

1 STATE OF NEW MEXICO
2 ENERGY, MINERALS, AND NATURAL RESOURCES DEPARTMENT
3 OIL CONSERVATION DIVISION
4 IN THE MATTER OF THE HEARINGS CALLED.
5 BY THE OIL CONSERVATION DIVISION FOR
6 THE PURPOSE OF CONSIDERING: AGENDA ITEMS 1-74
7
8
9
10
11

12 REPORTER'S TRANSCRIPT OF PROCEEDINGS
13 THURSDAY, JANUARY 19, 2023
14

15 These matters came on for hearing before the New
16 Mexico Oil Conservation Division, William Brancard,
17 Esq. Hearing Examiner, Leonard Lowe, Technical
18 Examiner, on Thursday, January 19, 2023, via Webex
19 Virtual Conferencing Platform hosted by the New
20 Mexico Energy, Minerals and Natural Resources
21 Department
22

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25 PAUL BACA COURT REPORTERS, A VERITEXT
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14 AGENDA ITEM NO. 10

15 APPLICATION OF MARATHON OIL
PERMIAN, LLC FOR COMPULSORY.
16 POOLING, EDDY County, New Mexico No. 21387

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4 APPLICATION OF COLGATE OPERATING, LLC,
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7 APPLICATION OF COLGATE OPERATING, LLC,
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10 APPLICATION OF COLGATE OPERATING, LLC,
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TO POOL ADDITIONAL INTERESTS
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P R O C E E D I N G S

(Time noted 8:16 a.m.)

EXAMINER BRANCARD: Good morning everyone. It is January 19, 2023.

These are hearings in the New Mexico Oil Conservation Division. I am Bill Brancard, Hearing Examiner. With me today is Mr. Leonard Lowe, Technical Examiner.

Mr. Lowe, are you there?

EXAMINER LOWE: Yes, sir. Good morning. I'm having a hard time hearing my stuff on my side, though. I'm working on that.

EXAMINER BRANCARD: Okay.

I don't think I have any announcements today, but we have worksheet posted on our website, as always. Today there are 74 cases. Quite a number of them are status conferences, so we may be moving pretty quickly today through the agenda.

EXAMINER BRANCARD: With that I will call our first cases. On the worksheet these are Cases 1 through 9. The numbers are 21361, 21362, 21363, 21364, 21393 21394, 21489, 21490, 21491.

Let's start with Mewbourne Oil Company.

MS. HARDY: Good morning, Mr. Examiner. Dana Hardy with the Santa Fe Office of Hinkle Shanor on behalf

1 of Mewbourne Oil Company.

2 EXAMINER BRANCARD: All right. So we have
3 Ascent Energy.

4 MR. SAVAGE: Good morning. Darrin Savage with
5 the Santa Fe office of Abadie and Schill on behalf of
6 Matador Production Company, successor to Ascent Energy.

7 EXAMINER BRANCARD: Thank you. Then we have
8 Apache Corporation.

9 MS. BENNETT: Good morning, everyone. Deana
10 Bennett on behalf of Apache Corporation.

11 EXAMINER BRANCARD: I think I have a few other
12 entries of appearance here. Let's start with Colgate
13 Operating.

14 MS. SHAHEEN: Good morning, everyone. Sharon
15 Shaheen of Montgomery and Andrews on behalf of Colgate
16 Operating.

17 EXAMINER BRANCARD: EOG Resources. (Note:
18 Pause.)

19 Mr. Padilla? He was on earlier.

20 And I think I also have Jalapeno
21 Corporation has entered in some of these cases.

22 MR. BECK: Good morning, Mr. Hearing Examiner.
23 Matt Beck on behalf of Jalapeno Corporation.

24 EXAMINER BRANCARD: Thank you.

25 Are there any other entries of appearance

1 in Cases 21361, -362, -363, -364, 21393, -394, 21489,
2 -490, -491? (Note: Pause.)

3 Hearing none, I will start with Mewbourne.
4 Where are we?

5 MS. HARDY: Mr. Examiner, the parties are still
6 working on finalizing an agreement, and are making
7 progress so I believe that the parties are in agreement
8 that another status conference should be set, and I think
9 we have discussed the date of February 16th.

10 EXAMINER BRANCARD: So soon. Okay. You're
11 being optimistic.

12 MS. HARDY: Hope springs eternal.

13 EXAMINER BRANCARD: All right. Matador okay
14 with that?

15 MR. SAVAGE: We're fine with that.

16 EXAMINER BRANCARD: Thank you.

17 And Apache?

18 MS. BENNETT: Yes. Thank you.

19 EXAMINER BRANCARD: Any other comments on the
20 proposal for a status conference on February 16th?

21 Hearing none, these cases will be set for a
22 status conference on February 16th. We will issue some
23 sort of Order.

24 MS. HARDY: Thank you.

25 MR. SAVAGE: Thank you.

1 MR. PADILLA: Mr. Examiner, Ernest Padilla here.
2 I had conductivity problems, and I don't know if you
3 called the first set of cases already.

4 EXAMINER BRANCARD: We did. I'm sorry,
5 Mr. Padilla. We were looking for you.

6 Those cases are set for a status conference
7 on February 16.

8 MR. PADILLA: Okay. Thank you.

9 EXAMINER BRANCARD: With that, Item 10, Case No.
10 21387, Marathon Oil Permian, LLC.

11 MS. BENNETT: Good morning, Mr. Examiner. Deana
12 Bennett on behalf of Marathon Oil Permian, LLC.

13 EXAMINER BRANCARD: Thank you, Ms. Bennett.

14 Anyone else here for Case 21387?

15 MR. RANKIN: Good morning, Mr. Examiner. Adam
16 Rankin appearing on behalf of OXY with the Santa Fe Office
17 of Holland and Hart.

18 EXAMINER BRANCARD: Had you entered an
19 appearance before?

20 MR. RANKIN: In this case?

21 EXAMINER BRANCARD: Yes.

22 MR. RANKIN: I believe so.

23 EXAMINER BRANCARD: Okay. We are here because
24 there's a Motion for Continuance, but this is a really old
25 case and I wanted to see where we were with this.

1 MS. BENNETT: Thank you, Mr. Examiner. I
2 reached out to Marathon after this was set for a status
3 conference, and yesterday afternoon Marathon informed me
4 that I could dismiss this case. So with that I would like
5 to ask that this Case 21387 be dismissed. And I can
6 submit a formal dismissal if that's the Division's
7 preference.

8 EXAMINER BRANCARD: I think we can do it on the
9 record here. Any objections from OXY?

10 MR. RANKIN: Mr. Examiner, No. OXY and Marathon
11 have been in discussions for some time, so no objections
12 to the dismissal.

13 EXAMINER BRANCARD: All right. We will issue an
14 Order then. Thank you.

15 Case 21387 will be dismissed.

16 MS. BENNETT: Thank you.

17 EXAMINER BRANCARD: All right. With that we're
18 on Items 11 and 12. These are Cases 22845, 22947, Tap
19 Rock Operating.

20 MR. RODRIGUEZ: Good morning, Michael Rodriguez
21 with Tap Rock Operating --

22 EXAMINER BRANCARD: EOG Resources.

23 MR. FELDEWERT: Good morning, Mr. Examiner.
24 Michael Feldewert with the Santa Fe office of Holland and
25 Hart.

1 EXAMINER BRANCARD: And I have Marathon Oil
2 Permian.

3 MS. BENNETT: Good morning, everyone. This is
4 Deana Bennett on behalf of Marathon Oil Permian, LLC.

5 EXAMINER BRANCARD: MRC Permian?

6 MR. BRUCE: Mr. Examiner, Jim Bruce on behalf of
7 MRC.

8 EXAMINER BRANCARD: Anyone else here for Cases
9 22845, 22947? (Note: Pause.)

10 I believe we have a few motions for
11 continuances here. Since this had been a status
12 conference and it got moved, I just sort of assumed it was
13 going to be a status conference anyway, but at this point
14 I believe we have a motion to continue this to March 16th.
15 Are there any objections to that? I guess the question
16 is: Are we continuing it for another status conference?

17 MR. RODRIGUEZ: I prefer that we keep it a
18 status conference.

19 MR. FELDEWERT: That's fine with EOG, Mr.
20 Examiner.

21 EXAMINER BRANCARD: All right. So any
22 objections to a status conference on March 16th?

23 MS. BENNETT: No.

24 EXAMINER BRANCARD: Hearing none, it will be
25 ordered. We'll issue something.

1 MR. RODRIGUEZ: Thank you.

2 EXAMINER BRANCARD: With that we are on Items 13
3 through 47. I guess I'll do all the case numbers here.

4 So we're on Cases 23129, 23130, 23131,
5 23132, 23133, 23134, 23135, 23136, 23137, 23138, 23139,
6 23140, 23141, 23142, 23143, 23144, 23145, 23146, 23158,
7 23159, 23160, 23161, 23162, 23163, 23164, 23165, 23166,
8 23167, and 23236, 23237, 23238, 23239, 23240, 23240,
9 23241, 23242, Franklin Mountain Energy.

10 MS. BENNETT: Good morning. This is Deana
11 Bennett of Modrall Sperling on behalf of Franklin Mountain
12 Energy.

13 EXAMINER BRANCARD: Thank you. COG Operating.

14 MS. HARDY: Good morning. Dana Hardy with
15 Hinkle Shanor on behalf of COG Operating.

16 EXAMINER BRANCARD: Thank you. Are there any
17 other entries of appearances for all those cases that I'm
18 not going to call again?

19 Hearing none, let's start with Franklin
20 Mountain.

21 MS. BENNETT: Thank you. The parties are in
22 discussions, and the discussions are progressing but we're
23 not quite done yet, so Franklin Mountain Energy's request
24 with that would be that all these cases be set for a
25 contested hearing for the next available docket.

1 So if that's 2-16, recognizing that there's
2 a bunch of cases here, that would be great.

3 And I believe that COG -- well, I'll let
4 Ms. Hardy speak on her client's behalf, but the parties
5 have at least agreed to 2-16 as a tentative date.

6 EXAMINER BRANCARD: Okay. COG?

7 MS. HARDY: Mr. Examiner, COG would prefer to
8 have status conference on February 16, given the
9 discussions between the parties that are fruitful and
10 making progress. I think if a contested hearing is set we
11 would prefer it to be set with maybe the first docket in
12 April. We have conflicts in March. But based on the way
13 the discussions are progressing, I think it's our position
14 that a contested hearing date on February 16 would be
15 likely unnecessary, and hopefully premature.

16 MS. BENNETT: If I could just respond really
17 quickly, Mr. Examiner.

18 EXAMINER BRANCARD: Sure.

19 MS. BENNETT: I would hope that we would not
20 need a contested hearing on 2-16, but it's Franklin's
21 preference to keep it as a contested hearing on 2-16, and
22 then if we're getting close to the contested hearing date
23 we can request that it be changed to a status conference
24 well in advance of the time that the parties would need to
25 submit any materials or that the Division would be -- you

1 know, have any issues with our timing.

2 So Franklin Mountain Energy would prefer to
3 keep it for a contested hearing on 2-16, with a caveat we
4 would let the Division know as soon as we could if we were
5 going to change it to a status conference.

6 EXAMINER BRANCARD: I think in terms of
7 hearings, February is kind of booked up so we're looking
8 at either March 2nd or April 6th if we're going to set
9 this for hearing.

10 MS. BENNETT: Either one of those dates work for
11 us, Mr. Examiner.

12 MR. BRANCARD: COG, I believe you expressed a
13 problem with March.

14 MS. HARDY: We would prefer April, Mr. Examiner.

15 EXAMINER BRANCARD: COG has conflicts in March,
16 is that what you...

17 MS. HARDY: I think that the March 2nd date may
18 work. I would need to confirm with our witnesses. I know
19 that the second docket in March doesn't work, but the
20 first docket is a possibility, I think, if I could
21 confirm. I think April would definitely work if we wanted
22 to go that route.

23 EXAMINER BRANCARD: Why don't we set this, then,
24 for a hearing on March 2nd, and if COG has problems we can
25 bump it to April.

1 MS. HARDY: Okay. Thank you.

2 EXAMINER BRANCARD: Please let us know as soon
3 as possible.

4 MS. BENNETT: Thank you.

5 MS. HARDY: Thank you.

6 EXAMINER BRANCARD: So with that we're setting
7 this for hearing, not a status conference, on March 2nd.

8 MS. HARDY: Thank you.

9 MS. BENNETT: Thank you very much.

10 EXAMINER BRANCARD: I believe we're on Items 48
11 and 49, Cases 23254, 23255, V-F Petroleum.

12 MS. HARDY: Mr. Examiner, Dana Hardy with Hinkle
13 Shanor on behalf of V-F Petroleum.

14 EXAMINER BRANCARD: Thank you. Apache
15 Corporation.

16 MS. BENNETT: Good morning, everyone.
17 Deana Bennett, Modrall Sperling, on behalf of Apache
18 Corporation.

19 EXAMINER BRANCARD: Any other interested persons
20 for Cases 23254, 23255? (Note: Pause.)

21 Hearing none, let's start with V-F. I
22 think there was a request for February 16th.

23 MS. HARDY: There has been, Mr. Examiner.
24 Apache filed a motion for continuance to February 15, and
25 V-F does not oppose that request.

1 EXAMINER BRANCARD: And this is for a status
2 conference; is that correct?

3 MS. HARDY: I believe it would either be for a
4 status conference or presentation by affidavit. V-F is
5 hopeful that we can reach an agreement with Apache by that
6 date and present the case by affidavit.

7 EXAMINER BRANCARD: Apache?

8 MS. BENNETT: Good question. I think -- I don't
9 have enough information to actually answer that question.
10 I guess I was assuming it would be continued for a status
11 conference, but I also understand if we continue it for a
12 status conference, would it be possible to transform that
13 into a hearing by affidavit, or would that not be
14 possible?

15 EXAMINER BRANCARD: Well, yes, it is possible to
16 do that.

17 MS. BENNETT: Okay. Then I am ambivalent about
18 whether it's a status conference or -- well, I guess I
19 would prefer it be a status conference, then, or Apache
20 would prefer that.

21 EXAMINER BRANCARD: All right. What was V-F's
22 preference?

23 MS. HARDY: I think V-F is fine with the status
24 conference, as long as we can convert that to presentation
25 by affidavit if Apache's objections are resolved.

1 EXAMINER BRANCARD: If you think you can let us
2 know with enough time, we can do that.

3 MS. HARDY: That's fine. Thank you.

4 EXAMINER BRANCARD: With that, Cases 23254,
5 23255 are set for a status conference or possible hearing
6 by affidavit on February 16th.

7 MS. HARDY: Thank you.

8 EXAMINER BRANCARD: With that we're on item No.
9 50, Case 23244, and I believe also 51, 23245, Earthstone
10 Operating.

11 EXAMINER BRANCARD: Ms. McLean.

12 MS. McLEAN: Good morning. Jaclyn McLean on
13 behalf of Earthstone Operating.

14 EXAMINER BRANCARD: I have entries here from MRC
15 Delaware Resources.

16 MR. FELDEWERT: Good morning, Mr. Examiner.
17 Michael Feldewert from the Santa Fe Office of Holland and
18 Hart. And I believe we're just in 23244.

19 EXAMINER BRANCARD: I think that's also maybe
20 true for Jalapeno Corporation, although I don't know if
21 they have totally withdrawn.

22 MR. BECK: Yeah, Matt Beck on behalf of Jalapeno
23 Corporation. We're in the same boat, just 22344.

24 EXAMINER BRANCARD: Any other appearances for
25 Cases 23244, 23245?

1 Hearing none, I believe this is a
2 continuance from the January 5th hearing, and we were
3 dealing with some late notices.

