

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:

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

Case No. 22788, 22789,
22790, 22791

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS
EXAMINER HEARING
June 2, 2022
SANTA FE, NEW MEXICO

This matter came on for virtual hearing
before the New Mexico Oil Conservation Division,
HEARING OFFICER WILLIAM BRANCARD and TECHNICAL
HEARING OFFICER JOHN GARCIA on Thursday, June 2,
2022, through the Webex Platform.

Reported by: PAUL BACA COURT REPORTERS
500 4th Street, NW, Suite 105
Albuquerque, New Mexico 87102
505-843-9241

1 A P P E A R A N C E S

2 For Colgate Operating, LLC:

3 HINKLE SHANOR LLP
4 PO Box 2068
5 Santa Fe, New Mexico 87504-2068
6 505-982-4554
7 BY: DANA S. HARDY
8 dhardy@hinklelawfirm.com

9 For Fasken Oil and Ranch and XTO:

10 HOLLAND & HART LLP
11 PO Box 2208
12 Santa Fe, New Mexico 87504-2208
13 505-988-4421
14 BY: MICHAEL FELDEWERT
15 mfeldewert@hollandhart.com

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1 HEARING OFFICER BRANCARD: With that, I
2 want to check in with Ms. Castillo and see how
3 you're doing.

4 THE COURT REPORTER: Can we take a short
5 break?

6 HEARING OFFICER BRANCARD: Yes, we can.
7 That's why I'm asking. All right. Let's all be
8 back here at 10:00 a.m.

9 (Recess taken at 9:47 a.m. to 10:04 a.m.)

10 HEARING OFFICER BRANCARD: All right.
11 Let's go back on the record. It is June 2nd, 2022.
12 This is the OCD Hearings.

13 We are on our worksheet Item Number 39.
14 And this is Cases 22788, 22789, 22790, 22791.
15 Colgate Operating.

16 MS. HARDY: Mr. Examiner, Dana Hardy with
17 Hinkle Shanor on behalf of Colgate Operating.

18 HEARING OFFICER BRANCARD: All right. I
19 have Fasken Oil and Ranch.

20 MR. FELDEVERT: May it please the
21 Examiner, Michael Feldewert with the Santa Fe office
22 of Holland & Hart.

23 HEARING OFFICER BRANCARD: And XTO Energy.

24 MR. FELDEVERT: Again, Mr. Examiner,
25 Michael Feldewert with the Santa Fe office of

1 Holland & Hart.

2 HEARING OFFICER BRANCARD: All right.

3 Mr. Feldewert, XTO has filed a prehearing statement.

4 Are you okay with this case going forward
5 by affidavit?

6 MR. FELDEVERT: Mr. Examiner, XTO's
7 prehearing statement, as you probably saw, includes
8 some additions to your standard pooling order which
9 have been marked as our Exhibit No. 1.

10 It's my understanding in reviewing the
11 case materials and prior discussions that Colgate
12 does is not object to these provisions being
13 inserted into the pooling order.

14 And with that caveat, we do not object to
15 the matter going forward.

16 HEARING OFFICER BRANCARD: Thank you. Are
17 there any interested persons in Cases 22788, 22789,
18 22790, 22791?

19 Hearing none, Ms. Hardy, you may proceed.

20 MS. HARDY: Thank you.

21 In Case Number 22788, Colgate seeks an
22 order pooling an interest within the Wolfcamp
23 formation underlying a 320.32-acre standard
24 horizontal spacing unit comprised of Lots 1, 2, 3
25 and 4 or irregular Sections 18 and 19, Township 20

1 South, Range 34 East in Lea County. That unit will
2 be dedicated to the Batman Fed Com 201H well.

3 In Case 22789, Colgate seeks an order
4 pooling uncommitted interest within the Wolfcamp
5 formation underlying a 320-acre horizontal spacing
6 unit comprised of the east half of the west half of
7 Sections 18 and 19. That unit will be dedicated
8 Batman Fed Com 202H well.

