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

APPLICATION OF COLGATE OPERATING, LLC, TO POOL ADDITIONAL INTERESTS, UNDER ORDER NO. R-22277
LEA COUNTY, NEW MEXICO.
CASE NO. 23149
ORDER NO. R-22277

APPLICATION OF COLGATE OPERATING, LLC, TO POOL ADDITIONAL INTERESTS, UNDER ORDER NO. R-22278
LEA COUNTY, NEW MEXICO.
CASE NO. 23150
ORDER NO. R-22278

APPLICATION OF COLGATE OPERATING, LLC, TO POOL ADDITIONAL INTERESTS, UNDER ORDER NO. R-22279
LEA COUNTY, NEW MEXICO.
CASE NO. 23151
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APPLICATION OF COLGATE OPERATING, LLC, TO POOL ADDITIONAL INTERESTS, UNDER ORDER NO. R-22280
LEA COUNTY, NEW MEXICO.
CASE NO. 23152
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APPLICATION OF COLGATE OPERATING, LLC, TO POOL ADDITIONAL INTERESTS, UNDER ORDER NO. R-22281
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CASE NO. 23153
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CASE NO. 23154
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LEA COUNTY, NEW MEXICO
CASE NO. 23155
ORDER NO. R-22283

APPLICATION OF COLGATE OPERATING, LLC, TO POOL ADDITIONAL INTERESTS, UNDER ORDER NO. R-22284
LEA COUNTY, NEW MEXICO.
CASE NO. 23156
ORDER NO. R-22284

COLGATE OPERATING, LLC'S OBJECTIONS TO AND MOTION TO QUASH DOYLE AND MARGARET HARTMAN'S SUBPOENA DUCES TECUM

Colgate Operating, LLC ("Colgate" or "Applicant") submits the following Objections to and Motion to Quash Doyle and Margaret Hartman's Subpoena Duces Tecum pursuant to 19.15.4.16(A) NMAC. In support of this motion, Colgate states the following.

I. INTRODUCTION

In these cases, Colgate seeks to pool additional interests under the pooling orders on its Batman Fed Com Wells ("Wells"), which were issued on September 26, 2022. Doyle Hartman ("Hartman") is named as a minority record title owner of the federal lease involved and has refused to sign a communitization agreement. *See* Self-Affirmed Statement of T. Macha, attached as Exh. A, at ¶ 4. As a result, Colgate seeks to pool his record title interest. *Id.* Colgate is not seeking to pool any working or overriding royalty interest held by Hartman, as Colgate's title research has shown that Hartman does not own a working or royalty interest in the Wells.[1] *Id.* at ¶ 5. Colgate has confirmed that Hartman's record title interest is not subject to the cost or risk penalty provisions of the pooling orders and has further confirmed that if Hartman is determined to own a working interest, Colgate would be required to pool that interest at a later date. *Id.* at ¶¶ 7-8; *see also* Colgate's Motion to Strike Hartman's Pre-Hearing Statement at ¶¶ 5 and 8.

Despite these facts, Hartman opposes Colgate's applications to pool his minority record title interest because he claims to also own a working interest in the units. *See generally,* Hartman's Pre-Hearing Statement. He opposes the cost and risk penalty provisions of the pooling orders even though his record title interest is not subject to those provisions, and he apparently intends to thwart Colgate's 24-well development by asking the Division to delay pooling his record title interest

[1] Hartman Assigned out operating rights interest in all pertinent lands via county assignment filed: Volume 1416, Page 357 (Hartman to Plantation, ABOS dated 12/15/2005).

until a court addresses his claimed working interest in a quiet title action that has not been filed.[2] In essence, he is attempting to use these proceedings to gain leverage in a potential quiet title action that is outside the scope of the Division's authority.

In pursuit of this goal, Hartman has issued a subpoena to Colgate seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in this proceeding. *See* Subpoena, attached as Exh. B. Hartman seeks copies of contracts, federal APDs, and BLM communications regarding wells that are not the subject of these applications and that have no bearing on the pooling of his record title interest. Colgate's federal APDs are also confidential under federal and New Mexico law. The Division should not allow Hartman to utilize a Division subpoena to conduct a fishing expedition in preparation for his potential quiet title action. Hartman's arguments on the relevance of the documents he seeks demonstrate a fundamental misunderstanding of these proceedings, Division precedent, and the applicable law. The subpoena should be quashed.

II. ARGUMENT

A. Hartman's subpoena seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence because Colgate is only pooling his record title interest.

