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

APPLICATIONS OF COLGATE OPERATING, LLC FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.

Case Nos. 23149-56

HARTMAN'S SUPPLEMENTAL PRE-HEARING STATEMENT

Doyle and Margaret Hartman ("Hartman") provide this Supplemental Pre-Hearing Statement as required by Rule 19.15.4.13B NMAC and the Pre-Hearing Order entered on November 4, 2022. The issues in each of the above-referenced cases are identical with respect to the relief sought in the application and the basis for Hartman's opposition.

APPEARANCES

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STATEMENT OF THE CASES

Colgate has filed eight cases seeking to amend force pooling orders that were entered on September 26, 2022 in OCD cases 22788-95. The orders are R-22277, 22278, 22279, 22280, 22281, 22282, 22283 and 22284 ("Prior orders"). The Prior orders pooled uncommitted interests in horizontal spacing units comprised of Section 18 and 19, Township 20 South, Range 34 East, Lea County, New Mexico. The properties consist of federal leases.

Hartman owns interests in the acreage affected by the applications and owned his interests when Colgate filed its applications in cases 22788-95 in April 2022. Though Colgate was aware of Hartman's ownership at all material times, it purposely failed to provide Hartman with notice of the applications in cases 22788-95. It offers no valid excuse as to why Hartman was not notified of the force pooling applications.

The lands in sections 18 and 19 are already subject to a November 25,1941 Operating Agreement between predecessors of Hartman and Colgate. The agreement applies to all of sections 18 and 19. The 1941 Operating Agreement was amended by a 1949 agreement. Colgate has to date refused to produce the 1949 agreement.

The Prior Orders contain objectionable terms. However, based on Colgate's representation that they are not force pooling any Hartman working interest, Hartman does not intend to raise issues regarding the 200% risk penalty or the procedure for billing working interest owners for their share of costs without regard to when the wells will actually be drilled. Hartman reserves the right to raise those issues if an attempt is made to force pool his working interest.

MATERIAL FACTS NOT IN DISPUTE

1. The lands at issue involve Section 18 and 19, Township 20 South, Range 34 East, Lea County, New Mexico. The properties are subject to federal leases NMNM 013276, NMLC 0029512-A, NMLC 0029512-B and NMLC 0029512-C. The lands in issue are located in the Potash Area administered by the Bureau of Land Management (BLM).

2. Hartman acquired a record title interest and operating rights in sections 17, 18, 19, and 20, Township 20 South, Range 34 East, Lea County in a conveyance from Sun Operating Limited Partnership by Sun Exploration and Production Co. and Sun Exploration and Production Co. effective January 2, 1986 as reflected in transfers from Sun to Hartman as to leases NMNM 013276, NMLC 0029512-A and NMLC 0029512-B.

3. The conveyance as to the interests at issue here was made subject to a November 25, 1941 Operating Agreement between the W-K Royalty Co., R. Olsen Oil Co. and Cities Service Oil Co. as amended by Agreement dated May 16, 1949 between R. Olsen Oil Co., E. A. Culbertson and Cities Service Oil Co. providing for operation of the leasehold estate by Cities Service Oil Co.

4. Following the 1986 Sun to Hartman conveyance, the federal lease files for NMNM 013276, NMLC 0029512-A, and NMLC 0029512-B have at all relevant times reflected Hartman as owner of both record title and operating rights in these leases.

5. Colgate sent a letter dated February 2, 2022 to Affected Parties regarding the Batman Development Area in sections 18 and 19. Hartman was noticed as an “Affected Operator/Lessee/WI Owner.” This was the first communication Hartman received from Colgate regarding the Batman wells.

6. Colgate was aware of Hartman's interest in the affected acreage when it filed its applications in OCD cases 22788-95 on April 27, 2022. The applications sought force pooling orders for units to be dedicated to twenty-four (24) Batman wells in Sections 18 and 19, Township 20 South, Range 34 East covering the Wolfcamp and Bone Spring formations. Colgate did not provide Hartman with notice when it filed its applications in OCD cases 22788-95.

7. On May 10, 2022, after filing its force pooling applications, Colgate sent Hartman proposed communitization agreements for the Batman wells. Hartman has not signed the communitization agreements.

8. OCD cases 22788-95 were heard on June 2, 2022. Hartman did not participate because he had no notice.

9. Colgate filed eight (8) force pooling applications on June 6, 2022 to establish spacing units for various Robin Federal Com wells in sections 17 and 20, Township 20 South, Range 34 East. Hartman's interest in these sections is the same as his interest in sections 18 and 19. Colgate provided notice to Hartman of its Robin force pooling applications.