4 MS. McLEAN: Yes, that's correct. We just
5 needed to have the Notice period run; I believe that the
6 case is taken under advisement otherwise. And so now that
7 that is complete we would like to have the full case taken
8 under advisement by the Division, because the Notice
9 period has properly run at this point.

10 EXAMINER BRANCARD: Thank you. I did not see
11 any other entries since that time, and I would -- are
12 there any other objections from MRC or Jalapeno at this
13 point?

14 I see a nodding of a head at MRC.

15 MR. FELDEWERT: There would be no objection,
16 sir.

17 EXAMINER BRANCARD: Thank you.

18 MR. BECK: No objection from Jalapeno, either.

19 EXAMINER BRANCARD: Thank you.

20 With that Cases 23244, 23245, all the
21 evidence will be admitted into the record and these cases
22 will be taken under advisement.

23 MS. McLEAN: Thank you.

24 EXAMINER BRANCARD: We are now on Items 52 and
25 53, Cases 23280, 23281, Ridge Runner Resources.

1 MS. McCLAIN: Jackie Mclean for Ridge Runner
2 Operating.

3 EXAMINER BRANCARD: Thank you. Are there any
4 other interested persons for Cases 23280, 23281.

5 Hearing none, these cases were also
6 continued from January 5th for Notice issues, is that
7 correct, Ms. McLean?

8 MS. McLEAN: That's correct. It suffers from
9 the same day-late publication in the newspaper, and now
10 that that period has passed we ask that 23280 and 23281 be
11 taken under advisement.

12 EXAMINER BRANCARD: Thank you. Are there any
13 other interested the person with concerns or comments on
14 23280, 23281?

15 Hearing none, the exhibits will be admitted
16 into the record and Cases 23280 and 23281 will be taken
17 under advisement.

18 So we can continue. So we're on Item 54.
19 Case 23292, Mewbourne Oil Company.

20 MR. BRUCE: Mr. Examiner, Jim Bruce on behalf of
21 Mewbourne.

22 EXAMINER BRANCARD: Thank you. Are there any
23 other interested persons for Case 23292?

24 Hearing none, this case was continued from
25 January 5th.

1 Mr. Bruce.

2 MR. BRUCE: Yes, Mr. Examiner. I presented the
3 matter on January 5th. Exhibits 1 through 4 were
4 submitted. And I believe it was Examiner Garcia who
5 noticed that the published Notice was -- the publication
6 date was one day late, so this matter was continued to
7 cure that. Since then I have submitted Exhibit 5, which
8 is a Certified Notice spreadsheet, and at this point I
9 would move the admission of Exhibits 1 through 5 and ask
10 that this matter be taken under advisement.

11 EXAMINER BRANCARD: Thank you. Any other
12 interested persons for Case 23292? (Note: Pause.)
13 Hearing none, the exhibits will be admitted into the
14 record and Case 23292 will be taken under advisement.

15 With that we are here on Items 55, 56 and
16 57, Cases 23248, 23249, 23250, Matador Production Company.

17 MR. RANKIN: Good morning, Mr. Examiner. Adam
18 Rankin of the Santa Fe Office of Holland and Hart
19 appearing on behalf of the applicant in these cases.

20 EXAMINER BRANCARD: Are there any other
21 interested persons for Cases 23248, 23249, 23250. (Note:
22 Pause.)

23 Hearing none, I believe we have a
24 late-filed motion for a continuance. Is that correct?

25 MR. RANKIN: Good morning Mr. Examiner. Because

1 of the holiday on Monday we did file a motion for
2 continuance on Tuesday asking that these cases be heard, I
3 believe in the February hearing date.

4 EXAMINER BRANCARD: All right. Any objections?
5 (Note: Pause.)

6 Hearing none, none they will be continued
7 to -- what was the date again, Mr. Rankin?

8 MR. RANKIN: I'm sorry, Mr. Examiner, I don't
9 have that in front of me. I believe it was -- I'd have to
10 check it. I'm not clear exactly which date we requested,
11 Mr. Examiner.

12 MS. SALAZAR: It's February 16th.

13 MR. RANKIN: February 16th. Thank you.

14 EXAMINER BRANCARD: Thank you. That was
15 Marlene.

16 So 23248, 23249, 23250 will be continued to
17 February 16th.

18 Nos. 58 through 60, 23251, 23252, 23253,
19 Matador Production Company.

20 MR. RANKIN: Good morning. Adam Rankin from the
21 Santa Fe Office of Holland and Hart appearing on behalf of
22 the Applicant in this case.

23 EXAMINER BRANCARD: We have Coterra Energy.

24 MR. SAVAGE: Good morning, Mr. Hearing Examiner,
25 Mr. Technical Examiner. Darrin Savage appearing on behalf

1 of Coterra Energy, incorporated, et al.

2 EXAMINER BRANCARD: Thank you. Again I think we
3 also have a motion for continuance here. Mr. Rankin, is
4 that correct?

5 MR. RANKIN: That is correct, Mr. Examiner. And
6 I believe Coterra does not object to our request that this
7 case be moved to the same docket as the previous set of
8 cases.

9 EXAMINER BRANCARD: So that would be February
10 16th.

11 Any objections from Coterra?

12 MR. SAVAGE: No objection. Thank you.

13 EXAMINER BRANCARD: With that Cases 23251,
14 23252, 23253 will be continued to February 16th.

15 With that we're on Nos. 61, 62, 23265,
16 23266, Matador Production Company.

17 MR. RANKIN: Good morning, Mr. Examiner. May it
18 please the Division, Adam Rankin of the Santa Fe office of
19 Holland & Hart appearing on behalf of the applicant in
20 these two cases.

21 MR. BRANCARD: Thank you. Any other interested
22 persons for Cases 23265, 23266? (Note: Pause.)

23 Hearing none, Matador may proceed.

24 MR. RANKIN: Good morning, Mr. Examiner.

25 These two cases involve acreage in the

1 south half of Section 13 in Township 24 South, Range 28
2 East. In these cases Matador is seeking a one-year
3 extension under the existing Pooling Order to allow
4 Matador time to get a federal APD in both cases. The
5 applicable Order in the first case, 23265, is Order No.
6 R-22041, and in the second case the Order for 23266, the
7 applicable Order is R-22042.

8 Filed on Tuesday is an exhibit packet that
9 contains the Orders and exhibits for these cases.

10 Exhibit A is a copy of the applications
11 that were filed in these two cases explaining the request
12 for the extension of time.

13 Exhibit B is the Orders which Matador is
14 seeking to amend to extend by one year.

15 Exhibit C is the application of Matador's
16 landman, and she in her Self-Affirmed Statement explains
17 the basis for the request for the extension of time and
18 the fact that they are still waiting on the APD from the
19 BLM.

20 Exhibit D is a copy of the -- excuse me.
21 Exhibit D is a copy of the --

22 Sorry, it may be out of Order. Apologies
23 for a moment. Exhibit D looks like it's out of order. I
24 apologize, but it is.

25 I see its the Summary of Interests in these

1 cases and identifies the parties that are being sought to
2 pool.

3 The following exhibit is the Self-Affirmed
4 Statement of Paula Vance of our office. She affirms that
5 the Notice was provided in accordance with the Division's
6 rules by certain time frames.

7 Following the affidavit is a copy of the
8 Notice Letters sent out, along with the status of filings
9 on each of the parties who are subject to Notice in these
10 cases.

11 And then following that is a copy of the
12 postal report.

13 Exhibit F for each of those cases showing
14 that Notice was provided by publication, identifying each
15 of the parties by name.

16 With that, Mr. Examiner, I would move the
17 admission of Exhibits A through F into the record, and ask
18 that these cases be taken under advisement.

19 EXAMINER BRANCARD: Thank you.

20 I'll start with Mr. Lowe. Any questions?

21 EXAMINER LOWE: Good morning, Mr. Examiner. I
22 have no questions now. Thank you.

23 EXAMINER BRANCARD: Thank you.

24 Mr. Rankin, my questions are on the first
25 Case, 23265. I was a little confused by the different

1 mailing listings, but I will rely on what is attached to
2 Ms. Vance's affidavit as the correct one.

3 In the land person's affidavit, they
4 mention that parties that had been previously force pooled
5 who were unleased mineral owners have now leased their
6 interest?

7 MR. RANKIN: I think there were a couple of
8 parties for whom that's the case, and she identifies them
9 in paragraph 7, I believe.

10 EXAMINER BRANCARD: I'll just note that in the
11 Summary of Interests, it's page 1, you still have the
12 unleased mineral interest owners in there. So I think
13 they have been replaced by Pony Oil, which would be an
14 uncommitted working interest owner.

15 So it would be good if your land person's
16 exhibits matched their testimony.

17 MR. RANKIN: Right.

18 Uh, yeah, I will double check the timing on
19 that. I suppose, Mr. Examiner, that these -- since this
20 application in this case was filed previously to that
21 change in ownership interest that the new lessee would
22 take subject to the pooling.

23 EXAMINER BRANCARD: Yes. But it appears that in
24 your Notice you have notified the new interest owner --

25 MR. RANKIN: Uh-huh.

1 EXAMINER BRANCARD: -- as opposed to the mineral
2 interest owners anyway, you probably just have the Summary
3 of Interest from the original application in there. I did
4 notice that Pony Oil was given notice, the new lessee.

5 MR. RANKIN: Yes, I see that.

6 EXAMINER BRANCARD: Okay. Are there any other
7 persons interested in Cases 23265, 23266? (Note: Pause.)

8 Hearing none, the exhibits will be admitted
9 into the record and this case will be taken under
10 advisement. And I guess if you could just get us a new
11 page 31 that has the current interests in this. That's
12 23265 only.

13 MR. RANKIN: Mr. Examiner, we will do that.

14 EXAMINER BRANCARD: Thank you.

15 So with that we're on Items 63 and 64,
16 Cases, 23267, 23268, Matador Production.

17 MR. RANKIN: Good morning, Mr. Examiner. Adam
18 Rankin appearing again on behalf of the Applicant in these
19 cases, Santa Fe Office of Holland & Hart.

20 EXAMINER BRANCARD: Thank you. Are there any
21 other interested persons for cases 23267, 23268? (Note:
22 Pause.)

23 Hearing none, Matador may proceed.

24 MR. RANKIN: Thank you, Mr. Examiner.

25 In these cases, as with the prior cases,

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1 Matador is seeking a one-year extension under the
2 applicable pooling Orders in order to allow Matador time
3 to obtain federal APDs, which have still yet to be issued.

4 In the first case, 23267, Matador seeks to
5 amend Order No. R-22045 four a one-year extension. That
6 case involves the north half/north half of Section 13 in
7 Township 24 South, Range 28 East; and in the second case,
8 23268, Matador seeks to amend Order R-22046, which
9 involves the south half/north half of Section 13 in the
10 same township.

11 In the exhibits that were filed on Tuesday,
12 Exhibit A is a copy of the applications that were filed in
13 these cases identifying the acreage, spacing Orders and
14 the justification for the requested extension in each
15 case. Exhibit B is a copy of the Orders that were issued
16 by the Division for each of the cases that Matador is
17 seeking to amend.

18 Exhibit C is the affidavit of Matador's
19 landman for each case, in which he reviews the basis for
20 the requested extension.

21 Exhibit D is a copy of the previous Notice
22 that was provided under the existing Orders.

23 Exhibit E is the Self-Affirmed Statement of
24 my colleague Ms. Paula Vance reflecting that she has
25 provided Notice to each of the parties that were subject

1 to pooling under the Orders that Matador is seeking to
2 amend, and attached to her affidavit is a copy of the
3 Notice Letter that went out, along with the certified
4 mailing status of each of the Notice letters that went out
5 to the parties in each case.

6 Exhibit F is a copy of the Affidavit of
7 Publication reflecting we had published Notice in the
8 Carlsbad Current Argus for each of the cases, identifying
9 the parties subject to pooling and the extension in each
10 case.

11 Mr. Examiner if there's no questions I
12 would move the admission of Exhibits A through F and ask
13 these cases also be taken under advisement.

14 EXAMINER BRANCARD: Thank you. Mr. Lowe, any
15 questions.

16 EXAMINER LOWE: I have no questions. Thank you.

17 EXAMINER BRANCARD: Okay. Neither do I.

18 So Cases 23267, are there any other persons
19 here for that case or 23268? (Note: Pause.)

20 Hearing none, 23267, 23268, the exhibits
21 will be admitted into the record and these cases will be
22 taken under advisement.

23 MR. RANKIN: Thank you, Mr. Examiner.

24 EXAMINER BRANCARD: With that we are at Item 65,
25 Case No. 23273, BTA Oil Producers.

1 MS. McLEAN: Jackie McLean with Hinkle Shanor on
2 behalf of BTA Oil producers.

3 EXAMINER BRANCARD: Thank you.

4 Is there anyone else here for Case 23273?

5 (Note: Pause.) Hearing none, BTA may proceed.

6 MS. McLEAN: Thank you.

7 In Case No. 23273 BTA seeks an Order
8 pooling all uncommitted interests in the Upper Penn. Pool,
9 Code 98333 in the Pennsylvanian Shale Formation,
10 underlying a 224.59 acre horizontal spacing unit comprised
11 of Lots 3 and 4, which is the west half/southwest quarter
12 equivalent of irregular Section 19; and Lots 1, 2, 3 and 4
13 west half/west half equivalent of irregular Section 30,
14 Township 17 South, Range 36 East in Lea County. And BTA
15 will dedicate this unit to and Altamont 7903 19-30 State
16 Com 2H well.

17 The exhibit packet submitted to the
18 division for Case No. 23273 contains a Compulsory Pooling
19 Checklist; Exhibit A, which is the land professional's
20 testimony and related land exhibits; Exhibit B, which is
21 the geologist's testimony and related geology exhibits;
22 and finally Exhibit C, which is Notice testimony that
23 includes a sample Notice Letter that our office sent to
24 the interested parties and the chart. And a copy of the
25 Certified Mail receipt shows that the only interest that

1 BTA is currently seeking to pool received timely Notice of
2 the hearing via Certified Mail.

3 And with that I ask that Exhibits A, B and
4 C be admitted into the record and Case No. 23273 be taken
5 under advisement.

6 EXAMINER BRANCARD: Thank you.

7 Mr. Lowe, questions?

8 EXAMINER LOWE: Not at this time. Thank you.

9 EXAMINER BRANCARD: Thank you.

10 Are there any other interested persons for
11 Case 23273? (Note: Pause.) Hearing none, the exhibits
12 will be admitted into the record and Case 23273 will be
13 taken under advisement.

