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 COMMISSION 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
Case No. 25371 *De Novo*

MOTION REQUESTING THE COMMISSION TO ACKNOWLEDGE THAT THE STATUTORY DEFINITION OF WASTE INCLUDES ECONOMIC WASTE; AND THAT AN ALLOCATION FORMULA IS LEGALLY NECESSARY TO PROTECT CORRELATIVE RIGHTS AND PREVENT AN UNLAWFUL TAKING WHEN THERE EXISTS NONUNIFORM OWNERSHIP CREATED BY A DEPTH SEVERANCE IN THE WOLFBONE POOL

Coterra Energy Operating Co. ("Coterra"), formerly known as Cimarex Energy Co. ("Cimarex"), by and through its undersigned attorneys, submits to the Oil Conservation Commission ("Commission" or "OCC") this Motion addressing two critical issues before the Commission:

(1) the statutory definition of "Waste" includes economic waste in the form of proposing an unnecessary number of wells resulting in unnecessary costs and expense; and

(2) an allocation formula is necessary to protect correlative rights and prevent unlawful taking in the current situation where nonuniform ownership exists due to a depth severance in the Wolfbone Pool.

Coterra respectfully submits this Motion and supporting facts and legal argument to provide an overview and analysis of these two dispositive legal matters in the present case. The Division's rulings in Order No. R-23089-A ("Final Order"), issued in Case Nos. 23448-23455, 23594-23601, and 23508-23523 ("Subject Cases"), excluded these two essential legal matters from consideration in its final decision. *See* Order No. R-23089-A, ¶ 33, attached hereto as Exhibit 1 (finding that the $256 million economic difference in costs and expenses between the development plans is not an important factor when granting operatorship); *see also* Cimarex Energy Co.'s Brief Providing the Basis for Evaluating a Single Reservoir Situated in the Third Sand of the Bone Spring Formation in an Area that Lacks a Baffle Separating it from the Underlying Wolfcamp Formation (Cimarex's Brief Re: Single Reservoir), pp. 18-19, filed July 26, 2023, relevant pages attached hereto as Exhibit 2 (filed of record prior to the original contested hearing and showing the basis for needing a formula that properly allocates to owners the percentage produced from the Third Bone Spring formation and the percentage produced from the Upper Wolfcamp formation when producing the single reservoir comprised of both formations); Order Denying Cimarex's Motion to Reopen Evidentiary Record, dated November 22, 2024, at ¶10 (denying consideration of an allocation formula).

In support of its Motion, Coterra states the following:

I. Relevant Background and Procedural History

1. These cases involve a long and procedurally complex history, originating on March 7, 2023, and April 13, 2023, when Cimarex and Read & Stevens, Inc., with operator Permian Resources Operating, LLC (collectively "Permian Resources"), filed competing pooling applications covering Sections 4, 5, 8, and 9, Township 20 South, Range 34 East, NMPM (the "Subject Lands"). Historically, operators in this region of Lea County have targeted the Third Bone Spring formation as the primary zone for hydrocarbon production. *See, e.g.*, Ex. C-3, Cimarex's Hearing Packet, Case No. 23448. Furthermore, the operators that completed wells in the Third Bone Spring typically did not pursue development of the Upper Wolfcamp formation because it was generally acknowledged that Third Bone Spring production drained hydrocarbons from the Wolfcamp formation. *See, e.g.,* Cimarex's Brief Re: Single Reservoir, pp 10-14, filed July 26, 2023, excerpt attached hereto as Ex. 2.

2. In the Subject Cases, the Division initially designated two separate pools and corresponding pool codes—one for the Bone Spring formation, which included the Third Bone Spring formation (Quail Ridge Bone Spring [Pool Code 50460]), and one for the Upper Wolfcamp formation (Tonto; Wolfcamp Pool [Pool Code 59500]). Permian Resources either failed to critically examine the actual geologic relationship between the Third Bone Spring and the Upper Wolfcamp formations or used the two classifications as a pretext to propose wells in both the Third Bone Spring and the Upper Wolfcamp in an effort to bolster its position before the Division. Regardless, by ignoring the interconnectivity and open communication between them, Permian Resources advanced a development plan premised on the erroneous assumption that the formations were geologically distinct and constituted two separate pools - each

representing a separate source of supply, as had been defined by the OCD. As a result, Permian Resources filed pooling applications proposing to drill eight (8) wells in the Upper Wolfcamp and an additional eight (8) wells in the Third Bone Spring, totaling sixteen (16) wells — eight (8) of which, Coterra contends, are unnecessary to drill in the Wolfbone because they produce the same single reservoir, without resulting in any appreciable increase in overall production, and therefore, are wasteful.

