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

APPLICATION OF COTERRA ENERGY CO. FOR THE CREATION OF A SPECIAL POOL, A WOLFBONE POOL, PURSUANT TO ORDER NO. R-23132, TO REOPEN CASE NOS. 22853 AND 23295 AND TO APPROVE A POOLING APPPLICATION FOR THE WOLFBONE POOL, LEA COUNTY, NEW MEXICO.

Case No. 24721

APPLICATION OF PRIDE ENERGY COMPANY FOR CREATION OF A SPECIAL WOLFBONE OIL POOL IN PARTS OF SECTION 12 AND 13, TOWNSHIP 19 SOUTH RANGE 34 EAST, NMPM, LEA COUNTY, NEW MEXICO

Case No. 24736

APPLICATION OF PRIDE ENERGY COMPANY FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.

Case No. 22853

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

Case No. 23295

Order No. R-23132
Order No. R-23752

UNOPPOSED MOTION REQUESTING LEAVE TO SUBMIT AN ALLOCATON FORMULA AND REQUESTING REVIEW OF THE LEGAL NECESSITY TO UTILIZE AN ALLOCATION FORMULA WHEN PRODUCING THE WOLFBONE POOL TO PROTECT CORRELATIVE RIGHTS AND PREVENT THE UNCONSTITUTIONAL TAKING OF HYDROCARBONS WHERE THERE IS BOTH OPEN COMMUNICATION AND NONUNIFORM OWNERSHIP ACROSS A DEPTH SEVERENCE WITHIN THE WOLFBONE POOL

Coterra Energy Operating Co. ("Coterra"), pursuant to its change of name from Cimarex Energy Co. ("Cimarex") to Coterra,[1] through its undersigned attorneys, submits to the Oil

[1] Coterra Energy Co. has changed its name to Coterra Energy Operating Co., by Certificate of Amendment with the Secretary of the State of Delaware.

Conservation Division ("Division" or "OCD") this Unopposed Motion for (1) requesting leave to submit an allocation formula, and (2) requesting review of the legal necessity to utilize an allocation formula when producing the Wolfbone Pool to protect correlative rights and prevent an unconstitutional taking of hydrocarbons where there is both nonuniform ownership and open communication across a depth severance within the Wolfbone Pool ("Unopposed Motion"). In support of its Unopposed Motion, Coterra submits the following:

I. Factual and Procedural Background:

1. On May 3, 2022, Pride Energy Company ("Pride") submitted a pooling application in Case No. 22853 that proposes to drill a single well, the Go State Com Well No. 401H, in the Upper Wolfcamp formation underlying the W/2 W/2 of Sections 12 and 13, Township 19 South, Range 34 East, NMPM, Lea County, New Mexico ("Subject Lands"). There is a depth severance between the top of the Upper Wolfcamp and the base of the Third Bone Spring formations contained within the single reservoir of the Wolfbone Pool which creates nonuniform ownership in the intervals above and below the depth severance in said Pool (the "Depth Severance"). Pride's proposed Go State well is located below the Depth Severance.

2. Coterra submitted a competing pooling application in Case No. 23295 on December 15, 2022, in which it proposes to drill a single well, the Showbiz 13-12 State Com 301H Well, above the Depth Severance in the Wolfbone Pool underlying the Subject Lands. In addition, as part of its development plan, Coterra proposes to drill a well in the Second Bone Spring and a well in the First Bone Spring.

3. The Division heard Case Nos. 22853 and 23295 (referred to herein as the "GoState/Showbiz Cases") on July 20, 2023, and issued Order No. R-23132, in which the Division denied both Pride's and Coterra's Pooling Applications based on the unique geology underlying

the Subject Lands, stating that both parties "acknowledged that wells completed in the Bone Spring and Wolfcamp formations *will share production from both the Bone Spring and Wolfcamp formations.*" Order No. R-23132, ¶ 9 (emphasis added). Moreover, the Division ruled that the Third Bone Spring and Upper Wolfcamp together constitute a single reservoir and therefore a single pool and not two pools as originally classified. *See id.,* at ¶¶ 13-19 (discussing the need for a single pool).

4. As a result, the OCD denied both applications except insofar as the applicants choose to propose a special pool, a Wolfbone Pool, that would account for the lack of frac baffles between the Bone Spring and Wolfcamp formations in the area, thus justifying the creation of a pool that encompasses the single reservoir by including the Third Bone Spring and Upper Wolfcamp in the new Wolfbone Pool. *See* Order No. R-23132, at ¶ 2. Pride and Coterra assumed that the creation of a Wolfbone Pool would require all necessary steps to properly integrate the new Wolfbone pool into the original application and hearing process, including submitting updated pooling applications and closing arguments.

