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

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

APPLICATIONS OF CIMAREX ENERGY CO. FOR A HORIZONTAL SPACING UNIT AND COMPULSORY POOLING LEA COUNTY, NEW MEXICO

Case Nos. 23448-23455

APPLICATIONS OF CIMAREX ENERGY CO. FOR COMPULSORY POOLING , LEA COUNTY, NEW MEXICO

Case Nos. 23594-23601

APPLICATIONS OF READ & STEVENS, INC. FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO

Case Nos. 23508-23523

APPLICATION OF READ & STEVENS, INC. FOR THE CREATION OF A SPECIAL WOLFBONE POOL IN SECTIONS 4, 5, 8 AND 9, TOWNSHIP 20 SOUTH, RANGE 34 EAST, NMPM, LEA COUNTY, NEW MEXICO

Case No. 24528

APPLICATION OF CIMAREX ENERGY CO. FOR THE CREATION OF A SPECIAL POOL, A WOLFBONE POOL, PURSUANT TO ORDER NO. R-23089 AND TO REOPEN CASE NOS. 23448 – 23455, 23594 – 23601, AND 23508 – 23523, LEA COUNTY, NEW MEXICO

Case No. 24541
Order No. R-23089
Order No. R-23089-A
OCC Case No. 25371

COTERRA'S REPLY TO PERMIAN'S RESPONSE TO MOTION TO STAY ORDER

Coterra Energy Operating Co. ("Coterra"), by and through its undersigned attorneys, respectfully submits this Reply to the Response in Opposition of Division Order [R-23089-A][1] ("Reply") filed by Read & Stevens, Inc., and Permian Resources, LLC (collectively "Permian"). Coterra states at the outset of this Reply that there should be a strong presumption to grant the Motion to Stay Division Order No. R-23089-A ("Motion to Stay") pursuant to granting a hearing *de novo* under NMSA 1978 §70-2-13. This statute provides for an impartial contested hearing on the merits during which the Commission is obligated to review the evidence and legal arguments anew for the purpose of selecting the plan that best protects correlative rights and prevents waste. Without a stay, Permian will be allowed to commence its development plan by acting on Order No. R-23089-A ("Final Order"), thereby rendering moot the purpose of the hearing *de novo*. Such action would deprive Coterra of its right to have a meaningful hearing under the §70-2-13. Thus, a stay of the Final Order is necessary for ensuring due process in these proceedings.

In further support of its Reply, Coterra states the following:

1. In its Response, Permian continues to misinform the Oil Conservation Commission ("Commission"). The most notably inaccurate assertion made by Permian is that Coterra's Motion to Stay did not provide a proposed stay order and therefore did not meet the requirement of 19.15.4.23(B). *See* Permian's Response, p. 7 (Permian wrongly asserting that Coterra has not met this mandatory procedural requirement under 19.15.4.23(B)). An accurate reading of the Motion to Stay shows otherwise, that Coterra did in fact provide a proposed order to the Commission as required by the New Mexico Administrative Code. *See* Coterra's Motion to Stay, p. 27, ¶ 50 (Coterra

[1] In the title of its Response, Permian mistakenly refers to Division Order R-24541; the actual order under review is Division Order No. R-23089-A.

providing: "A proposed order is attached hereto as Exhibit 5 pursuant to 19.15.4.23(B) NMAC.") Such inaccuracies surface throughout Permian's Response.

2. Permian concedes that the Commission may grant a stay "if the stay is necessary to prevent waste, protect correlative rights, protect public health or the environment or prevent gross negative consequences to an affected party" (Order No. R-14300-A, ¶ 6 (emphasis added)) and concedes that the Commission has adopted as guidance for issuing a stay pursuant to the standards described in *Tenneco Oil Co. v. N.M. Water Quality Comm'n,* 1986-NMCA-033, 736 P.2d 986. Therefore, to obtain a stay, Coterra must address the "conditions [that] involve consideration of whether there has been a showing of: (1) a likelihood that applicant will prevail on the merits of the appeal; (2) a showing of irreparable harm to applicant unless the stay is granted; (3) evidence that no substantial harm will result to other interested persons; and (4) a showing that no harm will ensure to the public interest." *See Tenneco,* 1986-NMCA-033, ¶ 10.

3. Contrary to Permian's assertions, Coterra did thoroughly explain and provide a showing, based on evidence and arguments, of how the Final Order, if acted upon, would result in irreparable harm to Coterra and other owners by causing substantial waste, by violating the correlative rights of Coterra and other owners with unauthorized takings of hydrocarbons, by imposing unreasonably exorbitant costs that create economic waste, by producing unnecessary emissions from the drilling of unnecessary wells, and by promoting the drilling of unnecessary wells as a policy. *See* Coterra's Motion to Stay, ¶¶ 20-26, 31-38, 42-45, 48-49.

4. **The Final Order results in substantial waste:** Coterra showed that the Final Order would cause substantial waste, as waste is understood under the statute in its "ordinary meaning." *See id,* ¶¶ 20-26. Coterra provided clear evidence that the Final Order, if not stayed, requires Permian to drill numerous unnecessary wells (wells that even Permian itself acknowledged could be unnecessary) resulting in a quarter-billion-dollars of economic waste. *See id.*, ¶¶ 22-23; ¶¶ 43-44

(citing evidence from Permian's Closing Statement and from Permian's testimony). Permian's Response fails to address or even mention the incontrovertible evidence presented by Coterra which clearly shows that the Final Order requires Permian to drill eight (8) additional wells in the Wolfbone and ten (10) additional wells in the Bone Spring, for a total of eighteen (18) more wells than Coterra's plan, which would result in $256 million dollars of economic waste. Permian also ignores its own self-admission that its proposed development plan is not feasible or serious, as confirmed by Permian asking the OCD to remove the upper Bone Spring wells from its development plan and stating that that even its eight (8) XY wells may not need to be drilled. *See id.,* ¶¶ 43-45.