9 In Case 22790, Colgate seeks an order
10 pooling uncommitted interest within the Wolfcamp
11 formation underlying a 320-acre standard horizontal
12 spacing unit comprised of the west half of the east
13 half of Sections 18 and 19.

14 That unit will be dedicated to the Batman
15 Fed Com 203H well.

16 And finally in Case Number 22791, Colgate
17 seeks an order pooling uncommitted interest within
18 the Wolfcamp formation underlying a 320-acre
19 standard horizontal spacing unit comprised of the
20 east half of the east half of Sections 18 and 19.

21 That unit will be dedicated to the Batman
22 Fed Com 204H well.

23 In each case, Colgate has agreed with XTO
24 Energy and also with Marathon Oil Permian to include
25 special provisions in the standard pooling order

1 that pertain to the commencement of drilling and
2 well election issues.

3 And those provisions are included in our
4 landman's affidavit as well as in the prehearing
5 statement that XTO submitted.

6 We have provided the affidavits of landman
7 Travis Macha and geologist John Anthony in support
8 of the application.

9 Mr. Macha provides the standard land
10 exhibits, the tract ownership information is
11 included in Exhibit A3 which also identified the
12 pooled parties.

13 The special provisions that would apply to
14 XTO and Marathon are included in Paragraph 14 of
15 Mr. Macha's affidavit.

16 Mr. Anthony has not previously testified
17 and we have included his CV detailing his experience
18 as a geologist as Exhibit B1, and I request that he
19 be qualified as an expert.

20 HEARING OFFICER BRANCARD: Any objections?
21 Hearing none, he is so qualified.

22 MS. HARDY: Thank you.

23 Mr. Anthony's exhibits include a location
24 map, cross section map, structure maps, cross
25 sections and gun barrel diagram.

1 Exhibit C is my notice affidavit. We have
2 provided a chart that identifies the parties to whom
3 notice was sent and the mailing dates, and we have
4 also provided Postal Service tracking information
5 for the parties who did not send a return receipt.

6 And in this case, in these cases all but
7 one of the working interests are locatable.

8 Several of the overrides are unlocatable
9 and we did timely publish notice, and the affidavit
10 of publication is provided in Exhibit A3.

11 With that, unless there are questions, I
12 request that the exhibits be admitted and that the
13 cases be taken under advisement.

14 Thank you.

15 HEARING OFFICER BRANCARD: Thank you.

16 Mr. Feldewert, any questions?

17 I think you're muted, Mr. Feldewert.

18 MR. FELDEVERT: Thank you. Ms. Hardy and
19 I have spoken just this morning through the exhibits
20 that she filed. It appears that in each case,
21 Fasken has been dismissed from the pooling efforts.

22 Am I right?

23 MS. HARDY: On Exhibit A3.

24 MR. FELDEVERT: That's what I was looking
25 at. And quite frankly, I didn't get a chance to

1 check them all, but it looks --

2 MS. HARDY: That's correct. That's
3 correct, it looks like they are not being pooled
4 because they've executed the documents to
5 participate.

6 MR. FELDEVERT: Okay, okay. And then you
7 mentioned the special provisions that are identified
8 in XTO Exhibit 1 as being acceptable to Colgate,
9 correct?

10 MS. HARDY: That's correct.

11 MR. FELDEVERT: Okay. That's all I have,
12 Mr. Examiner.

13 Thank you.

14 HEARING OFFICER BRANCARD: Okay. Well,
15 let me just -- Ms. Hardy, you have your own version
16 of the language in the landman's affidavit.

17 MS. HARDY: The language adds Marathon, I
18 believe.

19 HEARING OFFICER BRANCARD: Right.

20 MS. HARDY: And Marathon hasn't entered an
21 appearance, but Colgate did reach an agreement with
22 them on that issue and they wanted it included, so I
23 think it is the same language, it just includes
24 Marathon as well as XTO.

25 HEARING OFFICER BRANCARD: Mr. Feldewert,

1 is XTO okay with that?

