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

MOTION FOR RECONSIDERATION

Doyle and Margaret Hartman ("Hartman") request that the Division reconsider the Hearing Examiner's oral ruling at the December 15, 2022 hearing granting Colgate's Motion to Quash a subpoena served by Hartman seeking documents relevant to this proceeding. As grounds for this Motion, Hartman would show as follows:

1. Colgate seeks in these cases to force pool Hartman's record title interest in sections 17, 18, 19 and 20 in Township 20 South, Range 34 East, Lea County, New Mexico. The acreage is subject to federal leases NMNM 013276, NMLC 0029512A and NMLC 0029512B, which are in the Potash area.

2. Colgate asks the Division to pool Hartman's interest pursuant to the terms of Division Orders entered September 26, 2022. Hartman was not given notice of the applications in OCD cases 22788-95 which resulted in entry of the September 26 force pooling orders. Hartman had no opportunity to contest the merits of those applications.

3. Hartman opposes these applications on numerous jurisdictional and factual grounds. Colgate represented that it was only seeking to force pool Hartman's record title interest and was not seeking to force pool any working interest owned by Hartman. Colgate represented that the BLM required that all interest owners, including record title

owners, agree to participate in the proposed development either by signing a communitization agreement or by being subject to a force pooling order.

4. Hartman served a subpoena on Colgate on November 17, 2022 seeking the following documents: (a) 1949 operating agreement which covers the lands at issue in Colgate's force pooling applications; (b) communications between Colgate and the BLM concerning the federal leases and acreage at issue in Colgate's force pooling applications. Colgate moved to quash the subpoena arguing that the requested documents were irrelevant.

5. At the December 15 hearing in these cases an issue was raised about whether the BLM in fact requires that record title owners execute a communitization agreement. The Hearing Examiner ruled that the matter would be rescheduled to January 19, 2023, at which time the Division would only consider Colgate's request to force pool record title owners including Hartman. The Hearing Examiner orally granted Colgate's motion to quash.

6. Hartman has previously demonstrated that the 1949 operating agreement amended a 1941 operating agreement that applied to all of sections 17, 18, 19 and 20. Thus, the interest owners have already agreed to pool their interests for mineral development. Hartman has raised a jurisdictional challenge under NMSA 1978 §70-2-17(C) to the Division's authority to issue a force pooling order. The Legislature has authorized force pooling proceedings only where interest owners have not agreed to pool their interests. Even given the limited scope of the January 19 hearing, the 1949 operating agreement is relevant to determine if the Division has the authority to force pool Hartman's record title interest where the interest owners have agreed to pool their interests.

7. Communications between Colgate and the BLM concerning the proposed Colgate plan of development are relevant to the questions that were raised during the December 15 hearing about whether the BLM actually requires agreement by record title owners. Any communication from the BLM to Colgate on this issue is relevant in its own right. Moreover, Hartman anticipates that Colgate will respond to the questions raised by citing statements of counsel and/or communications from the BLM on the subject. Colgate cannot support its application by citing self-selected communications from the BLM while denying Hartman the right to see all communications on the subject.

8. Like a trial court judge, the Division Hearing Examiner has inherent authority to reconsider interlocutory rulings. *Tabet Lumber Co. v. Romero,* 1994-NMSC-033, ¶ 6, 872 P.2d 847. The policy of reconsideration is designed to insure that errors are not perpetuated.

Hartman respectfully requests that the Division reconsider its oral ruling granting the motion to quash and order Colgate to produce the 1949 operating agreement and communications with the BLM concerning its plan for development for Sections 17-20, Township 20 South, Range 34 East, Lea County, New Mexico.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

By /s/ J.E. Gallegos
J.E. GALLEGOS
MICHAEL J. CONDON
460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505
(505) 983-6686
jeg@gallegoslawfirm.net
mjc@gallegoslawfirm.net

Attorneys for Hartman

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 12th day of January, 2023.

/s/ J.E. Gallegos
J.E. Gallegos