5. Furthermore, the Final Order itself failed to properly consider the massive disparity in total costs between the two development plans and the policy implications of this intentional disregard. *See id.,* ¶ 25-35. The Final Order failed to consider the substantial amount of economic waste from the drilling of unnecessary wells inherent in Permian's plan by misapplying a statement in OCC Order No. R-10731-B, P 23(j) in order to reach a conclusion unsupported by the Commmission's actual statement. *See id.,* ¶¶ 26-27. Therefore, if Permian pursues its plan under the Final Order, it will be subjecting Coterra and owners to the irreparable harm caused by owners having to foot the bill of a quarter-billion-dollars of unnecessary and excessive economic waste.

6. Not only did Coterra thoroughly explain the nature of this harm in its Motion to Stay, but it also showed how the irreparable harm caused by the Final Order's failing to give economic waste its due consideration satisfies *Tenneco's* second prong. *See id.,* ¶ 48. Coterra did not just make mere allegations of irreparable harm, as wrongly claimed by Permian, but provided a thorough showing of irreparable harm resulting from economic waste backed by testimonial evidence and legal arguments. *See* Motion to Stay, ¶ 3, 15, 22-23, 28, 30, 37-38; *see also* Ex. B, ¶ 26, Cimarex's Hearing Packet I (Permian's Wolfcamp XY wells will produce primarily from the Third Bone Spring); Tr. (Cases 23448 et al.)(Aug. 10, 2023), 170:5 - 172: 16 (Permian admitting that eight (8)

Wolfcamp XY wells might not be necessary, and therefore, the OCD's mandate in its Final Order that Permian drill them is unjustified and a cause of waste). In its Motion to Stay, Coterra provided the legal arguments showing that the evidence of massive economic waste presented at the hearing must be considered as a factor when evaluating competing development plans for operatorship.

7. **The Final Order violates correlative rights:** Permian claims that Coterra's plan violates correlative rights because, according to their interpretation of NMSA 1978 §70-2-17(C), Coterra would not be able to allocate production and costs across a depth on an "acreage basis" pursuant to the statute. *See* Permian's Response, p. 8. However, Permian's interpretation of §70-2-17(C) is incorrect. The Division has previously adopted allocation formulas to address distribution of ownership across depth severances located in a single reservoir in order to avoid the drilling of unnecessary wells. *See, e.g.,* OCD Order No. R-12094, ¶¶ 7-8 attached hereto as Exhibit 1 (stating that production from the subject well shall be allocated among three Morrow zones such that Zone A [11,366-11,761 feet], produces 76.4% of the pool, Zone B [11,761-11,766 feet] produces 0.967% of the pool, and Zone C [11,766-11,883 feet], produces 22.63% of the pool, and within each zone, costs and production shall be allocated based upon each owner's percentage interest ownership). This Order directly refutes that Permian's interpretation of §70-2-17(C) should apply to depth severances within a single reservoir in the unique situation of the present case. The Division will allocate production across a depth severances based on percentages to account for differences in production from each interval in order to protect the owners' correlative rights.

8. Permian based its original plan on the existence of two separate pools, the Upper Wolfcamp and the Third Bone Spring, while Coterra (based on its geological analysis) designed its plan around a single pool and reservoir comprised of the Upper Wolfcamp and Third Bone Spring. *See* Coterra's Motion to Stay, ¶¶ 2 and 39. Coterra's geological analysis prevailed over Permian's entrenched position that there were two pools, and the Division eventually agreed with Coterra that

the Upper Wolfcamp and Third Bone Spring represented a single reservoir and therefore one common source of supply (the "Wolfbone Pool"). *See* Motion to Stay, ¶¶ 3, and 9-11; *see also* Order No. R-23089, ¶¶ 7-8. Nonetheless, in its Response, Permian continues to use "zones" incorrectly in a futile effort to maintain the validity of its original plan designed for two pools. *See* Permian's Response, p. 3 and 4. Under Division Rules, a "Pool" is defined as an "underground reservoir containing a common accumulation of oil or gas that corresponds to a "Zone." *See* Order No. R-23089, ¶ 14, attached as Exhibit 3 in the Motion to Stay*; see also* NMSA 1978 §70-2-33 (in the OGA's definition of "Pool," a "zone" is completely separate from any other zone in the structure and is covered by the word "Pool"). Thus, Permian gets it wrong with its misguided conception of co-development because the entire Wolfbone Pool is a single "zone" under the OCD's definition of "Pool," not two zones as incorrectly asserted in Permian's Response. *See* Permian's Response, pp. 2-4. The Wolfbone Pool, as a single reservoir, which is also described under the OGA as a single pool and single zone, does not require the duplicate set of wells proposed by Permian in order for it to be properly produced.

9. Under Division Rules, the Upper Wolfcamp and Third Bone Spring are not separate zones but are both contained within the Wolfbone Pool as a single zone, and therefore, wells drilled in either the Upper Wolfcamp or the Third Bone Spring will produce the entire the Wolfbone Pool as one zone. *See* Order No. R-23089, ¶ 10. Permian acknowledges that ownership and owners in the Upper Wolfcamp are different from ownership and owners in the Third Bone Spring (*see* Permian's Response, pp. 6 and 8), therefore if Permian is allowed to drill and produce a well in the Upper Wolfcamp without an allocation formula, the well would violate the owners' correlative rights in the Third Bone Spring by taking their hydrocarbons without compensation and giving the production only to the Wolfcamp owners -- same as Permian drilling a well in the Third Bone Spring under its plan which would take hydrocarbons from the Upper Wolfcamp. *See* Motion to Stay, ¶ 17-19.

