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

APPLICATIONSS OF COLGATE OPERATING, LLC
TO POOL ADDITIONAL INTERESTS
UNDER ORDERS NO. R-22277, R-22278, R-22279,
R-22280, R-22281, R-22282, R-22283, R-22284,
LEA COUNTY, NEW MEXICO

Cases No. 23149
Orders No. R-22277-A
Cases No. 23150
Orders No. R-22278-A
Cases No. 23151
Orders No. R-22279-A
Cases No. 23152
Orders No. R-22280-A
Cases No. 23153
Orders No. R-22281-A
Cases No. 23154
Orders No. R-22282-A
Cases No. 23155
Orders No. R-22283-A
Cases No. 23156
Orders No. R-22284-A

ORDERS

The Director of the New Mexico Oil Conservation Division ("Division"), having heard this matter through a Hearing Examiner on January 19, 2023, and after considering the testimony, evidence, and recommendation of the Hearing Examiner, issues the following Orders.

FINDINGS

1. On September 26, 2022, the Division issued Orders R-22277, R-22278, R-22279, R-22280, R-22281, R-22282, R-22283, R-22284 ("Orders") to Colgate Operating, LLC ("Colgate" or "Operator") to pool the listed uncommitted oil and gas interests within the specified spacing Units ("Units").

2. On October 3, 2022, Colgate filed Applications ("Applications") to amend the Orders to pool additional uncommitted interests ("Additional Interests"). The Additional Interests are the interests held by certain record title owners (or lessees of record).

3. Doyle and Margaret Hartman ("Hartman") entered an appearance in these cases and objected to the presentation of the cases by affidavit.

4. After a status conference on November 3, 2022, OCD issued a Pre-Hearing Orders setting a contested a hearing date of December 15, 2022. The hearing would address the Applications filed by Colgate and objected to by Hartman.

5. At the hearing on December 15, 2022, the Hearing Examiner addressed several pending motions. These included a Motion to Strike Doyle and Margaret Hartman's Pre-Hearing Statement ("Motion to Strike") filed by Colgate and a Motion to Quash Doyle and Margaret Hartman's Subpoena Duces Tecum ("Motion to Quash") filed by Colgate.

6. The Examiner ruled that the hearing would be continued to January 19, 2023 and would be limited to the request by Colgate to pool additional record title owners including Hartman. The pooling of any other interest of Doyle or Margaret Hartman would not be considered at this hearing. The Motion to Quash was granted. The parties were provided an opportunity to file amended pre-hearing statements, including amended or new direct testimony and exhibits. (Amended Pre-Hearing Orders, 12/15/22).

7. Prior to the hearing on January 19, the following motions and pleadings were filed with the Division:

   a) Motion for Reconsideration, filed by Hartman on January 12, 2023, a Response filed by Colgate on January 17, 2023, and a Supplement to Motion for Reconsideration filed by Hartman on January 17, 2023;
   b) Objection to Doyle and Margaret Hartman's Hearing Exhibits, filed by Colgate on January 17, 2023;
   c) Motion to Dismiss, filed by Hartman on January 17, 2023, and a Response filed by Colgate on January 18, 2023.

8. At the hearing on January 19, 2023, Colgate presented evidence through exhibits and the testimony of Travis Macha. Other witnesses were presented through affidavits in support of the Applications. Hartman presented evidence through exhibits and the testimony of Bryan Jones.

9. Macha testified that the only interests Colgate seeks to pool in this proceeding are record title interests. Hartman is named as an owner of a minority record title interest in the federal leases for this Units. (Colgate Ex. A, A-10). Macha provided Hartman with a copy of Colgate's title opinion and a proposed communitization agreement. Hartman has refused to sign a communitization agreement. (Colgate Ex. A, A-11, A-12, A-13).

10. In the U.S. Department of the Interior Bureau of Land Management ("BLM") Serial Register Pages for the leases covered by the Units, Doyle Hartman is listed as a Current Record Title Owner. (Colgate Ex. A-14; Hartman Ex. 7-A, 8-A. 9-A).

11. Jones testified that, based on his review of federal records, Colgate does not own an interest in the Units. The federal records show the transfer of operating rights from Oxy to Colgate

as "FILED" and not approved and accepted. (Hartman Ex. 7-A). Jones stated that he had not reviewed county records.