Items 1 and 2 – Items 1 and 2 of the subpoena seek copies of operating agreements to which Hartman is not a party. Colgate objects to the production of these agreements on the ground that they are irrelevant and are not calculated to lead to the discovery of admissible evidence in a hearing before the Division that only involves Hartman's record title interest. Hartman contends that the operating agreements are relevant because "[i]f there is a valid operating agreement that

[2] *See* Hartman's Response to Colgate Motion to Strike Hartman's Pre-Hearing Statement. It is unclear why this response was filed, as the Division has already issued a prehearing order and set this matter for hearing on December 15, 2022. Regardless, the response reiterates Hartman's position on Colgate's applications.

covers the lands at issue, force pooling is unavailable under NMSA 1978, § 70-2-17." *See* Hartman Entry of Appearance and Pre-Hearing Statement (filed 10/27/22) at 3-4.

Hartman's argument has no merit. The Division has repeatedly held that a Joint Operating Agreement ("JOA") does not preclude compulsory pooling under Section 70-2-17(C) NMSA. *See, e.g.,* Order Nos. R-14140, R-14523, R-14524 (granting pooling applications notwithstanding the fact that a JOA covered a portion of the area sought to be pooled). Order No. R-8013, cited by Hartman, rejected Hartman's attempt to pool acreage and interests that were fully covered by a JOA. That is not the case here, where existing agreements may address portions of the acreage at issue. *See* Exh. A at ¶ 9.

Additionally, the operating agreements sought by Hartman are irrelevant because they have no bearing on his record title interest. *See id.* As a record title owner, Hartman does not have a working interest in Colgate's spacing units, is not liable for the costs of drilling the subject wells, and is not entitled to their proceeds. *Id.* at ¶ 7. However, the BLM requires a signed communitization agreement – or an order pooling record title interests – before Colgate can produce the wells. *See* Order No. R-10974. This is true regardless of whether a JOA exists. Thus, it seems Hartman's real quarrel is with the BLM's policy on communitization agreements. There is no support for Hartman's argument that a JOA precludes pooling of a record title interest.

Hartman's objection to Colgate's applications is based on his belief that he also owns a working interest in the proposed spacing units. But that claim is not properly before the Division and further supports Colgate's objection to Items 2 and 3 of the subpoena as irrelevant and not calculated to lead to the discovery of admissible evidence. The Oil and Gas Act delegates to the Division authority to prevent waste and protect correlative rights. NMSA 1978, §§ 70-2-6; 70-2-11. Although this grant of authority is broad, it does not include the ability to adjudicate title

disputes. Hartman apparently intends to use this proceeding as a means to obtain information he wishes to use in a quiet title action. In this regard, the subpoena is improper and should be quashed.

Items 3, 4 & 5 – Items 3, 4 and 5 of of Hartman's subpoena seeks copies of "all applications for permits to drill (APDs) filed with the Bureau of Land Management by Colgate" for the Batman and Robin Wells that are the subject of Case Nos. 22788-22795, 22861-22868, and 23149-23156, as well as "all communications between Colgate and the Bureau of Land Management related to the Batman wells and the Robin wells." Colgate objects to producing these documents because the requests are overly broad, unduly burdensome, irrelevant, not calculated to lead to the discovery of admissible evidence, and seek confidential, propriety information not subject to disclosure.

The BLM documents requested by Hartman are irrelevant to this proceeding. Hartman's requests for federal APDs and communications with the BLM concerning the Robin wells, which were the subject of Case Nos. 22861 – 22868 and are not at issue here, is particularly telling. That information is wholly irrelevant, and Hartman's improper attempt to obtain it shows he is using this proceeding to seek information he may use elsewhere.

Moreover, APDs and communications with the BLM will not assist Hartman in opposing the pooling of his record title interest because he is not liable for the cost of the wells or entitled to their proceeds. While even the date that Colgate filed APDs with the BLM is irrelevant, Colgate nonetheless confirms that it filed APDs with the BLM on May 11, 2022. Exh. A at ¶ 11. In accordance with the APDs, Colgate intends to spud the Batman wells on January 17, 2023. *Id.*

Colgate further objects to Items 3 and 4 of the subpoena on the grounds that the APDs submitted by Colgate to the BLM are confidential and are not subject to disclosure pursuant to Rule 1-045(C) NMRA. Rule 1-045(C) NMRA permits a court to quash or modify a subpoena if it "requires disclosure of trade secret or other confidential research, development, or commercial

information." Rule 1-045(C)(3)(b)(i). The BLM categorizes APDs as "records that may contain protected information that must be considered for segregation prior to release" under the Federal of Information Act. *See* Confidential BLM Records Access Categorieshttps://www.blm.gov/sites/default/files/docs/2021-01/BLM_Records_Access_Categories.pdf at 9; *see also* 5 U.S.C. § 552(b)(4) (exempting from disclosure by statute "trade secrets and commercial or financial information obtained from a person and privileged or confidential"); *see also* Exh. A at ¶ 10.

