

**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  
ORDER NO. R-22279**

**APPLICATION OF COLGATE OPERATING,  
LLC, TO POOL ADDITIONAL INTERESTS,  
UNDER ORDER NO. R-22280  
LEA COUNTY, NEW MEXICO.**

**CASE NO. 23152  
ORDER NO. R-22280**

**APPLICATION OF COLGATE OPERATING,  
LLC, TO POOL ADDITIONAL INTERESTS,  
UNDER ORDER NO. R-22281  
LEA COUNTY, NEW MEXICO.**

**CASE NO. 23153  
ORDER NO. R-22281**

**APPLICATION OF COLGATE OPERATING,  
LLC, TO POOL ADDITIONAL INTERESTS,  
UNDER ORDER NO. R-22282  
LEA COUNTY, NEW MEXICO.**

**CASE NO. 23154  
ORDER NO. R-22282**

**APPLICATION OF COLGATE OPERATING,  
LLC, TO POOL ADDITIONAL INTERESTS,  
UNDER ORDER NO. R-22283  
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 AMENDED PRE-HEARING STATEMENT**

Colgate Operating, LLC (“Colgate”) submits its Pre-Hearing Statement pursuant to the rules of the Oil Conservation Division (“Division”) and the Pre-Hearing Order.

**I. APPEARANCES**

**APPLICANT**

Colgate Operating, LLC

**ATTORNEYS**

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**OPPONENT**

Doyle and Margaret Hartman

**ATTORNEYS**

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**II. STATEMENT OF THE CASE**

Colgate’s applications seek to pool additional interests under the Division’s September 26, 2022 pooling orders regarding the Batman Fed Com Wells (“Wells”). Collectively, the orders pooled uncommitted interests in the Bone Spring and Wolfcamp formations underlying Sections 18 and 19, Township 20 South, Range 34 East in Lea County and dedicated the units to 24 wells. The additional interests Colgate seeks to pool include the 2% record title interest held by Doyle

Hartman (“Hartman”). Colgate is not seeking pool any working interest held by Hartman, as Colgate’s title research has definitively showed that Hartman does not own a working interest in the Wells.<sup>1</sup> Hartman is, however, named as a record title owner of the federal lease involved and has refused to sign a communitization agreement. As a result, Colgate seeks to pool his record title interest so it can obtain a communitization agreement and produce the 24 wells in accordance with BLM requirements.<sup>2</sup>

Hartman opposes Colgate’s applications to pool his minority record title interest because he claims to also own a working interest in the units. 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 until a court addresses his claimed working interest in a quiet title action that he has not filed.<sup>3</sup> 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.

Hartman also claims that Joint Operating Agreements (“JOAs”), to which he is not a party, preclude pooling in these cases. *See* Hartman Entry of Appearance and Pre-Hearing Statement (filed 10/27/22) at 3-4. However, the Division has repeatedly held that JOAs do not preclude

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<sup>1</sup> 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).

<sup>2</sup> The BLM’s policy on communitization states: “a communitization agreement signed by the operator and complete in all respects, except for signatures of all working interest and royalty owners, may be accepted and approved by the authorized officer when a State order force-pooling such interests in the lands in question is also submitted.” *See* [https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter\\_blmpolicymanual3160-9.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual3160-9.pdf)

<sup>3</sup> *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.

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 and a superseding JOA has been proposed and signed.

Further, the JOAs discussed by Hartman are irrelevant to the pooling of his record title interest, as the BLM requires a pooling order – not a JOA – to issue a communitization agreement. As a record title owner, Hartman does not own 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. However, the BLM requires a signed communitization agreement – or an order pooling record title interests – regardless of whether a JOA exists. Thus, it seems Hartman's real quarrel is with the BLM's policy on communitization agreements. And none of the cases cited by Hartman regarding JOAs involved the pooling of record title interests. There is no support for Hartman's argument that a JOA precludes pooling of a record title interest to obtain a communitization agreement from the BLM.

