

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

**APPLICATION OF ELIZABETH KAYE DILLARD
TO REOPEN CASE NO. 21226 (ORDER R-21354),
EDDY COUNTY, NEW MEXICO**

**Case No. 22323
Order No. R-22240**

ORDER

The Director of the New Mexico Oil Conservation Division (“OCD”), having heard this matter through a Hearing Examiner on May 19, 2022, and after considering the testimony, evidence, and recommendation of the Hearing Examiner, issues the following Order.

FINDINGS

1. Due public notice has been given as required by law, and OCD has jurisdiction of this case and the subject matter.
2. Elizabeth Kaye Dillard (“Dillard”) filed an application (“Dillard Application”) on October 29, 2021 to reopen Case No. 21226 due to a failure to provide adequate notice and to require a new hearing.
3. Colgate Application. Case No. 21226 was filed by Colgate Operating, LLC (“Colgate”) on March 3, 2020 (“Colgate Application”) seeking an order pooling all uncommitted mineral interests in the Winchester Bone Spring Pool within a non-standard spacing unit underlying the south half of Sections 33 and 34, Township 19 South, Range 38 East, N.M.P.M., Eddy County, New Mexico (“Spacing Unit”)¹.
4. The record in Case No. 21226 is incorporated into the record for Case No. 22323.
5. The Colgate Application was heard by the Hearing Examiner on May 28, 2020, during which Colgate presented evidence through affidavits in support of its Application. No other party presented evidence at the hearing.
6. The evidence presented by Colgate at the hearing lists Dillard (named as Elizabeth Kaye Tullis Dillard) as an uncommitted working interest owner.

¹ The record on the size of the Spacing Unit is contradictory. The checklist attached to the Orders lists the Spacing Unit as 320 acres however the legal description lists two 320 acre units which together comprise the south half of the sections and therefore would total 640 acres.

7. OCD issued Order No. R-21354 on June 10, 2020, and Order R-21354-A on September 25, 2020. (“Orders”). Each Order pooled the uncommitted interests within the Spacing Unit. Under the Orders, each pooled working interest owner is to be given an opportunity to participate in the costs of the well. If the pooled working interest owner does not participate, the operator can withhold from the interest owner’s share of proceeds the actual costs of production plus supervisory and operating charges and a 200% risk charge. The interests of Dillard, as an uncommitted working interest owner, were pooled under the Orders. (Orders, ¶15). No party appealed either Order to the Oil Conservation Commission (“Commission”).

8. Dillard Application. The Dillard Application asserts that a) Colgate failed to engage in good faith negotiations with Dillard; b) Colgate intentionally failed to provide notice of the Colgate Application to Dillard at Dillard’s correct address; and c) the administrative overhead charges and the risk charge in the Order are unreasonably high and should not have been approved. Dillard seeks to reopen Case No. 21226 to allow Dillard to participate in the hearing on the Colgate Application, and if the Colgate Application is again approved, to have the opportunity to participate in the wells.

9. Colgate, in its pre-hearing statement, asserts that Dillard’s application to reopen should be denied because: a) Dillard lacks standing to challenge the Orders; b) Dillard failed to timely challenge the Orders; c) Colgate used reasonable diligence to attempt to locate Dillard; and d) the 200% risk charge in the Orders is just and reasonable.

10. The Dillard Application was heard by the OCD Hearing Examiners on May 19, 2022. Dillard and Colgate presented evidence through witnesses who were subject to examination. Dillard provided an affidavit from Elizabeth Kaye Dillard (Dillard ex. C) and offered Dillard for questioning. Colgate presented Mark Hajdik, a landman, as a witness.

11. Reopening. The threshold issue is whether the OCD can, and should, reopen a compulsory pooling case because of alleged notice inadequacies after a final order has been issued and time has passed. OCD has the authority to reopen cases as provided in its orders and in the Commission Rules. Each Order provides that the Division “retains jurisdiction of this matter for the entry of such orders as may be deemed necessary”. (Orders, ¶35).

12. The Commission’s Rules specifically provide that the failure to provide adequate notice for a compulsory pooling application is grounds for reopening a case. “Evidence of failure to provide notice as 19.15.4.9 NMAC requires may, upon proper showing, be considered cause for reopening the case.” 19.15.4.12(D) NMAC. In this case, Dillard seeks to reopen the Colgate Application due to alleged failures to provide adequate notice.

13. Standing. Colgate argues that Dillard lacks standing to re-open the Colgate Applications because Dillard was sent a well proposal in December 2020 at Dillard’s correct address and, therefore, since Dillard had an opportunity to participate in the well, Dillard lacks an injury. This well proposal was sent after the hearing on the Colgate Application and after the Orders were entered.