5. Thus, the Parties submitted a Joint Application for a Special Pool to request the creation of the Wolfbone Pool. This submission of the Joint Application was predicated on statements made during discussions at a Status Conference held before the Division on August 22, 2024. Specifically, Pride and Coterra agreed to remove their allocation formulas from the competing applications for a Wolfbone pool on the condition that the allocation formulas be placed in new pooling applications to be filed after the Division's Order creating the Wolfbone Pool was issued. *See* GoState/Showbiz Cases Tr. (Cases 24721, 24736, dated 8-22-2024) 43: 10-25; 44: 1-25 (the OCD directing the parties to place the allocation formula in the pooling applications and not in the joint application for the new pool).

6. Filing new pooling applications to include the allocation formulas and account for the newly created Wolfbone Pool as a single reservoir reflected what Pride and Coterra assumed was agreed upon in related cases, Case Nos. 23448 – 23455, 23594 – 23601, & 23508 – 23523 ("Case Nos. 23448 *et al*.") (the "Joker/Mighty Pheasant Cases"), which Coterra and Pride followed closely in order to understand how their own cases involving the creation of a Wolfbone Pool should proceed. In the Joker/Mighty Pheasant Cases, the Division issued Order No. R-23089, which arrived at the same conclusions of fact and law for the Upper Wolfcamp and Third Bone Spring as Order No. R-23132 in the GoState/Showbiz Cases. Specifically, the OCD found that there was a lack of frac baffles between the Third Bone Spring and Upper Wolfcamp resulting in a single reservoir that constituted one pool, not two. The OCD found that both parties acknowledged "that wells completed in the Bone Spring and Wolfcamp formations will share production from both the Bone Spring and Wolfcamp formations," which is the same finding as in the GoState/Showbiz Cases. *Compare:* Order No. R-23089, ¶ 10 with Order No. R-23132, ¶ 9.

7. At a Status Conference for the GoState/Showbiz Cases held on August 8, 2024, the Division discussed the expectation that the parties would be resubmitting competing pooling applications based on the special pool creation. *See* Tr. (Cases 24528, 24541, dated 8-13-24) 40: 1-3. On the basis of such discussions including subsequent discussions in which the Division stated it prefers to have the allocation formulas presented in subsequent pooling applications submitted after the creation of the Wolfbone, Pride and Coterra assumed it would be preparing and submitting new pooling applications upon creation of the Wolfbone Pool.

8. The Division held the contested hearing for the Go State/Showbiz Cases on July 20, 2023, approximately two (2) years ago, and Coterra and Pride submitted their joint application

for the creation of the Wolfbone Pool on or about September 17, 2024, followed by the hearing for the creation the Wolfbone Pool on October 10, 2024, almost a year ago.

9. On March 7, 2025, Coterra submitted an "Unopposed Motion Requesting Opportunity to Submit Updated Applications and Updated Closing Arguments as Necessary Submissions After the Division Issues its Order for Creation of the Wolfbone Pool Pursuant to Case Nos. 24721 and 24736." The appointed hearing examiner who heard the original contested cases on July 20, 2023, did not adjudicate and rule on this motion; the current Hearing Examiner hired by the Division on or about August-September 2023 assumed review and adjudication of the motion and issued an Order on the motion dated March 25, 2025.

10. The Order stated that the parties shall submit updated pooling applications and updated closing arguments for Case Nos. 22853 and 23295 within thirty (30) days after the OCD issues its order creating the Wolfbone Pool. The OCD issued Order No. R-23752 creating the Wolfbone Pool on April 1, 2025. However, both Coterra and Pride inadvertently and unintentionally missed the email listing the case numbers for the Wolfbone Order, and consequently, they did not discover that the Order had been issued until after the current Hearing Examiner's deadline for submitting the updated pooling applications and closing arguments.

11. Therefore, Coterra is submitting this Unopposed Motion to address the missed deadline by respectfully requesting leave to submit updated pooling applications that contain an allocation formula and updated closing arguments that address the impact of the allocation formula and creation of the Wolfbone Pool on the development plans. Furthermore, Coterra respectfully requests the Division review the legal necessity of utilizing an allocation formula, pursuant to the New Mexico Oil and Gas Act, NMSA 1978 § 70-2-1 *et seq.* ("OGA"), in order to account for and protect the correlative rights of the owners who have non-uniform ownership in the intervals above

and below the depth severance in the Wolfbone Pool and to prevent an unconstitutional taking. *See* Section B, below.