14 EXAMINER BRANCARD: With that I will call Item
15 No. 66, Case 23210, Novo Oil & Gas Northern Delaware.

16 MS. BENNETT: Good morning, everyone. Deana
17 Bennett of Modrall Sperling on behalf of Novo Oil & Gas.

18 EXAMINER BRANCARD: I have entries of appearance
19 from Yates Energy Corporation.

20 MR. BECK: Good morning. Matt Beck on behalf of
21 Yates Energy Corporation.

22 EXAMINER BRANCARD: Thank you. MRC Delaware
23 Resources.

24 MR. FELDEWERT: Good morning, Mr. Examiner.
25 Michael Feldewert of the Santa Fe office of Holland and

1 Hart.

2 EXAMINER BRANCARD: COG Operating.

3 MR. RITTENHOUSE: Yes, Mr. Examiner. This is
4 Joby Rittenhouse appearing on behalf of COG.

5 EXAMINER BRANCARD: Any other interested
6 persons for Case 23210? (Note: Pause.)

7 Hearing none, I'll first ask the other
8 parties whether they object to this case going forward by
9 affidavit.

10 MR. FELDEWERT: MRC Delaware has no objection,
11 Mr. Examiner.

12 EXAMINER BRANCARD: Thank you.

13 Yates Energy.

14 MR. BECK: Yates does not have any objection
15 either.

16 EXAMINER BRANCARD: Thank you. COG?

17 MR. RITTENHOUSE: No objection from COG.

18 EXAMINER BRANCARD: Thank you. With that Novo
19 may proceed.

20 MS. BENNETT: Thank you very much.

21 In this case Novo seeks an Order from the
22 Division pooling all uncommitted mineral interests within
23 a 720-acre, more or less, standard Bone Spring horizontal
24 spacing unit underlying the west half of Sections 9 and 16
25 and the north half/northwest quarter of Section 21,

1 Township 19 South, Range 30 East, Eddy County, New Mexico.

2 The spacing unit will be dedicated to
3 several wells that are the Tickety-Boo Fed Com 2109
4 wells, and the wells which will be dedicated to this unit
5 are outlined in the Declaration of Mr. Peter Schmidt, the
6 land professional, as well as in the Compulsory Pooling
7 Checklist.

8 So the exhibits that we submitted include
9 as Tab A the Compulsory Pooling Checklist. Tab B is the
10 Declaration of Peter Schmidt, land professional. And he
11 has previously testified before the Division and his
12 credentials have been accepted as a matter of record, and
13 behind his Declaration are the usual suite of land
14 exhibits. And I have two notes, or two points to make
15 about his -- three, actually, to make about his exhibits.

16 In his Declaration, Mr. Schmidt does
17 clarify why Novo is --

18 I'm sorry, there was feedback.

19 EXAMINER BRANCARD: Yeah. Folks need to make
20 sure they're muted. Thank you.

21 MS. BENNETT: So Mr. Schmidt in his Declaration
22 explains why Novo is drilling into the north half of the
23 northwest quarter of Section 21, that's in paragraph 9 of
24 his Declaration. And the reason for that is this is part
25 of the Potash area, and there's a drilling island in the

1 north half of the northwest quarter and so Novo would need
2 to drill through that area anyway to get to the drilling
3 island so they have included that in their lateral length,
4 and the BLM has approved that plan.

5 I also wanted to note that we've identified
6 on page 4 the parties that Novo is seeking to pool, and we
7 were informed recently that Novo and Yates have reached an
8 agreement, and so we will be filing an amended page 24 to
9 remove Yates from the parties-to-be-pooled list.

10 And then the third thing I wanted to note
11 about the exhibits that are behind Mr. Schmidt's
12 Declaration are our Notice Affidavit. As you will see
13 from our Notice Affidavit we did encounter some issues
14 with the post office either not tracking that we delivered
15 letters to the post office, which we did, or not tracking
16 them after they left the post office, and so we have
17 redone a mailing to the parties who are identified on the
18 Notice List as "to be mailed."

19 And so at the end of the case today I'll be
20 asking for the case to be continued to the second docket
21 in March -- I'm sorry, to the February 16th docket to
22 allow time for Notice to cure.

23 So that's the Land Declaration.

24 Also included in the packet is the geology
25 Declaration, and that's a Declaration provided by Michael

1 Hale, who has previously testified before the Division.
2 And his Declaration includes -- I'm sorry, I'm at home and
3 my dog is unhappy, so I apologize for the dog noise in the
4 background. But Mr. Hale has previously testified before
5 the Division and he has provided the usual suite of
6 geology exhibits.

7 So with that explanation or clarification
8 of the land exhibits, I would ask that the exhibits in
9 Case No. 23210 be taken under advisement, and that the
10 exhibits be admitted into the record, and I stand for any
11 questions the Division may have.

12 EXAMINER BRANCARD: Thank you.

13 Mr. Lowe, questions?

14 EXAMINER LOWE: I guess just to reiterate what
15 you have in your exhibits here, Ms. Deana Bennett. As
16 noticed in your exhibits, Well No. 2 and Well No. 5 -- I'm
17 sorry, I always call them by the well number. Well No.
18 122H and the Well No. 132H are noted as your defining well
19 to create the larger spacing unit; is that correct?

20 MS. BENNETT: Yes. Thank you for that clarification,
21 Mr. Lowe. Those two wells are proposed to be closer than
22 330 feet from the adjoining tracts, allowing inclusion of
23 the adjacent tracts to create the larger spacing unit.

24 EXAMINER LOWE: According to what you have in
25 your exhibits they appear to be pretty much right on top

1 of each other. Right?

2 MS. BENNETT: Uhm, yes, they're both 1320 --

3 EXAMINER LOWE: Yes.

4 MS. BENNETT: -- but I think their TVD, their
5 depths may be different. I'd have to look at that.

6 Let's see. The 122H is -- the TVD and MD
7 for the 122H are about 1,000 feet -- 500 to 1,000 feet
8 different than the 132H. So they're at the same -- you
9 know, very close to the same locations, but there's a good
10 bit of difference between their depths.

11 And that's actually shown on Exhibit C. A
12 diagram of that is shown on Exhibit C.2, which is page 68
13 of the materials, and that's a gun barrel of the
14 development, and it shows the difference in depths between
15 the 122 and the 132.

16 EXAMINER BRANCARD: C.2?

17 MS. BENNETT: Yes, Mr. Examiner, C.2. That's
18 page 68 of the -- not of the .pdf but of the paginated
19 pages, it's page 68.

20 EXAMINER BRANCARD: It's page 70 of the .pdf.

21 UNIDENTIFIED VOICE: Okay. Okay.

22 EXAMINER BRANCARD: If you are calling in to the
23 meeting, please mute your phone. Thank you.

24 EXAMINER LOWE: Those are all my questions.
25 Thank you, Deana.

1 MS. BENNETT: Thank you, Mr. Lowe.

2 EXAMINER BRANCARD: Thank you.

3 ALL right. So I think you have answered my
4 question, which is why are there several letters here.

5 So you're attempting to try to get through
6 to these folks who you are not getting any feedback from
7 the postal service on.

8 MS. BENNETT: That's right.

9 EXAMINER BRANCARD: Thank you.

10 So at this point you have requested -- let
11 me ask the other parties: Are there any questions or
12 concerns?

13 MR. FELDEWERT: None from MRC Delaware, Mr.
14 Examiner.

15 MR. BECK: None from Yates Energy, Mr. Examiner.

16 EXAMINER BRANCARD: COG?

17 MR. RITTENHOUSE: None from COG.

18 EXAMINER BRANCARD: So with that it appears
19 you're going to revise the list of pooled parties; is that
20 correct?

21 MS. BENNETT: Yes, Mr. Examiner. And I would
22 submit that revised exhibit within the week, as the
23 Division has requested, and then of course we will be
24 submitting a revised Notice information as we approach the
25 continuance date, which would be February 16th.

1 EXAMINER BRANCARD: So with that, Case 23210
2 will be continued to February 16th. The exhibits that
3 have been presented today will be admitted into the
4 record, and we will see you then.

5 MS. BENNETT: Thank you very much.

6 EXAMINER BRANCARD: All right. So the last
7 items on our agenda are Cases 67 through 74, which will be
8 Case No. 23149, 23150 -- and again if you would mute your
9 screens we can avoid feedback -- 23151, 23152, 23153,
10 23154, 23155, 23156, Colgate Operating.

11 MS. HARDY: Good morning, Mr. Examiner. Dana
12 Hardy with Hinkle, Shanor on behalf of Colgate Operating.

13 EXAMINER BRANCARD: Doyle and Margaret Hartman.

14 MR. GALLEGOS: Good morning, Mr. Hearing
15 Examiner. This is Gene Gallegos appearing for Doyle and
16 Margaret Hartman.

17 EXAMINER BRANCARD: Thank you. Are there any
18 other persons for Case Nos. 23149, -150, -151, -152, -153,
19 -154, -155, -156?

20 Hearing none.

21 (Note: Reporter interruption re echo.)

22 THE HEARING examiner: Mr. Gallegos, if you
23 would just keep your machine muted, that might be helpful.
24 That might be what the issue is.

25 Anyway, we had a hearing on this

1 previously. It was decided that we would move forward
2 today solely on the issue of pooling the Hartmans'
3 interest as record title owners only, and that would be
4 the scope of this hearing today. Since then we've had a
5 few more motions filed, including a late-filed Motion to
6 Dismiss. And so we have a Motion to Dismiss, we have a
7 Motion for Reconsideration, and then Objections to
8 Exhibits.

9 And let me just start out by saying -- I'll
10 just rule right away on the motion for reconsideration. I
11 don't see any additional information there that would
12 change the original decision, so that motion will be
13 denied.

14 As to the Motion to Dismiss, that's a
15 pretty critical issue, even though it was only filed a day
16 or so ago, but it appears to me that you can't really
17 decide that without having some evidence in the record,
18 because the motion and the responses rely on the evidence.
19 So we need to for forward then, I think, with having the
20 hearing at this point, and we will start with Colgate
21 presenting its witnesses today, and you can describe what
22 you're going to do.

23 And for that benefit of Colgate and for the
24 Hartmans, we're going to be dealing with both the reason
25 for this hearing, which is to amend Orders to add record

1 title owners, but we will also deal with the issues raised
2 in the Motion to Dismiss.

3 So you want to deal with your witnesses in
4 that regard, please do, or -- you know, I know, Ms. Hardy,
5 you have submitted certain stuff as rebuttal points, but
6 you can deal with that in your direct testimony, as well.

7 So let's start with Colgate. What are your
8 plans for today? What is your evidence and witnesses you
9 want to present today?

10 MS. HARDY: Mr. Examiner, I can just briefly
11 summarize our position and then let you know that we will
12 plan to call our witnesses Travis Macha, the landman
13 working on this development, and then our geologist, John
14 Anthony.

15 Colgate's applications seeks to pool
16 interests, record title interest under the Division's
17 September 26th, 2022 pooling order regarding the Batman
18 Fed Com Well. Collectively those Orders pooled interest
19 the Bone Spring and Wolfcamp underlying Sections 18 and
20 19, Township 20 South, Range 34 East in Lea County and
21 dedicated the units to 24 wells. Colgate seeks to pool
22 record title interest so that it can obtain a
23 communitization agreement from the BLM and produce its 24
24 wells.

25 Mr. Hartman opposes Colgate's application

1 for various reasons, none of which preclude pooling.
2 First he claims to own a working interest in the spacing
3 units, and as the Division has recognized previously,
4 we're not dealing working interests here because we are
5 not seeking to pool it.

6 Mr. Hartman has claimed that JOAs preclude
7 pooling. That is also incorrect, because those documents
8 deal with working interest and we are pooling a record
9 title interest. And the BLM does not accept JOAs as a
10 substitution for a communitization agreement but they do
11 accept a pooling order.

12 Mr. Hartman claims his due process rights
13 were violated because he did not receive Notice of
14 Colgate's original pooling applications. That argument
15 has no merit as that is the reason for the hearing and the
16 reason for Colgate's application in these cases.

17 Mr. Hartman's recent claim in his Motion to
18 Dismiss is that Colgate does not have the right to drill
19 the wells because the BLM has not approved the conveyances
20 of interests to Colgate. That argument is invalid, as Mr.
21 Macha is going to explain. And as we provides in our
22 exhibits, the BLM has actually approved APDs for three of
23 these wells and the others are expected imminently. And,
24 as a legal matter, the Hartmans' argument is incorrect on
25 the effect of the BLM's approval. The transfer was

1 executed and filed in New Mexico county records, and it is
2 binding.

3 As Mr. Macha will explain, Colgate has been
4 working on this development for a very long time and is in
5 the process of plugging these wells. Mr. Hartman's attempt
6 to block the development based on the pooling of his
7 minority record title interest, which amounts to 2 percent
8 in the leases, I believe approximately 6 percent in one
9 quarter/quarter section, his effort to block these wells
10 based on that interest violates Colgate's correlative
11 rights and would result in a massive waste of oil and gas.

12 So with that I would like to call as our
13 first witness our landman Travis Macha.

14 EXAMINER BRANCARD: Thank you. Perhaps -- do
15 you have both your witnesses available right now?

16 MS. HARDY: I believe I do.

17 Mr. Anthony, are you also available? I see
18 you on the hearing.

19 MR. ANTHONY: Yes, I'm available.

20 EXAMINER BRANCARD: All right. Well, can you
21 put on your camera, Mr. Anthony?

22 MR. ANTHONY: I actually don't have access to a
23 camera. I apologize.

24 EXAMINER BRANCARD: We can work around it, if
25 you say that you will raise your right hand.

1 And do you both solemnly swear that the
2 testimony you are about to give is the truth and nothing
3 but the truth?

4 MR. MACHA: Yes.

5 MR. ANTHONY: Yes.

6 EXAMINER BRANCARD: Thank you.

7 With that, you may proceed, Ms. Hardy.

8 MS. HARDY: Thank you.

9 DIRECT EXAMINATION

10 BY MS. HARDY:

11 Q. Mr. Macha, can you please state your full name
12 for the record.

13 A. Travis Macha.

14 Q. By whom are you employed and in what capacity?

15 A. Colgate Operating, LLC, as a senior landman.

16 Q. Have you previously testified before the
17 Division?

18 A. Yes, I have.

19 Q. Can you please briefly summarize your education,
20 training and experience.

21 A. Uhm, I graduated from Texas Tech back in 2016
22 with an energy commerce degree, worked as both an in-house
23 and a contract landman for a few companies, being Peak
24 Land Service, Concha Resources, Alpha Energy Partners, and
25 most recently Colgate Operating.

1 MS. HARDY: Mr. Examiner, I request that the
2 Division recognize Mr. Macha as an expert in petroleum
3 land matters.

4 EXAMINER BRANCARD: Thank you. Any objections?

5 MR. GALLEGOS: No objection.

6 And we might shorten things, Mr. Examiner.
7 We have no issues about the geology of the prospects, and
8 I don't know that it's necessary to hear from the
9 geologist, but I'm just suggesting in a way to expedite
10 things.

11 MR. BRANCARD: Thank you. When we get -- I
12 guess when we get to the geologist, we can just submit the
13 evidence that's in the affidavit.

14 MS. HARDY: That's fine.

15 MR. GALLEGOS: We would have no objection to
16 that.

17 EXAMINER BRANCARD: Thank you.

18 Okay. Mr. Macha is admitted as an expert
19 in petroleum land issues, and please proceed.

20 MS. HARDY: Thank you.

21 Q. Mr. Macha, do you have in front of you a
22 document that's marked as Colgate Exhibit A?

23 A. Yes, I do.

24 Q. Can you identify that document.

25 A. Uhm, yes. That's my Self-Affirmed Statement.

1 Q. Is your Self-Affirmed Statement the same in each
2 of these cases?

3 A. Yes, it is.

4 Q. Is Exhibit A a true and correct copy of your
5 Self-Affirmed Statement?

6 A. Yes, it is.

7 Q. Can you please identify Exhibit A-1.

8 A. These are Colgate's applications and proposed
9 Notices in these cases.

10 Q. Can you please summarize briefly what Colgate is
11 requesting.

12 A. We're seeking to pool the record title owners
13 for the purpose of obtaining a communitization agreement
14 from the BLM.

15 Q. Is Colgate seeking to pool any working
16 interests?

17 A. No. Those were already pooled back in June.

18 Q. Does Colgate seek to fully develop the Bone
19 Spring and Wolfcamp Formations underlying these two
20 sections of land?

