter came on for hearing before the  
New Mexico Oil Conservation Division, WILLIAM  
BRANCARD, Hearing Examiner, DYLAN ROSE-COSS and  
Dean McCLURE, Technisal Examiners, via Cisco  
Webex Virtual Meeting Platform

Reported by: Mary Therese Macfarlane  
New Mexico CCR No. 122  
PAUL BACA PROFESSIONAL COURT REPORTERS  
500 Fourth Street NW, Suite 105  
Albuquerque, New Mexico 87102  
(505) 843-9241

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1 MR. McDONALD: Yes, on behalf of the J. M.  
2 Wellborn Trust.

3 HEARING EXAMINER BRANCARD: Right. Okay.

4 Are there any other interested parties in  
5 this case, Case 21629?

6 Hearing none, let's start with Mr. Hough.  
7 How do you want to proceed in this matter?

8 MR. HOUGH: Mr. Examiner, I believe the parties,  
9 being the J.M. Wellborn Trust and Colgate, have reached an  
10 agreement that -- uh, assuming that's what drew the  
11 Division to set it for a status conference, Colgate is  
12 prepared to present this matter by affidavit this morning.  
13 We've submitted an exhibit packet timely, so, you know,  
14 obviously we would like to proceed by affidavit presenting  
15 this case. And my understanding is there an agreement has  
16 been reached with J.M. Wellborn Trust.

17 HEARING EXAMINER BRANCARD: Okay. Examiners,  
18 are you okay with this going by affidavit today?

19 HEARING EXAMINER ROSE-COSS: I'm okay if Mr.  
20 McDonald is.

21 EXAMINER McCLURE: I have no problems.

22 MR. McDONALD: Oh, this is Brent McDonald. We  
23 do have an agreement to the basic terms of an Assignment.  
24 We are reviewing the Assignment, the form that they sent  
25 to us this morning.



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

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

CASE NO. \_\_\_\_\_

**APPLICATION**

Colgate Operating, LLC (“Colgate”), OGRID Number 371449, through its undersigned attorneys, hereby makes an application to the Oil Conservation Division pursuant to the provisions of NMSA (1978), Section 70-2-17, for an order pooling all uncommitted mineral interests within a Bone Spring horizontal spacing unit underlying the N/2 N/2 of Section 3 and the N/2 N/2 of Section 2, Township 20 South, Range 29 East, NMPM, Eddy County, New Mexico. In support of this application, Colgate states as follows:

1. Colgate is an interest owner in the subject lands and has a right to drill a well thereon.
2. Colgate seeks to dedicate the N/2 N/2 of Section 3 and the N/2 N/2 of Section 2, Township 20 South, Range 29 East, NMPM, Eddy County, New Mexico to form a 320-acre, more or less, Bone Spring horizontal spacing unit.
3. Colgate plans to drill the **Meridian 3 Fed State Com 13H** well to a depth sufficient to test the Bone Spring formation. This is a horizontal well with a surface location in the NW/4 NW/4 (Unit D) of Section 3, Township 20 South, Range 29 East, NMPM, Eddy County, and an intended bottom hole location in the NE/4 NE/4 (Unit A) of Section 2, Township 20 South, Range 29 East, NMPM, Eddy County.

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4. This well is proposed to be drilled vertically to a depth of approximately 9,125' to the Bone Spring formation and laterally in a easterly direction within the formation to the referenced bottom hole location.

5. This well will be located within the Parkway; Bone Spring Pool (Code 49622) and will comply with the Division's setback requirements.

6. Colgate sought, but has been unable to obtain, a voluntary agreement from all interest owners in the Bone Spring formation underlying the proposed spacing unit to participate in the drilling of the well or to otherwise commit their interests to the well.

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

WHEREFORE, Colgate requests that this case is set for hearing before an Examiner of the Oil Conservation Division on January 7, 2020, and after notice and hearing as required by law, the Division enter its order:

A. Creating an approximately 320-acre horizontal spacing unit in the Bone Spring formation comprised of N/2 N/2 of Section 3 and the N/2 N/2 of Section 2, Township 20 South, Range 29 East, NMPM, Eddy County, New Mexico;

B. Pooling all mineral interests in the Bone Spring formation underlying a horizontal spacing unit within the N/2 N/2 of Section 3 and the N/2 N/2 of Section 2, Township 20 South, Range 29 East, NMPM, Eddy County, New Mexico;

C. Designating Colgate as operator of this unit and the well to be drilled thereon;



contact information for parties entitled to notification. I mailed all working interest owners a well proposal and an Authorization for Expenditure, and a form of Operating Agreement upon request.

5. No opposition is expected. Prior to filing its application, Colgate contacted the interest owners being pooled regarding the proposed well; the pooled working interest owners have failed or refused to voluntarily commit their interests in the well. Colgate provided all of the working interest owners, any unleased mineral owners, and overriding royalty owners with notice of this application, and none have entered an appearance in opposition to Colgate's application.

6. In its Application, Colgate seeks an order from the Division: (1) to the extent necessary, approving the creation of a 320-acre, more or less, Bone Spring horizontal spacing unit; and, (2) pooling all uncommitted mineral interests within a Bone Spring horizontal spacing unit underlying the N/2 N/2 of Section 3 and the N/2 N/2 of Section 2, Township 20 South, Range 29 East, NMPM, Eddy County, New Mexico. This spacing unit will be dedicated to the **Meridian 3 Fed State Com 131H** well, to be horizontally drilled. The Application is attached hereto as **Exhibit B.1**.

7. Attached as **Exhibit B.2** is a draft plat for the proposed well. The well will develop the Parkway; Bone Spring Pool (Code 49622). The producing interval for the well will be orthodox and comply with the Division's set back requirements, as the first and last take points will be no closer than 100' from the proposed unit boundary and the completed lateral will be no closer than 330' from the proposed unit boundary.

8. Attached as **Exhibit B.3** is a summary of communications with non-joined working interest owners regarding proposed well within the unit that is the subject of this application.

9. Attached as **Exhibit B.4** is a lease tract map outlining the tracts in both of the proposed units, a list of the working interest owners in the proposed units with their respective

## Communication Timeline

**July 10, 2020** – Proposals sent for the Meridian 3 Fed State Com 131H

**October/November, 2020** – Various trade proposals exchanged with Concho along with a number of communications between Colgate and Concho on trade ideas that included this well. Ultimately trade negotiations were unsuccessful, and no trade was completed.

**August 2020** - Ramsland Oil and Gas, Bahnhof, and Robinson elected to participate, but have not signed the Operating Agreement to date

**September 2020-January 2021** – Reached agreement and finalizing purchase of Manada and Canyon's interest in the spacing unit.

**August 2020-January 2021** – responded to various email questions from WPX, Cimarex, and a number of small WI owners who have not made any affirmative decision regarding their participation or willingness to sell

**July 2020-January 2021** – Various email exchanges with JM Welborn Trust

**July 2020-October 2020** – Challenger, Jerlyn, Marshall & Winston, Hill Royalty, and Petrohill returned AFEs but have not yet signed JOAs.

**December 2020** – Conoco has agreed to participate, but has not yet executed the Operating Agreement

**December 31, 2020** - Provided offer to purchase JM Welborn Trust interest that aligns in price with other accepted offers in the spacing unit

**January 4, 2021** – Exchanged emails with JM Welborn Trust regarding counter-offer

**January 4, 2021** – As of this date a number of the parties have not responded to the notices or have provided follow up decisions regarding their intent to sell or participate

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