12. Although Coterra and Pride both failed to meet the deadline for including an allocation formula in updated pooling applications and closing arguments because they mistakenly overlooked the case numbers listed in the OCD's email -- and are truly apologetic for this oversight -- the parties respectfully submit that the importance and legal necessity of including the allocation formulas in the applications and development plans to be evaluated in the Subject Cases should outweigh the imposition of a procedural deadline that would exclude their consideration. Therefore, Coterra respectfully requests that the Division review the need for including the allocation formulas based on the legal arguments presented herein.

II. Legal Arguments:

A. The Unique Geology of the Subject Lands Combined with the Depth Severance Requires the Use of an Allocation Formula to Protect Correlative Rights.

13. Both Coterra and Pride propose drilling a single well to produce the Wolfbone Pool. Pride proposes drilling its well in the Upper Wolfcamp formation, the interval below the Depth Severance, and Coterra proposes to drill its single well in Third Bone Spring formation, the interval above the Depth Severance. If there were no depth severance in the Wolfbone Pool then there would be no issues concerning non-uniform ownership and the propriety of drilling a single well in the Wolfbone to produce the pool; the only issue would be the optimal depth for drilling the single well. Moreover, because a single well will produce from the entire Wolfbone Pool there would be no question whether an additional well or wells above and below the Depth Severance would be needed to produce the Wolfbone Pool.

14. However, in the present cases, subject to Order No. R-23132, the Wolfbone Pool contains a Depth Severance between the base of the Third Bone Spring and top of the Upper

Wolfcamp. This raises the question of first impression for this novel situation in which a depth severance occurs in an area of open communication between intervals above and below the severance located in the pool and requires a review of the best way to address the depth severance for the proper production of the pool in a manner that upholds the purpose of the OGA by protecting correlative rights.

15. When a depth severance creates non-uniform ownership across the single reservoir that is the Wolfbone Pool – the Division must ensure that operators maintain a proper accounting of the production from the well or wells drilled into the Wolfbone Pool to protect correlative rights. For example, an owner who owns 10 net acres above the severance and 5 net acres below the severance has a right to receive its 10 net acres of production from the interval above the severance ("Upper Interval") and its 5 net acres from the interval below the severance ("Lower Interval"). The problem the Division must address is that any well drilled in the Wolfbone Pool (a single reservoir with open communication between the Upper and Lower Intervals) will produce hydrocarbons from both the Upper and the Lower Intervals of the Pool. When the production is from a single reservoir, such as the Wolfbone Pool, where there is open communication between the Intervals, there is only one way under the OGA to protect correlative rights and prevent waste and that one way is to utilize an allocation formula that allocates to the owners their just and equitable share of production from each Interval.

16. The method of drilling and producing both above and below the severance without an allocation formula is proper and workable only if the geology sequesters and maintains the production from the individual zones, meaning that there would need to be some kind of natural barrier or baffling, carbonite or otherwise, between the upper and lower formations that prevents intermixing of product. If there is no natural barrier at the depth severance, as in the Subject Cases,

then a well or wells in the Upper Interval above the severance would produce from both the Upper and Lower Intervals, and a well or wells in the Lower Interval would also produce from both Intervals. Thus, since each well drilled anywhere in the Wolfbone Pool would produce from both Upper and Lower Intervals, an allocation formula is necessary as a matter of law to properly allocate the production of each well to the owners in order to protect correlative rights.

17. In Order No. R-23132, the Division found that "wells completed in the Bone Spring and Wolfcamp formations will share production from both the Bone Spring and Wolfcamp formations [meaning the wells would share production from both the Upper and Lower Intervals separated by the depth severance]." Order No. R-23132, ¶ 9. This finding creates a situation within the Wolfbone Pool where, if wells were drilled above and below the Depth Severance, an owner who owns interest in the Upper Interval would also receive production from the Lower Interval, and an owner in the Lower Interval would receive production from the Upper Interval. Thus, an owner who owns ten (10) acres net acres in the Lower Interval and five (5) net acres in the Upper Interval would be taking – an unlawful taking of -- more than the owner's share of production from the Upper Interval. The OGA cannot be used to authorize an unlawful taking without compensation nor can the Division authorize and facilitate an unlawful taking without compensation of hydrocarbons.

18. Such outcomes violate correlative rights and are prohibited under the OGA. *See* NMSA 1978 § 70-2-33(H) (stating that correlative rights mean the opportunity afforded to the owner of each property in a pool to produce without waste the owner's just and equitable share of the oil and gas in the pool). For example, assume a company owns a working interest in the Lower Interval but owned less or no interest in the Upper Interval. Because a well drilled in the Lower Interval produces hydrocarbons from the Upper Interval, that company would end up receiving

more than its just and equitable share of hydrocarbons from the well thereby violating the correlative rights of the owners who own in the Upper Interval.

