

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

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

**CASE NOS. 22702-22705**

**APPLICATIONS OF MEWBOURNE OIL COMPANY  
FOR COMPULSORY POOLING,  
EDDY COUNTY, NEW MEXICO**

**CASE NOS. 22427–22428  
and 22721–22722**

**COLGATE OPERATING LLC’S MOTION FOR CONTINUANCE, TO REVISE THE  
AMENDED PRE-HEARING ORDER, AND REQUEST FOR EXPEDITED DECISION**

Colgate Operating, LLC (“Colgate”) moves to (1) continue the September 15, 2022 hearing currently scheduled in the above-captioned cases and in lieu thereof hold a status conference; and (2) revise the amended pre-hearing order to reflect the revised hearing date for these matters. Moreover, given the filing deadlines reflected in the amended pre-hearing order for the September 15, 2022 hearing, Colgate respectfully requests an expedited decision on this motion. As grounds for this motion, Colgate states as follows:

**BACKGROUND**

1. In the above-captioned cases, Colgate and Mewbourne Oil Company (“Mewbourne”) have filed competing applications and both parties seeks to pool uncommitted mineral interest owners within Bone Spring horizontal spacing units underlying Sections 25 and 26, Township 18 South, Range 30 East, Eddy County, New Mexico.

2. On December 7, 2021, Mewbourne filed its applications in Case Nos. 22427 and 22428 covering the N/2 of Sections 25 and 26. On December 30, 2021, Colgate entered its

appearance and objected to the presentation of these cases by affidavit under Rule 19.15.4.12(A)(1)(b).

3. On March 22, 2022, Colgate filed its applications in Case Nos. 22702–22705. These cases cover both the N/2 and the S/2 of Sections 25 and 26. To date, Mewbourne has not entered an appearance in Colgate’s cases.

4. On April 4, 2022, Mewbourne filed its applications in Case Nos. 22721 and 22722 covering the S/2 of Sections 25 and 26. On April 26, 2022, Colgate entered its appearance and objected to the presentation of these cases by affidavit under Rule 19.15.4.12(A)(1)(b) NMAC.

5. On May 6, 2022, the Division entered a pre-hearing order which set the above-referenced cases for a contested hearing on August 4, 2022.

6. On July 25, 2022, the parties filed joint motion for continuance and to vacate the pre-hearing order, and asked that the cases be continued to September 15, 2022.

7. On July 26, 2022, the Division entered an amended pre-hearing order which set the above-referenced cases for a hearing on September 15, 2022.

### **ARGUMENT**

8. The September 15, 2022 hearing for the above-referenced cases should be continued for two reasons. First, additional time is needed to allow the parties to continue good-faith negotiations. If they are unable to reach agreement, whichever party fails to prevail at the Division hearing is certain to appeal de novo to the Commission. Therefore a Division hearing is a waste of administrative resources. Second, Colgate recently merged with Centennial Resources Development, Inc. (“Centennial”) to form Permian Resources Corporation, and its personnel have not had sufficient time to prepare for this hearing. Therefore, in order to afford Colgate a full opportunity to present evidence, and to prevent a waste of time for both the parties and the

Division, the Division should continue these cases to the next available docket or a special hearing date and amend the pre-hearing order accordingly.

9. To begin, the Division should continue the cases to allow for more time for the parties to engage in good-faith negotiations and avoid wasting time and resources on a contested hearing when the parties are likely to work out a trade which would allow these cases to be presented by affidavit. As demonstrated below, the parties expended substantial time and effort in attempting to work out a trade in this acreage, and those efforts should be allowed to continue without the need for a hasty contested hearing.

10. After the parties filed their respective applications, in May of 2022, Mewbourne's representatives approached Colgate regarding a potential trade agreement which would resolve the need for a contested hearing in these cases. *See* Exhibit A, Declaration of Mark Hajdik, ¶ 3. Under the terms of the trade, each party would operate the portion of the acreage in which it had the majority of the working-interest control. *See* Ex. A, Hajdik Decl., ¶ 4.

11. The parties reached a tentative agreement regarding Mewbourne's proposed trade proposal and further agreed to work out the details of the trade in the following months. *See* Ex. A, Hajdik Decl., ¶ 5.