3. Coterra, by contrast, carefully evaluated the geologic relationship between the Third Bone Spring and Upper Wolfcamp formations in the area. Based on its technical analysis, Coterra determined that no natural barriers or baffling existed between the formations—meaning that the Third Bone Spring and Upper Wolfcamp do not constitute two separate sources of supply, but rather form a single, hydraulically connected reservoir. Accordingly, Coterra concluded that a single set of eight (8) strategically positioned wells would be sufficient to effectively and efficiently develop both formations. *See, e.g.,* Ex. B, ¶ 26, Ex. B-21, Cimarex's Hearing Packet I, Case No. 23448. Drilling an additional eight (8) wells—as proposed by Permian Resources—would therefore constitute substantial waste and impose significant, avoidable costs on interest owners.

4. As a result of its geologic analysis, Coterra proposed to locate its eight (8) wells across the four sections in its development plan in the lower portion of the Third Bone Spring formation to effectively produce hydrocarbons from both the Third Bone Spring and the Upper Wolfcamp formations. It accordingly filed pooling applications targeting the Third Bone Spring formation. However, when Permian Resources submitted applications to drill wells in both the Third Bone Spring and the Upper Wolfcamp formations —despite the formations comprising a single reservoir—Coterra was placed in a difficult position. To prevent Permian Resources from

proceeding with a duplicative and wasteful development plan, Coterra was compelled to file competing applications for the Upper Wolfcamp.

5. Consequently, in a good-faith effort to uphold its geologic analysis, prevent waste, protect corelative rights, and avoid the drilling of unnecessary wells, Coterra pursued the only viable course of action available at the time: filing competing applications for the Upper Wolfcamp. In doing so, Coterra proposed to dedicate the same eight (8) wells it had originally planned for the lower Third Bone Spring to a spacing unit for the Upper Wolfcamp—justified by the geological reality that the two formations constitute a single reservoir and common source of supply. These wells, strategically located in the lower Third Bone Spring, would effectively and efficiently produce both formations. *See, e.g.,* Cimarex's Brief re: Single Reservoir.

6. Following the filing of its unconventional applications to preserve its competitive position, Coterra submitted a Motion to Continue Hearing, requesting a pre-hearing conference to address the geologic reality that the Third Bone Spring and Upper Wolfcamp formations constituted a single reservoir. *See* Cimarex's Motion to Continue Hearing, ¶ 6, filed July 17, 2023 (requesting a pre-hearing conference to determine whether the Third Bone Spring and Upper Wolfcamp should be treated as a single reservoir to expedite proceedings). Permian Resources, in its own words, "vigorously" opposed Cimarex's Motion to Continue Hearing, arguing that "it is not the Division that must assess the circumstances of the geology and pools in this acreage," and that "[i]t is not the Division's job to attempt to alter the pools….". *See* Permian Resource's Response in Opposition, Introductory ¶, at ¶ 10, and Conclusion, filed July 18, 2023. On the basis of its assertions, Permian Resources advocated that the "hearing should go forward as planned." *Id.* Relying on Permian Resources' objections, the Division denied Coterra's request for a pre-hearing conference and proceeded with the contested hearing based

on the erroneous assumption that the Third Bone Spring and Upper Wolfcamp constituted separate pools and therefore separate sources of supply.

7. Further, at the time of the subject proceedings, the Division was undergoing a transitional period. The Division's presiding hearing examiner retired shortly after Coterra and Permian Resources filed their pooling applications. In his absence, the Division retained and appointed a hearing examiner to review preliminary pleadings of the cases, conduct the contested hearing, which took place over three days—August 9 through 11, 2023, and provide her recommendation and report to the Division pursuant to NMSA 1978 § 70-2-13.

8. Sometime around August - September 2023, a new Division Examiner was hired and began presiding over hearings and cases before the Division. The previously appointed examiner who had conducted the original contested hearing in these matters no longer appeared to be involved. Instead, the newly hired examiner—who had neither attended nor participated in the contested hearing held August 9-11, 2023—assumed oversight of post-hearing proceedings, including the adjudication of subsequent motions and participation in status conferences related to the subject cases. *See, e.g.,* Transcript ("Tr.") Case Nos. 23448-23455 *et al.* (Nov. 21, 2024) at 28 and 48, excerpt attached hereto as Exhibit 3 (new examiner acknowledging he was not originally involved with these cases).

