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

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

Case Nos. 23149-56

HARTMAN'S RESPONSE TO COLGATE MOTION TO STRIKE

Doyle and Margaret Hartman ("Hartman"), by and through undersigned counsel, serve this Response in opposition to Colgate's Motion to Strike Hartman's Pre-Hearing Statement. The Motion is without merit and should be denied.

1. The Division should not sanction Colgate's due process violations

Colgate has filed eight cases seeking to amend force pooling orders that were entered on September 26, 2022, in OCD cases 22788-95. The orders are R-22277, 22278, 22279, 22280, 22281, 22282, 22283 and 22284 ("Prior orders"). The Prior orders pooled uncommitted interests in horizontal spacing units comprised of Section 18 and 19, Township 20 South, Range 34 East, Lea County, New Mexico. The interests being pooled are in federal oil and gas leases. The leases are in the Potash Area subject to plenary administration by the Bureau of Land Management (BLM). Twenty-four horizontal wells are proposed (Batman wells). Hartman, a lessee owner in the federal leases, was not given notice of the applications and hearings.

Colgate now seeks to add Hartman as a party to be subject to the burdens of those Prior orders about which he had no opportunity to present evidence in opposition to the applications. Colgate concedes that Hartman owns a record title interest in the lands. The parties have a dispute as to Hartman's ownership of operating rights.

Colgate concedes that it did not provide Hartman with notice in OCD cases 22788-95 notwithstanding its knowledge of Hartman's ownership interest. Colgate filed those cases on April 27, 2022. Colgate violated 19.15.4.12(A) NMAC which requires notice of compulsory pooling applications be made to "each owner of an interest in the mineral estate of any portion of the lands the applicant proposes to be pooled . . .". Record title ownership is an interest in the mineral estate. 43 CFR §3100.0-5(c) ("Record title means a lessee's interest in a lease which includes the obligation to pay rent, and the rights to assign and relinquish the lease").

As a record title interest owner, and certainly as a lessee, Hartman was entitled to notice of the force pooling applications that resulted in entry of the Prior orders. NMSA 1978 §70-2-17(C). Colgate claims it did not notify Hartman of the cases because Colgate expected Hartman to sign communitization agreements. There is no exception to the duty to give notice due to a subjective expectation of a party's future conduct.

Moreover, Colgate's claims regarding notice to Hartman make no sense under the facts. The first communication from Colgate to Hartman referencing the signing of communitization agreements for the Batman wells was a certified letter from Colgate dated February 2, 2022, with proposed agreements for eight of the twenty-four Batman wells. There were no other communications between the parties regarding the Batman wells before Colgate filed its applications in OCD cases 22278-84 on April 27, 2022.

Colgate's claim in its application that it has identified additional interests in the unit since the September 26 orders were entered is also misleading. Colgate knew about Hartman since at least February 2, almost three months before it filed its applications and

seven months before the Prior orders were entered. There is no excuse for Colgate's failure to notify Hartman of the applications in OCD cases 22278-85.

Having deprived Hartman of notice and an opportunity to be heard on the force pooling applications. The Prior orders are void and should not be the basis of Colgate's applications. Colgate's attempt to preclude Hartman from presenting opposition to Colgate's applications, including objections to the terms of the force pooling orders, is improper on its face. Hartman timely filed a Pre-Hearing Statement objecting to these applications and is entitled to a hearing on the merits of his objections. The applications are now set for hearing on the December 15, 2022, docket.

2. Colgate's excuses for due process violations are specious.

Colgate claims Hartman should not be heard because Colgate is only seeking to pool Hartman's record title interest. The suggestion is that record title in federal leases is meaningless. It is not. As a partner in the firm representing Colgate has written "Reduced to its essence, the owner of record title, or the "lessee", is the party that the BLM will ultimately come looking for in the event something goes wrong on the leased premises." Jared A. Hembree, "Mineral Tittle Examination on Federal Lands," 8b-1 (Rocky Mt. Min. L. Rev. 2019).