In New Mexico, a party seeking documents protected from public disclosure by a public agency, must "satisfy the trial court that the information constitutes evidence which is critical to the cause of action or defense." *Estate of Romero v. City of Santa Fe*, 2006-NMSC-028, ¶ 19. Under this inquiry, the fact finder must determine whether "the success or failure of a litigant's cause of action or defense would likely turn on the evidence adjudged to fall within" the exemption from disclosure. *Id*. Colgate's submissions to BLM have no bearing on whether Hartman is a record title or working interest owner or whether Hartman's record title interest should be forced pooled due to Hartman's refusal to sign a communitization agreement. Hartman's subpoena should be quashed because it seeks Colgate's proprietary and confidential commercial, financial, and geologic information, without any critical need for the information. Further, producing the information would subject Colgate to economic harm and a competitive disadvantage. Exh. A at ¶ 10.

B. Hartman's subpoena subjects Colgate to an undue burden and should be quashed pursuant to Rule 1-045(C)(2)(b).

Rule 1-045(C) requires a party issuing a subpoena to "take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena" and permits that a subpoena be quashed or modified if it "fails to allow reasonable time for compliance" and/or

subjects a person to undue burden." Rule 1-045(C)(1) - (3) NMRA. A person commanded to produce documents "shall not respond to the subpoena prior to the expiration of fourteen (14) days after the date of service of the subpoena." Rule 1-045(C)(2)(a)(ii). In this matter, the subpoena was served upon Colgate on November 17, 2022 and required Colgate to respond by November 28th. This amount of time is insufficient, subjects Colgate to an undue burden, and does not comply with Rule 1-045. For this reason alone, the subpoena should be quashed for failure to allow a reasonable time for compliance.

III. CONCLUSION

None of the information sought by Hartman is relevant or reasonably calculated to lead to the discovery of admissible evidence in this proceeding, where Colgate only seeks to pool Hartman's record title interest in accordance with BLM requirements. The subpoena also seeks confidential and proprietary information and is inconsistent with the requirements of Rule 1-045 NMRA. Accordingly, the subpoena should be quashed.

Respectfully submitted,

HINKLE SHANOR, LLP

/s/ Dana S. Hardy

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion was sent to the following counsel of record by electronic mail on this 23rd day of November, 2022.

Gene Gallegos –jeg@gallegoslawfirm.net

Michael Condon – mjc@gallegoslawfirm.net

Dana S. Hardy

STATE OF NEW MEXICO
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES
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Exhibit A

SELF-AFFIRMED STATEMENT
OF TRAVIS MACHA

1. I am a landman at Colgate Operating, LLC ("Colgate") and am over 18 years of age. I have personal knowledge of the matters addressed herein and am competent to provide this Self-Affirmed Statement. I have previously testified before the New Mexico Oil Conservation Division ("Division") and my credentials as an expert in petroleum land matters were accepted and made a matter of record.

2. I am familiar with the land matters involved in these cases.

3. Colgate's applications seek to pool additional interests under the pooling orders on its Batman Fed Com Wells ("Wells"), which were issued on September 26, 2022.

4. Doyle Hartman ("Hartman") is named as a minority record title owner of federal leases involved and has refused to sign a communitization agreement. As a result, Colgate seeks to pool his record title interest to comply with the BLM's communitization requirements.

5. Colgate is not seeking to pool any working interest or overriding royalty interest held by Hartman, as Colgate's title research has shown that Hartman does not own a working or royalty interest in the Wells.[1]

6. In an attempt to work with Hartman in good faith, I have provided Hartman with Colgate's June 14, 2022 Drilling and Division Order Title Opinion ("DOTO") confirming the nature of Hartman's interest, even though Colgate was under no obligation to do so. I also informed Hartman that if he provides information to substantiate his claimed working interest, Colgate will consider it. He has declined to provide any such information.

[1] Hartman Assigned out operating rights interest in all pertinent lands via county assignment filed: Volume 1416, Page 357 (Hartman to Plantation, ABOS dated 12/15/2005).

7. Hartman's record title interest is not subject to the cost or risk penalty provisions of the pooling orders and, conversely, he is not entitled to proceeds from the Wells' production. As a result, the pooling of Hartman's record title interest has no material impact on Hartman, and it certainly does not impair his correlative rights or result in the waste of oil and gas. In fact, Hartman is attempting to block's Colgate's ability to produce 24 wells, which impairs Colgate's correlative rights, results in a tremendous waste of oil and gas, and causes financial harm to Colgate, working interest owners in the wells, overriding royalty interests, the BLM, and the State of New Mexico.