19. This is why drilling and producing a well or wells above or below a depth severance without the use of an allocation formula is not a proper method for producing in a pool and single reservoir where there are no geological barriers between the severed depths of the pool. The only proper method of protecting correlative rights in a situation of open communication above and below the severance of a pool, as exists in the Subject Cases, is through the use of an allocation formula. Thus, Coterra respectfully requests that the Division review that the use of an allocation formula is a legal necessity to provide for the proper allocation of production from the Wolfbone Pool in order to protect correlative rights and prevent an unlawful taking.

B. When Nonuniform Ownership is Present in a Pool and a Well Drilled on One Side of a Depth Severance Takes Hydrocarbons from Owners on the Other Side of the Severance, an Allocation Formula Should Be Utilized to Prevent Violating the Takings Clause Pursuant to the Fifth and Fourteenth Amendments of the Constitution.

20. Because of the unique geology underlying the Subject Lands, there are no natural barriers or baffles that prevent a well drilled in the Upper Wolfcamp interval below the depth severance in the Wolfbone Pool from producing (and therefore taking) hydrocarbons from the owners in the Third Bone Spring interval above the depth severance. Thus, an operator who drills a well in the lower interval and produces hydrocarbons from both intervals should utilize an allocation formula to facilitate the just and equitable distribution of production to all the owners in the Wolfbone Pool, both above and below the severance; otherwise, the operator would be engaged in an unconstitutional taking of hydrocarbons without compensation. The prospect of such a taking implicates the Fifth and Fourteenths Amendments of the Constitution; therefore, if the Division does not consider the utilization of an allocation formula as part of its regulatory requirement, the

Division may risk using its state police powers to authorize a taking that escapes proper compensation. *See Manning v. Energy, Minerals,* 2006-NMSC-027, ¶ 22, 140 N.M. 528, 144 P.3d 87 (stating that a "regulatory taking can be just as devasting to property rights as eminent domain, and the right of the landowner to compensation is just as central to the promise of the Bill of Rights in either instance.")

21. Furthermore, the New Mexico Supreme Court concluded in *Manning* that the "Takings Clause creates an individual right to the remedy of just compensation." *See id.* at ¶ 46. "More specifically, as incorporated through the Fourteenth Amendment, the Takings Clause mandates that states have made, at the time of the taking, '<u>reasonable, certain and adequate provision for obtaining compensation.</u>'" *Id.* (*citing Williamson County Reg'l Planning Comm'n,* 473 U.S. at 194, 105 S.Ct. 3108) (emphasis added). Implementing an allocation formula provides the Division the opportunity to insure at the time of the drilling and production of the Wolfbone Pool (that is, at the time of the taking) that reasonable, certain and adequate provisions have been made for the owners to obtain compensation for their just and equitable share of production, thereby protecting their correlative rights. Absent the use of an allocation formula, the owners in the Wolfbone Pool would be deprived of compensation from the production of their mineral interests which the Division should want to avoid. *See id.* at ¶¶ 18 and 46. Both Coterra and Pride want to avoid such a taking by properly allowing just and equitable compensation for the owners, thus protecting the owners' correlative rights, and therefore, respectfully request leave to submit their allocation formulas in updated pooling applications and updated closing arguments.

C. New Mexico Case Law and Division Policy Is Clear: The Oil & Gas Act Must Not be Interpreted or Applied to Violate Correlative Rights or Facilitate an Unconstitutional Taking of Hydrocarbons.

22. The state legislature enacted the OGA and charged the Division to uphold and

advance its purpose in order to protect correlative rights of ownership and prevent waste. *See, e.g., Continental Oil Co. v. OCC*, 1962-NMSC-062, ¶¶ 10-11, 70 N.M. 310, 373 P.3d 809. Review of Division policy and New Mexico case law demonstrate that the OGA cannot be used to violate correlative rights by producing and taking an owner's hydrocarbons without allowing the owner to receive its just and equitable share of production and compensation. The Division has a history of adopting and utilizing allocation formulas when one is necessary to account for non-uniform ownership across depth severances in order to protect correlative rights. *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 to owners 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).

23. Furthermore, the Division's policy for utilizing an allocation formula when it is necessary to protect correlative right is fully supported by established case law. In *Rutter & Willbanks Corp. v. OCC,* 1975-NMSC-006, 532 P.2d 582, the New Mexico Supreme Court upheld the Commission's use of an allocation formula in OCC Case No. 4763 where the Oil Conservation Commission ("Commission" or "OCC") found that "there was some indication" that a certain tract in a spacing unit "had no recoverable gas underlying [the owners'] property." *Id.,* at ¶25. Thus, without an allocation formula to distribute interest to the owners in the non-producing tract, the owners would receive zero production from their ownership in the unit.