Because a well drilled anywhere in the Wolfbone Pool will take hydrocarbons from both the Third Bone Spring and Upper Wolfcamp, the well's production must be properly allocated to the Upper Wolfcamp and Third Bone Spring owners to protect their correlative rights. Accordingly, Permian's plan violates correlative rights because it fails to allocate to the Bone Spring owners and the Wolfcamp owners the production from a well drilled anywhere in the Wolfbone Pool that by the nature of the geology will produce both formations.

10. In effect, by misapplying its rigid interpretation of §70-2-17(C) to production from the Wolfbone, Permian is using the Oil and Gas Act ("OGA") to justify a violation of the owners' correlative rights, which is antithetical to the purpose of the OGA. The sentence in question in §70-2-17(C) reads as follows:

> For the purpose of determining the portions of production owned by the persons owning interests in the pooled oil or gas, or both, such production shall be allocated to the respective tracts within the unit in the proportion that the number of surface acres included within each tract bears to the number of surface acres included in the entire unit.

There is more than one way to interpret and apply this provision. Permian's interpretation uses this provision to drill duplicative wells in the Upper Wolfcamp, at wastefully exorbitant costs, that will take hydrocarbons without compensation from owners in the Third Bone Spring and distribute all the production from the Wolfcamp wells only to the Wolfcamp owners, resulting in an illegal taking and violation of correlative rights. This provision must not be interpreted and applied to facilitate such unauthorized takings and violations of correlative rights.

11. Furthermore, Permian presents Travis Macha, Permian's Landman, who does not have a law degree and is not a legal expert, to inform the Commission on the legal interpretation of the OGA. *See* Exhibit B, ¶ 20, Permian's Response (Mr. Macha asserting his unqualified opinion on the legal meaning of §70-2-17(C)); *see also* Tr. (Cases 23448 et al.) (Aug. 11, 2023), 19: 19-21, attached hereto as Exhibit 2 (Mr. Macha confirming that he does not have a background in law).

Mr. Macha is not an expert on legal matters, and the Commission should disregard his statements on the law.

12. In clear contrast to Permian's interpretation, Coterra's interpretation and application of this provision accounts for the interest of the owners in both the Upper Wolfcamp and Third Bone Spring. Coterra's wells located in the Third Bone Spring will produce hydrocarbons from both the Upper Wolfcamp and Third Bone Spring, same as Permian's wells, because the Wolfbone Pool encompasses both formations is a single zone and common source of supply. However, the provision in §70-2-17 (C) only requires that production from the well "shall be allocated to the respective tracts within the unit in the proportion that the number of surface acres included in each tract bears to the number of surface acres included in the entire unit." (emphasis added). In the Wolfbone Pool, produced as a single reservoir, there is a depth severance that creates non-uniform ownership between the Third Bone Spring and Upper Wolfcamp.

13. Because there is non-uniform ownership above and below the severance, there are different-sized tracts attributed to the surface acreage for the Upper Wolfcamp interval and the Third Bone Spring interval. Under these circumstances, the terms of the provision can be satisfied by applying the surface acres of the tracts in the Third Bone Spring interval to the total acres in the unit to allocate production from the Third Bone Spring interval to its "respective tracts," and then do the same with the Upper Wolfcamp interval, apply the surface acres in its interval to the total acres in the unit to allocate production from the Upper Wolfcamp interval to its "respective tracts." This approach satisfies the general terms of the provision requiring that production from the well "shall be allocated to the respective tracts within the unit in the proportion that the number of surface acres included in each tract bears to the number of surface acres included in the entire unit." (emphasis added).

14. Once this part of the provision is satisfied, the operator can then allocate the production from each tract (tracts in the Third Bone Spring and Upper Wolfcamp) in the proper proportion to the individual owners. The provision in § 70-2-17(C) only requires that the production be allocated to the "respective tracts" in the unit. It is silent about how the production allocated to the tracts are then allocated to individual owners, as there can be multiple owners per tract. In order to account for the interest (and correlative rights) of each owner, whether the owner owns in the Third Bone Spring or the Upper Wolfcamp interval of the Wolfbone Pool, Coterra proposes an allocation formula that takes the production allocated to each tract, as required by §70-2-17(C), and then allocates the proper portions from the tracts to the individual owners based on the percentage of production each interval (Third Bone Spring or Upper Wolfcamp) contributes to the total production from the Wolfbone.

15. Owen Anderson, Professor and Distinguished Oil and Gas Scholar at the University of Texas School of Law in the Kay Bailey Hutchison Energy Center, is currently applying for Pro Hac Vice admission to the New Mexico Bar, and once approved, plans to associate with Coterra as co-counsel in support of Coterra's position that the application of §70-2-17(C) in the present case requires a form of allocation to protect correlative rights. Professor Anderson also holds the titles of the Eugene Kuntz Chair Emeritus and the George Lynn Cross Research Professor Emeritus at the University of Oklahoma. He has authored more than 100 articles on various topics of oil and gas law, including spacing, pooling, unitization, correlative rights, and waste, and is a co-author of Kuntz, A Treatise on the Law of Oil and Gas. Professor Anderson plans to be available during the proceedings to address legal questions regarding the interpretation and application of §70-2-17(C), correlative rights, and economic waste under the OGA.

16. Just as Coterra's geologist had accurately determined, against Permian's protests, that the two formations constituted a single pool, Coterra's geologist has also reasonably determined

the percentage of production each interval would contribute if a well were to be drilled in the Wolfbone Pool. The Third Bone Spring interval would contribute 72.8% and the Upper Wolfcamp interval would contribute 27.2%. *See* Exhibits B and B-10, p. 6, ¶ 15, Cimarex's Hearing Packet I, Cases 23448-23455. Consequently, under Permian's plan, 72.8% of production received by the owners in the Upper Wolfcamp would be taken without compensation to the owners in the Third Bone Spring. Therefore, Permian's plan violates correlative rights, and Coterra has shown how this violation would create irreparable harm if the Final Order should not be stayed; thus, satisfying *Tenneco's* second prong for granting a stay. *See* Motion to Stay, ¶ 48.