2 MR. FELDEVERT: First off, I believe that
3 the -- yes, I'm looking now. The language that is
4 in the land affidavit at Paragraph 14 of the lease
5 exhibits with the first case is the same language
6 that is in XTO's Exhibit No. 1.

7 The only thing I did was place that
8 language where it appeared to me it would best fall
9 within your standard pooling order.

10 HEARING OFFICER BRANCARD: Okay. We can
11 discuss that later.

12 MR. FELDEVERT: Okay.

13 HEARING OFFICER BRANCARD: Thank you.

14 Mr. Garcia, questions?

15 TECHNICAL HEARING OFFICER GARCIA: On the
16 additional wording, do all the parties have the same
17 understanding of, "until no sooner than 30 days of
18 spudding" means? Is that 30 days prior to spudding
19 or 30 days within spudding?

20 I mean, I understand you guys agreed to
21 it, I guess I just don't want to see you guys back
22 here in a few months because you guys had different
23 interpretations of that sentence.

24 I mean, to me it's kind of vague, so
25 that's why I ask. I'm not a lawyer, so maybe

1 lawyers understand it better but ...

2 MS. HARDY: I think it makes sense to
3 Colgate, Mr. Examiner.

4 TECHNICAL HEARING OFFICER GARCIA: Is
5 Colgate's understanding 30 days prior to spudding or
6 30 days of spudding?

7 MS. HARDY: No, 30 --

8 HEARING OFFICER BRANCARD: That's the
9 question. What does "of" mean in there, prior or
10 after?

11 TECHNICAL HEARING OFFICER GARCIA:
12 Correct. And, Mr. Brancard, Marathon is not present
13 today; is that correct?

14 HEARING OFFICER BRANCARD: Yes, correct,
15 they're not a party.

16 MS. HARDY: That's correct. We can
17 clarify that language, although Mr. Feldewert may
18 want to weigh in on XTO's --

19 HEARING OFFICER BRANCARD: Let's talk
20 about this language a bit here. I have questions.

21 Do you have other questions, Mr. Garcia?

22 TECHNICAL HEARING OFFICER GARCIA: I
23 believe you may be addressing it. I guess I'm just
24 more curious on the where and how it fits into our
25 orders. I guess I'll see what you have to say

1 first.

2 HEARING OFFICER BRANCARD: So let's start
3 from the top. You define commence drilling here,
4 and I think, Mr. Feldewert or Ms. Hardy, either one
5 can answer these questions. But then when you get
6 down to the next paragraph you don't talk about
7 commence drilling, you talk about spudding the well,
8 which is not defined. Would it be better to say,
9 "commence drilling"?

10 MR. FELDEVERT: You know, interesting
11 enough, Mr. Examiner, neither term is defined,
12 commence drilling or spudding. It is -- the desire
13 is to ensure that the drilling occurs within a year
14 with a rig that is capable of drilling to total
15 depth.

16 The 30 days of spudding of the well is to
17 ensure that XTO, at the timeframe in which XTO
18 receives the estimated well costs is no sooner than
19 within 30 days of spudding or the commencement of
20 drilling. I guess it could be either thing.

21 HEARING OFFICER BRANCARD: Okay.

22 MR. FELDEVERT: Neither is defined.

23 HEARING OFFICER BRANCARD: Thirty days
24 prior to spudding or 30 days after spudding?

25 MR. FELDEVERT: No sooner than 30 days, I

1 guess the term is, "Of," that you're having problems
2 with.

3 HEARING OFFICER BRANCARD: Yes.

4 MR. FELDEVERT: Okay, I'm with you. It
5 would be no -- so if it chose to spud the well on
6 May 30th, okay, they would be -- they could not
7 submit the estimated well cost any sooner than
8 May 30th. Now if they wanted to wait until ten days
9 before spudding or 20 days before spudding, that's
10 fine, but it can't be any sooner than 30 days of
11 spudding.