21 A. Yes, we do.

22 Q. How many wells are included in this Batman
23 development?

24 A. About 24.

25 Q. How long has Colgate been working on this

1 development?

2 A. Since December of 2021.

3 Q. Can you please identify Exhibits A-2 through
4 A-9.

5 A. These are our original pooling orders in these
6 cases from the hearing back in June.

7 Q. Are those the Orders that Colgate seeks to pool
8 the record title insurance under?

9 A. Yes.

10 Q. Can you please identify Exhibit A-10.

11 A. These are plats of the tracts and the ownership
12 in each of the leases.

13 Q. What is the percentage of Colgate's ownership
14 interest in the Batman spacing units?

15 A. So originally, as you can see on those plats and
16 the tract ownership, back in June when we originally
17 pooled these Colgate was sitting with around 30 percent
18 working interest in each unit. We have since acquired
19 some more interest from the various parties. We now have
20 57 percent working interest across both sections.

21 Q. Does Colgate hold a working interest in every
22 tract it seeks to pool and develop?

23 A. Yes.

24 Q. Does Exhibit A-10 identify the pooled parties in
25 each case?

1 A. Yes, it does.

2 Q. And does it separately identify the parties who
3 were originally pooled, as well as the record title owners
4 we're seeking to pool here?

5 A. Yes.

6 Q. Is one of those record title owners Doyle
7 Hartman?

8 A. Yes.

9 Q. What is the name of Mr. Hartman's record title
10 interest?

11 A. Uhm, on three of the five leases in Sections 18
12 and 19 he owns a 2 percent record title interest, same
13 except in the southeast/southeast corner of Section 18
14 where he owns a 6.7 record title interest. And that's it.

15 Q. And those are -- are those federal leases?

16 A. Yes, ma'am, they are.

17 Q. What does it mean from your perspective that Mr.
18 Hartman owns a record title interest in the federal
19 leases?

20 A. So the BLM defines it -- and this is from their
21 own Title 43 Part 3100 of the federal regulations.
22 They --

23 MR. GALLEGOS: Objection. We object to Mr.
24 Macha attempting to speak for BLM. Anything he says is
25 just hearsay and speculation.

1 EXAMINER BRANCARD: If Mr. Macha is simply
2 quoting from the federal regulations, that's fine. He
3 could also give his opinion about what a record title
4 interest is.

5 THE WITNESS: Yeah. I'll do both.

6 A. (Continued) So it's quoted as: A lessee's
7 interest in a lease which includes the obligation to pay
8 any rent as well as the rights to assign and relinquish
9 the lease.

10 In my opinion of that, being the record
11 title interest, obviously there's a lot of administrative
12 rights that go along with the record title, but as it
13 pertains to actually operating rights in the working
14 interest in any wells drilled, those are two separate
15 things.

16 Q. Are record title owners responsible for paying
17 well costs?

18 A. No.

19 Q. Are they entitled to receive well proceeds?

20 A. No.

21 Q. In your opinion does the pooling of Mr.
22 Hartman's record title interest impact him?

23 A. Not from what I can tell. These leases
24 are generally --

25 MR. GALLEGOS: Objection, your Honor, to

1 that conclusion. The impact on our client, he's not
2 qualified to testify to something of that sort.

3 EXAMINER BRANCARD: I think -- I mean, he's a
4 landman. He can give an opinion about what the impacts
5 are.

6 A. (Continued) Since these leases are past their
7 primary term no delay rentals are needed, uhm, they are
8 all HVP and it's not anywhere close to being needed, a
9 minimum royalty payment from a record title owner. So the
10 point of these leases, I don't see any effect to their
11 interests, no.

12 Q. As a record title owner, does Mr. Hartman have
13 any right to produce the underlying reserves?

14 A. No.

15 Q. Why wasn't Mr. Hartman's record title interest
16 pooled when Colgate filed its initial pooling
17 applications?

18 A. So on these ones we typically like to keep an
19 open dialogue with a lot of individual owners in the State
20 of New Mexico. We intended on just obtaining signature on
21 the communitization agreement.

22 Q. Did Mr. Hartman sign a communitization
23 agreement?

24 A. No.

25 Q. Okay. Has Colgate researched whether Hartman

1 owns a working interest?

2 A. Yes, we have.

3 Q. And what is your determination on that issue?

4 A. I --

5 EXAMINER BRANCARD: We are not addressing that
6 issue here.

7 MS. HARDY: Okay. I can skip that. Thank you.

8 Q. Have you reviewed the Affidavit of Bryan Jones
9 which has been submitted by Mr. Hartman?

10 A. Yes, I have.

11 Q. In your opinion is it accurate?

12 A. Uhm, as to record title, yes. As to any working
13 interest purported, no.

14 Q. If it turns out that Mr. Hartman does own a
15 working interest, how would Colgate handle that situation?

16 A. We will either have to seek another agreement,
17 whether that be through JOA or purchasing their interest,
18 or we would come back to the OCD to pool their working
19 interest, as well.

20 Q. Mr. Macha, can you please identify Exhibit A-11.

21 A. This is an example of a communitization
22 agreement.

23 Q. Was this agreement sent to Mr. Hartman and the
24 other record title owner Colgate seeks to pool?

25 A. Yes.

1 Q. When was it sent?

2 A. May 10, 2022.

3 Q. Can you please identify Exhibit A-12.

4 A. This is a high-level summary of the contact with
5 the parties in the Batman unit, as well as kind of a
6 description of the events leading up to today.

7 Q. Can you provide a general overview of your
8 discussions with Mr. Hartman or his representatives.

9 A. Uhm, so I haven't had the privilege to actually
10 talk to Mr. Hartman or any of his direct representatives
11 besides his attorneys. The initial contact was in June of
12 2022 when the Hartmans sent two separate letters asserting
13 a working interest in these lands. I responded, trying to
14 reach out via phone, via email. Those attempts to reach
15 out were rejected, so I sent a formal letter in response
16 on June 23rd of 2022. From there on, from June until
17 about October, we've had pretty light conversations until
18 we were directed by the Hartmans' attorneys that -- to no
19 longer contact them directly and all communications will
20 proceed therefor via our attorneys.

21 Q. Do you feel that you have tried to work with Mr.
22 Hartman to resolve these matters?

23 A. Yes, I do.

24 Q. Can you please identify Exhibit A-13.

25 A. This is my letter I wrote on June 23rd that I

1 just mentioned a minute ago.

2 Q. And why did you send that letter to Mr. Hartman?

3 A. So their formal letters kind of, like, again
4 asserted that working interest, as well as made several
5 requests of us. I've tried my best to accommodate all
6 those requests, as well as explain why a working interest
7 was not available for them at this time, tried to be as
8 detailed as I possibly could, to avoid any confusion.

9 Q. Did you provide extensive documentation with
10 your letter?

11 A. Yes, ma'am, I did.

12 Q. Is it accurate to say that you provided Mr.
13 Hartman with hundreds of pages of information?

14 A. Yes, I did.

15 Q. And did you let Mr. Hartman know that you would
16 consider additional information if he presented it?

17 A. Yes, I did.

18 Q. Has he done so?

19 A. No. I think what I've seen, the most of what
20 I've seen is Bryan Jones' exhibits here, which I view that
21 to be as federal title of record title transfers.

22 Q. Let's talk about the BLM. Does the BLM require
23 a signed communitization agreement or pooling order before
24 Colgate can produce its wells?

25 A. Yes, they do.

1 MR. GALLEGOS: Object to that conclusion as to
2 the BLM requirement, that Mr. Macha is not qualified to
3 speak for the BLM.

4 EXAMINER BRANCARD: Well, I guess the question
5 would be: Has the BLM told Mr. Macha?

6 MS. HARDY: I would be --

7 Q. Mr. Macha, is it your understanding that the BLM
8 requires a pooling order if a record title owner will not
9 sign a communitization agreement?

10 A. Yes.

11 Q. Is it your understanding that the BLM does not
12 consider JOAs as a substitute for a com. agreement or
13 pooling order?

14 A. I --

15 MR. GALLEGOS: Objection to that.

16 Here we are just -- if we're going to have
17 evidence of what the BLM does or doesn't, then we should
18 have somebody who is -- who actually has authority, not
19 Mr. Macha's speculation of hearsay on hearsay.

20 EXAMINER BRANCARD: You know, if Mr. Macha has
21 had conversations with the BLM, or have received written
22 information from the BLM, that would be what we prefer to
23 here at this point, rather than what he thinks the BLM
24 wants.

25 MS. HARDY: Sure. Okay.

1 Let me -- we do have documentation I will
2 get to in just a minute.

3 Q. Mr. Macha, can you please identify Exhibit A-14.

4 A. Yeah. So this was an email I had sent to the
5 BLM the day of our last hearing on December 15th, probably
6 20 minutes after our hearing, after clarification was
7 requested that the BLM does -- would accept an NMOCD Order
8 in lieu of a record title interest owner's signature or
9 approved communitization agreement, and they responded in
10 the affirmative that BLM does accept state pooling orders
11 for lessees of federal leases.

12 Q. And, Mr. Macha, I believe that's Exhibit A-15.
13 Is that correct? Just to clarify.

14 A. Yeah. Sorry.

15 Q. Can you go back for just a minute quickly to
16 Exhibit A-14.

17 A. Yes.

18 Q. What is that exhibit?

19 A. That's a BLM Serial Registry page for one of the
20 leases in question on this tract.

21 Q. Okay.

22 A. That BLM Serial page kind of gives you a
23 breakdown of historical record of documents filed directly
24 with the BLM themselves. As you can see on the front
25 page, there is several operating right owners on this, and

1 then there's two lines that are redacted. The BLM is
2 starting to redact any owners that are not part of an LLC
3 or a company on these pages, but if you look down on
4 page 5 of this document where it says Current Record Title
5 Holders, you can see Doyle Hartman's name on this page.

6 Q. Okay.

7 A. And the percentage.

8 Q. Back to Exhibit A-15. Have you worked with the
9 BLM on pooling of record title interests in other cases?

10 A. Yes.

11 Q. And has it been your experience that they accept
12 a pooling order when a record title owner does not sign a
13 communitization agreement?

14 A. Yes, it's very common.

15 Q. And is that what you were requesting
16 confirmation of when you sent the email in Exhibit A-15?

17 A. Yes, ma'am.

18 Q. And who was the person you were communicating
19 with in the email?

20 A. This is Jordan Yawn. He is a legal examiner for
21 the BLM. He's, I think, in charge of most of the
22 communitization agreements right now in the State of New
23 Mexico.

24 Q. Is it your understanding, based on his email,
25 that BLM will accept a pooling order in these cases as a

1 substitution for a communitization agreement signed by Mr.
2 Hartman?

3 A. Yes, ma'am.

4 MR. GALLEGOS: Mr. Examiner, we have a document
5 and now he's going to interpret it with his understanding.
6 The document is a simple email and the examiner can read
7 it himself. Mr. Macha is not qualified to start -- his
8 understanding of it means something different than what it
9 says. It's very clear what it says, and far from
10 definitive, and I think it's important that it's before
11 the examiner so that can be read, rather than Mr. Macha
12 saying what his spin is on a one-sentence email.

13 EXAMINER BRANCARD: Thank you. I actually
14 agree. I think that the email speaks for itself, so...

15 Q. Mr. Macha, can you please identify Exhibit A-16.

16 A. Yes. This is BLM's processing guidelines for
17 drilling in a potash area where these wells are located.

18 Q. What does this document discuss?

19 A. Again it discusses the process of development
20 from drill islands to development areas, to filing APDs.

21 Q. Has Colgate complied with these requirements?

22 A. Yes.

23 Q. Mr. Hartman has claimed that Colgate has not
24 provided him with all of the Notices required under these
25 provisions. Is that correct?

1 A. No, that's not correct.

2 Q. What Notices has Colgate provided?

3 A. We're only obligated to provide the Notice of
4 Development Area, which references everything from our
5 development plans to surface use. That is, I think,
6 referenced in one of documents. We do not propose these
7 drill islands, the BLM proposed them themselves, so we
8 were not obligated to propose those drill islands.

9 Q. Mr. Macha, can you please identify what has been
10 marked as Colgate Exhibit D.

11 A. Yes. That is a supplemental affidavit on the
12 APD -- the Batman APDs, as well the conveyance into
13 Colgate.

14 Q. Has Colgate submitted APDs for those Batman
15 wells?

16 A. Yes. We submitted them in May of 2022.

17 Q. Can you please identify Exhibit D-1.

18 A. Yes, this is pulled from the NMOCD'S page that
19 shows our first three Batman wells that now have approved
20 APDs. We're still waiting on the rest.

21 Q. When do you expect the BLM to issue the
22 remaining APDs?

23 A. Today or tomorrow, honestly.

24 Q. Do you have plans to spud these wells?

25 A. Yes. We have -- pads are built. We have one

1 rig on location that's being built out right now, and
2 another on the way.

3 Q. Can you please identify Exhibit D-2.

4 A. Yes. That's an executed and filed conveyance
5 from OXY into Colgate.

6 Q. Based on the conveyance does Colgate have the
7 right to drill on the acreage at issue?

8 A. Yes.

9 Q. And do you know why the BLM has not approved the
10 conveyance?

11 MR. GALLEGOS: That -- well, now Mr. Examiner
12 we're really going -- now it's not just hearsay, now it's
13 channeling why the BLM has not done something. This is
14 not admissible testimony.

15 MS. HARDY: I can rephrase the question.

16 EXAMINER BRANCARD: If Mr. Macha has heard from
17 the BLM, then that would be helpful. I mean, I agree we
18 don't need any speculation here.

19 Q. Mr. Macha, have you communicated with the BLM
20 about the fact that this conveyance is still pending
21 approval?

22 A. Yes. Typically we're not very concerned about
23 it. Uhm, back in June, as part of that letter, the June
24 23rd letter I wrote to the Hartmans -- it's not exhibited
25 here, but as an exhibit to that letter I gave them an

1 email from the BLM where the BLM stated that they are
2 several months behind on approving any filed transfers
3 with them. And again they're pretty gummed up in that
4 regard typically, so we don't expect those very quick.

5 Q. And has the conveyance from OXY to Colgate been
6 filed in the county records?

7 A. Yes, it has.

8 Q. Do you expect -- well, let me ask it this way:

9 Has the BLM given you any indication that
10 it will not approve the conveyance?

11 A. No.

12 MR. GALLEGOS: Now the question is to a
13 negative, whether something doesn't exist. That's not
14 admissible.

15 EXAMINER BRANCARD: Well --

16 MR. GALLEGOS: We're here to obtain evidence,
17 and --

18 EXAMINER BRANCARD: (Inaudible) haven't told
19 him.

20 I don't see a problem with that. Thank
21 you.

22 Q. Mr. Macha, if Colgate is not permitted to
23 produce these wells will it be harmed?

24 A. Yes, we will be.

25 Q. And will it lose substantial revenue from the

1 lack of production?

2 A. Yes, we will.

3 Q. Will the working interest owners in the wells be
4 harmed?

5 A. Yes, they will also lose substantial revenues.

6 Q. Will the State of New Mexico and the federal
7 government also lose revenue?

8 A. Yes. Royalties as well as taxes.

9 Q. Would Colgate lose the ability to produce two
10 formations underlying two sections of land?

11 A. Yes.

12 Q. Would that violate Colgate's correlative rights?

13 A. Yes.

14 Q. Would it result in waste?

15 A. Yes, it would.

16 Q. In your opinion will the granting of Colgate's
17 applications prevent waste, prevent the drilling of
18 unnecessary wells, and protect correlative rights?