24. The *Rutter* court justified the OCC's use of an allocation formula on the basis that application of the pooling statutes cannot be used to violate the fundamental purposes of the OGA, which are to protect correlative rights and prevent 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." *Id.,* at ¶27.

25. The New Mexico Supreme Court further confirmed the necessity for the Division to use an allocation formula in circumstances in which the absence of one would result in an illegal taking and the violation of correlative rights in *Santa Fe Exploration Co. v. Oil Conservation Division*, 1992-NMSC-044, 114 N.M. 103, 835 P.2d 819. In *Santa Fe Exploration*, the Division joined three adjacent 160-acre tracts, where ownership was non-uniform across the three tracts, into a single unit. One well, the Deemar well, was drilled by one operator in the first tract; another well, the Holstrom Well, was drilled by a different operator in the second tract, and there was the potential for drilling an additional well in the third tract. *See id.* at ¶¶ 5-6. Because there was open communication between each tract in the unit, each well, in addition to producing hydrocarbons from its own tract, would also produce and take hydrocarbons from the owners in the other two tracts. In order to prevent a taking and to protect correlative rights, the Commission implemented an allocation formula across the three tracts in which the owners in Tract 1 received 21% (49 barrels per day) of the production from the unit; the owners in Tract 2 received 53% (125 barrels per day) of the production from the unit; and the owners in Tract 3, if drilled, would receive 26% (61 barrels per day) of the production from the unit. *See id.* at ¶ 5.

26. The principle on which the Commission and the New Mexico Supreme Court in *Santa Fe Exploration* based the need to have an allocation formula is the same principle on which

both Coterra and Pride have proposed the need for an allocation formula to produce the Wolfbone Pool underlying the Subject Lands. To illustrate the principle, one only needs to envision the unit in *Santa Fe Exploration* being rotated ninety (90) degrees, which would turn the vertical boundaries of each tract into horizontal depth severances within the unit. Under fundamental principles of oil and gas law, a regulatory agency must prohibit the unlawful taking of hydrocarbons from each of the three tracts when there is open communication between the tracts, as the Commission and the New Mexico Supreme Court did by allocating production among the three tracts in *Santa Fe Exploration*. This principle remains true and must be maintained when the unit is turned ninety (90) degrees on its side at which point the tract boundaries would be viewed as depth severances. Under this hypothetical, one can easily see an illustration of the principle that the Division and Commission is obligated to prohibit the unlawful taking of hydrocarbons and the violation of correlative rights by implementing an allocation formula across the boundaries that separate the intervals in the spacing unit (whether the boundaries are vertical boundaries between adjacent tracts or a horizontal depth severance that separates upper and lower intervals), a principle recognized and upheld by the Court in *Santa Fe Exploration*.

D. The Competing Applications in the Subject Cases Should Be Properly Adjudicated on the Merits Notwithstanding Counsels' Inadvertent and Unintentional Oversight of Missing a Procedural Deadline.

27. Counsel for Coterra and Pride had been in communication with each other while eagerly awaiting and watching for the order to be issued by the Division that would create the Wolfbone Pool. However, both parties missed the order when the Division emailed the list of cases in April, and consequently, our clients, both Coterra and Pride, missed the deadline imposed by the current Hearing Examiner requiring the parties to file updated pooling applications and updated closing arguments within thirty (30) days after the order is issued. Both Coterra and Pride

are very apologetic for this oversight and wish they could undo this mistake, as there is no excuse for counsels' oversight except that unintentional mistakes can and do happen and this regrettable situation should not prejudice their clients.

28. Therefore, Coterra respectfully asks that the Division take into account the necessity to address the remaining important and significant legal issues associated with the Subject Cases by granting the parties leave to submit their allocation formulas in spite of their counsels' oversight, a necessity which Coterra believes should outweigh the procedural oversight that resulted in the missed deadline. Thus, Coterra respectfully submits that the Division's receipt and review of the updated applications that include an allocation formula and updated closing arguments would assist and benefit the Division in its review of the important legal issues inherent to the Subject Cases and provide for their efficient resolution.