12 HEARING OFFICER BRANCARD: So 30 days
13 prior to spudding would be --

14 MR. FELDEVERT: I think you could make
15 that change. Yes, I think it still would have the
16 same effect.

17 HEARING OFFICER BRANCARD: Okay. My
18 trouble with this sentence is that it is kind of a
19 double negative, right? It's a, "will not submit
20 until no sooner than."

21 And really what you want to says, "Colgate
22 will submit the well costs no sooner than 30 days
23 prior to spudding."

24 MR. FELDEVERT: Perhaps it gets us to the
25 same spot because the intent here is to avoid,

1 obviously, the submission of estimated well costs
2 which triggers the election period any sooner than
3 30 days of the spudding of the wells. In other
4 words, you don't get a 45-day advance on 60 days
5 advance or 6 months, okay? That's the intent and
6 that is the desire.

7 HEARING OFFICER BRANCARD: I think I
8 understand what you're getting at here. You know,
9 all our order does is require the operator to submit
10 the AFE and then the other interest owners have 30
11 days to pony up or not.

12 MR. FELDEVERT: Correct.

13 HEARING OFFICER BRANCARD: And you're
14 saying, look, there are 24 of these wells, and that
15 includes the next four cases after this, correct?

16 We don't want them coming a year before
17 you start drilling.

18 MR. FELDEVERT: We don't them a year
19 before we start drilling and we want them more or
20 less sequentially, okay, so that you're not paying
21 or forced to make an election until you know they're
22 closer to drilling the well. Thirty days was the
23 chosen day. That's why we say, "no sooner than."

24 If they want to until ten days, if they
25 want to five days, that's fine, but they can't do it

1 any sooner than 30 days.

2 And I think the language Colgate will not
3 submit to XTO is just to make it more of a command.
4 You shall not submit to XTO estimated well costs,
5 any sooner than 30 days prior to spudding. So it's,
6 you know, I guess it was drafted more, Mr. Examiner,
7 as a command.

8 HEARING OFFICER BRANCARD: We like
9 commands. Will submit is a command, too. I mean,
10 they have to give you the AFE. They have to submit
11 the AFE, it's just a question of when, right?
12 You're trying to establish when, which our order
13 does not establish when.

14 MR. FELDEVERT: Right.

15 HEARING OFFICER BRANCARD: In addition, to
16 the order.

17 MR. FELDEVERT: Correct.

18 HEARING OFFICER BRANCARD: So I also don't
19 want to create a problem here with saying, you know,
20 Colgate sends you the AFE on May 1st and says,
21 "We're spudding on May 30th." Okay?

22 And then you get that and then May 30
23 rolls around and they go, "Drill rig caught in a
24 traffic jam in Pecos, Texas, won't happen until
25 July."

1 I mean, now they are in violation of that
2 provision. You're asking them to predict the future
3 here.

4 MR. FELDEVERT: Well, not necessarily.
5 Hold on a second, let me think about this. Okay.
6 The election to participate, okay, has to occur
7 within 30 days of receipt of the estimated well
8 cost. So under your scenario, okay, XTO will not
9 have yet elected to participate by the time, as you
10 suggest, that maybe they violate -- maybe they can't
11 comply with 30-day provision, right?

12 HEARING OFFICER BRANCARD: Right.

13 MR. FELDEVERT: Okay. So you would think
14 that if that would occur, and they needed an
15 additional ten days for spudding the well, that
16 would trigger an additional ten days for XTO to make
17 their election. I think that holds.

18 HEARING OFFICER BRANCARD: No, I mean
19 it's -- I would say that the last phrase under the B
20 bullet point there it says, "XTO MRI shall have 30
21 days after the receipt."

22 So it's just 30 days, period, once you get
23 it. I think that's unnecessary, that phrase, also
24 because that's duplicative of Paragraph 23.

25 Paragraph 23 says, the order says you have

1 30 days. So you don't need to repeat that. So I
2 don't think changing the spudding date is going to
3 give you any more time, at least the way the
4 language is currently written here.