19 A. Yes.

20 Q. In your opinion will the granting of Colgate's
21 application impair Mr. Hartman's correlative rights?

22 A. No, as we're only pooling record title
23 interests, and none of their purported working interest is
24 being pooled.

25 Q. Were the exhibits attached to your Self-Affirmed

1 Statement prepared by you or under your direction and
2 control?

3 A. Yes.

4 MS. HARDY: Mr. Examiner, with that I have no
5 more questions for Mr. Macha and I move the admission of
6 Colgate Exhibits A, A-1 through A-16, D, D-1 and D-2.

7 MR. GALLEGOS: Mr. Examiner, we would ask moving
8 on admission be left pending until after
9 cross-examination. I think some may not be subject to
10 objection but for now please withhold your ruling and give
11 us the opportunity for cross-examination.

12 EXAMINER BRANCARD: And did you -- Mr. Gallegos,
13 do you have specific exhibits that you're seeking to
14 object to?

15 MR. GALLEGOS: I have objections to Exhibit A-15
16 and I have objection to the Self-Affirming Affidavit which
17 is Exhibit A. I think with examination we might develop
18 whether we have additional objections or not, so that's
19 just why I asked the ruling be withheld.

20 EXAMINER BRANCARD: How about if we admit
21 Exhibit A-1 through -8 and start with that.

22 These are the applications, prior Orders.

23 MR. GALLEGOS: Mr. Examiner, I think Exhibits
24 A-1 through A-11 we have no objection.

25 EXAMINER BRANCARD: All right. So let's admit

1 Exhibits A-1 through A-11, and then we'll go into
2 questioning.

3 CROSS-EXAMINATION

4 BY MR. GALLEGOS:

5 Q. Mr. Macha, after your qualifications of -- when
6 you were asked basically into the substance of what we're
7 dealing with here, my notes show that you say that you
8 were seeking to pool the record title because the working
9 interest had already been pooled.

10 A. That's correct.

11 Q. All right. Explain the working interest that
12 was pooled.

13 A. So on that June hearing, as you can see on our
14 Ownership Schedule and Plat, all of the uncommitted
15 working interest owners that hadn't already signed a JOA
16 at that point were compulsory pooled and an Order issued.

17 EXAMINER BRANCARD: Mr. Gallegos I'm just going
18 to have to ask a favor of you. When you're done asking a
19 question, if you can mute yourself that would be great.
20 Okay?

21 MR. GALLEGOS: Yes, Mr. Examiner. Thank you.
22 I'll do that.

23 Q. So you were not referring to the Hartman working
24 interest, or were you referring to the Hartman working
25 interest?

1 A. I was not referring to any working interest
2 possibly associated with the Hartmans, only the parties
3 listed on the pooling documents as referenced here in the
4 exhibits.

5 Q. Now, is it a fact that when this application was
6 filed in April of 2022, their request was approval for
7 drilling 24 Batman wells?

8 A. Correct.

9 Q. And you said, I believe, that Colgate now has
10 the right to drill these wells.

11 A. Correct. We own an interest in every tract.

12 Q. But doesn't it require an APD in order to have
13 the right to drill any of these Batman wells?

14 A. Correct. Which three of the 24 are now
15 approved. We're waiting on the rest.

16 Q. So you have three APDs, Mr. Macha. And you
17 obtained those APDs just two days ago, isn't that true?

18 A. Correct. Our regulatory department is in close
19 contact with the BLM working through these APDs and
20 ensuring they are going to be approved.

21 Q. If you just answer my question, Mr. Macha, it
22 would be helpful, without a speech.

23 You have three APDs at this point.

24 A. Correct.

25 Q. And so as far as being deprived of all the

1 revenue and drilling and development of the different
2 resources, at this point Colgate would be able to drill
3 three wells.

4 A. We can drill them, we can't complete them
5 without a communitization agreement submitted to the BLM.

6 Q. Now, at the hearing on these applications -- the
7 applications were filed in August of 2022. Do you recall
8 when that hearing took place?

9 A. June 2nd, 2022, I believe.

10 Q. And is it true that Doyle and Margaret Hartman
11 had no notice of that hearing and did not participate in
12 the hearing?

13 A. That's correct.

14 Q. Let's go to your Exhibit A-15. Do you have that
15 in front of you?

16 A. Yeah, I'm scrolling to it right now.

17 Q. Does it begin with an email from you dated
18 December 15, 2022, addressed to A. Jordan?

19 A. Yes.

20 Q. And I take it Mr. Jordan is somebody that you
21 were a friend with.

22 MS. HARDY: I object to the --

23 A. He's not a friend. I don't know him personally.

24 Q. Well, why was your email directed to Mr. Jordan?

25 A. Because he assists Colgate and other operators

1 in information relating to communitization.

2 (Note: Pause.)

3 MS. HARDY: Mr. Gallegos, you're muted I
4 believe.

5 MR. GALLEGOS: I am sorry.

6 Q. I didn't quite understand the explanation.

7 A. He is our contact, as well as other operators'
8 contact at the BLM as it relates to information pertaining
9 to communitization.

10 Q. It appears that Mr. Jordan promptly replied to
11 you. Your email was at 10:44 and he was back to you about
12 an hour later. Is that what Exhibit A-15 shows us?

13 A. Yes.

14 Q. And does Exhibit A-15 -- Mr. Yawn, I guess his
15 name is Yawn, reply to your question is a simple one
16 sentence that reads: Yes, the BLM may accept State
17 pooling orders for lessees.

18 A. Yes.

19 Q. Did you, after that contact he, or anybody else
20 in BLM, and say: You know, this doesn't really answer our
21 question, because this doesn't say it's a requirement. It
22 sounds like it's just a discretionary matter.

23 So did you do anything to follow up?

24 MS. HARDY: I object to the question. It's
25 misleading.

1 EXAMINER BRANCARD: Just ask the question. You
2 don't need to characterize the exhibit.

3 Q. In view of the one sentence that says the BLM
4 "may" accept a pooling order, did you take any steps for
5 clarification?

6 A. The BLM has commonly required communitization
7 agreements to be filed on all producing wells. I did not
8 reach out asking why comm agreements are required, no.

9 Q. Would you mind, Mr. Macha, answering the
10 question, instead of, you know, offering some sort of
11 argument.

12 In view of the fact that the sentence
13 simply says it may accept pooling orders, did you take any
14 steps for an explanation or to seek a more definitive
15 statement regarding the BLM and pooling orders?

16 A. I read this statement as pretty, uhm, clear. I
17 did not request any more definitive information, no.

18 Q. Is it a fact, Mr. Macha, that Colgate has sought
19 to obtain OXY's interest in the leases, the federal leases
20 that are the subject of those applications?

21 MS. HARDY: I object to the form of the
22 question. It misstates the evidence.

23 EXAMINER BRANCARD: I'll allow that question,
24 although I'll not really sure what the relevance is.
25 But...

1 A. Yes, we have acquired OXY's working interest and
2 record title, and it is being currently filed with the
3 BLM.

4 Q. Is that a true statement or is the fact is that
5 a form BLM for transfer of operating rights from OXY to
6 Colgate, and a form BLM for assignment of record title
7 from OXY to Colgate, are on file but have not been
8 approved by the BLM.

9 A. As it pertains to filing with the BLM, yes;
10 however, county assignments do hold weight as transfer of
11 operating rights as it pertains to working interest here.

12 Q. Once again without your argument, is the answer
13 that Colgate at this time has no approval of the transfers
14 from OXY to it for either operating rights or record title
15 in the federal leases that are the subject of this
16 application?

17 A. Pursuant to federal records, yes. No final
18 transfer has been approved yet by the BLM.

19 Q. Mr. Macha, where does Colgate have on file the
20 1949 joint operating agreement that Hartman has asked to
21 provide, asked to be provided by Colgate?

22 MS. HARDY: I object to this question. I think
23 the Division has already ruled that we're not talking
24 about JOAs here because they don't deal with record title.

25 EXAMINER BRANCARD: That was a rather complex

1 question, Mr. Gallegos. Are you asking whether they have
2 the document or not? What are you asking?

3 MR. GALLEGOS: Yes. I think that would be a
4 simpler question to start with.

5 Q. Mr. Macha?

6 A. Yeah. I'm -- in answering a question pertaining
7 to working interest, yes, we have that document on file.
8 Our house attorneys have reviewed it.

9 Q. Okay. And where is that? Is that kept as part
10 of your land files?

11 A. Mine as well as our attorneys, yes.

12 MR. GALLEGOS: Let me -- Mr. Examiner, just let
13 me review my notes for a moment. (Note: Pause.)

14 I think that concludes my questions, Mr.
15 Macha. Thank you.

16 EXAMINER BRANCARD: Thank you.

17 Mr. Lowe, do you have any questions.

18 EXAMINER LOWE: I do not have any questions,
19 Thank you.

20 EXAMINER BRANCARD: Thank you. Okay.

21 CROSS-EXAMINATION

22 BY HEARING EXAMINER BRANCARD:

23 Q. Mr. Macha, let's go through some of your
24 exhibits here.

25 I'm looking at A-11, okay, the

1 communitization agreement.

2 A. Yes, sir.

3 Q. Okay. So this would be a communitization
4 agreement for this particular unit; is that correct?

5 A. Yes, sir, that's correct.

6 Q. Okay. Therefore it follows Exhibit A and
7 Exhibit B are part of that communitization agreement?

8 A. Yes, sir, that's correct.

9 Q. So Exhibit B, who prepared that?

10 A. Uh, I, alongside my main coordinator, who
11 assisted in putting together the stuff.

12 Q. So Colgate prepared this.

13 A. Yes.

14 Q. And the information is based off of BLM records?

15 A. The information is based off of -- the record
16 title information is based off BLM record. The working
17 interest information is based off county and federal
18 record together.

19 Q. So if we're looking at the first page of
20 Exhibit B, the column on the left there under Tract No. 1,
21 the phrase "Current Lessee of Record" is another phrase
22 for what today we're calling record title owner; is that
23 correct?

24 A. Correct. Yes.

25 Q. Does the BLM use that phrase?

1 A. Lessee of record? They typically just use
2 "lessee," but yes.

3 Q. So then Exhibit A-14 is actually from the BLM
4 records.

5 A. Yes, it is.

6 Q. And so if we're looking under the first page
7 there of that case recordation.

8 Yep.

9 Q. And then there's a list of what's called Case
10 Customers.

11 A. Yes, sir.

12 Q. So in the fourth column where it says "Interest
13 Relationship."

14 A. Right.

15 Q. Okay. There are two things indicated in there.
16 There's operating rights and there's lessee.

17 Would operating rights be what we're
18 referring to as a working interest ownership?

19 A. Yes, sir, that is correct.

20 Q. And would lessee be something more like a record
21 title interest?

22 A. Yes, sir, that is correct.

23 Q. Okay. So in Exhibit A-15 -- which is your
24 communication with the BLM?

25 A. Yep.

1 Q. When -- is that Mr. Yawn? I don't want to get
2 it wrong.

3 A. Yes, it is Mr. Yawn.

4 Q. Where it says, "BLM may accept safe pooling
5 orders for lessees," lessees either means or includes what
6 we are calling record title owners.

7 A. Yes, sir.

8 Q. That's how -- we've seen that in the BLM
9 records.

10 A. Yes, sir. That's -- that is my understanding.

11 Q. All right. So let's see if you can find this
12 here.

13 I'm looking at your supplemental exhibits
14 now, and in Exhibit, I believe it's D-2, which is the
15 conveyance document.

16 A. Yes, sir.

17 Q. I don't think anybody asked any questions about
18 this, but is this the document from which Colgate has
19 gotten its interest in this unit?

20 A. Yes, sir, it is.

21 Q. Okay. And it's dated September of 2021. Is
22 that the effective date?

23 A. That's the effective date, yes.

24 Q. But then it wasn't filed in the county records
25 until February, 2022?

1 A. Correct.

2 Q. There's a transfer, basic transfer provision in
3 here but of course it refers to exhibits.

4 A. Yep.

5 Q. And we get to the exhibits, Exhibit A, leases --

6 A. Yes, sir.

7 Q. -- what I am seeing as referred to as the
8 federal notations for these leases, they would be
9 somewhere down that first page there with the Lessee City
10 Services Oil Company.

11 A. Yes, sir. An easy way to identify them is on
12 the very left column where it's denoted area --

13 Q. Yes.

14 A. This area is the Jewitt (phonetic) area.

15 Q. Okay. Correct. So those original leases that
16 are being transferred are dated either 1951 or 1959.

17 A. Correct.

18 Q. So those are the leases in question. That is
19 how Colgate is claiming its interest in this.

20 A. Yes, that is correct.

21 Q. Are you familiar with this conveyance document,
22 Mr. Macha?

23 A. Yes, I am.

24 Q. Is there any reference in this document to a
25 provision that says that the transfer of these leases is

1 subject to approval by the federal government?

2 A. No, there's no reference to that, I do not
3 believe.

4 Q. Is there any reference in these leases when it
5 says that, you know -- I believe there's certain things
6 that are excluded from here. Is there any reference to a
7 joint operating agreement?

8 A. No, there is not.

9 EXAMINER BRANCARD: Thank you. Any rebuttal
10 questions from Colgate?

11 MS. HARDY: Mr. Examiner, I have just a couple.

12 EXAMINER BRANCARD: Redirect.

13 MS. HARDY: Redirect. Yes. Thank you.

14 REDIRECT EXAMINATION

15 BY MS. HARDY:

16 Q. Mr. Macha, with respect to Mr. Gallegos'
17 questions on the initial hearing in these cases, in the
18 original cases, why didn't Colgate notify Hartman of those
19 applications?

20 A. So we, again, intended to not pool them at that
21 hearing and rather obtain a communitization agreement
22 signature.

23 Q. None of Hartmans' interest was pooled by the
24 first hearing?

25 A. No, nothing was pooled of theirs.

1 Q. Approximately how many times have you seen the
2 BLM accept pooling orders in lieu of signed
3 communitization agreements? And I understand you won't
4 likely have an exact number.

5 A. Right. I don't think I have an exact number,
6 but again I've been working operating assets since 2017,
7 and it's been almost every single one of those cases.

8 Q. And from your perspective was that note you
9 received from the BLM a clear answer to your question?

10 A. Yes.

11 Q. And was that answer consistent with your prior
12 experience?

13 A. Yes.

14 MS. HARDY: I have no further questions for Mr.
15 Macha. I would just move the admission of our remaining
16 exhibits A-12 through A-16, D, D-1 and D-2, I believe.

17 EXAMINER BRANCARD: Thank you.

18 Let's deal with the exhibits.

19 Are there any further objections from the
20 Hartmans to these exhibits?

21 MR. GALLEGOS: No further objection.

22 MR. BRANCARD: Thank you. All right. So I
23 believe counsel for that Hartman has agreed to accept the
24 evidence related to geology.

25 MR. GALLEGOS: That's correct, Mr. Examiner.

1 That's not an issue.

2 EXAMINER BRANCARD: Can you just, for the
3 record, Ms. Hardy, list what that -- just the exhibit
4 numbers, et cetera, relating to that, so it's all clear?

5 MS. HARDY: Yes, I can.

6 It is Exhibit B and the attachments No. B-1
7 through -- sorry it's just taking me a minute. My
8 computer is slow. This will just take one second, I hope.

9 EXAMINER BRANCARD: What your file document
10 shows is B-1 through B-13.

11 MS. HARDY: Then that's correct, Mr. Examiner.
12 I would ask for the admission of Exhibits B and B-1
13 through -16 (sic).

