

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

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION DIVISION FOR
THE PURPOSE OF CONSIDERING:

CASE NOS: 21828, 21829

APPLICATION OF COLGATE OPERATING LLC
TO AMEND ORDERS R-21294 AND R-21226,
EDDY COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS
EXAMINER HEARING
APRIL 8, 2021
SANTA FE, NEW MEXICO

This matter came on for virtual hearing before
the New Mexico Oil Conservation Division, HEARING OFFICER
WILLIAM BRANCARD and TECHNICAL EXAMINER DEAN McCLURE on
Thursday, April 8, 2021, through the Webex Platform.

Reported by: Irene Delgado, NMCCR 253
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A P P E A R A N C E S

For the Applicant:

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1 HEARING EXAMINER BRANCARD: We've got some little
2 more contentious matters coming up here, so I'm calling
3 Items 44, 45, Case 21828 and 21829, Colgate Operating,
4 Modrall Sperling.

5 MR. HOUGH: Good morning, Mr. Examiner. This is
6 Lance Hough, Modrall Sperling on behalf of Colgate Operating
7 in the two cases.

8 HEARING EXAMINER BRANCARD: Okay, Alpha Energy?

9 MR. BRUCE: Mr. Examiner, Jim Bruce on behalf of
10 Alpha Energy, and I just wanted to make one clarifying point
11 which I know Mr. Hough would do, anyway, but my client and
12 Colgate have come to terms, so we are not objecting to the
13 granting of this -- of these applications anymore.

14 HEARING EXAMINER BRANCARD: Okay. Are there any
15 other interested parties in cases 21828 and 21829?

16 (No audible response.)

17 HEARING EXAMINER BRANCARD: Hearing none,
18 Mr. Hough, you may proceed.

19 MR. HOUGH: Thank you. As Mr. Bruce clarified,
20 with the resolution of his client's interest, we'll present
21 those two cases by affidavit.

22 So I will start with the description of these
23 two. These are requests for extensions of orders. The
24 first case, 21829, Colgate is seeking an extension of order
25 R-21226 to allow for a one year extension of time to

1 commence drilling. This order was entered -- I'm sorry, I
2 jumped one over. I apologize. Let me start back.

3 21828 is the first case of those two. The same
4 relief is sought here, one year extension to the time line
5 for drilling, and this is for order 21294 that was entered
6 on April 28, 2020, and that was pooling acreage in the N/2
7 S/2 of Sections 35 and 36. That's Township 19 South, Range
8 28 East in Eddy County, New Mexico. So again, the order
9 extension would be out to April 28, 2022.

10 On the next case is 21829. As I mentioned a
11 moment ago, this is also seeking a one year extension of
12 time to commence the drilling operations. This is under
13 Order R-21226. Under that order acreage was pooled in the
14 S/2 S/2 of Sections 35 and 36 in Township 19 South, Range 29
15 East in Eddy County, New Mexico.

16 And for this application we included that relief
17 be granted nunc pro tunc based upon the understanding that
18 the Division treats applications timely based upon the date
19 the application was filed. We understand that is done under
20 the Doctrine of Nunc Pro Tunc, which, under New Mexico case
21 law, means now for then.

22 So with that, let's walk through the attachments
23 to this application -- to these applications.

24 The first item in Exhibit A, that is the
25 self-affirmed declaration of Mark Hajdik, and in his

1 application or his declaration, he provides that good cause
2 exists for the extensions due to market conditions and
3 limitations caused by the Covid-19 pandemic. So as a result
4 Colgate has had to adjust its drilling schedule for this
5 development. And he also further provides for the
6 resolution with Alpha Energy Partners.

7 Exhibits A-1 and 2 contained in the packet with
8 the applications here. Exhibit A-3 and A-4 are the orders I
9 just referenced a moment ago. The Exhibit B is the
10 affidavit of myself with respect to notice. As provided
11 there in B-1 is the hearing notice itself that was actually
12 the day we filed the application. As well as B-1 or B-2 and
13 B-3 are proof of the mailing notice, and we also published
14 in the newspaper of local circulation to show everyone got
15 proper notice that was submitted timely, 12 business days
16 ago.

17 And so, you know, I would ask that the exhibits
18 be admitted into the record and this matter be taken under
19 advisement. Unless there is any questions, and just to be
20 clear the order extension date for the first case, 21828
21 would be for April 20, 2022, and then the extension for case
22 21829 would be for April 4, 2022. And I stand for any
23 questions.