17. By OCD Order No. R-12094, ¶ 7, attached as Exhibit 1, the Division has established as precedent that, when necessary to protect correlative rights under the pooling statute, production from a pool can be allocated based on the different percentages that the non-uniform ownership of each depth interval contributes to the total production from the pool. *See* Paragraph 7, above. Furthermore, this precedent – that in unique situations both the Division and Commission will best construe §70-2-17(C) in a manner that protects correlative rights -- has been reinforced and confirmed by the New Mexico Supreme Court in *Rutter & Willbanks Corp. v. OCC,* 1975-NMSC-006, 532 P.2d 582. In *Rutter,* the Commission found that "there was some indication" that a certain tract in a spacing unit "had no recoverable gas underlying their property." *See Rutter,* 1975-NMSC-006, ¶25. Thus, under *Rutter*, if the terms of §70-2-17(C) were strictly applied to allocate production to each tract on a "surface acreage" basis as demanded by Permian, the owners in the non-producing tracts in the *Rutter* case would have received zero production from their ownership in the unit if indications that the tract was non-producing were later confirmed.

18. Fortunately, for these owners, the *Rutter* court rejected a strict interpretation and application of § 70-2-17(C) and affirmed the Commission's holistic interpretation in OCC Case No. 4763 that protected the correlative rights of all the owners in the unit by allowing owners in the

tract, suspected as being non-producing, to receive their just and equitable share of production through an allocation formula based -- not on "surface acreage" of the tracts -- but on the proportion of net acres each person owns individually in the unit to the total acreage of the unit -- a different metric for the pooling statute crafted by the Commission specifically to protect correlative rights in this unique instance. *See id.,* at ¶27. The *Rutter* court justified its ruling and interpretation on the basis that the pooling statute cannot be used to violate the purposes of the OGA, which are to protect correlative rights and prevent waste, including economic waste. *See id.,* at ¶¶12, 18, 24 and 27 (stating that the Commission is empowered to do whatever may be reasonably necessary to carry out the purposes of the OGA, whether or not indicated or specified in any section thereof, and that the Commission was correct to use its powers to establish "a participation formula giving each owner in the unit a share in production in the same ratio as his acreage bears to the acreage of the whole units.") The *Rutter* court concluded that the Commission's allocation formula was "a reasonable and logical one." *See id.,* at ¶27.

19. The remaining point of concern regarding the Final Order, if not stayed until its consequences can be thoroughly considered, is that the Order establishes a precedent that the more wells an applicant proposes to drill, however unnecessary and regardless of costs, the more likely the applicant will be awarded operatorship because economic waste from the drilling of unnecessary wells has now been removed from the Division's consideration. *See* Order No. 23089-A, ¶ 33. The Final Order requires Permian to drill and produce forty-eight (48) wells, eight (8) more than what Coterra determined was needed to produce the Wolfbone Pool, and an additional ten (10) more wells than what Coterra had proposed for the full development of the upper Bone Spring formations, even after Permian admitted that it may not need the eight (8) additional wells in the Upper Wolfcamp and attempted to alter its development plan by asking Division to remove from its plan ten (10) Bone Spring wells . *See* Motion to Stay, ¶¶ 42-45. Thus, not only is Permian's excessive number of

wells unnecessary, but the OCD mandating that Permian drill them, regardless of its later requests not to, results in excessive and unnecessary emissions thereby contravening the state's efforts to reduce emissions and waste under Executive Order 2019-003. Therefore, Coterra satisfies the requirement of 19.15.4.23(B) NMAC that a stay can be granted to protect the environment and public health and satisfies the requirement of *Tenneco's* fourth prong for issuing a stay, showing that there is no harm to the public from a stay but only a potential benefit. *See id.,* at ¶ 49.

20. Furthermore, the Final Order creates a dangerous precedent that encourages operators to disregard considerations of economic waste in favor of drilling unnecessary wells for competitive advantage in a contested hearing. This is the strategy Permian utilized and was subsequently rewarded with operatorship for its gratuitous excess. If the Commission validates this precedent by denying a stay of the Final Order, it will spell the end of applicants making any effort to present a rational and balanced development plan that proposes to drill a lesser number of wells to avoid economic waste and prevent unnecessary emissions in favor spending as much money as possible to out-drill any competitor for the sole purpose of winning – the exact opposite outcome envisioned by the OGA. *See* Motion to Stay, ¶ 36. In its presentation of a rationally-balanced plan that prevents both economic waste and the drilling of unnecessary wells, Coterra showed that the "3rd Bone Spring Sand ("3rd Sand") is the established bench target" and Permian's plan of drilling more wells to co-develop "the Upper Wolfcamp in association with the development of the 3rd Sand will not result in any significant increase in the Estimated Ultimate Recovery ("EUR") of hydrocarbons." *See* Exhibit D, ¶ 8, Cimarex's Hearing Packet I, Case Nos. 23448-23451. If the Final Order becomes policy, such balanced and forthright development plans, as presented by Coterra, will likely become a relic of the past.

21. Moreover, the Final Order disregarded the relevant evidence presented at the hearing that Permian's self-admitted excessive number of wells created a quarter-billion-dollars of

economic waste by deeming such magnitude of costs irrelevant. *See* Order No. 23089-A, ¶ 33. Thus, Coterra is not the party who failed to provide evidence, as wrongly claimed by Permian. The evidence is there in the record. The Final Order improperly omitted consideration of this evidence based on a misapplication of Commission policy; and therefore, Coterra bringing this omission to the attention of the Commission is not "re-hashing arguments" as Permian claims. *See* Permian's Response, p. 6. The purpose of a hearing *de novo* is for the Commission to review and evaluate the evidence "anew" (s*ee* Black Law's Dictionary, (7th Ed.), p. 447), and that purpose should apply to the Commission's review of the evidence and arguments Coterra provided in support of its request for a stay of the Final Order.

