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 REPLY IN SUPPORT OF MOTION TO QUASH DOYLE AND MARGARET HARTMAN'S SUBPOENA DUCES TECUM

Colgate Operating, LLC ("Colgate" or "Applicant") submits the following reply in support of its 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:

1. In these cases, Colgate proposes 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.

2. Doyle Hartman ("Hartman") is named as an owner of a 2% record title interest in the federal leases at issue and has refused to sign a communitization agreement. As a result, Colgate seeks to pool his record title interest solely for the purpose of complying with the BLM's communitization requirements.[1] Colgate is not seeking to pool any working interest held by Hartman.

3. Hartman claims that Colgate is asserting that a record title interest is meaningless and that Colgate believes Hartman cannot challenge the Orders issued in Case Nos. 23149 through 23156. This argument misses the point. Colgate is not claiming that Hartman cannot challenge the pooling of his record title interest (although he has no basis to do so) but rather that Hartman cannot challenge the pooling of his record title interest based on a claimed working interest in the units, which is what he seeks to accomplish here.

[1] The BLM's policy 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." https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual3160-9.pdf.

4. Hartman also argues that the Joint Operating Agreements ("JOAs") he seeks are relevant to whether the Division has authority to force pool the units at issue. As with the challenge of the pooling orders, the JOAs and Division Orders that Hartman cites have no bearing on the pooling of record title interest. Further, the Oil and Gas Act provides that "where . . . such owner or owners have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit." NMSA 1978, § 70-2-17(C). Because Hartman has not agreed to the pooling of his record title interest, pooling is appropriate and necessary regardless of the existence of any JOAs.

5. Hartman has received all the notice he is entitled to under both the BLM process for APD, Drilling Island, and Development Area Review in Designated Potash Areas, and the Division process for forced pooling, as evidenced by the attachments to Hartman's Response.

6. In his Supplemental Pre-Hearing Statement, Hartman states that there is a "title dispute [that] can only be resolved by the courts," and that the "force pooling applications and the resulting Prior orders should be stayed" until the quiet title action is concluded. *See* Supplemental Pre-Hearing Statement at 6. This demonstrates Hartman's true reason for bringing this unfounded challenge before the Division – it is an opportunity to use discovery in these cases to gather documents so he can attempt to bolster the quiet title complaint he intends to file in district court. The Division should not allow Hartman to utilize a Division subpoena to conduct a fishing expedition in preparation for his potential quiet title action.

7. In response to Colgate's objection that the subpoena does not allow 14 days for response, Hartman simply states that "[b]y the time Colgate will produce any documents pursuant to the subpoena, more than 14 days will have passed." *See* Hartman's Response to Colgate's Motion to Quash at 7. That is not the Rule. Subpoenas may not command the production of documents "prior to the expiration of fourteen (14) days after the date of service of the subpoena." Rule 1-045(C)(2)(a)(ii). The subpoena did not provide sufficient time to respond and for that reason alone, the subpoena should be quashed.

8. 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

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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 12th day of December, 2022.

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Dana S. Hardy