14 EXAMINER BRANCARD: Thank you. All right.
15 Exhibits B and B-1 through B-13 will be admitted.

16 MS. HARDY: Thank you .

17 EXAMINER BRANCARD: And we have other exhibits.

18 MS. HARDY: Exactly. That was what I was going
19 to request next is admission of my Notice exhibits,
20 Exhibits C and C-1 through C-3, which show that we
21 provided Notice to all interested parties. I believe
22 there are only two record title owners, and that Notice
23 was certainly received by Mr. Hartman. And then we also
24 published Notice timely.

25 EXAMINER BRANCARD: Any objection to these

1 Exhibits C and C-1 through C-3.

2 MR. GALLEGOS: No objection.

3 EXAMINER BRANCARD: Thank you.

4 With that, does that conclude Colgate's'
5 case?

6 MS. HARDY: It does. Thank you, Mr. Examiner.

7 MR. BRANCARD: Thank you.

8 All right. With that let me first check in
9 with the court reporter.

10 (Note: Discussion off the record.)

11 MR. BRANCARD: All right. We will be back at
12 10:15. Thank you.

13 (Note: In recess from 10:08 a.m. to 10:17 a.m.)

14 EXAMINER BRANCARD: Ms. Hardy, are you
15 available?

16 MS. HARDY: Yes. Thank you. I'm here.

17 EXAMINER BRANCARD: Mr. Gallegos, I think I saw
18 a dog trying to get on your computer while you were gone.

19 MR. GALLEGOS: Yes. My dog spends the day with
20 me here.

21 EXAMINER BRANCARD: All right. So with that I
22 believe we are back on the record. Cases 23149 through
23 23156, the applications of Colgate Operating.

24 With that, Mr. Gallegos, give us a sense of
25 what you're going to provide today.

1 MR. GALLEGOS: Mr. Examiner, we prepared to
2 provide for the Division evidence by a petroleum landman,
3 Bryan Jones, regarding the state of the federal lease
4 ownership as to the lease of the subject of the proceeding
5 we also will present evidence and argument regarding the
6 application of the importance of having the joint
7 operating agreement and the right to drill on the part of
8 this applicant in terms of compliance with Section
9 70-2-17C.

10 So, with that, we think we can show that
11 the Division having an interest on whether the applicant
12 does have the right to drill or their parties are already
13 in agreement goes to the basic jurisdiction over this
14 matter and supports our Motion to Dismiss.

15 We will call, if it's okay with the
16 Examiner, we will call our first witness.

17 EXAMINER BRANCARD: Thank you. So you have the
18 one witness?

19 MR. GALLEGOS: Yes, Mr. Examiner.

20 EXAMINER BRANCARD: And as we discussed, you
21 know, if you could keep the testimony limited to the
22 issues that are at play here, which is the application to
23 amend the Orders to pool the record title owner and the
24 issues raised in your Motion to Dismiss.

25 MR. GALLEGOS: Yes, Mr. Examiner.

1 EXAMINER BRANCARD: Thank you.

2 So with that, Mr. Jones will you raise your
3 right hand.

4 BRYAN JONES

5 having been duly sworn testified as follows:

6 EXAMINER BRANCARD: Mr. Gallegos will try to
7 mute himself whenever he is not speaking.

8 MR. GALLEGOS: Yes. Are we okay to proceed?

9 EXAMINER BRANCARD: Please do.

10 MR. GALLEGOS: I'm maybe getting a little
11 feedback right in my own office here.

12 DIRECT EXAMINATION

13 BY MR. GALLEGOS:

14 Q. State your name, please.

15 A. Bryan Jones.

16 Q. Where do you live, Mr. Jones?

17 A. In Coppell, Texas.

18 Q. Are you a petroleum landman?

19 A. Yes, I am.

20 Q. Would you please state for the examiner,
21 beginning from when you embarked on this profession, what
22 your education, training and experience has consisted of.

23 A. Yes. I went to work for Phillips Petroleum
24 Company as a landman trainee in December, 1973. I have
25 been in the land profession business since that point in

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1 time. I have -- in 1989 I received my Certified
2 Professional Landman certification, and I maintained that
3 until when I semiretired about 20 years ago.

4 I have worked for hundreds of clients
5 throughout the United States. I have worked on federal
6 and state leases, fee leases, all the way from Mississippi
7 and Alabama to Montana and back.

8 I have put together federal unitizations,
9 federal communitizations, state communitizations that
10 include both federal and fee leases.

11 I have examined federal lease files on
12 thousands of leases throughout my career, not only in New
13 Mexico but in Colorado, Wyoming, Montana and Idaho.

14 Q. Have you previously done some land work for
15 Doyle Hartman?

16 Mr. Jones, did you hear my question? I was
17 asking if you previously have done work for Doyle Hartman.

18 EXAMINER BRANCARD: Mr. Jones, you're muted
19 right now. (Note: Pause.)

20 Mr. Jones, we do not hear your response
21 because you're muted. Thank you.

22 THE WITNESS: I'm sorry. I'm not used to these
23 buttons.

24 A. Yes. I have worked for Mr. Hartman off and on
25 on various projects for 30-plus years.

1 Q. Has your testimony, both as to facts and
2 opinions regarding issues of petroleum land rights, been
3 accepted by administrative bodies and by courts of law?

4 A. Yes. It has been accepted by New Mexico Oil
5 Conservation Division, as well as Federal District Court
6 and State District Court in Wyoming.

7 Q. Mr. Jones, are you familiar with 30 U.S. Code
8 Section 187, which reads that any transfer of title to oil
9 or gas lease under the authority of the chapter may be
10 assigned or subleased subject to final approval of the
11 Secretary?

12 A. Yes, I'm familiar with that, that any assignment
13 or conveyance of a federal oil and gas lease requires
14 approval by the Bureau of Land Management.

15 Q. Do you have -- it was marked as Exhibit 14, but
16 maybe you have just from your own files a copy of the
17 current Serial Register of the BLM for Lease NMNM 29512A,
18 which is one of the leases that is the subject of this
19 application?

20 A. Yes, I have it right here.

21 MR. GALLEGOS: Mr. Brancard, do you have that
22 handy?

23 EXAMINER BRANCARD: Is this one of your proposed
24 exhibits?

25 MR. GALLEGOS: No, this is actually Colgate's

1 exhibits. I thought it would be easy if we go to
2 Colgate's Exhibit A-14.

3 EXAMINER BRANCARD: Okay. As long as you let us
4 know which exhibit you're on, we'll be fine.

5 MR. GALLEGOS: Okay.

6 Q. Mr. Jones, would you turn to the -- what is
7 shown as page 5 of 5 on that Serial Register.

8 A. Yes, I have it.

9 Q. I'm directing your attention and that of the
10 examiner to what I call the upper half of the page where
11 the entries under the Action Status show Filed, and under
12 the Action Information has additional entries.

13 Would you tell us what those entries
14 indicate.

15 A. Those reflect that Colgate has filed an
16 Assignment of Record Title and a Transfer of Operating
17 Rights from OXY into Colgate, and that they have not been
18 approved by the BLM.

19 Q. Does the Serial Register indicate the parties
20 who own record title or operating rights in this
21 particular lease?

22 A. Yes. It has both at the bottom of page 5, and
23 then if you go back to page 1 it will show you a list of
24 Operating Rights Other Than Lessees, which are record
25 title owners.

1 Q. What do we find in regard to Colgate?

2 A. They are shown as having no ownership, period.

3 Q. Are you acquainted with the transfers from OXY
4 to Colgate that are held by the BLM?

5 A. Yes. I have reviewed them. I reviewed those
6 lease files at issue in this from the BLM.

7 Q. At my request have you continued to review the
8 files currently, so as we are here today on January 19th
9 the status as shown on Exhibit A-14?

10 A. Yes. As of -- this is Thursday. As of Tuesday
11 evening at 5:00 p.m., they had not been approved, and we
12 couldn't get into the system today to clarify it.

13 Q. I'd like to ask you, Mr. Jones, as a lessee of a
14 federal lease does that ownership include working
15 interests?

16 A. Yes, it can. And I will direct the examiner
17 back to the Definitions page that Mr. Macha referred to
18 earlier, which was Exhibit C to Hartmans' Response to
19 Colgate's Motion to Quash, which was filed back on -- I
20 believe it was January 12th of this year.

21 If you look down towards the bottom of that
22 page under the definition of Operating Rights it says:
23 Means a person or entity holding operating rights in a
24 lease issued by the United States. A lessee also may be
25 an operating rights if the operating rights in a lease or

1 portion thereof have not been severed from the record
2 title.

3 Q. And what is the significance of that in regard
4 to the particular leases that are the subject here?

5 A. If you look at my affidavit, I examined the
6 lease files at issue in this case, and nowhere in any of
7 these lease files would you find a conveyance of operating
8 rights from Mr. Hartman to any third party. So he owns
9 both record title and operating rights, as is shown on my
10 affidavit.

11 Q. Just to be clear, when we use the federal term
12 operating rights, is that the equivalent of what is
13 ordinarily understood to mean working interest?

14 A. Yes. Yes.

15 Q. What I'd like to do, Mr. Jones, is just
16 establish in the record: Have you examined the oil and
17 gas lease files in the BLM office in Santa Fe for
18 leases -- and I'm going to talk about this: 29512A,
19 29512B, and I think C is not material, but also lease
20 13276.

21 A. Yes. I examined the lease files on two
22 different occasions. The first time was in October of
23 last year, and most recently again for deposition.

24 (Note: Reporter request for sound check.)

25 EXAMINER BRANCARD: Okay. Ms. Hardy are you on

1 mute?

2 UNIDENTIFIED VOICE: Let me mute myself.

3 MS. HARDY: I don't think it's coming from me,
4 but...

5 EXAMINER BRANCARD: Try again, Mr. Gallegos.

6 Q. Mr. Jones, then with your examination of the
7 leases of mine, would you simply go down through the
8 leases and tell the examiner what you found, and in
9 particular with a view as to whether or not out of the
10 lessee ownership there has been severed working interest
11 so that only what we call record title or lessee title
12 remains.

13 MS. HARDY: Mr. Examiner --

14 EXAMINER BRANCARD: Mr. Gallegos, I have a
15 question whether this is relevant or not, because we're
16 not really looking at whether the Hartmans have working
17 interests at this point.

18 MR. GALLEGOS: Well --

19 MR. HARDY: Repeat my objection.

20 Q. Well, the prior application of Colgate here has
21 been premised on Mr. Macha's opinion that we're only here
22 for record title because he doesn't think working interest
23 rights exist. Those are the very heart of what I'm
24 representing to the Division, and if that is not the case,
25 then Mr. Hartman is not only deprived of due process

1 regarding the record title but also regarding the working
2 interest. And Colgate's position is, Oh, just let us do
3 this because we say it's record title and let's not go
4 into it any deeper.

5 EXAMINER BRANCARD: Well, I think we've already
6 decided that. That's what the scope of this hearing is,
7 is on the record title interests that are listed as the
8 record title owners, and it's not impacting anybody's
9 working ownership, this pooling proceeding.

10 If Colgate is mistaken or another court
11 proves that they are incorrect, they will have to come
12 back or obtain an agreement from the other working
13 interest owners.

14 MR. GALLEGOS: Well, it strikes me as a little
15 inconsistent that the Division will hear what Mr. Macha
16 has to say basically about the Hartman ownership, and stop
17 there and we can't present what Mr. Jones will present
18 regarding the Hartman ownership which is of interest.

19 EXAMINER BRANCARD: All right. Let me just
20 allow you to do this: If Mr. Jones can briefly describe
21 the exhibits that are attached to his testimony, why don't
22 we do that.

23 MR. GALLEGOS: Thank you. And this affidavit is
24 Hartman Exhibit 1-A.

25 Q. And so, Mr. Jones, rather than go into great

1 detail, if you can summarize what you find as you examine
2 the record on the three leases that I mentioned to you,
3 13276, 29512A, 29512B.

4 A. Yes. Based on the federal oil and gas lease
5 files, it reflects that Mr. Hartman owns both record title
6 and operating rights on all the leases, at least with
7 regard to a portion of the --

8 (Note: Reporter inquiry.)

9 MR. GALLEGOS: She's asking, Mr. Jones, that you
10 repeat your summary of what your findings were.

11 A. Yes. I found in the federal oil and gas lease
12 files that Mr. Hartman owns record title and operating
13 rights under all of the leases at issue in this case,
14 based upon the federal gas lease files.

15 MR. GALLEGOS: What I would ask, Mr. Brancard,
16 is we, uh -- on this point, and it will save the time, is
17 if we admit Mr. Jones' Hartman Exhibits 1-A and 2-A, which
18 basically are the detail of what he has summarized?

19 EXAMINER BRANCARD: I'm going to allow questions
20 on it first before we admit it. So please proceed.

21 MR. GALLEGOS: That completes my direct
22 testimony of Mr. Jones.

23 EXAMINER BRANCARD: Okay. So are you just
24 offering 1-A and 2-A or are you offering the other
25 exhibits?

1 MR. GALLEGOS: I would like to offer all of the
2 exhibits, Hartman Exhibits 1-A, 2-A, 3-A, 4-A, 5-A and
3 6-A.

4 MS. HARDY: Mr. Examiner, I object to the
5 admission of those documents on the basis that they are
6 intended to establish the Hartmans have a working
7 interest, which is not an issue in this case.

8 EXAMINER BRANCARD: Well, let me ask
9 Mr. Gallegos: Is Mr. Jones available for questioning on
10 these exhibits?

11 MR. GALLEGOS: They are his exhibits. Yes, they
12 are his exhibits. He's available to be questioned on
13 them.

14 EXAMINER BRANCARD: Okay. So why don't we have
15 cross-examination first, and then I will rule on the
16 exhibits.

17 MS. HARDY: Mr. Jones, can you hear me?

18 THE WITNESS: Yes, I can hear you.

19 MS. HARDY: Okay. Thank you.

20 CROSS-EXAMINATION

21 BY MS. HARDY:

22 Q. Mr. Jones, have you ever testified in a pooling
23 case in New Mexico?

24 A. Yes, I have.

25 Q. When was that?

1 A. It's been a number of years ago. I've done
2 numbers of them. I couldn't tell you exactly when the
3 last one was.

4 Q. Mr. Jones, the transfer of interest from OXY to
5 Colgate has been filed in the county records, correct?

6 A. Not the federal form, no.

7 Q. That wasn't my question, Mr. Jones. My question
8 was whether the conveyance has been filed in the county
9 records.

10 A. There's a conveyance from OXY to Colgate filed
11 in Lea County records, yes.

12 Q. And the language of that conveyance doesn't
13 state that it's subject to BLM approval, does it?

14 A. No.

15 Q. And the request for approval of that conveyance
16 that's been submitted to BLM has not been denied, has it?

17 A. That particular conveyance has not been
18 submitted to the BLM.

19 Q. Let me rephrase my question.

20 The request for approval of the transfer of
21 rights from OXY to Colgate has not been denied by BLM, has
22 it?

23 A. Again, that particular assignment, if we're
24 talking about the one in Lea County, has not been filed
25 with the BLM, period.

1 Q. Maybe my understanding of your testimony is
2 incorrect. It's been my understanding that you're
3 testifying that the conveyance from OXY to Colgate has not
4 been approved yet by BLM. Is that right?

5 A. The federal form assignments have not been
6 approved, that's correct.

7 Q. Okay. And they haven't been denied, have they.

8 A. No.

9 Q. The BLM Serial Register pages that you were
10 discussing a few minutes ago, specifically I think we can
11 look at Colgate Exhibit A-14, those documents don't list
12 every working interest owner in the leases, do they?