22. Coterra respectfully submits that there is no basis for excluding economic waste as a factor to be considered in the comparative evaluation of competing plans because the OGA requires the prevention of economic waste by its prohibition against drilling unnecessary wells (which is the primary means of preventing economic waste) and by including the "ordinary meaning" of waste in its statutory definition. *See* §70-2-3. Economic waste is an integral part of the "ordinary meaning" of waste.[2] *See, e.g., Earthworks' Oil & Gas Accountability Project v. N.M. Oil Conservation Comm'n,* 2016-NMCA-055, P 27, 374 P.3d 710, 720-21 (stating that the OCD must "consider the economic loss caused by the drilling of unnecessary wells."). Furthermore, the *Rutter* court confirmed the Commission's established policy that the prevention of waste under the OGA includes

[2] Examples of the ordinary meaning of waste from online dictionaries include: (1) "an unnecessary or wrong use of money, substances, time, energy, abilities, etc." as defined by the online Cambridge English Dictionary (https://dictionary.cambridge.org/us/dictionary/english/ waste#); (2) "loss of something valuable that occurs because too much of it is being used or because it is being used in a way that is not necessary or effective," as defined by the online Britannica Dictionary (https://www.britannica.com/dictionary/waste); and (3) "Action or process of wasting: II.5.a. Useless expenditure or consumption, squandering (of money, goods, effort, etc.)," as defined by the online Oxford English Dictionary (https://www.oed.com/dictionary/waste_n?tab=meaning_and_use#14998584). Thus, the definition of waste under the OGA includes such ordinary meanings as "economic waste," that is, waste from the expenditure of money and funds when drilling, operating and producing unnecessary wells, in addition to the waste of resources, time and energy from drilling, operating, and producing unnecessary wells.

the prevention of economic waste. *See Rutter,* 1975-NMSC-006, ¶18; *see also* OCC Order No. R-4353, ¶ 7 (and *de novo* Order R-4353-A), issued in 1972 and attached hereto as Exhibit 3 (the Commission finding that pooling the unit will "avoid the drilling of unnecessary wells," "protect correlative rights," and afford the owners of each interest in the unit "the opportunity to recover or receive without unnecessary expense his just and fair share of the gas in said pool.") (emphasis added). Since at least the early 1970s, the Commission has had this policy in place, where economic waste must be prevented under the OGA's statutory definition of waste; and therefore, the Final Order was misguided in its interpretation that disregarded the massive difference in total costs between Coterra's and Permian's development plans and only considered *de minimis*, if any, reservoir waste as the sole factor in its decision.

23. Furthermore, in its Motion to Stay, Coterra showed how it is likely to prevail on the merits, thereby satisfying the first prong of the *Tenneco* test. *See id.,* at ¶ 48. The determination of who should be granted operatorship turns in the present case on specific legal issues. If the Commission upholds the Final Order and allows Permian to drill its wells as proposed, Permian will be committing an unlawful taking of hydrocarbons from owners across the depth severance in the Wolfbone Pool. *See id.,* at ¶¶ 18-19 and 46. Because the Final Order allows this unlawful taking of hydrocarbons without allocation or compensation, the Commission must issue a stay to protect the Division from engaging in, and facilitating, an unauthorized taking until the Commission can consider the facts and circumstances of the present case. S*ee id.*, ¶ 46(b), FN 5.

24. Coterra's interpretation of §70-2-17(C), as confirmed in prior Orders and *Rutter,* is the only legally valid interpretation that protects correlative rights, prevents an unauthorized taking, and avoids the drilling of unnecessary wells, therefore Coterra would likely prevail on the merits as a matter of law regardless of how many working interest owners might gravitate to Permian's plan under the influence of the flawed Final Order because, given the recent issuance of the Order, the

owners have not been provided the time necessary to understand the Order's legal implications and liabilities. *See id.*, ¶ 46 (showing that the Final Order is flawed on multiple levels and should be stayed). Although the improper taking of hydrocarbons across the depth severance was a critical issue raised at the hearing -- the prevention of which was the cornerstone of Coterra's plan -- the Final Order failed to address or explain, or even mention, the proper interpretation of §70-2-17(C) that needed to be applied. *See id.*, ¶ 19; *also see id.,* ¶ 12.

25. A stay of the Order would provide the necessary time for the Commission and owners to understand the scope of consequences and liabilities inherent in the Final Order. Not only would there be potential liability for unauthorized taking of hydrocarbons, but if the Commission upholds the Final Order's policy of disregarding economic waste in favor of the drilling of unnecessary wells, the impact of this new policy over the long-term could result in an increase of abandoned wells in the future. Therefore, a foreseeable consequence of the policy inherent in the Final Order could be an exacerbation of the state's existing problem with abandoned and unplugged wells.

26. Based on the overview provided herein as a reply to Permian's Response, Coterra has satisfied all prongs of *Tenneco's* test for issuance of a stay: (1) Coterra will likely prevail on the merits of the appeal as a matter of law to prevent the unauthorized taking of hydrocarbons and further will likely prevail on the merits when all the factors for evaluating competing plans, such as preventing economic waste and the drilling of unnecessary wells, are properly considered; (2) Coterra has shown that it will suffer irreparable harm by being subjected to the excesses of Permian's plan which requires working interest owners, such as Coterra, to waste its resources on the exuberant costs incurred by drilling eighteen (18) unnecessary wells (i.e. excessive economic waste), thereby violating the owners correlative rights; (3) other interested persons, such as other owners, will not suffer substantial harm because the stay will provide a reprieve from Permian's substantial economic burdens on their interest, and the owners will receive the Commission's assurance that the

development plan ultimately selected will avoid the legal entanglements and liabilities from the unauthorized taking of hydrocarbons (s*ee id.*, ¶ 46(b), FN 5); and finally (4) the public will not be harmed but will benefit from the Commission's having time to properly evaluate the competing development plans to ensure that the requirement to reduce emissions pursuant to Executive Order No. 2019-003 are satisfied and other negative externalities are avoided.