29. Relevant and applicable case law holds that the basis for approving or denying an administrative application should be on the merits of the cases after review of the evidence and the statutory requirements for approval rather than a denial based on a procedural oversight such as missing a deadline. *See, e.g., Taylor for Peck v. Heckler,* 738 F.2d 1112, 1115 (10th Cir. 1984) (holding that an ALJ's denial of an application should not be based on a procedural matter, rather the decision should be made in the traditional manner "by determining whether the findings are supported by substantial evidence and by determining whether the decision was in accord with applicable law and regulations.") (*citing Tillary v. Schweiker,* 713 F.2d 601, 603 (10th Cir. 1983) (emphasis added). Thus, on the basis of *Taylor,* Coterra respectfully requests that the Division allow the applicants to proceed with the Subject Cases by accepting their submission of an allocation formula and reviewing the legal necessity to utilize an allocation formula in the Subject Cases.

30. Furthermore, the current Hearing Examiner has stated that he does not supervise, preside over, or rule on cases that were assigned to and heard by a previous hearing examiner who presided over and adjudicated the original contested cases. *See* Transcript ("Tr.") for Cases 25123-25124 and 25204-25205 (June 26, 2025) 80: 9-13; 81: 7-12, attached hereto as Exhibit 2 (the current Hearing Examiner stating that the OCD has the same hearing examiner who started the case continue the case, so that anything that was filed in the case went to the original hearing examiner.)

31. The contested hearing for the competing applications in the Subject Cases (Case Nos. 22853 and 23295) were presided over on July 20, 2023, by another Hearing Examiner who was appointed by the Division, and because the applicant's request in this Unopposed Motion is for the Division to grant leave to file updated pooling applications with allocation formulas in the original cases and to review the question whether an allocation formula is legally necessary for the production of the Wolfbone Pool, this Unopposed Motion is a continuation of the original adjudication of applications in the Subject Cases. Coterra agrees with the current Hearing Examiner that pleadings filed in the Subject Cases should go to the originally appointed Hearing Examiner for review. *See id.* at 80: 9-13; 81: 7-12. Thus, Coterra respectfully requests that the Division allow the original Hearing Examiner to continue the Subject Cases and preside over the adjudication of this question, thereby providing his recommendations for the finding and conclusion of law to the Division Director pursuant to §70-2-13 so the Division would be in a position to issue a ruling on this question.

32. Under the OGA and its rules, the Hearing Examiner manages the hearings for the benefit of the Division Director, who embodies the final decision-making authority of the tribunal and the means by the Division issues the actual findings of fact and conclusions of law. *See*

19.15.4.19 NMAC (stating that the hearing examiner "shall have the power to perform all acts and take all measures necessary for and proper for the hearing's efficient and orderly conduct" and then provides a complete and certified record of the proceedings to the Director); *see also* § 70-2-13 ("the director of the division shall base the decision rendered in any matter or proceeding heard by an examiner upon the transcript of testimony and record made by or under the supervision of the examiner in connection with such proceeding"). Furthermore, only the hearing examiner who was originally appointed to preside over the competing applications in the contested hearing has the authority under the OGA to provide recommendations to the Division Director on findings of fact and conclusions of law. *See* Sec. 70-2-13 (requiring that "*an examiner appointed to hear any particular case*…shall cause a complete record of the proceeding to be made and transcribed and shall certify the same to the director of the division for consideration *together with a report of the examiner and his recommendations in connection therewith.*") (emphasis added).

33. Coterra respectfully submits that it is particularly important and necessary in the Subject Cases for the Hearing Examiner who presided over the original contested hearing to be the examiner who adjudicates the question whether the utilization of an allocation formula is necessary to protect correlative rights and prevent the unlawful taking of hydrocarbons. Because the current Hearing Examiner and Coterra and Pride agree that the hearing examiner originally appointed to the cases by the Division should be the examiner presiding over the continuation of the cases (*see, e.g.,* Tr. Cases 25123-25124 and 25204-25205(June 26, 2025) 80: 11-13, attached as Exhibit 2), Coterra respectfully submits that in order to have a fair, impartial, and informed evaluation of the need to utilize an allocation formula in the Subject Cases (Case Nos. 22853 and 23295), the Division should have the Hearing Examiner who originally presided over the contested hearing of the Subject Cases, and who therefore is familiar with the facts, proceedings, exhibits

and legal issues as presented in the context of the original contested hearing, be the examiner who presides over the review of this Unopposed Motion.

34. Counsel for Pride has been informed of this Motion and does not object or oppose it; counsel for Chevron U.S.A., Inc. has been informed and takes no position on the Motion; and counsel for ConocoPhillips Company, COG Operating LLC, Concho Oil & Gas, LLC, and Marathon Oil Permian LLC, have been informed of the Motion and does not object t to it.