9. Nine months after the conclusion of the contested hearing, the Division issued Order No. R-23089 ("First Order"), denying the pooling applications submitted by both Permian Resources and Coterra. The denial was based on the Division's determination that Coterra's geological analysis was correct—specifically, that the Third Bone Spring and Upper Wolfcamp formations did in fact constitute a single reservoir due to the absence of natural barriers, as Coterra had asserted from the outset of these proceedings. *See* Order No. R-23089, ¶ 7, attached

hereto as Ex. 4. Importantly, the OCD found that the "single reservoir or common source of supply was located *predominately* in the Third Bone Spring Sand." *Id*. at Findings of Fact at ¶ 6 (emphasis supplied). It remains unclear whether the Division considered or incorporated the report or any recommendations from the appointed examiner who presided over the original contested hearing in issuing the First Order or Order No. R-23089-A ("Final Order"). A copy of the First Order is attached hereto as Exhibit 4.

10. The First Order, as well as the Final Order (Order No. R-23089-A) currently under *de novo* review, state that both Coterra and Permian Resources testified at the hearing that the Third Bone Spring and Upper Wolfcamp lacked baffling. *See* Order No. R-23089, at 7-8; *see also* Order No. R-23089-A, at 13, attached hereto as Ex. 1. However, this characterization does not fully reflect the actual positions taken by the parties during the proceedings. Coterra consistently maintained from the outset of the proceedings that the two formations functioned as a single reservoir (even asking for a pre-hearing conference to determine this fact) and designed its development plan according to the actual geology.

11. Coterra substantiated this geological conclusion in its direct written testimony and supporting exhibits submitted during the contested hearing. *See* Ex. B, at 26-30, Ex. B-21, Cimarex's Hearing Packet I, Case No. 23448. By contrast, Permian Resources' development plan was premised on the assumption that the Third Bone Spring and Upper Wolfcamp constituted separate reservoirs in the Subject Lands. From the outset of the proceedings, Permian Resources opposed having the formations reclassified as a single reservoir and objected to any pre-hearing clarification by the Division. *See* Permian Resources' Response in Opposition, Introductory ¶, at 10, and Conclusion, filed July 18, 2023. As a result, Permian Resources did not characterize the formations as a single reservoir in its written testimony for the contested

hearing. Its admission that the formation lacked baffling occurred only after its witnesses were cross-examined under oath. *See* Tr. (Case Nos. 23448-23455 et al.) (Aug. 10, 2023) at 181: 2-4; *see id.* at 206: 11-1.

12. Coterra was the sole party in the contested hearing to recognize and forthrightly address the true geological characteristics at issue, underscoring that the distinctive geology and permeable interconnectivity of the formations are critical factors that must be accounted for in the production of a reservoir. However, the Division did not credit Coterra for having identified the nature of actual geology underlying the Subject Land to be developed[1] and denied its applications along with denying Permian Resources applications. Instead, the First Order allowed for the creation of a new special pool—the Wolfbone pool—to account for the lack of frac baffles between the Bone Spring and Wolfcamp formations in this area as had been accurately identified by Coterra. *See* Order No. R-23089 ¶ 21, attached hereto as Ex. 4.

13. On or about August 27, 2024, Coterra and Permian Resources submitted a joint application for the creation of the Wolfbone Pool in Case Nos. 24528 and 24541. Although both parties supported the formation of this pool, their proposed development plans differed substantially—most notably with respect to total development cost. Permian Resources' development plan is projected to cost approximately a quarter of a billion dollars more than Coterra's, including $95,022,896.00 of economic waste associated with Permian Resources' 8 unnecessary Wolfcamp Wells. *See* Order No. 23089-A at ¶¶ 31-32 and Permian Resources' Revised Hearing Packet submitted on July 14, 2023, at Exhibit C-10 at pp. 242-245 (AFEs for the Permian's 4 Wolfcamp wells in its Bane development plan) and at pp. 273-276(AFEs for the

[1] Geology is the primary factor to consider in the evaluation of competing plan. *See, e.g.,* Order Nos. R-21834, R-20223, and R-21416-A.