5 MR. FELDEVERT: Well, the obligation is no
6 sooner than spudding, right? So if I delay the
7 spudding ten days, then that extends the obligation
8 by ten days.

9 HEARING OFFICER BRANCARD: No, the
10 obligation is 30 days after you receive it.

11 MR. FELDEVERT: Yeah. But I mean the
12 election. They're not to submit the estimated well
13 costs no sooner than 30 days prior to spudding. So
14 if they change the spud date, right?

15 HEARING OFFICER BRANCARD: You're saying,
16 you're saying even though you actually receive the
17 estimated well costs, that date moves because
18 they're not spudding the well yet?

19 MR. FELDEVERT: Because they have to
20 comply with that paragraph, yes.

21 HEARING OFFICER BRANCARD: Well --

22 MR. FELDEVERT: They --

23 HEARING OFFICER BRANCARD: Your reading of
24 the paragraph, I don't see that language in there.
25 But, you know, that's your interpretation of it.

1 Anyway, I don't know that that's our
2 problem necessarily. Unless, you know, one of you
3 violates the order and comes running in to the
4 Division wanting a hearing. That's my concern, that
5 we have to arbitrate, you know, between the parties
6 because, you know, someone's drill rig is delayed.

7 MR. FELDEVERT: Well, I mean that's how I
8 view it. I would be interested to hear what
9 Ms. Hardy says. I mean, I would think that that
10 would be the logical road of the language, right,
11 because it says, "You shall not submit any sooner
12 than 30 days prior to spudding."

13 So if you change your anticipated spud
14 date, you got to make sure you're in compliance with
15 this paragraph. Because we don't control that.

16 TECHNICAL HEARING OFFICER GARCIA: (Audio
17 cut out) schedule for a very fluid thing. I mean,
18 that's kind of why our orders don't have that time.
19 Unfortunately they change all the time.

20 So I guess the way I see it, are you
21 wanting -- if they, for whatever reason, defer spud
22 date ten days, are you trying to assume you have
23 extra days because they're going to have to resend
24 an AFE, is that you're kind of seeking here, you
25 know, if they send you an AFE on the 1st, something

1 happens, you can't get casing, we defer a month,
2 they need to resend you an AFE.

3 MR. FELDEVERT: They need to comply with
4 the paragraph, yes.

5 TECHNICAL HEARING OFFICER GARCIA: So
6 you're saying the original AFE is nor valid, it's
7 void. You're not obligated by 30 days is how you
8 are interpreting this?

9 MR. FELDEVERT: It would not -- lack of
10 compliance would not trigger our election period.
11 Just like if they said at 45 days advance of
12 spudding, that would not comply with the paragraph.

13 TECHNICAL HEARING OFFICER GARCIA: Yeah.
14 Yeah, I think it's rough wording, I guess, in my
15 eyes but I'll leave it to Mr. Brancard.

16 HEARING OFFICER BRANCARD: Ms. Hardy, your
17 interpretation of these words?

18 MS. HARDY: Thank you.

19 I think that Mr. Feldewert's
20 interpretation is reasonable and I think that
21 Colgate and XTO have the same intent and
22 understanding regarding this language. So I think
23 Colgate, I don't think, would object to clarifying
24 the language on the, "no sooner than" provision.
25 But I also think that Colgate's understanding here

1 comports with XTO's.

2 HEARING OFFICER BRANCARD: I just don't
3 want you folks back in front of us, us having to
4 interpret this language.

5 Mr. Garcia, you had mentioned to me at
6 some point about what we normally do with new
7 language to orders under our affidavit system.

8 I lost Mr. Garcia. Anyway, what
9 Mr. Garcia explained to me is that what we have done
10 in the past with additional language is, I believe,
11 simply attach it to the affidavit which gets
12 attached to the order rather than trying to rework
13 the standard order.