III. Conclusion:

For the foregoing reasons, Coterra respectfully asks the Division to grant its Unopposed Motion pursuant to the following requests:

1. Coterra respectfully asks the Division to grant the applicants leave to submit revised pooling applications, along with proper notice to the owners of the allocation formula and any additional exhibits the OCD and applicants deem necessary that contain each applicant's proposed allocation formula and allow the applicants to submit a revised closing argument that addresses any remaining issues that may have arisen from the creation of the new Wolfbone Pool;

2. To preserve fairness and impartiality, and the appearance of fairness and impartiality, Coterra respectfully asks the Division, in this particular instance, to allow the hearing examiner who heard and adjudicated the original contested hearing of the Subject Cases be the examiner who presides over and adjudicates this Unopposed Motion and any subsequent hearings deemed necessary; and

3. Coterra respectfully asks the Division to provide the original hearing examiner the time and opportunity to review and adjudicate the legal questions described in the Unopposed Motion, specifically the legal necessity for utilizing an allocation formula for the proper production of the Wolfbone Pool in order to protect correlative rights and prevent the unconstitutional taking of hydrocarbons, and to provide his report and recommendations to the Division Director, pursuant to § 70-2-13, for a decision on these issues.

Coterra respectfully submits that granting these requests pursuant to its Unopposed Motion will ensure the implementation of the necessary due process procedures and provisions which would allow the Division and applicants to conclude the contested cases in a manner that protects

correlative rights and avoids the unlawful taking of hydrocarbons. Since no parties oppose the motion, Coterra has provided a proposed order attached hereto as Exbibit 3, pursuant to NMSA 1-007.1.B.

Respectfully Submitted,

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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 Oil Conservation Division and was served on counsel of record via electronic mail on July 29, 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 CONSIDERING:

Case Nos. 25312, 25347, 25348, 25376, 25247, 25248, 25250, 25252, 25253, 25254, 25123, 25124, 25204, 25202, 25228, 25301, 25302

EXHIBIT 2

HEARING

DATE: Thursday, June 26, 2025

TIME: 8:57 a.m.

BEFORE: Hearing Examiner Gregory Chakalian

LOCATION: EMNRD - Oil Conservation Division
1220 South Street, Francis Drive,
3rd Floor
Santa Fe, New Mexico 87505

REPORTED BY: PAUL BACA, CCR #112
VERITEXT LEGAL SOLUTIONS
500 4th Street, Suite 105
Albuquerque, New Mexico 87102

them. They are in the motion if you want to look at them.

Mr. Hearing Examiner, you were the presiding Hearing Examiner at that time, overseeing the management of that case. The Division allowed those supplemental exhibits to remain of record and be considered in the final evaluation.

HEARING OFFICER CHAKALIAN: So you filed an objection to those, right?

MR. SAVAGE: Based on a valid objection.

HEARING OFFICER CHAKALIAN: Was an order issued?

MR. SAVAGE: No, it was disallowed. It was disregarded and the notice of supplemental exhibits were allowed to maintain in the record.

HEARING OFFICER CHAKALIAN: It was disregarded.

MR. SAVAGE: Yes.

HEARING OFFICER CHAKALIAN: What was the case number?

MR. SAVAGE: 23448.

HEARING OFFICER CHAKALIAN: 23448.

MR. SAVAGE: The exhibits are actually attached to the motion. They start on Exhibit 2.

HEARING OFFICER CHAKALIAN: Okay. You

said that Holland & Hart filed what, when?

MR. SAVAGE: So on October 25, 2023 they filed a notice of supplemental Exhibit C-12. That was about a little over a month after --

HEARING OFFICER CHAKALIAN: Mr. Savage, that wasn't my case.

MR. SAVAGE: You assumed supervision of it.

HEARING OFFICER CHAKALIAN: No, sir, I didn't. We had the same Hearing Examiner who started that case continue that case. So anything that was filed went to that Hearing Examiner. It was not me who made any rulings. That is why nothing was done with your objections.

MR. SAVAGE: All those status conferences, all post motions, we had a number of motions during that time while you were presiding over that case. The original Hearing Examiner never made any appearance or made any comment or she was, as far as I understood, she was excluded at that point when you came on board.

HEARING OFFICER CHAKALIAN: No, that is not correct, Mr. Savage.

MR. SAVAGE: Well, nonetheless, it is just an example that this is a standard practice.

HEARING OFFICER CHAKALIAN: It may have been another Hearing Examiner's practice, but it is not my practice. There is a difference. I started here in August of '23. Any case that had been heard before August of '23, the original Hearing Officer worked with John Garcia on those cases.

So whether you think I had anything to do with that case or not, I did not have anything to do with that case. Maybe there was a status conference, I don't remember, but I did not make decisions about cases that I did not preside over. So, let me clear that up for you now.