13 A. They could. I don't know.

14 Q. They don't list overriding royalty interests, do
15 they.

16 A. No, they don't.

17 Q. And those interests still exist, don't they.

18 A. I haven't examined the lease files to see if
19 there were any overriding royalties outstanding on these
20 leases.

21 Q. Are you aware that under New Mexico law a
22 conveyance filed in county records is a transfer of an
23 interest in real property?

24 A. Yes, I'm aware of that.

25 Q. So since the BLM Serial Register page does not

1 list overriding royalty interests, and it may or may not
2 list all working interests, isn't it correct that the
3 Serial Register pages don't identify every interest in a
4 lease?

5 A. It depends on which lease it is. It could, it
6 couldn't. It just depends on which one it is.

7 Q. And you're aware, aren't you, that, uhm, a
8 conveyance was filed in the county records of Hartmans'
9 interest conveyance to Plantation.

10 A. Yes, I'm aware of that.

11 Q. And that document was dated December 15 of 2005,
12 wasn't it?

13 A. Yes, it was.

14 Q. And that document is omitted from your affidavit
15 and your exhibits, isn't it?

16 A. I didn't examine Lea County records, as I stated
17 in my affidavit. My examination was federal lease files
18 and what they showed.

19 Q. Okay. So you didn't look at county records and
20 you didn't consider them. Is that fair to say?

21 A. That's correct.

22 MS. HARDY: Those are all of my questions.
23 Thank you for your time.

24 MR. GALLEGOS: No redirect, Mr. Examiner.

25 EXAMINER BRANCARD: Thank you.

1 Mr. Lowe, any questions?

2 EXAMINER LOWE: A quick question.

3 CROSS-EXAMINATION

4 BY EXAMINER LOWE:

5 Q. Mr. Jones, good morning.

6 Are you previously -- Ms. Hardy has
7 inquired about your previous testimony in New Mexico, and
8 she asked in what aspect -- or actually I'm not to sure at
9 what time frame it was done, but I was just curious to
10 know: What aspect was that pertaining to in your previous
11 testifying in New Mexico?

12 A. That would have been with regard to unitization
13 and communitizations of both federal and state lands, and
14 possibly some fee lands in New Mexico.

15 Q. Was that through the OCD?

16 A. Yes.

17 EXAMINER LOWE: Okay. Those are my questions
18 Thank you.

19 EXAMINER BRANCARD: Maybe you can help me, Mr.
20 Gallegos. At the beginning of your questioning of Mr.
21 Jones you referred to, or maybe perhaps Mr. Jones referred
22 to, in response to your question, an attachment to a
23 document that involved federal regulations.

24 You're muted, Mr. Gallegos. Sorry. Mr.
25 Gallegos, you're muted.

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1 MR. GALLEGOS: Thank you, Mr. Examiner.

2 What I referred to is a section of the
3 Mineral Leasing Act at 30 USCA. It's Section 187a, which
4 says that in the event of an assignment of a sublease or
5 any part of the acreage it's subject to final approval by
6 the Secretary.

7 EXAMINER BRANCARD: Thank you.

8 And was that actually attached to one of
9 your pleadings?

10 MR. GALLEGOS: No.

11 EXAMINER BRANCARD: Okay. I'll find it.

12 MR. GALLEGOS: I would be happy to furnish that.
13 Obviously, you know, it's easily found.

14 EXAMINER BRANCARD: Yeah. I'll look it up on
15 the Internet and try to find it.

16 Okay. Let's look at the exhibits so we can
17 go through them here. Jones.

18 Uhm, so I'm looking at what is labeled
19 Hartman Exhibit 4-A. It's entitled Conveyance and
20 Agreement.

21 MR. GALLEGOS: Yes. That's one of Mr. Jones'.
22 And it's way back, uh, the beginning of title for Mr.
23 Hartman, which came from Sun, Sun Operating.

24 EXAMINER BRANCARD: Let me just ask Mr. Jones.
25 We want to get information about these exhibits on the

1 record.

2 CROSS-EXAMINATION

3 BY EXAMINER BRANCARD:

4 Q. So, Mr. Jones, it appears that Exhibit 4-A are
5 excerpts from this document.

6 A. Yes. They are excerpts. The document itself is
7 hundreds of pages long, so I pooled the pages that
8 pertained to the leases at issue in this case, or these
9 cases.

10 Q. Okay. Is it your addition to this file document
11 those sort of boxes?

12 A. Yes. I boxed those in just so it would show you
13 what we were talking about.

14 Q. Okay. I just want to make sure what we're
15 looking at here in terms of what's a file document and
16 what's your annotations to this.

17 Okay. So you have basically highlighted by
18 boxes the leases that you're saying are relevant to this
19 particular unit.

20 A. Yes, that's correct. And in there it also says
21 that the conveyance into Mr. Hartman is subject to the
22 1941 Operating Agreement, as amended by the 1949 Operating
23 Agreement.

24 Q. Okay. And so then the next document, 5-A, that
25 is the 1941 agreement?

1 A. Yes, that is correct.

2 Q. There are annotations on the first page. Do you
3 have any idea what those are?

4 A. That handwriting was on there when I found the
5 documents in Mr. Hartman's file, and I don't know whose
6 handwriting that is.

7 Q. So you have -- is it correct that this document
8 and the prior one were pulled from Mr. Hartman's files?

9 A. Yes, that's correct.

10 Q. Okay. You didn't get them from the county
11 records or the BLM records.

12 A. No, I found them in one of Mr. Hartman's files.

13 Q. Thank you. And this agreement, this what is
14 referred to as an Operating Agreement here, there's no
15 indication that it has been filed in the county records.

16 A. That's correct.

17 Q. And so there are further documents here, Exhibit
18 6-A, which appears to be a letter from Colgate.

19 A. Yes. That's a copy of the letter that they sent
20 to Mr. Hartman in February of 2022, which was notice of
21 the Batman development area.

22 Q. Again you obtained this from the Hartmans?

23 A. Yes.

24 Q. I assume all these attachments are part of that.

25 A. Yes, that's exactly how it is in the file.

1 Q. So I thought there was some additional exhibits
2 that you had, Mr. Gallegos. I'm trying to find them here.

3 MR. GALLEGOS: I think we added the Serial
4 Register pages for the three leases.

5 EXAMINER BRANCARD: Right.

6 MR. GALLEGOS: They all read basically the same
7 as Colgate's Exhibit A-14, so they could be admitted or
8 not. I mean, either way we have the substance of the
9 state of the federal record as shown by these Serial
10 Registers.

11 EXAMINER BRANCARD: Okay. Sorry, I have way too
12 many documents open here.

13 All right. That's 7A, 8A and 9A are the
14 BLM Serial Register pages.

15 MR. GALLEGOS: That's correct, your Honor. One
16 of them is -- the Lease A is the same as Exhibit A-14 of
17 Colgate.

18 EXAMINER BRANCARD: All right. So let me turn
19 to Ms. Hardy.

20 Does Colgate have objections to these
21 exhibits?

22 MS. HARDY: Yes, Mr. Examiner, I do.

23 I think that Exhibits -- Exhibit 1-A, which
24 is Mr. Jones' affidavit, deals with a claimed working
25 interest by Hartman, which is not at issue here.

1 Exhibit 2-A, 4-A, and 5-A also deal with
2 that issue.

3 We did not submit the assignment of
4 Hartmans' interest to Plantation because the Division had
5 ruled that we were not dealing with working interest and
6 JOAs here and title issues, so I would object to the
7 admission of all of these exhibits that are designed to
8 show that Hartman has a working interest that's not at
9 issue here.

10 Exhibit 3-A I don't object to, the schedule
11 of Colgate's pooling cases. I don't think that's
12 necessary. I think that's all in the record.

13 Exhibit 6-A, Colgate's Notice letter on the
14 development area, I object to that being used to try to
15 show that Hartman has a working interest. It actually
16 shows that he was notified as a lessee, not as a working
17 interest owner. So I don't object to it being considered
18 for that purpose, but it does not establish that Hartman
19 has a working interest, which is the reason Hartman has
20 submitted it.

21 EXAMINER BRANCARD: Mr. Gallegos.

22 MR. GALLEGOS: Yes. Mr. Examiner, we -- we're
23 really here dealing with this federal leases and rights
24 under federal leases.

25 EXAMINER BRANCARD: Hang on.

1 Ms. Hardy, would you mute yourself? I
2 don't know if that is helping but it seemed to last time.

3 Please proceed. I'm sorry.

4 MR. GALLEGOS: Well, thank you.

5 This has the state agency, really,
6 addressing questions of federal lease rights in every
7 respect, and you cannot just at your convenience slice off
8 one element and then come forward and say, "Oh, by the
9 way, we dealt with the BLM on comm agreements and Mr.
10 Macha has checked with this to see whether we should pool
11 record title, and so forth, and here we have the Serial
12 Registers.

13 In other words, the rights and the lack of
14 rights regarding federal leases are central to this
15 application, and I think everything we set forth is
16 admissible on those grounds. It helps the Division
17 understand what this case is about and get to some of the
18 issues that are not quite as siloed (phonetic) off as
19 Colgate would like them to be.

20 And I do ask permission to ask one more
21 question of Mr. Jones regarding one of his exhibits, and I
22 appreciate the examiner's examination to help lay the
23 foundation for some of these exhibits which I failed to
24 do.

25 EXAMINER BRANCARD: Sure. One more question on

1 the exhibits.

2 REDIRECT EXAMINATION

3 BY MR. GALLEGOS:

4 Q. Mr. Jones, on Exhibit 5-A, do you have that?

5 A. Yes, I do.

6 Q. Do you have Exhibit 5-A?

7 What is the significance of that exhibit
8 with respect to the questions that have been raised
9 regarding the existence of a joint operating agreement
10 covering the subject land?

11 A. Well, this agreement covers all lands at issue
12 in these cases, all the cases at issue here and all the
13 leases. It covers all the lands in Sections 17, 18, 19
14 and 20.

15 Q. Did it also give an indication that there is the
16 existence of a later-in-time joint operating agreement on
17 these properties?

18 A. Let me look just a second. (Note: Pause.)

19 I don't see any mention of an amendment to
20 this agreement.

21 Q. How did it come to your attention that there is
22 a later-in-time joint operating agreement covering these
23 properties?

24 A. I can't quite remember exactly where I saw the
25 reference, but also it was in -- referenced in the title

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1 opinion that Colgate provided, the redacted title opinion
2 that Colgate provided to Mr. Hartman.

3 MR. GALLEGOS: Thank you. And thank you, Mr.
4 Examiner, for allowing the questions.

5 EXAMINER BRANCARD: Any if I may testify, I
6 think the answer to your question is Exhibit 4-A has the
7 reference to the 1949 amendment.

8 So okay.

9 MR. GALLEGOS: We accept your testimony.

10 MS. HARDY: Mr. Examiner, I did have one more
11 objection.

12 EXAMINER BRANCARD: Please. And Mr. Gallegos,
13 would you mute yourself. Thank you.

14 MS. HARDY: The objection that I have to the
15 admission of these exhibits is they do contain handwritten
16 notes. It's unclear who those are from. They were
17 derived from Mr. Hartman's files and not from county
18 records, so I don't know that they are reliable or
19 complete, and I object for that reason, as well.

20 And if they are admitted I would ask to
21 call back Mr. Macha to address some of these items. Thank
22 you.

23 EXAMINER BRANCARD: Okay. The standard in an
24 administrative hearing is relevance. I find the relevance
25 of some of these exhibits, I don't know, a little slim,

1 but I think that we will admit them. Obviously it is our
2 job as a decision-maker to give the weight that any of
3 these exhibits should be given. You have already made
4 on-the-record indications of where they are from, how they
5 were kind of cut and pasted and notations made on them.
6 All of that is obviously part of how we would evaluate the
7 weight and importance of these exhibits.

8 The relevance seems to be less to the
9 question of whether the Hartmans have a working interest
10 and more to the issue of this joint operating agreement
11 that has been raised.

12 So with that the Hartmans' exhibits will be
13 admitted.

14 But Mr. Gallegos, I believe you have
15 finished your case at this point?

16 MR. GALLEGOS: Yes, Mr. Examiner, we have.

17 MR. BRANCARD: So, as indicated, I will allow a
18 rebuttal if that's what Colgate would like at this point.
19 Again, as you mentioned Ms. Hardy, it needs to be a
20 rebuttal just on what has been testified about.

21 MS. HARDY: I understand, Mr. Examiner, and I
22 would like to call Mr. Macha back to answer a couple of
23 questions.

24 EXAMINER BRANCARD: Thank you.

25 If you would mute yourself, Mr. Gallegos.

1 Thank you.

2 Has Mr. Macha left the building?

3 MR. MACHA: No, I'm here hard.

4 MS. HARDY: No, he's on.

5 Can you turn on your video, Mr. Macha?

6 MR. MACHA: Yes.

7 MS. HARDY: Thank you.

8 REBUTTAL EXAMINATION

9 BY MS. HARDY:

10 Q. Mr. Macha, did you hear the testimony that was
11 just offered by Mr. Jones?

12 A. Yes.

13 Q. Okay. First, with respect to the assignments,
14 can you give a brief summary of your understanding of the
15 status of Hartmans' interest.

16 A. Yes. So obviously --

17 MR. GALLEGOS: I'm sorry. Can we have a
18 clarification of the assignments? Are you referring to
19 the federal transfer reports?

20 MS. HARDY: No, I'm not. I'm referring to the
21 county records that transfer real property interest. And
22 Mr. Hartman has provided Exhibit 4-A, which is a
23 conveyance from Sun to Hartman. So Mr. Macha should be
24 able to address that.

25 MR. GALLEGOS: Well, I wasn't objecting, I was

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1 just asking, you know, so that we can --

2 MS. HARDY: Yes.

3 A. Yeah. So I guess we have a --

4 (Note: Reporter inquiry re echo. Pause to
5 adjust.)

6 A. So on the 1989 assignment into Hartman,
7 obviously we recognize that in the county record. We've
8 taken that into account in our title opinion that we've
9 provided a redacted version to Hartman.

10 We do supplement that with the 2005
11 conveyance from Hartman to Plantation that we did not
12 provide here as an exhibit because we didn't think we had
13 to discuss working interests, but effectually there's
14 no -- even though these assignments were not filed in part
15 with the BLM, the effect of a county assignment still does
16 hold weight; it's not just voided because there was no
17 counterpart filed with the BLM. So we have taken that
18 into account in our unit.

19 MS. HARDY: Mr. Examiner, if it would be helpful
20 for the Division, I would like to submit that assignment
21 from Hartman to Plantation as a rebuttal exhibit, as the
22 prior conveyance from Sun to Hartman has been admitted.

23 EXAMINER BRANCARD: Well, again, we're not
24 talking about working interests here, so...

25 It's on the record and Mr. Macha testified,

1 so let's just leave it at that.

2 MS. HARDY: That's fine.

3 EXAMINER BRANCARD: Mr. Gallegos, I think you
4 need to be muted. Thank you.

5 Q. Mr. Macha, did you hear Mr. Jones' testimony
6 about joint operating agreements regarding this acreage?

7 A. Yes, ma'am, that's correct. I did hear that.

8 Q. And can you provide an explanation of the status
9 of the joint operating agreements that currently exist?

10 A. Yeah, yeah. So -- yeah. So I'm working back.

11 So these joint operating agreements, I mean
12 these leases are old, they're from the '50s, this
13 operating agreement is from the '40s. These leases
14 weren't even in effect at that point, but they were mining
15 permits, they were not actual leases at that point, even
16 though would do recognize this 1943 or, yeah, 1941 JOA as
17 having effect as to some of the lands at that point, there
18 was also a 1928 joint operating agreement covering part of
19 the lands, there was also a 1993 agreement covering part
20 of lands, there is now 2002 JOAs covering these individual
21 spacing units.