27. **Conclusion:** For the reasons set forth above, Coterra respectfully requests that the Commission stay Order No. R-25089-A to avoid the irreparable harm that would result from the Order as described herein and to provide the Commission the necessary time to thoroughly evaluate the unresolved legal issued raised by the Order and the concern that, if the Order is allowed to stand as precedent in its current version, it will establish policy that promotes the drilling of unnecessary wells and the increase of emissions. Because the Commission will be considering a number of unresolved legal issues in the present case, Coterra respectfully requests that the Commission allow the parties to brief their respective positions on the unresolved legal matters prior to the hearing on the merits.

Respectfully Submitted,

ABADIE & SCHILL, PC

/s/ Darin C. Savage

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed with the New Mexico New Mexico Oil Conservation Commission and was served on counsel of record via electronic mail on June 5, 2025:

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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 NO. 13132
ORDER NO. R-12094

APPLICATION OF DEVON ENERGY PRODUCTION COMPANY, L.P. FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on November 20, 2003 at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this 4th day of February, 2004, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

(1) Due public notice has been given, and the Division has jurisdiction of this case and of the subject matter.

(2) The applicant, Devon Energy Production Company, L.P. ("Applicant"), seeks an order pooling all uncommitted mineral interests in the Morrow formation underlying Lots 1 and 2, the S/2 NE/4 and the SE/4 (E/2 equivalent) of Section 6, Township 23 South, Range 27 East, NMPM, Eddy County, New Mexico, to form a standard 319.49-acre gas spacing and proration unit in the South Carlsbad-Morrow Gas Pool.

(3) The above-described unit ("the Unit") is to be dedicated to the proposed Joell Well No. 2 to be drilled at a standard gas well location 1330 feet from the North and East lines (Unit G) of Section 6.

(4) Two or more separately owned tracts are embraced within the Unit, and/or there are royalty interests and/or undivided interests in oil and gas minerals in one or more tracts included in the Unit that are separately owned.

EXHIBIT 1

(5) Applicant is an owner of an oil and gas working interest within the Unit. Applicant has the right to drill and proposes to drill the Joell Well No. 2 to a common source of supply in the Morrow formation at a standard gas well location within the SW/4 NE/4 of Section 6.

(6) There are interest owners in the proposed Unit that have not agreed to pool their interests.

(7) The applicant presented evidence that demonstrates that:

(a) the Morrow formation underlying the Unit covers the subsurface interval from approximately 11,366 feet to 11,883 feet;

(b) the Morrow formation within the E/2 of Section 6 is potentially productive from both the Middle-Morrow zone and the Lower-Morrow zone; and

(c) the available geologic data suggests that a reasonable operator should test the entire Morrow interval in any well drilled within the E/2 of Section 6.

(8) The Morrow formation underlying the E/2 of Section 6 is divided into three zones, with different sets of ownership in each of these zones. These zones are described as follows:

(a) 11,366-11,761 feet subsurface, which is 76.402321% of the Morrow interval. This portion of the Morrow formation is subject to an operating agreement entered into in 1970;

(b) 11,761-11,766 feet subsurface, which is 0.967118% of the Morrow interval. This portion of the Morrow formation is also subject to the above-described operating agreement; and

(c) 11,766-11,883 feet subsurface, which is 22.630561% of the Morrow interval. This portion of the Morrow formation is not subject to the above-described operating agreement.

(9) The operator under the operating agreement is Chaparral Energy, L.L.C. ("Chaparral"). Chaparral however, owns no working or other interest in the Morrow formation underlying the E/2 of Section 6.

(10) Applicant requests pooling of the lower portion of the Morrow formation that is not subject to the operating agreement. The applicant further requests that the Division approve a cost and production allocation between the three Morrow zones that is based upon the footage ratio described in Finding No. (8) above. The applicant further requests that it be named operator of the entire Morrow interval within the E/2 of Section 6.

(11) Chaparral was provided notice in this case, but did not appear at the hearing.

(12) The applicant testified that it is still negotiating with Chaparral the terms by which it will be allowed to drill and operate the proposed Joell Well No. 2. As of the hearing date, no agreement has been reached between these parties.

(13) A number of interest owners in the E/2 of Section 6 have entered into a voluntary agreement apportioning production based upon the percentages set forth in Finding No. (8) above.

(14) The working interest owners in the E/2 of Section 6 have received a demand from royalty owners to develop the acreage.

(15) The applicant's proposed cost and production allocation is fair and reasonable and should be approved.

(16) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford to the owner of each interest in the Unit the opportunity to recover or receive without unnecessary expense its just and fair share of hydrocarbons, this application should be approved by pooling all uncommitted interests, whatever they may be, in the oil and gas within the Unit.

(17) Applicant should be designated the operator of the subject well and of the Unit.

(18) Any pooled working interest owner who does not pay its share of estimated well costs should have withheld from production its share of reasonable well costs plus an additional 200% thereof as a reasonable charge for the risk involved in drilling the well.

