

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

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

CASE NOS: 22323

APPLICATION OF ELIZABETH KAYE DILLARD
TO REOPEN CASE NO. 21226 REGARDING THE
APPLICATION OF COLGATE OPERATING FOR
COMPULSORY POOLING AND NON-STANDARD
SPACING AND PRORATION UNIT,
EDDY COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS
EXAMINER HEARING
DECEMBER 2, 2021
SANTA FE, NEW MEXICO

This matter came on for virtual hearing before
the New Mexico Oil Conservation Division, HEARING OFFICER
WILLIAM BRANCARD and TECHNICAL EXAMINERS DEAN McCLURE and
DYLAN ROSE-COSS on Thursday, December 2, 2021, through the
Webex Platform.

Reported by: Irene Delgado, NMCCR 253
PAUL BACA PROFESSIONAL COURT REPORTERS
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A P P E A R A N C E S

For the Applicant:

SCOTT MORGAN
CAVIN & INGRAM
P.O. Box 1216
Albuquerque, NM 87103

For Colgate Operating LLC:

PADILLA LAW FIRM
ERNEST PADILLA
1512 S. St. Francis Drive
Santa Fe, NM 87505

CASE CALLED

STATUS CONFERENCE 03

REPORTER CERTIFICATE 09

1 HEARING EXAMINER BRANCARD: With that, let's go
2 to Case 22323, Elizabeth Kaye Dillard.

3 MR. MORGAN: Good morning, Mr. Examiner. Scott
4 Morgan with Cavin & Ingram now (unclear) on behalf of
5 Elizabeth Kaye Dillard.

6 HEARING EXAMINER BRANCARD: Do we have any other
7 entries of appearance for Case 22323?

8 MR. PADILLA: Yes, Mr. Examiner, Ernest L.
9 Padilla for Colgate Operating LLC.

10 HEARING EXAMINER BRANCARD: Mr. Padilla, did you
11 file an entry, or are you entering right now?

12 MR. PADILLA: I'm entering right now. I thought
13 I was in this case to begin with since it's an application
14 to reopen a prior hearing that I handled.

15 I was served with the motion to reopen. There
16 was some confusion recently because Colgate has moved to the
17 Hinkle Firm some of its cases, and so I didn't file a
18 response. After looking at the worksheet yesterday, I
19 realized that this case was going forward. My information
20 has been that up to two weeks ago, approximately two weeks
21 ago, Colgate was first (unclear) of the applicant in this
22 case, but apparently not.

23 HEARING EXAMINER BRANCARD: Okay. Let me just
24 see, are there any other interested persons in this case
25 that were other parties to the original hearing?

1 (No audible response.)

2 HEARING EXAMINER BRANCARD: Hearing none,
3 Mr. Morgan, can you give us any update on the status of this
4 case?

5 MR. MORGAN: So briefly, we don't need to
6 necessarily go through the application to reopen for lack of
7 notice, I think it speaks for itself. With respect to Mr.
8 Padilla's comment, Colgate had indicated it might be
9 interested in purchasing, and our client indicated she might
10 be willing to sell, but to date Colgate has never sent an
11 offer over. We let them know that we would request an offer
12 in writing, they have not done so with respect to that.

13 So really this case comes down to that she never
14 received notice of the opportunity to -- or notice of these
15 proceedings and the opportunity to appear at the
16 proceedings. At the end of the day she would like the
17 opportunity to present evidence of lack of good faith
18 efforts (unclear) voluntary unitization, the risk penalty is
19 too high, and ultimately she would like the opportunity to
20 participate which has been denied by Colgate.

21 HEARING EXAMINER BRANCARD: Okay. Mr. Padilla,
22 do you have any instructions from your client about which
23 way to proceed with this case or what your client would like
24 to put on?

25 MR. PADILLA: We would put on evidence that Ms.

1 Dillard probably is not the real party in interest in this
2 case any longer because our information is that she had sold
3 that interest now, and so the real party in interest would
4 be a third party. We don't know that for sure, but that's
5 the information that I got yesterday from Colgate.

6 Secondly, if you look at the Exhibit B that is
7 attached to the motion, it's a letter from one of Colgate's
8 contractors, land contractors, indicating an interest in
9 purchasing her interest, and we think there was actual
10 notice of this hearing despite the fact that the notice of
11 hearing was sent to Plano, Texas instead of (unclear)
12 Louisiana.