Hartman's claims of due process violations similarly lack merit. Hartman was not notified of Colgate's original pooling applications because his record title interest was not pooled. That is the purpose of Colgate's current applications, and that is why Hartman received notice of the applications. There is no support for Hartman's request that the Division rescind Colgate's previously issued pooling orders because he did not receive notice of the applications when his interest was not pooled in those proceedings. Contrary to Hartman's claims, the Division allows operators to reopen pooling proceedings to include additional parties on a regular basis and doing

so does not invalidate the original pooling orders. Hartman's argument would upend extensive Division precedent and preclude operators from relying on pooling orders.

Hartman has not made any argument that the pooling of his record title interest would violate his correlative rights and/or result in waste, which are the criteria by which the Division must evaluate Colgate's applications. *See* NMSA 1978, § 70-2-11. And Hartman cannot make any such showing, because as a record title owner he is neither liable for well costs nor entitled to production proceeds. In essence, the pooling of Hartman's record title interest does not implicate his correlative rights. *See* NMAC 19.15.2.7(c)(16) (defining correlative rights as "the opportunity afforded, as far as it is practicable to do so, to the owner of each property in a pool to produce without waste the owner's just and equitable share of the oil or gas in the pool, being an amount, so far as can be practically determined, and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas under the property bears to the total recoverable oil or gas in the pool, and for the purpose to use the owner's just and equitable share of the reservoir energy.").

Through its applications, Colgate seeks orders that will allow it to fully develop two formations in two sections of land by drilling and completing 24 wells. Colgate's applications will best protect correlative rights and prevent waste in accordance with the requirements of the Oil and Gas Act, NMSA 1978, §§ 70-2-1 *et seq.* Hartman does not propose any development plan for the subject acreage. Rather, he simply seeks to thwart Colgate's development plan based on a claimed working interest that is not being pooled, which will result in a tremendous waste of oil and gas and violate the correlative rights of the working interest and royalty interest owners in the 24 wells. Hartman's objection should be rejected and Colgate's applications should be granted.

### **III. MATERIAL FACTS**

#### **A. Undisputed Facts**

1. On September 26, 2002, the Division entered Order No. R-22277 in Case No. 22788, which pooled all uncommitted interests in the Wolfcamp formation underlying a standard horizontal spacing unit comprised of Lots 1, 2, 3, and 4 (W/2 W/2 equivalent) of irregular Sections 17 and 19, Township 20 South, Range 34 East, Lea County. The Order further dedicated the Unit to the Batman Fed Com 201H well and designated Colgate as operator of the Unit and well.

2. On September 26, 2022, the Division entered Order No. R-22278 in Case No. 22789, which pooled all uncommitted interests in the Wolfcamp formation underlying a standard horizontal spacing unit comprised of the E/2 W/2 of Sections 18 and 19, Township 20 South, Range 34 East, Lea County. The Order further dedicated the Unit to the Batman Fed Com 202H well and designated Colgate as operator of the Unit and well.

3. On September 26, 2022, the Division entered Order No. R-22279 in case No. 22790, which pooled all uncommitted interests in the Wolfcamp formation underlying a standard horizontal spacing unit comprised of the W/2 E/2 of Sections 18 and 19, Township 20 South, Range 34 East, Lea County. The Order further dedicated the Unit to the Batman Fed Com 203H well and designated Colgate as operator of the Unit and well.

4. On September 26, 2022, the Division entered Order No. R-22280 in Case No. 22791, which pooled all uncommitted interests in the Wolfcamp formation underlying a standard horizontal spacing unit comprised of the E/2 E/2 of Sections 18 and 19, Township 20 South, Range 34 East, Lea County. The Order further dedicated the Unit to the Batman Fed Com 204H well and designated Applicant as operator of the Unit and the well.

5. On September 26, 2022, the Division entered Order No. R-22281 in Case No. 22792, which pooled all uncommitted interests in the Bone Spring formation underlying a standard horizontal spacing unit comprised of Lots 1, 2, 3, and 4 (W/2 W/2 equivalent) of irregular Sections 18 and 19, Township 20 South, Range 34 East, Lea County. The Order further dedicated the Unit to the Batman Fed Com 111H, Batman Fed Com 121H, Batman Fed Com 122H, Batman Fed Com 171H, and Batman Fed Com 131H wells, and designated Colgate as operator of the Unit and the wells.