Hartman's leasehold in the multiple federal leases has not been sub-leased, or in federal terms, subject to transfer of its operating rights. Hartman holds the operating rights (working interest) in the leases, it is clear Hartman owns "interests in oil and gas minerals. . ." NMSA 1978 §70-2-17C. Colgate cites no authority for the proposition that such a federal lessee is not entitled to notice and an opportunity to be heard when a party seeks to force pool its interest.

The law in New Mexico is clear that where a property interest is implicated, administrative proceedings must conform to fundamental principles of justice and the requirements of due process of law. *Uhden v. New Mexico Oil Conservation Comm'n,* 1991-NMSC-089, ¶ 10,112 N.M. 528, 530, 817 P.2d 721, 723. The unanswered question is, if according to Colgate there is no relevant interest owned by Hartman, **then why is it pooling Hartman now and why did it do so in the cases involving Colgate's Robin wells?** See OCD cases 22861-68.

Colgate next claims that the Division should ignore the dispute arising from Colgate's view of Hartman's ownership. If the dispute is resolved in Hartman's favor, Colgate "would address that interest through negotiation or further pooling." That meaningless proposal is no substitute for a merit's determination of these applications. The appropriate course is for the ownership dispute being judicially resolved before the Division approves any order pooling Hartman's interest.

Colgate finally claims Hartman should not be heard to object to the terms of the prior orders' risk penalty and cost provisions because Colgate is not seeking to pool any working interest Hartman owns. That is a novel theory that conflicts with the very objective of force pooling. Colgate contends it can omit Hartman's mineral interest in the original force pooling cases, then add Hartman as a party **bound by the prior orders**, which include harsh risk penalty and cost provisions. Where in the controlling statute or Division practice is sanction for such procedure?

Hartman has a right to object to those provisions and have the Division make a decision on the merits.

Hartman has also asked that any order allow for sequential payment by (a) requiring that Colgate submit AFEs for its wells no sooner than 60 days before the commencement of the drilling of each well and (b) allowing a working interest owner who decides to participate 30 days from receipt of the AFE to make payment. Colgate does not address this request in its Motion.

3. Operating agreements may exist and require dismissal of the cases.

Hartman has notified Colgate and the Division that there is evidence of outstanding operating agreements that apply to the acreage at issue in Colgate's applications. NMSA 1978 § 70-2-17 authorizes force pooling where the parties have not otherwise entered an agreement to develop the properties. The Division has recognized that force pooling is not available where a valid operating agreement exists. *See* Application of Doyle Hartman, Case No. 8606, Order No. R-8013 (where an applicant failed to provide evidence to refute that a 1951 operating agreement was binding, force pooling application denied). A copy of the Order of the Division is attached as Exhibit A.

Colgate claims without offering any evidence that "Any existing JOAs do not cover all of the acreage at issue or include all current owners." Motion, paragraph 6. Colgate cannot prevail on a motion by making unsupported statements of fact. Indeed, the assertion betrays the fact that Colgate possesses one or more operating agreements in question.

Hartman has served a subpoena requiring Colgate to produce any relevant operating agreements. Colgate has indicated it intends to object to the subpoena. Because Colgate has failed to establish that the acreage at issue is not subject to an operating agreement, its applications should be dismissed.

4. Colgate is responsible for any delay

Colgate complains that Hartman is delaying its efforts to develop the acreage. That is wrong. When Colgate filed its force pooling applications in cases 22788-95 on April 27, 2022, it was aware of Hartman's interest. Now, months later, it acknowledges that Hartman is a necessary party to the force pooling cases. Had Colgate included Hartman from the beginning, these cases would likely already be resolved one way or the other. Delay is the fault of Colgate.

Moreover, it is unclear that Colgate is actually ready to proceed with the Batman wells. Hartman can find no evidence that the Batman wells have been permitted. Hartman has not been given notice by Colgate of APDs filed with the BLM. This matter is another objective of the subpoena served on Colgate, to which Colgate will apparently object. Hartman and the Division are entitled to evidence of the true status of Colgate's drilling program, including whether the Batman wells have been permitted by the BLM.