(19) Reasonable charges for supervision (combined fixed rates) should be fixed at $6,000.00 per month while drilling and $600.00 per month while producing, provided that these rates should be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations.*"

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to the application of Devon Energy Production Company, L.P., all uncommitted interests, whatever they may be, in the oil and gas in the Morrow formation underlying Lots 1 and 2, the S/2 NE/4 and the SE/4 (E/2 equivalent) of Section 6, Township 23 South, Range 27 East, NMPM, Eddy County, New Mexico, are hereby pooled to form a standard 319.49-acre gas spacing and proration unit in the South Carlsbad-Morrow Gas Pool. The above-described unit shall be dedicated to the proposed Joell Well No. 2 to be drilled at a standard gas well location 1330 feet from the North and East lines (Unit G) of Section 6.

(2) The operator of the Unit shall commence drilling the proposed well on or before May 1, 2004 and shall thereafter continue drilling the well with due diligence to test the Morrow formation.

(3) In the event the operator does not commence drilling the proposed well on or before May 1, 2004, Ordering Paragraph (1) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause.

(4) Should the subject well not be drilled and completed within 120 days after commencement thereof, Ordering Paragraph (1) shall be of no further effect, and the unit created by this Order shall terminate unless the operator appears before the Division Director and obtains an extension of time to complete the well for good cause demonstrated by satisfactory evidence.

(5) Upon final plugging and abandonment of the subject well, the pooled unit created by this Order shall terminate, unless this order has been amended to authorize further operations.

(6) Applicant is hereby designated the operator of the subject well and of the Unit.

(7) Well costs and production from the subject well shall be allocated among the three Morrow zones in the following proportions. Within each zone, costs and production shall be allocated based upon each owner's percentage interest ownership.

(a) Zone A (11,366-11,761 feet subsurface): 76.402321%

(b) Zone B (11,761-11,766 feet subsurface): 0.967118%

(c) Zone C (11,766-11,883 feet subsurface): 22.630561%

(8) After pooling, uncommitted working interest owners are referred to as pooled working interest owners. ("Pooled working interest owners" are owners of working interests in the Unit, including unleased mineral interests, who are not parties to an operating agreement governing the Unit.) After the effective date of this order, the operator shall furnish the Division and each known pooled working interest owner in the Unit an itemized schedule of estimated costs of drilling, completing and equipping the subject well ("well costs").

(9) Within 30 days from the date the schedule of estimated well costs is furnished, any pooled working interest owner shall have the right to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production as hereinafter provided, and any such owner who pays its share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges. Pooled working interest owners who elect not to pay their share of estimated well costs as provided in this paragraph shall thereafter be referred to as "non-consenting working interest owners."

(10) The operator shall furnish the Division and each known pooled working interest owner (including non-consenting working interest owners) an itemized schedule of actual well costs within 90 days following completion of the proposed well. If no objection to the actual well costs is received by the Division, and the Division has not objected within 45 days following receipt of the schedule, the actual well costs shall be deemed to be the reasonable well costs. If there is an objection to actual well costs within the 45-day period, the Division will determine reasonable well costs after public notice and hearing.

(11) Within 60 days following determination of reasonable well costs, any pooled working interest owner who has paid its share of estimated costs in advance as provided above shall pay to the operator its share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator the amount, if any, that the estimated well costs it has paid exceed its share of reasonable well costs.

(12) The operator is hereby authorized to withhold the following costs and charges from production:

(a) the proportionate share of reasonable well costs attributable to each non-consenting working interest owner; and

(b) as a charge for the risk involved in drilling the well, 200% of the above costs.

(13) The operator shall distribute the costs and charges withheld from production, proportionately, to the parties who advanced the well costs.

(14) Reasonable charges for supervision (combined fixed rates) are hereby fixed at $6,000.00 per month while drilling and $600.00 per month while producing, provided that these rates shall be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations.*" The operator is authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to pooled working interest owners.

(15) Except as provided in Ordering Paragraphs (11) and (13) above, all proceeds from production from the well that are not disbursed for any reason shall be placed in escrow in Eddy County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership. The operator shall notify the Division of the name and address of the escrow agent within 30 days from the date of first deposit with the escrow agent.

(16) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under this order. Any well costs or charges that are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(17) Should all the parties to this compulsory pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(18) The operator of the well and Unit shall notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(19) Jurisdiction of this case 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.

SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

Lori Wrotenbery

LORI WROTENBERY
Director

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 Docket No. 16-23 OCD CONSIDERING:

Case Nos. 23448, 23449, 23450, 23451, 23452, 23453, 23454, 23455, 23594, 23595, 23596, 23597, 23598, 23599, 23600, 23601, 23508, 23509, 23510, 23511, 23512, 23513, 23514, 23515, 23516, 23517, 23518, 23519, 23520, 23521, 23522, 23523.

EXHIBIT 2

VIDEOCONFERENCE HEARING

DATE: Thursday, August 11, 2023

TIME: 8:30 a.m.

BEFORE: Honorable Examiner Felicia Orth

LOCATION: Remote Proceeding

Albuquerque, NM 87102

REPORTED BY: Jan Gibson, CCR, RPR, CRR

JOB NO.: 6031756

A. That is correct.
Q. Okay. So we do have one reference in here that is Bone Spring. And then in your testimony -- let's see here -- you say that Permian Resources in the past 36 months has drilled four Bone Spring wells and one Wolfcamp well. Is that an accurate statement? That's Paragraph 31.
A. That is correct. Permian Resources.
Q. Okay. Do you remember the -- go ahead.
A. Being the Batman wells.
Q. Oh, those are the Batman wells. Okay. So those are ones that you do claim co-development on those?
A. We did the appraisal of the co-development in the Wolfcamp while it was a stand-alone third-run test.
Q. Okay. Let's see here. Okay. So let me see if I can pull up the response. If you can bear with me just a minute here. You don't, by chance, have a law background as a landman?
A. No, I do not.
Q. I was curious about that. I'll see if I can share this. Hold on just a minute.
MR. SAVAGE: Madam Examiner, I'm having a little technical difficulty. Could I get my IT

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF NEW MEXICO FOR
THE PURPOSE OF CONSIDERING:

CASE NO. 4763
Order No. R-4353

APPLICATION OF BLACK RIVER
CORPORATION FOR COMPULSORY
POOLING AND NON-STANDARD
PRORATION UNIT, EDDY COUNTY,
NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on July 12, 1972, at Santa Fe, New Mexico, before Examiner, Richard L. Stamets.