8. If Hartman is determined to own a working interest in the spacing units for the Wells, Colgate would be required to reach an agreement with Hartman or pool that interest at a later date.

9. Although Colgate is only seeking to pool Hartman's record title interest, Hartman's subpoena seeks to compel Colgate to produce 1941 and 1949 agreements that are referenced in the DOTO. These agreements are not relevant to the pooling of Hartman's record title interest because they do not address the record title interest or supplant the BLM's requirements on communitization of leases prior to production. In addition, the agreements do not cover the entirety of the acreage addressed under the pooling orders. The agreements have no bearing on the issues presented in these cases, and it seems that Hartman is using these proceedings to obtain title research in anticipation of a quiet title action regarding his claimed working interest.

10. Hartman also seeks copies of federal APDs and communications regarding the Batman wells *and* the Robin wells that were the subject of other proceedings. Information regarding the Robin wells is wholly irrelevant. Furthermore, the APDs for the Batman and Robin wells include confidential engineering and geological information that is not subject to public

disclosure. Colgate and the BLM accord the APDs confidential treatment, and public disclosure would harm Colgate by allowing competitors to obtain detailed information regarding Colgate's drilling operations. This information has independent economic value and is subject to protection. Moreover, the APDs have no bearing whatsoever on the pooling of Hartman's record title interest. As a record title owner, Hartman is not liable for the cost of the wells and is not entitled to proceeds from production. There is no legitimate basis for him to seek copies of the APDs or communications regarding the APDs, and it seems he is doing so in an effort to extract an agreement from Colgate regarding his claimed working interest.

11. With respect to Hartman's claim that he needs the APDs and BLM communications to ascertain Colgate's progress on the wells, that issue is irrelevant for the reasons discussed above. Regardless, Colgate submitted the APDs to the BLM on May 11, 2022 and has two rigs scheduled to spud the wells beginning on January 17, 2023.

12. For the reasons discussed above, Colgate should not be required to produce the documents sought by Hartman.

13. I understand this Self-Affirmed Statement will be used as written testimony in this case. I affirm that my testimony above is true and correct and is made under penalty of perjury under the laws of the State of New Mexico. My testimony is made as of the date handwritten next to my signature below.

Travis Macha

11-23-2022
Date

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

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

CASE NOS. 23149-56

SUBPOENA DUCES TECUM

TO: Colgate Operating, LLC
c/o Dana Hardy, Esq.
Hinkle Shanor, LLP
P.O. Box 2068
Santa Fe, New Mexico 87504-2068
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Pursuant to NMSA 1978 Section 70-2-8, and Rule 19-15.4.16 NMAC, you are hereby ORDERED to produce the documents and items specified below on or before 9:00 a.m. on November 28, 2022 at the offices of the Gallegos Law Firm, P.C., counsel for Doyle and Margaret Hartman, 460 St. Michael's Drive, Building 300, Santa Fe, New Mexico 87505:

1. A complete copy (including all exhibits and attachments) of the November 25, 1941 operating agreement between The W-K Royalty Company, R. Olsen Oil Company and Cities Service Oil Company. The agreement is referenced in the June 14, 2022 Original Drilling and Division Order Title Opinion prepared for Colgate by Steven S. Toeppich & Assoc., PLLC.

2. A complete copy (including all exhibits and attachments) of the May 16, 1949 agreement between R. Olsen Oil Co, E. A. Culbertson and Cities Service Oil Company providing for operation of the leasehold estate by Cities Service Oil Co. The

agreement is referenced in the June 14, 2022 Original Drilling and Division Order Title Opinion prepared for Colgate by Steven S. Toeppich & Assoc., PLLC.

3. Copies of all applications for permits to drill (APDs) filed with the Bureau of Land Management by Colgate or on its behalf for the Batman wells at issue in OCD Cases 22788-22795 and 23149-23156.

4. Copies of all applications for permits to drill (APDs) filed with the Bureau of Land Management by Colgate or on its behalf for the Robin wells at issue in OCD cases 22861-22868.

5. Documents reflecting all communications between Colgate and the Bureau of Land Management related to the Batman wells and the Robin wells.

This subpoena is issued on the application of Doyle and Margaret Hartman through their attorneys, the Gallegos Law Firm, P.C.

Dated this 17th day of November 2022.

NEW MEXICO OIL CONSERVATION DIVISION

By _____
ADRIENNE SANDOVAL, DIRECTOR