12. During July of 2022, the parties continued to develop the details of the proposed trade agreement. *See* Ex. A, Hajdik Decl., ¶ 6. Because of the ongoing negotiations, the parties agreed to continue the hearing for these cases to September 15, 2022, to allow for more time to finalize the trade agreement. *See* Ex. A, Hajdik Decl., ¶ 6; *see also Joint Motion for Continuance and to Vacate the Pre-Hearing Order*, filed July 25, 2022.

13. In early-September of 2022, Mewbourne and Colgate met in an attempt to resolve an unrelated legal issue pertaining to other lands that had stymied finalizing the terms of a trade.

See Ex. A, Hajdik Decl., ¶ 8. At the conclusion of the meeting, Mewbourne indicated that it would formulate ideas to resolve the unrelated legal issue, which would possibly include the trade for the acreage at issue in these cases. *Id.*

14. Since the early-September meeting between the parties, Mewbourne has not provided a revised resolution to the proposed trade agreement as it indicated it would do. See Ex. A, Hajdik Decl., ¶¶ 10–11.

15. Instead, Mewbourne's counsel stated on September 8, 2022 that Mewbourne was ready to move forward with drilling its wells, and was willing to continue discussions with Colgate *after* the September 15, 2022 hearing.

16. Mewbourne's bad-faith negotiations with Colgate have unfairly prejudiced Colgate's ability to prepare for the September 15, 2022 hearing. In reasonable reliance on Mewbourne's representations, Colgate's personnel were devoted to the merger transaction with Centennial which closed on September 1, 2022. See Ex. A, Hajdik Decl., ¶¶ 10, 14. Even after the early-September meeting, Colgate was confident that the parties would finalize their agreement to trade the acreage at issue and proceed with un-contested pooling cases. *Id.* ¶ 9.

17. Colgate's personnel have had to commit numerous work hours in preparation for and as part of the merger. See Ex. A, Hajdik Decl., ¶ 14. These activities have taken away their ability to spend substantial time preparing for a contested hearing. *Id.* Additionally, over the last two weeks individuals have been receiving their employment placement in the merged company which has resulting in staffing changes and shortfalls, and re-assignment of employees' responsibilities. See *id.*

18. The fact that Colgate will be unable to present direct testimony in support of its case will severely prejudice Colgate's position in these cases. See Ex. A, Hajdik Decl., ¶ 15; see

also Rule 19.15.4.17(A) (“Subject to other provisions of 19.15.4.16 NMAC, the commission or division examiner *shall afford full opportunity to the parties* at an adjudicatory hearing before the commission or division examiner *to present evidence* and to cross-examine witnesses.” (emphasis added)).

19. The fact of the merger, taken together with Mewbourne’s last-minute refusal to negotiate with Colgate, has resulted in substantial prejudice to Colgate’s ability to plan and prepare for the September 15, 2022 hearing in these cases. *See* Ex. A, Hajdik Decl., ¶¶ 14–15.

20. On the other hand, Mewbourne cannot demonstrate any prejudice that would result from a short continuance of these cases. Mewbourne has simply stated that it is ready to move forward with drilling its wells, but it has not articulated why it will suffer any harm if the hearings are continued to the next-available docket. As of the date of writing, Mewbourne’s permits for its wells in this acreage are still pending BLM approval, and thus Mewbourne cannot immediately commence drilling as contended.

21. By allowing Colgate time to adequately prepare for these contested hearings, if necessary, the Division will be fulfilling Rule 19.15.4.17(A)’s requirement that each party have the “full opportunity” to present evidence in support of its case.

22. Additionally, a continuance would greater aid the Division in making an informed decision if a contested hearing is necessary, as both parties would be able to present the Division with the full scope of the relevant evidence required to decide this case.

23. Moreover, because of the present disagreement between the parties related to these cases, either party is certain to file a de novo appeal of the Division’s order to the Oil Conservation Commission after a contested hearing. *See* Ex. A, Hajdik Decl., ¶ 16. Thus, it simply be a waste

of time and resources for the Division to hastily hold a hearing and issue a decision which is sure to be appealed to the Commission.