6. On September 26, 2022, the Division entered Order No. R-22282 in Case No. 22793, which pooled all uncommitted interests in the Bone Spring formation underlying a standard horizontal spacing unit comprised of the E/2 W/2 of Sections 18 and 19, Township South, Range 34 East, Lea County. The Order further dedicated the Unit to the Batman Fed Com 112H, Batman Fed Com 123H, Batman Fed Com 124H, Batman Fed Com 172H, and Batman Fed Com 132H wells, and designated Colgate as operator of the Unit and the wells.

7. On September 26, 2022, the Division entered Order No. R-22283 in Case No. 22794, which pooled all uncommitted interests in the Bone Spring formation underlying a standard horizontal spacing unit comprised of the W/2 E/2 of Sections 18 and 19, Township 20 South, Range 34 East, Lea County. The Order further dedicated the Unit to the Batman Fed Com 113H, Batman Fed Com 125H, Batman Fed Com 126H, Batman Fed Com 173H, and Batman Fed Com 133H wells, and designated Colgate as operator of the Unit and the wells.

8. On September 26, 2022, the Division entered Order No. R-22284 in Case No. 22795, which pooled all uncommitted interests in the Bone Spring formation underlying a standard horizontal spacing unit comprised of the E/2 E/2 of Sections 18 and 19, Township 20 South, Range 34 East, Lea County. The Order further dedicated the Unit to the Batman Fed Com 114H, Batman

Fed Com 127H, Batman Fed Com 128H, Batman Fed Com 174H, and Batman Fed Com 134H wells, and designated Colgate as operator of the Unit and wells.

9. In these cases, Colgate seeks orders that will allow it to fully develop the Bone Spring and Wolfcamp formations underlying Sections 18 and 19, Township 20 South, Range 34 East in Lea County by drilling and completing 24 wells.

10. Colgate submitted its APDs to the BLM on May 11, 2022 and has two rigs scheduled to spud the wells beginning on January 17, 2023.

11. Hartman has not proposed a plan to develop any of the subject lands.

12. Hartman is named as a minority record title owner of federal leases involved in the Batman Units 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.

13. Colgate is not seeking to pool any working interest or overriding royalty interest held by Hartman.

14. Hartman's record title interest is not subject to the cost or risk penalty provisions of the pooling orders and he is not entitled to proceeds from the Batman Wells' production.

15. If Hartman is subsequently found to own a working interest in the subject lands, Colgate would address that interest at a later time.

**B. Disputed Facts**

1. Whether the pooling of Hartman's record title interest somehow violates his correlative rights and results in the waste of oil and gas.



**IV. PROPOSED EVIDENCE**

<b>Witness</b>	<b>Occupation</b>	<b>Estimated Time</b>	<b>Exhibits</b>
Travis Macha	Landman	45 minutes	Approx. 12
John Anthony	Geologist	15 minutes	Approx. 15

**V. PROCEDURAL MATTERS**

Colgate's Objections to and Motion to Quash Doyle and Margaret Hartman's Subpoena Duces Tecum is pending and should be granted. Colgate reserves the right to present rebuttal testimony and exhibits.

Respectfully submitted,

HINKLE SHANOR, LLP

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing prehearing statement was sent to the following counsel of record by electronic mail on this 8<sup>th</sup> day of December 2022:

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**Energy, Minerals and Natural Resources**  
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QUESTIONS  
 Action 165583

**QUESTIONS**

Operator: COLGATE OPERATING, LLC 300 North Marienfeld Street Midland, TX 79701	OGRID: 371449
	Action Number: 165583
	Action Type: [HEAR] Prehearing Statement (PREHEARING)

**QUESTIONS**

<b>Testimony</b>	
<i>Please assist us by provide the following information about your testimony.</i>	
Number of witnesses	Not answered.
Testimony time (in minutes)	Not answered.