

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

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

Case No. 22323

**PRE-HEARING STATEMENT
OF ELIZABETH KAYE DILLARD.**

Applicant Elizabeth Kay Dillard (“Ms. Dillard”), by and through her undersigned attorneys, submits this pre-hearing statement as required by the rules of the Oil Conservation Division (the “OCD”).

STATEMENT OF THE CASE

1. Background.

Ms. Dillard brought an action to reopen Case No. 21226 regarding the Application of Colgate Operating, LLC (“Colgate”) for Compulsory Pooling and Non-Standard Spacing and Proration Unit in Eddy County, New Mexico.

In Case No. 21226, Colgate sought an order pooling all mineral interests in the Winchester Bone Spring Pool underlying Sections 33 and 34, Township 19 South, Range 38 East, N.M.P.M., Eddy County, New Mexico (the “Subject Lands”). The purpose of pooling the Subject Lands was to drill the Dawson 34 Fed State Com 123H well, the Dawson 34 Fed State Com 133H well, the Dawson 34 Fed State Com 124H well, and the Dawson 34 Fed State Com 134H well (collectively, the “Dawson Wells”).

The OCD entered Order No. R-21354-A in Case No. 21226 pooling the Subject Lands for the Dawson Wells.

On August 29, 2022, the OCD entered Order No. R-22240 in Case No. 22323, which, among other things, found that:

“14. ...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.

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.”

The Order then concluded that the evidence of Colgate’s failure to provide adequate notice was sufficient and that cause existed to reopen Case No. 21226. Finally, the Order ordered that Case No. 21226 be reopened.

2. Colgate Has Not Provided Ms. Dillard an Opportunity to Participate.

Colgate’s Application in Case No. 21226 should be denied as Colgate has not made a good faith effort to secure the voluntary commitment of Ms. Dillard’s interest in the Dawson Wells as required by New Mexico law.

As the Applicant in Case No. 21226, Colgate has the burden of proving that it has fulfilled each of the statutory and regulatory requirements necessary to allow compulsory pooling. These requirements stem from the foundational principles of correlative rights and constitutionally protected private property rights. Section 70-2-17 NMSA states that:

All orders effecting [compulsory] pooling... shall be upon such terms and conditions as are just and reasonable and will afford to the owner or owners of each tract or interest in the unit the opportunity to recover or receive without unnecessary expense his just fair share of the oil or gas, or both.

When seeking to pool two or more separately owned tracts, Operators have the “obligation” to attempt to obtain voluntary agreements pooling the lands. *See* NMSA 1978 Section 70-2-18.

Additionally, prior to the issuance of a unitization order, applicants must show that the “operator has made a good a good faith effort to secure voluntary unitization within the pool.”

It is self-evident that the requirement of a “good faith effort to secure voluntary unitization” encompasses, at a minimum, providing each working interest owner with notice of the proposed wells and an opportunity to participate in the same without the imposition of a risk penalty. This voluntary participation allows the owner to “recover or receive without unnecessary expense” their fair share of oil or gas, or both.

In this case, Colgate has not made good faith attempts to obtain Ms. Dillard’s voluntary agreement to the Dawson Wells. Despite the OCD’s ruling in Order No. 22240, Colgate has not provided Ms. Dillard with well proposals, AFE’s, or made any other offer regarding Ms. Dillard’s voluntary agreement to the Dawson Wells. Ms. Dillard still has not had the opportunity to consent to participate in the Dawson Wells. While Ms. Dillard has contacted Colgate multiple times and informed them of her desire to participate in the Dawson wells, Colgate has refused to allow her to do so. As a result, Ms. Dillard has been deprived of her statutory right to recover or receive her just fair share of oil and gas without unnecessary expense.

3. Colgate’s Prehearing Statement Misrepresents its Conversations with Ms. Dillard.

Colgate’s Prehearing Statement filed on December 8, 2022, alleges that “Ms. Dillard has... agreed that Colgate may proceed to pool her interest under the terms of Order No. 21354-A.... Ms. Dillard has agreed to Colgate’s presentation of this matter by affidavit.” (Colgate Prehearing Statement, page 2). Both statements are simply untrue. Ms. Dillard has never agreed that Colgate may pool her interest, nor has she agreed that Colgate may present this matter by affidavit. In discussions with Colgate, Ms. Dillard agreed that, IF Colgate provided her with AFEs and an opportunity to participate in the Dawson Wells (which Colgate is statutorily required to do), then

she would not oppose their application going forward by affidavit. However, as detailed in this Prehearing Statement, Colgate still has not provided Ms. Dillard with an opportunity to participate in the Dawson Wells.

Colgate has not satisfied the statutory and regulatory prerequisites to compulsory pooling and its Application should be denied.

PARTIES

APPLICANT:

Elizabeth Kaye Dillard

APPLICANT’S ATTORNEY

Scott S. Morgan
Brandon D. Hajny
Cavin & Ingram, P.A.
P. O. Box 1216
Albuquerque, New Mexico 87103-1216
Telephone: (505) 243-5400
Facsimile: (505) 243-1700
smorgan@cilawnm.com
bhajny@cilawnm.com

RESPONDENT

Colgate Operating, LLC

RESPONDENT’S ATTORNEY

Dana S. Hardy
P.O. Box 2068
Santa Fe, NM 87504-2068
dhardy@hinklelawfirm.com

OTHER INTERESTED PARTIES

None.

APPLICANT’S PROPOSED EVIDENCE

| WITNESSES | ESTIMATED TIME | EXHIBITS |
|------------------------|-----------------------|-----------------|
| Elizabeth Kaye Dillard | 15 minutes | Approx. 5-10 |
| Lee Caple | 15 minutes | Approx. 1-5 |

APPLICANT’S POSITION ON RELIEF SOUGHT

Colgate has informed Ms. Dillard that it will provide her with AFEs and an opportunity to participate in the Dawson Wells. However, despite more than 3 months having passed since the OCD’s entry of Order No. 22240, it has continued to fail to do so.

Ms. Dillard requests that the OCD deny Colgate’s Application in Case No. 21226 as Colgate has not complied with the statutory requirements for compulsory pooling, unless Colgate does the following:

1. Provide Ms. Dillard an opportunity to participate in the Dawson Wells with updated AFEs for the Dawson Wells reflecting actual expenditures and back-up materials; and
2. Agree that, if Ms. Dillard elects to participate in the Dawson Wells, and does so within 30 days of receiving the AFEs and opportunity to participate, Colgate will not seek to pool Ms. Dillard interest in the Dawson Wells.

RESPECTFULLY SUBMITTED,

CAVIN & INGRAM, P.A.

By: 

Scott S. Morgan
Brandon D. Hajny
P. O. Box 1216
Albuquerque, NM 87103
(505) 243-5400
smorgan@cilawnm.com
bhajny@cilawnm.com

Attorneys Applicant Elizabeth Kaye Dillard

I hereby certify that a true and correct copy of the foregoing was served via e-mail on December 8, 2022 to the following:

Dana S. Hardy
PO Box 2068
Santa Fe, New Mexico 87504
dhardy@hinklelawfirm.com

Attorneys for Colgate Operating, LLC

CAVIN & INGRAM, P.A.

By: /s/ Brandon D. Hajny
Brandon D. Hajny