14. In the records of the Colgate Application, Dillard is listed as an interest owner, and, as such, was entitled to notice. The Commission's Rules require an applicant to provide notice to each mineral interest owner "whose interest is evidenced by a written conveyance document either of record or known to the applicant at the time the applicant filed the application". 19.15.4.12(A)(1) NMAC. Being entitled to notice, Dillard is therefore, entitled to party status under the Commission's Rules. 19.15.4.10(A) NMAC. Thus, Dillard has standing under the Commission's Rules to initiate an adjudicatory hearing to reopen a case based on an alleged failure to provide adequate notice. 19.15.4.8(A) NMAC.

15. Providing a well proposal, and therefore an opportunity to participate in a well, after the hearing and after the Orders were issued does not erase the claims of injury that flow from the alleged failure to notify Dillard of the hearing process. Dillard is claiming an injury not only for the inability to consider participation in the well but also for the inability to raise issues, such as the amount of the risk charge, at the hearing. The OCD finds that Dillard has standing to file an application to reopen the Colgate Application.

16. Untimeliness. Colgate argues the Applications are untimely and therefore should be denied. The Commission's Rules allow for the reopening of a case if there is evidence of failure to provide notice as required under the Rules. 19.15.4.12(D) NMAC. The Rules do not provide a time limit for such reopening and only require a "proper showing". Id.

17. The OCD does not reject the argument that, at some point, an application to reopen a case may be untimely. In this case, the time period between the issuance of the Orders and the filing of the Dillard Application was 13 months. The final Order was signed and dated on September 25, 2020. The Application was filed on October 29, 2021. The OCD finds that this period for filing an application to reopen is not unreasonable.

18. Notice: Reasonable Diligence. The Commission's rules require that an applicant for compulsory pooling provide individual notice "to each owner of an interest in the mineral estate of any portion of the lands the applicant proposes to be pooled". 19.15.4.12(A)(1)(a) NMAC. "When an applicant has been unable to locate persons entitled to notice after exercising reasonable diligence, the applicant shall provide notice by publication..." 19.15.4.12(B) NMAC. Demonstrating the failure to comply with the requirement for "reasonable diligence" or with other notice requirements can be the "proper showing" necessary to establish cause for reopening a case. 19.15.4.12(D) NMAC.

19. Did Colgate exercise reasonable diligence to locate Dillard? Colgate's landman, Mark Hajdik, testified that his initial research identified the address below for Dillard. Hajdik sent a well proposal to the Texas address on November 4, 2019. The letter was returned as undeliverable. (Colgate ex. A; Tr. 26).

3208 Wellshire Court
Plano TX 75093 ("Texas address")

20. Prior to the hearing on the Colgate Application, on March 5, 2020, counsel for Colgate mailed notice to Dillard at the Texas address. The letter was returned with the notation “Not deliverable as addressed. Unable to forward” (Colgate ex. A3).

21. Dillard testified that she had moved from the Texas address in 2016. (Dillard ex. C).

22. Hajdik testified that after the Orders were issued he did additional research and located another address where he sent a well proposal on December 10, 2020. (Colgate ex. A4). He did not receive a response.

1307 Hodges Ave.
Ruston LA 71270 (“Louisiana address”)

23. Dillard testified that she received a letter sent on February 11, 2020, from Shaw Interests, Inc., on behalf of Colgate, at the Louisiana address. (Dillard ex. B). The letter offers to purchase Dillard’s “leasehold operating rights” and includes a proposed purchase agreement. The letter does not mention a compulsory pooling proceeding nor offer an opportunity to participate in any well.

24. Hajdik testified that Shaw Interests was a third party contractor for Colgate who was attempting to determine if working interest owners are willing to sell their interest. (Tr. 36-37). While Shaw Interests had the Louisiana address for Dillard, that information was apparently not conveyed to Hajdik or Colgate’s attorney prior to the sending of notice for the Colgate Application. (Tr. 36-39).

25. Notice: Publication. Colgate also published a notice in the Carlsbad Current Argus on May 22, 2020. (Colgate ex. A4). The notice is specifically addressed to a list of interest owners. Dillard’s name is not in the list. The Commission’s rules require that notice be published “at least ten business days before the hearing”. 19.15.4.12(B) NMAC. The notice was published 4 business days prior to the hearing (May 28, 2020).

26. The failure of Colgate to provide notice to the correct address for Dillard when a contractor of Colgate was in possession of that address is evidence of a failure to exercise reasonable diligence. Further, the notice by publication was deficient because of the failure to timely publish compounded by the failure to list Dillard in the notice.

CONCLUSIONS

27. The OCD concludes that the evidence of the failure to provide adequate notice is sufficient cause exists to reopen Case No. 21226.

ORDER

IT IS HEREBY ORDERED THAT Case No. 21226 be reopened. A status conference will be held to schedule a hearing.

**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**



ADRIENNE SANDOVAL
DIRECTOR
AES/bb

Date: 8/29/2022