14 MR. FELDEVERT: You mean attach it to the
15 compulsory pooling checklist it gets attached?

16 HEARING OFFICER BRANCARD: Yes. So the
17 pooling checklist becomes part of the order. And
18 that's why I think the checklist asks for language
19 to be attached. And so --

20 MR. FELDEVERT: I didn't realize -- is
21 that right, Mr. Brancard?

22 HEARING OFFICER BRANCARD: Mr. Garcia
23 mentioned that to me. We may have lost Mr. Garcia.
24 He may be on another call or something.

25 TECHNICAL HEARING OFFICER GARCIA: I'm

1 back. I lost Internet for like five minutes.

2 HEARING OFFICER BRANCARD: Okay. I was
3 bringing up the question, Mr. Garcia, about where we
4 have inserted additional language into orders or
5 that we actually amend the order to rewrite them or
6 do we attach that language to the pooling checklist
7 which gets attached to the order?

8 TECHNICAL HEARING OFFICER GARCIA: So
9 prior to you coming from General Counsel to OCD
10 side, when Eric Ames was here, he added a line at
11 the bottom of the checklist and posted a notice.
12 Don't know the date, but it's like special
13 provisions, I believe, is what he called it.

14 I believe we saw a case earlier today, I
15 meant to write it down where COG had done it
16 previously.

17 Eric's thought was operators if they had
18 special agreements like this between them, it was
19 between them and they can add it there, OCD would
20 acknowledge it, but we weren't going to change every
21 order to accommodate every agreement between them
22 because it's kind of between them and not OCD. You
23 know, where we stand on that now is kind of a policy
24 question up to you.

25 MS. HARDY: Mr. Examiner, in our checklist

1 we did reference the language under special
2 provisions. I didn't include the actual language in
3 the checklist, but I referred to Exhibit A,
4 Paragraph 14.

5 TECHNICAL HEARING OFFICER GARCIA: Under
6 Eric, he required the language to be fully inserted
7 in there.

8 HEARING OFFICER BRANCARD: Or as an
9 attachment to the checklist?

10 MR. FELDEVERT: Correct. I think that's
11 right.

12 HEARING OFFICER BRANCARD: It's part of
13 the order, it's just not within the order language
14 itself.

15 TECHNICAL HEARING OFFICER GARCIA:
16 Correct. I mean, that's the goal here. We want it
17 as part of the order to make it clear to everyone
18 and to be enforceable.

19 HEARING OFFICER BRANCARD: Right.

20 MR. FELDEVERT: How you go about that, I
21 mean, I know that back when we used to have
22 in-person hearings when we first did this some time
23 ago, yeah, exactly. They actually placed the
24 language in the pooling order itself.

25 If you're more comfortable, attaching it

1 to compulsory pooling checklist and under that
2 additional information line right before the
3 certification, special provision, see XTO
4 Exhibit A1, or whatever you want to do there. You
5 could take what we filed and attach to it to your
6 compulsory pooling checklist.

7 HEARING OFFICER BRANCARD: Okay. I just
8 wanted to make you all aware that could be the
9 result here.

10 MR. FELDEVERT: Okay.

11 HEARING OFFICER BRANCARD: Okay.

12 Mr. Garcia, other questions? Okay, we
13 lost Mr. Garcia again.

14 Okay. Any other persons interested, then,
15 in Cases 22788, 22789, 22790, 22791?

16 MR. FELDEVERT: Mr. Examiner, do I need to
17 move the admission of XTO Exhibit 1?

18 HEARING OFFICER BRANCARD: It's in your
19 prehearing statement.

20 MR. FELDEVERT: I think we're okay.

21 HEARING OFFICER BRANCARD: Yeah, I think
22 you're fine.

23 MR. FELDEVERT: All right.

24 HEARING OFFICER BRANCARD: So the exhibits
25 are admitted into the record and these cases are

1 taken under advisement.

2 MS. HARDY: Thank you.

3 MR. FELDEVERT: Thank you.

4 (Matter concluded.)

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REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Date: June 2, 2022

/s/ Edwina Castillo



EDWINA CASTILLO, RPR, CCR
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