

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

**APPLICATIONS OF COLGATE OPERATING,
LLC, TO POOL ADDITIONAL INTERESTS,
UNDER ORDER NOS. R-22277 – R-22284
LEA COUNTY, NEW MEXICO.**

CASE NOS. 23149 - 23156

COLGATE OPERATING, LLC'S AMENDED PRE-HEARING STATEMENT

Colgate Operating, LLC (“Colgate”) submits its Amended 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

Hinkle Shanor LLP
Dana S. Hardy
Jaclyn M. McLean
Yarithza Peña
P.O. Box 2068
Santa Fe, NM 87504-2068
Phone: (505) 982-4554
Facsimile: (505) 982-8623
dhardy@hinklelawfirm.com
jmclean@hinklelawfirm.com
ypena@hinklelawfirm.com

OPPONENT

Doyle and Margaret Hartman

ATTORNEYS

Gallegos Law Firm, P.C.
J.E. Gallegos
Michael J. Condon
460 St. Michael’s Drive, Bldg. 300
Santa Fe, NM 87505
jeg@gallegoslawfirm.net
mjc@gallegoslawfirm.net

II. STATEMENT OF THE CASE

Colgate seeks 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 minority record title interest held by Doyle Hartman ("Hartman"), who has refused to sign a communitization agreement.¹ When a record title owner is unavailable or refuses to sign a communitization agreement, the BLM accepts a pooling order in lieu of a signed agreement.² As a result, Colgate seeks to pool Hartman's record title interest so it can obtain a communitization agreement from the BLM and produce its 24 wells. Colgate is not seeking pool any working interest held by Hartman, as Colgate's title research has definitively shown that Hartman does not own a working interest in the Wells.³

Hartman has opposed Colgate's applications to pool his minority record title interest on various grounds, none of which have merit. He primarily argues that a 1949 Joint Operating Agreement ("JOA") precludes the Division from pooling his record title interest because the working interest owners have already agreed to pool their interests. But Hartman has clearly not agreed to pool his record title interest, necessitating pooling under Section 70-2-17(C).⁴ The

¹ According to the BLM Serial Register, Hartman owns a 2% interest in the lease and a 6.67% interest limited to the SE/SE of Section 18.

² See Colgate Exhibits A (Self-Affirmed Statement of T. Macha) and A-15 (December 15, 2022 BLM Correspondence).

³ 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).

⁴ NMSA 1978 § 70-2-17(C) ("When two or more separately owned tracts of land are embraced within a spacing or proration unit, *or* where there are owners of royalty interests or undivided interests in oil and gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit, the owner or owners thereof may validly pool their interests and develop their lands as a unit. Where, however, 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*

Division cases cited by Hartman did not involve the pooling of record title interests and have no bearing here. In addition, the BLM requires a pooling order – not a JOA – to issue a communitization agreement. 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. As the Division correctly found at the December 15, 2022 hearing in these matters, the JOAs discussed by Hartman are irrelevant to the pooling of his record title interest.

Hartman has also opposed Colgate’s request to pool his record title interest because he claims to also own a working interest in the units, but Hartman’s title claim is not before the Division. 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. 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’s due process claims are baseless. Hartman was not notified of Colgate’s original pooling applications because his record title interest was not pooled, which is the reason for Colgate’s current applications. There is no support for Hartman’s request that the Division rescind Colgate’s previously issued pooling orders due to a lack of notice when his interest was not pooled in those proceedings. As the Hearing Examiner recognized during the December 15, 2022 hearing in these matters, the Division regularly allows operators to reopen pooling proceedings to include additional parties 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.

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.”) (emphasis added).

The critical inquiry in this proceeding is whether granting Colgate's applications would result in waste or violate correlative rights. *See* NMSA 1978, § 70-2-17(C). Hartman makes no attempt to address these factors. Nor can he, because as a record title owner he is not liable for well costs or entitled to production proceeds. In essence, the pooling of Hartman's minority 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, which would 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 claims 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 22, 2023.

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

12. Hartman is apparently named as a minority record title owner of a federal lease involved in the Batman Units (2% in the lease and 6.67% limited to the SE/SE of Section 18) and has refused to sign a communitization agreement.

13. The BLM has confirmed that when a record title owner is unavailable or refuses to sign a communitization agreement, the BLM accepts a pooling order in lieu of a signed agreement.

14. Colgate seeks to pool Hartman's record title interest to comply with the BLM's communitization requirements.

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

16. Hartman has not agreed to pool his record title interest.

17. Hartman's record title interest is not subject to the cost or risk penalty provisions of the pooling orders and does not entitle him to proceeds from the Batman Wells' production.

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

B. Disputed Facts

Whether the pooling of Hartman’s minority record title interest in the federal lease in accordance with the BLM’s policy on communitization agreements somehow violates his correlative rights and results in the waste of oil and gas.

IV. PROPOSED EVIDENCE

Witness	Occupation	Estimated Time	Exhibits
Travis Macha	Landman	45 minutes	Approx. 15
John Anthony	Geologist	15 minutes	Approx. 15

V. PROCEDURAL MATTERS

None at this time. Colgate reserves the right to present rebuttal testimony and exhibits.

Respectfully submitted,

HINKLE SHANOR, LLP

/s/ Dana S. Hardy _____
 Dana S. Hardy
 Jaclyn McLean
 Yarithza Peña
 P.O. Box 2068
 Santa Fe, NM 87504-2068
 Phone: (505) 982-4554
 Facsimile: (505) 982-8623
 dhardy@hinklelawfirm.com
 jmclean@hinklelawfirm.com
 ypena@hinklelawfirm.com
 Counsel for Colgate Operating, LLC

CERTIFICATE OF SERVICE

I hereby certify that the foregoing prehearing statement was sent to the following counsel of record by electronic mail on this 12th day of January, 2023:

Gene Gallegos –jcg@gallegoslawfirm.net
Michael Condon – mjc@gallegoslawfirm.net

Dana S. Hardy

District I
 1625 N. French Dr., Hobbs, NM 88240
 Phone:(575) 393-6161 Fax:(575) 393-0720

District II
 811 S. First St., Artesia, NM 88210
 Phone:(575) 748-1283 Fax:(575) 748-9720

District III
 1000 Rio Brazos Rd., Aztec, NM 87410
 Phone:(505) 334-6178 Fax:(505) 334-6170

District IV
 1220 S. St Francis Dr., Santa Fe, NM 87505
 Phone:(505) 476-3470 Fax:(505) 476-3462

State of New Mexico
Energy, Minerals and Natural Resources
Oil Conservation Division
1220 S. St Francis Dr.
Santa Fe, NM 87505

QUESTIONS
 Action 175595

QUESTIONS

Operator: COLGATE OPERATING, LLC 300 North Marienfeld Street Midland, TX 79701	OGRID: 371449
	Action Number: 175595
	Action Type: [HEAR] Prehearing Statement (PREHEARING)

QUESTIONS

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