13 Now, there is an issue of diligence here, there
14 is an issue of -- but I think that she would nonetheless
15 have had actual notice of this hearing because of the
16 ongoing negotiations.

17 Even, even two weeks ago, as I mentioned before,
18 I had asked Colgate if I needed to file a response in this
19 case, and they said, no, we pretty much purchased this
20 interest.

21 So I suppose we could go to hearing and argue
22 whether or not she had actual notice and who the real party
23 in interest really is.

24 HEARING EXAMINER BRANCARD: Okay. So this is a
25 little unusual case here. I mean, I think what we are

1 looking at is whether to determine the original compulsory
2 pooling order applied to this party. In other words, if
3 they were not given proper notice, then the order wouldn't
4 apply to them. That's with sort of the result of the
5 evidentiary hearing.

6 As you all see, every time we have hearings,
7 parties are coming in to amend their compulsory pooling
8 orders to add parties who they didn't give notice to, so
9 Colgate could come right back and seek to add this party,
10 which it seems, Mr. Morgan, your client would be happy with
11 because then they could step in and sort of argue about
12 their role and risk charges, et cetera, at that point.

13 Am I, am I heading in the right direction here,
14 Mr. Morgan, about what your client is looking for?

15 MR. MORGAN: Mr. Examiner, I think you are headed
16 the exact right direction. If the hearing were reopened by
17 either our party or by Colgate and a new order was entered
18 requiring Colgate to give Ms. Dillard the opportunity to
19 participate, that's exactly, effectively ultimately the
20 request.

21 Again, we would argue the evidence shows that the
22 notice of the hearing was sent to an address that was not
23 Ms. Dillard's, that it was returned undeliverable, and that
24 the offer letter to purchase, the one communication to which
25 she was responded, was sent to an address that gave her

1 notice.

2 Less than a month later, Colgate ultimately used
3 an address that didn't give her notice of the proceedings.
4 She has notice of the proceedings now after the fact, but
5 she didn't have an opportunity to participate.

6 HEARING EXAMINER BRANCARD: All right. So I see
7 us having a brief evidentiary hearing on the facts that you
8 have alleged, Mr. Morgan, where you can put them forward
9 however you would like, through affidavits, through
10 testimony, and Colgate can challenge or present its own
11 evidence about what happened with that particular hearing
12 and whether proper notice was given, and that would be the
13 issue, did the compulsory pooling order apply to this party,
14 or did it not apply, essentially, because there was not
15 proper notice to the party.

16 MR. MORGAN: I appreciate that, Mr. Examiner.

17 HEARING EXAMINER BRANCARD: So we just need to
18 come up with a date for this hearing.

19 MR. MORGAN: I was hoping that January 20 would
20 be --

21 HEARING EXAMINER BRANCARD: Yeah. Do you want to
22 try for February 3? I don't see this as being a terribly
23 detailed hearing. It's a pretty narrow issue.

24 MR. MORGAN: Mr. Examiner, February 3 works for
25 my client.

1 HEARING EXAMINER BRANCARD: Mr. Padilla?

2 MR. PADILLA: That works.

3 HEARING EXAMINER BRANCARD: All right. We will
4 set February 3 as a hearing on the issue of whether proper
5 notice was provided to Mr. Morgan's client and whether as a
6 result the compulsory pooling order needs to be amended to
7 reflect that. Any questions, Mr. Padilla?

8 MR. PADILLA: None.

9 HEARING EXAMINER BRANCARD: Thank you, Mr.
10 Examiner.

11 MR. MORGAN: Thank you, Mr. Examiner.

12 (Concluded.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

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4 REPORTER'S CERTIFICATE

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6 I, IRENE DELGADO, New Mexico Certified Court
7 Reporter, CCR 253, do hereby certify that I reported the
8 foregoing virtual proceedings in stenographic shorthand and
9 that the foregoing pages are a true and correct transcript
10 of those proceedings to the best of my ability.

11 I FURTHER CERTIFY that I am neither employed by
12 nor related to any of the parties or attorneys in this case
13 and that I have no interest in the final disposition of this
14 case.

15 I FURTHER CERTIFY that the Virtual Proceeding was
16 of reasonable quality.

17 Dated this 2nd day of December 2021.

18

/s/ Irene Delgado

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Irene Delgado, NMCCR 253
License Expires: 12-31-21

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