24 HEARING EXAMINER BRANCARD: Thank you. Mr.
25 Bruce, do you have any questions or comments.

1 MR. BRUCE: None.

2 HEARING EXAMINER BRANCARD: Mr. McClure?

3 TECHNICAL EXAMINER McCLURE: I have no questions
4 for you in this cases.

5 HEARING EXAMINER BRANCARD: Thank you, glad we
6 were able to resolve this. And so the exhibits are admitted
7 and cases 21828 and 21829 are taken under advisement.

8 (Exhibits admitted.)

9 (Taken under advisement.)

10 HEARING EXAMINER BRANCARD: For those of you who
11 are listening in, still listening in, just a point on this
12 case. Mr. Bruce in this matter raised an important point.
13 There is a bit of ambiguity in our provision about
14 extensions of time in our form order.

15 It does refer to the authorization terminating
16 automatically if no order is approved extending time. As a
17 number of you have noted today, you sort of assume that, as
18 long as you have an application in before the one-year
19 deadline you are safe. It doesn't really say that in the
20 order, and perhaps we need to clarify our order to make that
21 clear.

22 We have language in our new model underground
23 injection control permit that does deal with this issue,
24 requires submittal 30 days in advance of the expiration, and
25 so that's one thing we may look at. Just a heads up we may

1 be looking at this issue further.

2 MR. HOUGH: I would like to add one thing for
3 just a thought for future reference. There is language
4 provided there unless, so I think that provides the Division
5 discretion to allow the application to be the -- the time
6 frame for timeliness. And again, for -- for source of
7 authority, that Nunc Pro Tunc Doctrine is well established
8 in New Mexico.

9 And at one point the Division could look at the
10 case of State v. Hatly, 1963 NMSC 110 and that provides the
11 doctrine which I understand is what the Division is
12 following.

13 HEARING EXAMINER BRANCARD: Thank you. And we
14 realize when something is scheduled for hearing, and when an
15 order comes out or not, that is out of your control, so we
16 would like to have a deadline that is something that's under
17 your control that you have to meet.

18 MR. HOUGH: Thank you.

19 HEARING EXAMINER BRANCARD: Mr. Feldewert?

20 MR. FELDEWERT: Yes, sir. Thank you. While we
21 are on this subject or related subject, is it -- I'm not
22 clear on this -- is it still the Division's policy that all
23 new applications, no matter what they involve, are set on
24 the first docket of every month, or do we have the
25 flexibility of being able to place some basis particularly

1 in the cases that are not contested on the second docket?

2 HEARING EXAMINER BRANCARD: I will defer to
3 Marlene on this matter. You know, we are now getting much
4 busier with our dockets, and so it's becoming an issue. So
5 I don't know, we may have slipped off that procedure, but
6 maybe going back -- Marlene, where are we on this?

7 MS. SALVIDREZ: So I only notice once a month, so
8 new cases at the beginning of the month, and we can continue
9 cases the second hearing of the month, but I'm also
10 continuing cases on the first docket of the month as well.

11 So we are still sticking with new cases at the
12 beginning of the month because I only notice once.

13 MR. FELDEWERT: As you know, Mr. Brancard, there
14 is a big difference between having 12 available dockets
15 roughly during a year versus 24 available dockets during a
16 year to address a lot of circumstances including the one you
17 just addressed.

18 HEARING EXAMINER BRANCARD: Correct. But we went
19 to this system in part because of volume, and now that
20 volume is starting to return. I mean, this docket was 108
21 cases when it originally started. We are already planning
22 on over 100 cases I think for next month, so it's getting
23 busier again.

24 So this, I think, this was sort of an effective
25 system that we implemented to sort of maintain some sort of

1 control over that process. We may end up having more
2 special dockets if we continue to get busy here.

3 MR. FELDEWERT: Okay. Thank you.

4 (Concluded.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

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4 REPORTER'S CERTIFICATE

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6 I, IRENE DELGADO, New Mexico Certified Court
7 Reporter, CCR 253, do hereby certify that I reported the
8 foregoing virtual proceedings in stenographic shorthand and
9 that the foregoing pages are a true and correct transcript
10 of those proceedings to the best of my ability.

11 I FURTHER CERTIFY that I am neither employed by
12 nor related to any of the parties or attorneys in this case
13 and that I have no interest in the final disposition of this
14 case.

15 I FURTHER CERTIFY that the Virtual Proceeding was
16 of poor to good quality.

17 Dated this 8th day of April 2021.

18

/s/ Irene Delgado

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Irene Delgado, NMCCR 253
License Expires: 12-31-21

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