22 And just for another reference, the south
23 half of the southwest of Section 19 is a 1970-something
24 lease, I believe that's not included in these joint
25 operating agreements, these 1940s joint operating

1 agreements.

2 I guess what I'm trying to say is there has
3 been a lot of title and a lot of contracts overlaid,
4 superseded over the years. A lot of land's fallen out, a
5 lot of owners that did sign, a lot of owners that did not
6 sign. That's the premise for needing a superseding joint
7 operating agreement that we've proposed to drill these
8 wells under.

9 Q. So, Mr. Macha, is it correct that the joint
10 operating agreements referenced by Mr. Jones do not cover
11 all of the lands and formations at issue in Colgate's
12 applications?

13 A. (Note: No audible response.)

14 Q. Sorry, I couldn't hear you.

15 A. Sorry. Correct.

16 MS. HARDY: Thank you. I don't have any further
17 questions, Mr. Examiner. Thank you.

18 MR. GALLEGOS: Mr. Examiner, we now have a
19 situation on the record that makes it absolutely
20 imperative that our request for production by Colgate of
21 the joint operating agreement, the Order produced. Now we
22 have a party who said, "Oh, no, we don't want to get into
23 the joint operating agreement, we're going to hold it and
24 we're going to keep it in our file because, who knows, it
25 may show there's no jurisdiction in this case." Now they

1 object to it. If that isn't a waiver of any objection,
2 which is invalid to begin with, Mr. Examiner, please. Now
3 it is has to be ordered produced.

4 MS. HARDY: Mr. Examiner, may I respond?

5 EXAMINER BRANCARD: Yes.

6 MS. HARDY: The agreements are not relevant to
7 the pooling of record title interest, but because
8 Mr. Jones testified about them and was allowed to do so,
9 we called Mr. Macha in rebuttal. So that's the only
10 reason we've done that. I still do not believe they are
11 relevant to the pooling of a record title interest. I
12 don't think it's fair to introduce evidence and then claim
13 error as a result of evidence that you've introduced,
14 which is what I think Mr. Gallegos is doing.

15 MR. GALLEGOS: What we're claiming is that if
16 there ever was any reason for withholding this evidence,
17 it certainly has been totally waived. You've opened it up
18 and you've gone into it. And now Mr. Macha is testifying
19 about documents that we don't see and that you have
20 refused to produce.

21 I think it's so clear to the examiner now
22 that the subpoena rights that we've been denied must be
23 enforced and the documents produced.

24 EXAMINER BRANCARD: Well, Mr. Gallegos, I remain
25 baffled as to why your client doesn't have this document.

1 MR. GALLEGOS: I'm sorry?

2 EXAMINER BRANCARD: I'm baffled as to why your
3 client doesn't have this document.

4 MR. GALLEGOS: He does not have the document.
5 We wouldn't be asking for them if we had them.

6 We wish that we did, and we've wanted it
7 all along, because I think what it's going to show is
8 there's no reason for this application because there's an
9 agreement that covers the mineral interests.

10 And now we have a party who refuses
11 production, the most ultimate of discovery, that would go
12 to the very fundamentals of this application being heard,
13 now they go into it, now he testifies to it. The
14 agreement must be produced.

15 EXAMINER BRANCARD: Well, the reason I'm baffled
16 is because the document is referenced in the conveyance
17 document in which your client took title.

18 MR. GALLEGOS: It is. It certainly is, and that
19 was the clue to us that this agreement exists. We do not
20 have it. We do not have it. If we had had it from the
21 beginning we would have brought it before the Division,
22 because it's so fundamental to the requirements under the
23 statute that you only have force pooling if the parties
24 have failed to enter an agreement. And it's our
25 contention that yes, they have entered into an agreement

1 that's binding on these parties, and we don't have it.
2 And now we've got a witness testifying about it and
3 saying, Oh, well, it wouldn't apply or whatever.

4 Let's just have the document.

5 MS. HARDY: Mr. Examiner, can I respond briefly?

6 EXAMINER BRANCARD: Yes. Briefly.

7 MS. HARDY: We objected on the record in writing
8 to admission of any of this evidence on joint operating
9 agreements, and we objected to Mr. Jones testifying about
10 it, but he was allowed to do so. In response we called
11 Mr. Macha. But as a matter of law joint operating
12 agreements do not preclude pooling of record title
13 interest to obtain a BLM communitization agreement.
14 That's a legal issue and I think the parties have
15 addressed that in their written submissions.

16 MR. GALLEGOS: Mr. Examiner, all Mr. Jones said
17 is that we've seen something in a document that says a
18 joint operating agreement exists. Nothing about the
19 content, nothing about the applicability of anything until
20 Mr. Macha comes forward and starts testifying about that,
21 about this document that they refuse to produce.

22 EXAMINER BRANCARD: Well, Mr. Macha has
23 testified, apparently, to a series of operating agreements
24 that are out there covering perhaps parts of this area.

25 So that's -- my fear here is that if we ask

1 for one of these documents we're going to have to get all
2 of those documents in because we can't figure out which
3 documents in here in the 21st Century are still active.

4 I'm going to rule that we don't need this
5 document, because I agree with counsel that all we're
6 doing here in the proceeding, as was decided at the last
7 hearing, is pooling what are known as record title owners,
8 and therefore a joint operating agreement is not relevant
9 to that.

10 And we are doing that basically for the
11 benefit of the BLM. All right. And so if the BLM doesn't
12 think there is a joint operating agreement covering this,
13 they use communitization agreements, whatever those are.
14 So I don't think we need to see that document.

15 You know, Colgate wants to be nice and give
16 it to the Hartmans, that would be nice, fill out their
17 files. Which, again, I don't understand why the Hartmans
18 don't have this document.

19 So that's my ruling. I don't see these
20 joint operating agreements as being relevant to the issue
21 in this application, which is the pooling of record title
22 owners.

23 So with that, is there any other evidence
24 to be presented today?

25 MS. HARDY: Nothing further from Colgate, Mr.

1 Examiner.

2 EXAMINER BRANCARD: We have admitted the
3 exhibits. I think -- Mr. Lowe, do we have anything else
4 you would like to see?

5 EXAMINER LOWE: No, nothing else.

6 EXAMINER BRANCARD: So it is my decision that we
7 will take this case under advisement. And by taking it
8 under advisement I mean not just the application that has
9 been filed by Colgate, but also the Motion to Dismiss by
10 Hartman is also taken under advisement. And they will be
11 dealt with together, because basically -- basically I view
12 the Motion to Dismiss as a motion to reject the
13 application, so ruling on the application one way or the
14 other will determine the Motion to Dismiss and the issues
15 that have been raised underneath.

16 I don't know. I'll throw it out to the
17 parties whether you think that final closing statements
18 would be helpful here. I know I kind of cut you off.

19 Maybe I should give you a chance, if you
20 want, to have a final closing statement to sort of
21 rephrase your positions at this point.

22 Start with Colgate.

23 MS. HARDY: I think that would be helpful, Mr.
24 Examiner, just to consolidate the issues.

25 EXAMINER BRANCARD: It's not even lunchtime and

1 I'm already cutting people off.

2 So, Mr. Gallegos, are you okay with a short
3 closing statement?

4 MR. GALLEGOS: I think counsel have been sort of
5 making their statements all throughout, your Honor, but a
6 short statement would be fine, if the examiner thinks it's
7 helpful.

8 EXAMINER BRANCARD: All right. Since this is
9 Colgate's application, Colgate will go first.

10 Are you ready to do that now, Ms. Hardy, or
11 do you need a break?

12 MS. HARDY: I'm ready, Mr. Examiner.

13 EXAMINER BRANCARD: Excellent. Please proceed.

14 MS. HARDY: I'll be brief.

15 I think that the issues here come down to
16 the pooling of record title interest to obtain a BLM
17 communitization agreement. We've provided confirmation
18 that the BLM does accept pooling orders in lieu of signed
19 communitization agreements. I think that Hartman's claims
20 do not relate to the pooling of his record title interest,
21 and they certainly don't preclude it. The requirement is
22 that the Division consider whether a pooling application
23 granted protects correlative rights and prevents waste,
24 and here granting the applications prevents waste and
25 protects correlative rights.

1 Hartman has provided no information, no
2 evidence whatsoever that pooling his record title interest
3 would violate his correlative rights or result in waste.
4 Hartman's legal arguments lack merit, specifically on the
5 Motion to Dismiss. Uhm, it's factually and legally
6 incorrect. Colgate does have a right to drill on the
7 leases. The BLM has approved three of Colgate's APDs and
8 the others are pending and are expected to be approved
9 imminently. Regardless, the Division's pooling authority
10 is not contingent on the BLM's approval of APDs or an
11 interest conveyance. The Division has broader pooling
12 authority than that.

13 And of course the BLM has not yet issued
14 APDs or conveyances in many of the cases that were heard
15 by the Division. I know that there were several heard
16 earlier today that were extended because the BLM had
17 delayed issuance of drilling permits.

18 So that's a common occurrence. It doesn't
19 preclude pooling. The issue that's relevant for pooling
20 is whether the applicant has an interest in the acreage,
21 and here Colgate does. It has title conveyances that are
22 recognized in county records, and under New Mexico law, as
23 we've cited in our response to the Motion to Dismiss,
24 those interests, those conveyances are valid, binding
25 conveyances of real property. I think you heard Mr. Jones

1 admit that conveyances filed in county records convey real
2 property interest in New Mexico.

3 With respect to the BLM's delayed approval
4 of the conveyances, that is not a condition to pooling.
5 Again, Colgate has the conveyance in interest, as filed in
6 the county records. And in the Devon v. United States
7 case that we cited in our response to Hartmans' motion,
8 the Court of Federal Claims addressed the conveyance of
9 oil and gas interest in New Mexico and held that state law
10 controls real property conveyances, and that the BLM's
11 approval process is administrative. In that case the
12 court held that if the BLM has not denied approval the
13 transfer is valid.

14 So there's no basis for dismissal or denial
15 of Colgate's applications. Hartmans' Motion to Dismiss
16 should be denied and Colgate's applications should be
17 granted because they will protect correlative rights and
18 prevent waste.

19 Thank you. I appreciate everyone's time
20 today.

21 MR. BRANCARD: Thank you.

22 EXAMINER BRANCARD: Mr. Gallegos, do you have
23 anything to add?

24 MR. GALLEGOS: Yes, Mr. Examiner.

25 I know everybody has seen the statute 1,000

1 times, but it does control force pooling, and that's
2 Section 70-2-17. And whether we want to admit it or not,
3 or Colgate wants to, it provides that this kind of
4 authority of the Division depends on the situation where
5 such owner or owners have not agreed to pool their
6 interest and where one such separate owner or owners, who
7 has the right to drill, has drilled and proposed to drill
8 a well. Has the right to drill.

9 The two elements: The parties have not
10 agreed; and the party applicant has the right to drill.

11 There's basically three points that we want
12 to make.

13 First of all, we believe that the parties
14 have agreed to pool their interest, and we would establish
15 that by the joint operating agreement, which has been
16 unfairly denied. It is not in the possession of our
17 clients, never has been, and we wouldn't be seeking it if
18 it were. But it definitely is not just relevant, Mr.
19 Examiner, it goes to the very jurisdiction of this
20 application.

21 We believe that it will establish that the
22 parties have agreed to pool their rights, and we should
23 not be denied the document itself, nor should the
24 Division.

25 The Division, it seems to me, should be

1 equally interested in the existence of an agreement by
2 which the parties have agreed to pool their rights, so
3 that there is a firm jurisdictional foundation for any
4 Order entered.

5 No. 2 is about a right to drill.

6 Now, we've cited to the section of the U.S.
7 Code which calls for approval, and I will state that there
8 is a division of authority on this issue of whether or not
9 an ownership interest passes or does not pass by reason of
10 the approval or nonapproval of the BLM on an application
11 for transfer.

12 And I have to say I've been -- this is not
13 the first case. That's been the subject of a number of
14 cases, and there is a split of authority. And I think
15 some of the older authority was wrong, but I'm reading
16 from River Gas vs. Pullman. This is a federal case. It's
17 at 960 Fed. Supp. 264, and it says, and I quote: It is
18 well established that a party must receive the approval of
19 the Secretary of the Interior in order for an assignment
20 of a government lease to be valid. The assignment does
21 not actually occur until approval is granted.

22 As I say, there's other cases that say, Oh,
23 well, it transfers, it just -- but you have a very
24 important issue, and when it comes down to it, aside from
25 that, aside from whether or not it has any interest in

1 these federal leases as far as a right to drill, what
2 right does it have to drill? Three APDs that it got two
3 days ago? That doesn't give them a right to drill all the
4 Batman wells.

5 So we're lacking two essential elements
6 that are required under the statute.

7 Finally, as to the BLM requirement that
8 would have engendered this entire reapplication, an
9 application which was heard without the Hartmans present
10 or Noticed, and now this reapplication, are we to -- are
11 we to say -- and I think, Mr. Examiner, at the last
12 hearing you expressed an interest in having something
13 definitive, because this is not the only question that has
14 ever come before the Division on record title and you were
15 hoping to have, you know, something that you could say
16 this means we could depend on this, we can go forward.

17 What do we have? We have an email that
18 says the BLM may accept State pooling orders for lessees.

19 And that is what this Division can go
20 forward on and say, Oh, Colgate has proved that they are
21 here because they were required to do it by the BLM.

22 The email doesn't say it and, besides, what
23 is the authority of this particular land examiner on that
24 issue anyway.

25 So for all the reasons, the three reasons

1 here, we think that the application should be dismissed.

2 EXAMINER BRANCARD: Thank you. Thank you all
3 for doing a very nice job of summarizing their positions
4 here. I guess -- you know, I'm lazy, so if you-all could
5 just send me a copy of (A) Colgate, the Devon case; and
6 (B) this River Gas you are referring to Mr. Gallegos.

7 You're muted at this point, Mr. Gallegos.

8 MR. GALLEGOS: Sorry. Yes, it's River Gas v.
9 Pullman.

10 EXAMINER BRANCARD: If you can send me a copy of
11 that. You can even send it to me by email. It doesn't
12 need to be filed. So thank you all for the presentations.
13 As I said earlier before I gave you a chance to speak,
14 this case will be taken under advisement, both for the
15 application and the Motion to Dismiss. Thank you all.

16 MS. HARDY: Thank you very much.

17 MR. GALLEGOS: Thank you.

18 (Note: Proceedings concluded at 11:28 a.m.)
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25

1 STATE OF NEW MEXICO)
2 : ss
3 COUNTY OF TAOS)
4

5 REPORTER'S CERTIFICATE

6 I, MARY THERESE MACFARLANE, New Mexico Reporter
7 CCR No. 122, DO HEREBY CERTIFY that on Thursday, January
8 19, 2023, the proceedings in the above-captioned matter
9 were taken before me; that I did report in stenographic
10 shorthand the proceedings set forth herein, and the
11 foregoing pages are a true and correct transcription to
12 the best of my ability and control.

13 I FURTHER CERTIFY that I am neither employed by
14 nor related to nor contracted with (unless excepted by the
15 rules) any of the parties or attorneys in this case, and
16 that I have no interest whatsoever in the final
17 disposition of this case in any court.

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