So, I don't need any more input from either counsel at this point. As to the orders that were issued on May 7, they are not part of the record. The Division is quite aware of what it does day-to-day. The group that deals with those orders and issues those orders is the group that is dealing with your -- is dealing with your contested cases right now, that is number one.

Number two, the letter from the BLM. You, in your motion, cited to a rule of ethics of candor to the tribunal. I don't find that Mr. Suazo was not candid with me at all about the status. I believe that he thought that that lease would expire

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

APPLICATION OF COTERRA ENERGY CO. FOR THE CREATION OF A SPECIAL POOL, A WOLFBONE POOL, PURSUANT TO ORDER NO. R-23132, TO REOPEN CASE NOS. 22853 AND 23295 AND TO APPROVE A POOLING APPPLICATION FOR THE WOLFBONE POOL, LEA COUNTY, NEW MEXICO.

Case No. 24721

APPLICATION OF PRIDE ENERGY COMPANY FOR CREATION OF A SPECIAL WOLFBONE OIL POOL IN PARTS OF SECTION 12 AND 13, TOWNSHIP 19 SOUTH RANGE 34 EAST, NMPM, LEA COUNTY, NEW MEXICO

Case No. 24736

APPLICATION OF PRIDE ENERGY COMPANY FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.

Case No. 22853

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

Case No. 23295

Order No. R-23132
Order No. R-23752

[PROPOSED] ORDER ON UNOPPOSED MOTION REQUESTING LEAVE TO SUBMIT AN ALLOCATON FORMULA AND REQUESTING REVIEW OF THE LEGAL NECESSITY TO UTILIZE AN ALLOCATION FORMULA WHEN PRODUCING THE WOLFBONE POOL TO PROTECT CORRELATIVE RIGHTS AND PREVENT THE UNCONSTITUTIONAL TAKING OF HYDROCARBONS WHERE THERE IS BOTH OPEN COMMUNICATION AND NONUNIFORM OWNERSHIP ACROSS A DEPTH SEVERENCE WITHIN THE WOLFBONE POOL

This matter came before the Oil Conservation Division on the Unopposed Motion Requesting Leave to Submit an Allocation Formula and Requesting Review of the Legal Necessity to Utilize an Allocation Formula When Producing the Wolfbone Pool to Protect Correlative Rights and Prevent an Unconstitutional Taking of Hydrocarbons Where There is Both Nonuniform Ownership and Open Communication Across a Depth Severance within the Wolfbone Pool ("Unopposed Motion") submitted by Coterra Energy Operating Co. ("Coterra").

After having reviewed Coterra's Unopposed Motion and noting that the parties of record do not object to the motion requesting leave to submit an allocation formula and review of the

EXHIBIT 3

legal necessity to utilize an allocation formula for the production of the Wolfbone Pool underlying the Subject Lands, the Division, noting its disapproval that the parties missed a procedural deadline, nonetheless finds that there is good cause to grant the applicants leave to submit their allocation formulas since the need to consider the substantive legal issues related to the allocation formulas outweigh, in this instance, the enforcement of a procedural deadline that would otherwise exclude the allocation formulas from review.

Therefore, the Division grants the applicants leave to submit updated pooling applications for the purpose of including their proposed allocation formulas, along with updated closing arguments, and any exhibits the applicants find necessary, that can assist the Division with understanding better the role, function, and/or benefit of the allocation formula for the production of the Wolfbone Pool.

Furthermore, the Division finds that there is good cause to take the question presented by the Unopposed Motion under consideration because the Division finds it to be a novel question of first impression that will likely arise again in other cases that involve the same unique geology as the Subject Cases. Therefore, it benefits the Division to address the issue presented at this time.

The Division finds merit in the legal authority provided by Coterra and adheres to the policy promoted by the Tenth Circuit Court in *Taylor for Peck v. Heckler,* 738 F.2d 1112, 1115 (10th Cir. 1984) that the approval or denial of an administrative application should be made, to the extent possible, on the basis of whether the Division's findings and conclusions are supported by substantial evidence when reviewing the merits of the applications and by determining whether decisions are made in accordance with substantive law and regulation that uphold and promote the purpose of the New Mexico Oil and Gas Act -- considerations that should outweigh procedural oversights if such procedural matters have little or no relevance to advancing the purpose of the Oil and Gas Act.

For the reasons stated herein, the Division finds Coterra's Unopposed Motion is well taken and is hereby granted pursuant to the terms and conditions stated above.

IT IS THEREFORE ORDERED

Done at Santa Fe, New Mexico, on this ____ day of _____, 2025

ALBERT C.S. CHANG
DIVISION DIRECTOR
NEW MEXICO OIL CONSERVATION DIVISION