NOW, on this 7th day of August, 1972, the Commission, a quorum being present, having considered the testimony, the record, and the recommendations of the Examiner, and being fully advised in the premises,

FINDS:

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

(2) That the applicant, Black River Corporation, seeks an order pooling all mineral interests in the Washington Ranch-Morrow Gas Pool underlying the E/2 of Section 3, Township 26 South, Range 24 East, NMPM, Eddy County, New Mexico, to form a 409.22-acre non-standard gas proration unit to be dedicated to its Cities "3" Federal Well No. 2, located 2212 feet from the North line and 1998 feet from the East line of said Section 3.

(3) That the applicant has the right to drill and has completed its Cities "3" Federal Well No. 2, as described above in the Washington Ranch-Morrow Gas Pool.

(4) That there are interest owners in the proposed non-standard proration unit who have not agreed to pool their interests.

(5) That the evidence indicates that the entire E/2 of the above-described Section 3 can reasonably be presumed productive of gas in the Washington Ranch-Morrow Gas Pool.

EXHIBIT
3

(6) That the entire E/2 of the above-described Section 3 can be efficiently and economically drained and developed by the Cities "3" Federal Well No. 2.

(7) That to avoid the drilling of unnecessary wells, to protect correlative rights, and to afford to the owner of each interest in said non-standard unit the opportunity to recover or receive without unnecessary expense his just and fair share of the gas in said pool, the subject application should be approved by pooling all mineral interest, whatever they may be, within said unit.

(8) That the applicant should be designated the operator of the subject well and unit.

(9) That all proceeds from production from the subject well which are not disbursed for any reason should be placed in escrow to be paid to the true owner thereof upon demand and proof of ownership.

IT IS THEREFORE ORDERED:

(1) That all mineral interests, whatever they may be, in the Washington Ranch-Morrow Gas Pool underlying the E/2 of Section 3, Township 26 South, Range 24 East, NMPM, Eddy County, New Mexico, are hereby pooled to form a 409.22-acre non-standard gas proration unit to be dedicated to Black River Corporation's Cities "3" Federal Well No. 2, located 2212 feet from the North line and 1998 feet from the East line of said Section 3.

(2) That Black River Corporation is hereby designated the operator of the subject well and unit.

(3) That all proceeds from production from the subject well which are not disbursed for any reason shall be placed in escrow in Eddy County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership; that the operator shall notify the Commission of the name and address of said escrow agent within 90 days from the date of this order.

(4) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

BRUCE KING, Chairman

S E A L

ALEX J. ARMIJO, Member

dr/

A. L. PORTER, Jr., Member & Secretary

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION OF NEW MEXICO FOR
THE PURPOSE OF CONSIDERING:

CASE NO. 4763
Order No. R-4353-A

APPLICATION OF BLACK RIVER
CORPORATION FOR COMPULSORY
POOLING AND NON-STANDARD
PRORATION UNIT, EDDY COUNTY,
NEW MEXICO.

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing de novo at 9 a.m. on November 21, 1972, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission."

NOW, on this 29th day of November, 1972, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS:

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

(2) That after an examiner hearing, Commission Order No. R-4353, dated August 7, 1972, was entered in Case No. 4763 pooling all mineral interests, whatever they may be, in the Washington Ranch-Morrow Gas Pool underlying the E/2 of Section 3, Township 26 South, Range 24 East, NMPM, Eddy County, New Mexico, to form a 409.22-acre non-standard gas proration unit to be dedicated to Black River Corporation's Cities "3" Federal Well No. 2, located 2212 feet from the North line and 1998 feet from the East line of said Section 3, and designating Black River Corporation as operator of the unit.

(3) That Rutter and Wilbanks Corporation requested and was granted a hearing de novo of Case 4763 before the Commission.

(4) That the evidence presented at the hearing de novo indicates that the entire E/2 of the above-described Section 3 can reasonably be presumed to be productive of gas from the Washington Ranch-Morrow Gas Pool.

(5) That the evidence presented at the hearing de novo establishes to the satisfaction of the Commission that the entire E/2 of the above-described Section 3 can be efficiently and economically drained by the above-described Cities "3" Federal Well No. 2.

(6) That to reduce the size of the proration unit dedicated to said Cities "3" Federal Well No. 2, as proposed by Rutter and Wilbanks Corporation, would deprive the owners of mineral interests in that portion of the unit which would be deleted of the opportunity to recover their just and equitable share of the hydrocarbons in the Washington Ranch-Morrow Gas Pool, unless a third well were to be drilled in said Section 3, with a complete realignment of the acreage dedicated to the subject well and to the well located in the W/2 of Section 3.

(7) That to drill a third well in Section 3, Township 26 South, Range 24 East, Washington Ranch-Morrow Gas Pool, would result in supererogatory risk and economic waste caused by the drilling of an unnecessary well.

(8) That Commission Order No. R-4353 provides protection for the correlative rights of all mineral interest owners in the E/2 of Section 3, when considered as a whole, and will result in the prevention of waste.

(9) That Commission Order No. R-4353 should be reaffirmed.

IT IS THEREFORE ORDERED:

(1) That Commission Order No. R-4353, dated August 7, 1972, be and the same is hereby reaffirmed in its entirety.

(2) That jurisdiction of this cause be retained for the entry of such further orders as the Commission may deem necessary.

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

BRUCE KING, Chairman

ALEX J. ARMIJO, Member

S E A L

A. L. PORTER, Jr., Member & Secretary

dr/