24. In conclusion, continuing the hearing would save the Division and the parties' time and resources, by allowing the parties to proceed by affidavit if a trade is entered and the contested issues between the parties are resolved. Further, even if a trade agreement is not reached, a continuance will allow the parties the full opportunity to present evidence in support of their respective cases. Because Mewbourne cannot show any prejudice stemming from a short continuance of these cases, the Division should err on the side of the greater presentation of evidence, as directed by Rule 19.15.4.17(A).

25. Lastly, given the deadline to file pre-hearing statements and exhibits is this Thursday, September 8, 2022, *Colgate respectfully requests an expedited decision on this Motion.*

26. Counsel for Colgate contacted counsel for the other parties who have entered an appearance regarding their position on this Motion. The only other party to respond, MRC Delaware Resources, LLC, expressed no position on this motion. Mewbourne opposes the motion.

### **CONCLUSION**

For the foregoing reasons, Colgate respectfully requests that the September 15, 2022 hearing date be continued to the next available docket, the dates in the amended pre-hearing order be changed accordingly, and the cases instead be set for a status conference on September 15, 2022.

Respectfully submitted,

MODRALL, SPERLING, ROEHL, HARRIS  
& SISK, P.A.

By: /s/ Earl E. DeBrine, Jr.

Earl E. DeBrine, Jr.  
Deana M. Bennett  
Jamie L. Allen  
Bryce H. Smith  
Post Office Box 2168  
500 Fourth Street NW, Suite 1000  
Albuquerque, New Mexico 87103-2168  
Telephone: 505.848.1800  
edebrine@modrall.com  
dmb@modrall.com  
jla@modrall.com  
bsmith@modrall.com  
*Attorneys for Colgate Operating, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 8, 2022, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

James Bruce  
Post Office Box 1056  
Santa Fe, New Mexico 87504  
[jamesbruc@aol.com](mailto:jamesbruc@aol.com)  
***Attorney for Mewbourne Oil Company***

Darin C. Savage  
William E. Zimsky  
Andrew D. Schill  
ABADIE & SCHILL, PC  
214 McKenzie Street  
Santa Fe, New Mexico 87501  
[darin@abadieschill.com](mailto:darin@abadieschill.com)  
[bill@abadieschill.com](mailto:bill@abadieschill.com)  
[andrew@abadieschill.com](mailto:andrew@abadieschill.com)  
***Attorneys for Cimarex Energy Co.***

Ocean Munds-Dry  
Elizabeth A. Ryan  
CONOCOPHILLIPS  
1048 Paseo de Peralta  
Santa Fe, New Mexico 87501  
[ocean.munds-dry@conocophillips.com](mailto:ocean.munds-dry@conocophillips.com)  
[beth.ryan@conocophillips.com](mailto:beth.ryan@conocophillips.com)  
***Attorneys for COG Operating LLC and Concho Oil & Gas LLC***

MODRALL, SPERLING, ROEHL, HARRIS  
& SISK, P.A.

By: /s/ Earl E. DeBrine, Jr.  
Earl E. DeBrine, Jr.

Michael H. Feldewert  
Adam G. Rankin  
Julia Broggi  
Paula Vance  
HOLLAND & HART, LLP  
Post Office Box 2208  
Santa Fe, New Mexico 87504  
[mfeldewert@hollandhart.com](mailto:mfeldewert@hollandhart.com)  
[agrankin@hollandhart.com](mailto:agrankin@hollandhart.com)  
[jbroggi@hollandhart.com](mailto:jbroggi@hollandhart.com)  
[pmvance@hollandhart.com](mailto:pmvance@hollandhart.com)  
***Attorneys for MRC Delaware Resources, LLC***

James P. Parrot  
BEATTY & WOZNIAK, P.C.  
1675 Broadway, Suite 600  
Denver, CO 80202  
[jparrot@bwenergylaw.com](mailto:jparrot@bwenergylaw.com)  
***Attorney for EOG Resources, Inc.***

Matthew M. Beck  
PEIFER, HANSON, MULLINS &  
MAKER, P.A.  
P.O. Box 25245  
Albuquerque, NM 87125-5245  
[mbeck@peiferlaw.com](mailto:mbeck@peiferlaw.com)  
***Attorneys for Jalapeno Corporation***

W4501582.DOCX