10. On June 14, 2022, Colgate obtained a Drilling and Division Order Title Opinion (DDOTO) pertaining to sections 17 and 20, Township 20 South, Range 34 East. The DDOTO recognized both the November 25, 1941 Operating Agreement and the May 16, 1949 agreement.

11. The Division entered force pooling orders R-22277, 22278, 22279, 22280, 22281, 22282, 22283 and 22284 ("Prior orders") in OCD cases 22788-95 on September

26, 2022. Colgate did not provide Hartman with notice of its force pooling applications for the Batman wells prior to September 26, 2022.

12. On October 3, 2022, Colgate filed its applications in these cases seeking to pool Hartman's record title interests into the units formed under the Prior Orders pursuant to the terms of those orders. Its applications claimed that since the Prior Orders were entered, Colgate identified additional interests (i.e., Hartman) in the Unit that have not been pooled under the terms of the Prior Orders. The applications do not reference the 1941 Operating Agreement or the 1949 Agreement.

13. Hartman contends that he owns both record title and operating rights in the lands at issue in these cases. Colgate agrees regarding record title but disputes Hartman's ownership of working interests. Colgate has stipulated that it does not seek to pool any working interest owned by Hartman in these cases.

14. Colgate claims that it filed APDs with the BLM on May 11, 2022. Hartman was not provided with notice of those filings when they occurred.

DISPUTED FACTS AND ISSUES FOR THE HEARING

Disputed facts are those related to and supporting the following issues Hartman raises in these cases:

1. The OCD Prior orders Colgate seeks to amend (R-22277-R-22284) were entered improvidently and in violation of Hartman's due process rights and rights to notice under 19.15.4.12 NMAC. Colgate failed to give notice to Hartman of the applications for the Batman wells even though it was aware of Hartman's interests. Colgate misrepresented to the OCD in those cases that it had made a good faith effort to contact all interest owners and that notice was given. The OCD should withdraw those Prior orders.

2. The lands that are the subject of Colgate's force pooling applications are subject to a valid operating agreement. Because a valid operating agreement covers all of sections 18 and 19, and because the only lands at issue in Colgate's applications are wholly within sections 18 and 19, force pooling is unavailable under NMSA 1978 § 70-2-17; *Application of Hartman,* OCD Case No. 8606, Order No. R-8013.

3. Drilling of the proposed wells cannot proceed until Colgate has received approval by the BLM of a Development Area, one or more Drilling Islands and an APD. Each of those steps requires notice to Hartman as an affected party. Colgate has not provided all required notices.

4. Colgate has refused to acknowledge Hartman's working interest in the affected acreage even though BLM records show Hartman as the owner of record title and operating rights in federal leases LC0029512A, LC0029512B, and NMNM 013276. Hartman has never assigned operating rights while retaining record title in these properties. Thus, if he retained record title, he also retained operating rights. It makes no sense to force pool the record title interest while ignoring Hartman's operating rights. The fact that Colgate is not seeking to pool any working interest owned by Hartman does not solve this problem.

5. The title dispute can only be resolved by the courts. That litigation should be concluded, and the force pooling applications and the resulting Prior orders should be stayed. It is administratively inefficient and imprudent to allow operations under the force pooling order knowing the rights and obligations of the owners will be subject to modification if Hartman prevails. Since the Division is not empowered to resolve the ownership dispute, it should await that determination before proceeding.

6. Section 70-2-17(C) authorizes force pooling in order to pool all interests in the subject property for purposes of fully developing the minerals. The statute provides that a force pooling order must proportionally allocate production to the interest owners. It would be contrary to the language and intent of the statute to enter a force pooling order which intentionally omits a portion of the working interest. Such an order is unworkable.

Hartman is relying on Colgate's representation that it is not force pooling any working interest Hartman owns. If they were, Hartman would raise the following issues.

7. Hartman opposes issuance of any force pooling order which would require working interest owners pay their pro rata share for all wells up front without regard to when each well will be drilled. Hartman asks that any order allow for sequential payment by (a) requiring that Colgate submit AFEs for its wells no sooner than 60 days before the commencement of the drilling of each well and (b) allowing a working interest owner who decides to participate 30 days from receipt of the AFE to make payment.

8. Colgate cannot justify the proposed 200% risk penalty because there is little or no geologic risk in drilling the proposed wells. The target Wolfcamp and Bone Spring formations are established resource plays. The fact that Colgate plans to drill 24 wells is evidence that Colgate sees little to no risk in the project. Colgate, as the party advocating for a 200% risk penalty, should bear the burden to establish the basis for the request.

PROPOSED EVIDENCE

Witness Bryan Jones

A. Qualifications as expert landman

Mr. Jones is a mineral landman who began his career in December 1973 as a trainee and then became regular employee of Phillips Petroleum Company for five years.