12. Issues. In the Motion to Dismiss and in other pleadings, Hartman raised several arguments to dismiss the Applications. First, Hartman claims that Colgate lacks the interest necessary under the Oil and Gas Act to initiate a compulsory pooling proceeding. Because BLM has not approved the assignment of leases to Colgate, Colgate's interest is not valid. Second, Hartman claims that the lands are covered by old operating agreements and therefore are not eligible for compulsory pooling. Finally, Hartman questioned whether the BLM requires record title owners to either sign a communitization agreement or be pooled by a state agency.

13. Does Colgate have an ownership interest in the Units? The Oil and Gas Act allows the Division to pool interests in a unit where the "owners have not agreed to pool their interests" and where one owner "who has the right to drill has drilled or proposes to drill a well on said unit". NMSA 1978, §70-2-17(C). The Act defines "owner" as "the person who has the right to drill into and to produce from any pool and to appropriate the production either for the person or for the person and another;". NMSA 1978, §70-2-33(E).

14. In a document titled "Conveyance, Assignment and Bill of Sale", dated September 1, 2021 ("Assignment"), Oxy USA WTP Limited Partnership ("Oxy") conveyed to Colgate its interest in a variety of assets which included the federal leases which cover the Units. (Colgate Ex. D-2). The Assignment was recorded in the Lea County Records on February 4, 2022. The Assignment was filed with the BLM on February 25, 2022. (Hartman Ex. 7-A).

15. Macha testified that BLM has currently approved Applications for Permits to Drill ("APDs") for three Colgate wells within the area of the Applications, and other APDs are pending with the BLM. (Colgate Ex. D, D-1).

16. Colgate applied for compulsory pooling of the Units on April 27, 2022, in Cases No. 22788-22795. In its Applications, Colgate stated that it is "a working interest owner in the Units and has the right to drill wells thereon." The Division approved the Applications and found that Colgate "is the owner of an oil and gas working interest within the Units." Orders R-22277, R-22278, R-22279, R-22280, R-22281, R-22282, R-22283, R-22284 (Conclusion ¶7).

17. Hartman argues that Colgate does not have a working interest in the Units because the assignment of the interest to Colgate has not been approved by the federal government. The federal Mineral Leasing Act provides that any assignment of a lease for federal lands is "subject to final approval by the Secretary [of the Interior]". 30 U.S.C. §187a. Colgate filed the Assignment of federal leases from Oxy with the BLM but the Assignment has not yet approved by the BLM. (Hartman Ex. 7-A).

18. Hartman relies in part on *River Gas Corp. v. Pullman*, 960 F. Supp. 264 (D. Utah 1997). In a quiet title action where BLM rejected an assignment, the Court found that "It is well

established that a party must receive the approval of the Secretary of the Interior in order for an assignment of a government lease to be valid, … and that an assignment does not actually occur until approval is granted." 960 F. Supp at 266.

19. Colgate relies on a case involving New Mexico interests, *Devon Energy Corp. v. United States*, 45 Fed Cl. 519 (1999). In this takings case, the federal government argued that the plaintiffs had no property rights that could be taken because the plaintiffs had never sought BLM approval of their lease assignments. The Court found that "[t]he transfer approval and recording provisions of the MLA [Mineral Leasing Act] serve BLM's internal administrative needs, and failure to abide by the provisions does not impact the substantive property interests properly transferred to an assignee". 45 Fed. Cl. at 530-31.

20. The *Devon* Court declared that the BLM approval requirements existed so that the BLM had a party that would be required to perform administrative requirements and to whom the BLM could provide notice, but the requirements did not impact property rights. *Id*. At 531. "Although the lack of BLM approvals might impact plaintiffs' rights in their dealings with BLM, it does not undermine the valid transfer of lease interests to plaintiffs". *Id*. The Court held that "state and common law govern property rights, … and all plaintiffs possess real property interests under New Mexico law". *Id*. *See also* NMSA 1978, §§14-9-1 and 70-1-1 (require recording of conveyances in county records); *Bolack v. Underwood*, 340 F. 2d 816 (10th Cir. 1965) (under New Mexico law, constructive notice of an assignment of lease requires recording with county clerk and recording at federal office does not comply).

21. The Division finds that the Assignment, and the recording of the Assignment in the county records, provides Colgate with the interest necessary to apply for compulsory pooling under NMSA 1978, §70-2-17. The Division agrees with the *Devon* decision that New Mexico law governs the property interest at issue here and Colgate has taken the necessary steps to perfect that interest under New Mexico law. E.g., NMSA 1978, §§14-9-1 and 70-1-1.