5. Conclusion

Colgate's Motion to Strike should be denied in its entirety. These cases implicate important due process issues to be resolved after a hearing on the merits. Hartman belatedly has the opportunity to challenge the drilling proposals from an engineering and economic standpoint, to challenge the risk penalty, to challenge the cost payment in advance provisions and other unfair and improper terms of the orders. These cases are appropriately set for adjudication of the applications and Hartman's objections thereto on the merits.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

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

Attorneys for Hartman

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on counsel of record by electronic mail this 21st day of November 2022.

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

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION

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

CASE NO. 8606
Order No. R-8013

APPLICATION OF DOYLE HARTMAN FOR
SIMULTANEOUS DEDICATION AND
COMPULSORY POOLING, LEA COUNTY,
NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This cause came on for hearing at 8 a.m. on July 2, 1985, at Santa Fe, New Mexico, before Examiner Gilbert P. Quintana.

NOW, on this 20th day of August, 1985, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner, and being fully advised in the premises,

FINDS THAT:

(1) Due public notice having been given as required by law, the Division has jurisdiction of this cause and the subject matter thereof.

(2) The applicant, Doyle Hartman, seeks an order pooling all mineral interests from the surface to the base of the Jalmat Gas Pool underlying the NW/4 of Section 8, Township 24 South, Range 37 East, NMPM, Lea County, New Mexico, forming a previously approved 160-acre non-standard spacing and proration unit in the Jalmat Gas Pool.

(3) The applicant proposes to simultaneously dedicate said gas proration unit to his existing E. E. Jack Well No. 1 located 1980 feet from the North line and 660 feet from the West line (Unit E) of said Section 8 and his proposed E. E. Jack Well No. 5 to be drilled at a standard location within said unit.

(4) Marilyn A. Tarlton, interest owner in the subject proration unit and trustee of the surviving trustor's trust of the Lortscher Family Trust, dated November 26, 1980, has not agreed to the drilling of said E. E. Jack Well No. 5.

(5) Evidence was presented showing that an operating agreement entitled, "Operating Agreement", dated January 16, 1951, covering the subject unit area, was entered into by and between Howard Hogan, operator, and Charles T. Scott, Harold S. Russell, Herbert J. Schmitz, and F. D. Lortscher, non-operators.

(6) Said operating agreement was modified December 15, 1954, by an agreement entitled, "Modification of Operating Agreement" and was entered into by and between R. Olsen, operator, and the same non-operators in Finding No. (5) above.

(7) The applicant, Doyle Hartman, controls 66.667 percent of the subject proration unit, including the titles of Howard Hogan, R. Olsen, Herbert J. Schmitz, and Charles T. Scott, Jr.

(8) Marilyn A. Tarlton controls the title of F. D. Lortscher, which is 20 percent of the subject proration unit.

(9) Ms. Tarlton contends that the applicant, other interest owners, and herself are governed by the operating agreements in Findings Nos. (5) and (6) above, hereafter referred to as the "Agreements."

(10) The "Agreements" have provisions for the drilling of additional wells on the subject proration unit, including provisions for non-consent drilling risk penalties, drilling supervision charges, and production supervision charges.

(11) The applicant failed to provide evidence to refute that the "Agreements" are not binding and do not govern the operation of the subject proration unit.

(12) Because of a lack of evidence to the contrary, it appears that the "Agreements" are current binding operating agreements for the subject proration unit, having provisions governing those issues to be addressed in compulsory pooling cases obviating the need for such a hearing in this case.

(13) The compulsory pooling portion of this application should be denied.

(14) The simultaneous dedication portion of this application should be approved, provided the proposed new well is drilled under the provisions of the "Agreements."

IT IS THEREFORE ORDERED THAT:

(1) The portion of the application of Doyle Hartman seeking an order pooling all mineral interests from the surface to the base of the Jalmat Gas Pool underlying the NW/4 of Section 8, Township 24 South, Range 37 East, NMPM, Lea County, New Mexico, is hereby denied.

(2) The previously approved 160-acre non-standard gas proration unit, comprising the NW/4 of said Section 8, shall be simultaneously dedicated to the proposed E. E. Jack Well No. 5 and the applicant's E. E. Jack Well No. 1 located in Unit E of said Section 8 provided the E. E. Jack Well No. 5 is drilled under the terms of the "Agreements."

(3) Jurisdiction of this cause is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

R. L. STAMETS
Director

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