Thereafter he became a certified land man and worked as independent. Much of his work has been associated with federal leases in New Mexico. He has provided the services necessary to obtain approval of the formation of many federal units. He has prepared numerous Communitization Agreements. He is well acquainted with federal lease regulations and with the BLM filing system.

Mr. Jones' qualification to testify as an expert landman has been accepted before the New Mexico Oil Conservation Division and the state district court in Sublette County, Wyoming.

B. Opinions

1. Federal records show Hartman as owner of record title and operating rights.

Mr. Jones examined the applications of Colgate for pooling minerals for development of its Batman wells in sections 18 and 19, T20S, R34E, Lea County. The minerals being pooled are under federal leases in the Potash Area, subject to BLM jurisdiction. In the Santa Fe BLM office, Mr. Jones examined the records for federal leases NMNM 013276, NMLC 0029512-A, NMLC 0029512-B and NMLC 0029512 -C. Those leases pertain to T20S, R34E, Sections 18 and 19, Lea County.

Examining title to federal lands requires an examination of two sets of records. The title depends on entries on the county records and entries in the federal records. Colgate claims its examination of the Hartman interest is based solely on the county records, though recognition of Hartman's ownership of record title would logically flow from review of the BLM records.

The federal records show that Hartman is a lessee under leases NMNM 013276, NMLC 0029512-A, and NMLC 0029512-B. The BLM lease files show a transfer from Sun into Hartman of record title and operating rights with no transfer out of Hartman to Plantation or any other assignee. In federal regulation terms a lessee is referred to as owning "record title." The lessee can sever portions of the leasehold. For example, the lessee can carve off portions of the land, or of formation, or depths and can sever overriding royalty. In federal terminology operating rights means the interests created out of a lease authorizing the holder to conduct operations on the interests severed from the lease by the lessee. These interests are commonly referred to as "working interests." Operating rights not severed remain held by the lessee/record title owner.

Mr. Jones looked for any severance of the Hartman lessee/record title interest. He investigated what Hartman acquired from Sun Operating and what of those interests had been transferred to a third party. Based upon his examination of the federal oil and gas lease files, Mr. Jones will testify that Hartman currently owns both record title/lease and operating rights/working interest in Sections 18 and 19 under federal leases NMNM 013276, NMLC 0029512-A, NMLC 0029512-B.

2. The 1941 Operating Agreement covers sections 18 and 19.

Mr. Jones reviewed the November 25, 1941, Operating Agreement between W-K Royalty Company, R. Olsen Oil Company, and Cities Service Oil Company. Hartman is a successor in interest to R. Olsen. The agreement provides that the parties combine their respective interests in federal leases; Cities Service is to be the operator and drill a well; it provides specifications on the parties bearing the expenses of the operation.

The operating agreement applies to all of Sections 18 and 19 which are the subject of Colgate's force pooling orders for the Batman wells. Those orders create spacing units from acreage entirely within sections 18 and 19.

3. Colgate failed to provide Hartman notice of the original force pooling cases.

Mr. Jones reviewed Colgate force pooling applications and the OCD dockets in cases 22861-68 (Robin wells), 22788-95 (Batman wells) and the current cases 23149-56. He also reviewed the exhibits Colgate filed in those cases. Those records show Colgate was aware of Hartman's interest when it filed its applications in cases 22788-95 but failed to provide notice. Colgate never provided Hartman with proposed communitization agreements for the Batman wells until May 10, 2022, after it filed its force pooling applications.

C. Exhibits

Hartman Exhibit 1-A. Mr. Jones' Affidavit.

Hartman Exhibit 2-A. Schedule of the lease acreage obtained by Hartman and the few instances of rights that were transferred out of the leases. The far-right column sets forth the operating rights or "WI" retained by Hartman in specific lands.

Hartman Exhibit 3-A. Schedule of Colgate force pooling cases

Hartman Exhibit 4-A. 1986 conveyance from Sun to Hartman which shows that Hartman obtained his interest subject to existing Operating Agreements.

Hartman Exhibit 5-A. Operating Agreement dated November 25, 1941, between W-K Royalty Company, R. Olsen Oil Company, and Cities Service Oil Company.

Hartman Exhibit 6-A. Copy of Colgate's notice letter of February 2, 2022 regarding the Batman Development Area which was provided to Hartman as an "Affected Operator/Lessee/WI Owner."

Hartman reserves the right to submit rebuttal testimony and exhibits.

PROCEDURAL ISSUES

Hartman requests that the Division withdraw the Prior orders and continue these cases pending resolution of the title dispute.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on counsel of record by electronic mail this 8th day of December 2022.

/s/ J.E. Gallegos
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