22. Existing Joint Operating Agreements. Hartman contends that the Units are covered by existing joint operating agreements and therefore not subject to compulsory pooling. *See* NMSA 1978, §70-2-17(C) (The Division may pool interests in a unit when "owners have not agreed to pool their interests"). *See also*, *Doyle Hartman*, Orders R-8013 (Aug. 20, 1985). Hartman provided a copy of an Agreement, dated November 25, 1941, among the lessees of an area which includes the Units, that provides for a transfer of interests and the agreement to drill a well. (Hartman Ex. 5-A). Several other agreements are referenced in a redacted title opinion attached to "Hartman's Response to Colgate Motion to Quash".

23. Colgate argues in several pleadings that the existence of any joint operating agreements is "irrelevant and immaterial to the pooling of Hartman's record title interest". (Colgate's Objections to Hartman's Testimony and Exhibits). The purpose of this proceeding is to provide the BLM with an order pooling record title interests and does not affect the operating interests governed by an operating agreement.

24. The Division, in its December 15, 2022, Amended Pre-Hearing Order, limited this proceeding to the possible pooling of additional record title owners including Doyle Hartman. The Order specifically stated that "[t]he pooling of any other interest of Doyle or Margaret Hartman will not be considered at this hearing." Since any operating interest of the Hartmans can not be considered at this hearing, the possible existence of joint operating agreements is not relevant.

25. Pooling of Record Title Interests. An issue was raised by Hartman at the December 15 hearing concerning the necessity of compulsory pooling for record title interests. Colgate argued that the U.S. Bureau of Land Management ("BLM") required the pooling of record title interests by the state if a communitization agreement was not signed by the record title owners. The Hearing Examiner requested that, at a continued hearing, Colgate provide "some sort of documentary evidence from the BLM" related to the requirement of a pooling order for record title ownership. (12/15/22 Tr. 96).

26. Colgate cited to the BLM Policy Manual governing communitization agreements. BLM Policy Manual 3160-9(F). The Manual "generally" requires an operator to provide a communitization agreement signed by "all necessary parties". However, the Manual allows the BLM to accept a "State order force-pooling such interests". To clarify further, Colgate contacted the BLM local office to confirm that the provision for state pooling order applies to record title interests. The response of the BLM official was "Yes, the BLM may accept state pooling order for lessees." (Colgate Ex. A-15).

27. The federal regulations define "lessee" as "any person holding record title or owning operating rights in a lease issued or approved by the United States" 43 CFR 3160.0-5. Thus, to comply with the federal regulations and the requirements of the BLM, a record title holder must either sign a communitization agreement or be force pooled by the applicable state agency. In this cases, Doyle Hartman is identified in the BLM Serial Register as one of the record title holders for the area covered by the Units. (Colgate Ex. A-14). The Division finds that the BLM will accept a Division compulsory pooling order for communitization of record title interests, and therefore it is permissible to seek compulsory pooling of record title interests.

28. Other motions. Hartman filed a Motion for Reconsideration requesting that the Division reconsider its decision, at the December 15, 2022 hearing, to grant Colgate's Motion to Quash. The Division finds that Hartman did not offer any new and relevant basis to reconsider the Division's prior decision. The Motion for Reconsideration is denied.

29. Colgate filed Objections to the Hartman's proposed hearing exhibits. At the hearing on January 19, 2023, the Examiner admitted the exhibits that were offered by Hartman and therefore addressed any objections.

30. Colgate provided evidence that it gave notice of the Applications and the hearing to the Additional Interest owners. (Colgate Ex. C, C-1, C-2, C-3).

CONCLUSIONS

31. The Division has jurisdiction to issue these Orders pursuant to NMSA 1978, Section 70-2-17.

32. Operator is the owner of an oil and gas working interest within the Units.

33. The only interest of Hartman subject to this proceeding is that of record title owner or lessee of record as shown in the BLM records. This proceeding does not involve any other possible interests of Hartman.

34. Operator satisfied the notice requirements for the Applications and the hearing as required by 19.15.4.12 NMAC.

35. The Division satisfied the notice requirements for the hearing as required by 19.15.4.9 NMAC.

36. The Additional Interest owners have not agreed to commit their interests to the Units.

37. The pooling of the Additional Interests in the Units will prevent waste and protect correlative rights.

ORDERS

1. Hartman's Motion to Dismiss is denied.

2. The Additional Interests in the Units are hereby pooled in the Units.

3. Orders R-22277, R-22278, R-22279, R-22280, R-22281, R-22282, R-22283, R-22284 shall remain in full force and effect.

4. The Division retains jurisdiction of this matter for the entry of such Orders as may be deemed necessary.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

Date: 2/19/2023

DYLAN FUGE
DIRECTOR (Acting)
DF/bb