Permian's 4 Wolfcamp wells in its Joker development plan). The parties agreed on the joint Wolfbone Pool application solely because the Division had agreed to allow Coterra to include its proposed allocation formula in separate pooling applications to be filed after the pool's creation. *See* Tr. (Case Nos. 24528 & 24541) (Aug. 13, 2024), at 41: 6-11. [2] Relying on this assurance, Coterra did not include its allocation formula in the joint application for special pool creation. *See id.* at 41: 6-11; *also, see id.* at 40: 3-6 (Hearing Examiner stating the Division "expects the parties will be resubmitting competing pooling applications based on the special pool creation").

14. After creation of the Wolfbone Pool, Coterra requested leave to submit its allocation formula to account for the ownership of production in the Wolfbone Pool, since it had removed the allocation formula from the joint Wolfbone application in reliance upon the Hearing Examiner's stated willingness to allow its submission after the creation of the Wolfbone Pool. However, at the November 21, 2025, docket, the Division Examiner called Case Nos. 23448-23455 *et al.* to adjudicate whether Coterra's allocation formula should be considered for the production of the Wolfbone Pool. *See, e.g.,* Tr. (Case Nos. 23448-23455 *et al.*) (Nov. 21, 2024) at 28 and 48, attached hereto as Exhibit 3.

15. At the motion hearing, Coterra argued that if the interests are not properly allocated, the operator would be "producing illegally" from the severed formations within the Wolfbone Pool. *See,* Tr. (Case Nos. 23448-23455) *et al.* (Nov. 21, 2025) at 37: 5 through 40: 12, attached hereto as Exhibit 3. However, Coterra was denied the opportunity to apply its allocation formula

[2] Tr. (Case Nos. 24528 & 24541) (Aug. 13, 2024), at 40: 6-11:
Mr. Rankin: But I just want to make sure I understand the record's clear whether or not Cimarex is requesting incorporation of an allocation formula as part of the creation of the special pool.
The Hearing Examiner: Mr. Savage?
Mr. Savage: Cimarex would do the allocation formula separately in the compulsory pooling, and I think the – we can proceed at the OCD's discretion with the special pool.
The Hearing Examiner: Okay. So, Mr. Rankin, Mr. Savage has clarified that.

to the Wolfbone Pool. *See* Order Denying Coterra's Motion to Reopen Evidentiary Record, Intro. ¶ and ¶ 10, (Nov. 11, 2024) (denying Coterra's request "to introduce additional evidence in support of its competing compulsory pooling application regarding its allocation formula," and stating the Division "will approve or deny the competing Applications based on the evidence submitted at the hearing and in the administrative record."). This decision ignored the fact that Coterra had introduced into the administrative record several weeks prior to the original hearing arguments for the legal necessity to utilize an allocation formula. *See, e.g.,* Cimarex's Brief Re: Single Reservoir, pp. 18-19, filed July 26, 2023 (excerpt attached as Ex. 2).

16. Coterra's proposed allocation formula represents a fundamental distinction between its development plan and the plan that Permian Resources proposed. Coterra submitted its formula to prevent the unconstitutional taking of hydrocarbons and protect correlative rights by ensuring equitable distribution of hydrocarbons between formation owners within the Wolfbone Pool. In contrast, Permian Resources' plan includes no allocation formula and therefore results in the unauthorized taking of hydrocarbons, violating correlative rights. Permian Resources proposes to drill eight (8) wells in the Third Bone Spring and an additional eight (8) wells in the Upper Wolfcamp. However, because there is a depth severance between the two formations, ownership across the formations is non-uniform. Additionally, since the formations constitute a single reservoir, Permian Resources' Wolfcamp wells will produce hydrocarbons from both formations, furthering the need for an allocation formula. *See* Order No. R-23089, ¶ 10 (finding that "wells completed in the Bone Spring and Wolfcamp formation will share production from both the Bone Spring and Wolfcamp formations") (attached hereto as Ex. 4).

17. Coterra's geologic analysis estimates that approximately 72.8% of the reservoir lies within the Third Bone Spring, while only 27.2% lies within the Upper Wolfcamp. *See* Ex. B,

¶ 15, Cimarex's Hearing Packet I, Case No. 23448; *see also* Order No. R-23089-A, ¶ 14 (Ex. 1); Order No. R-23089 (Ex. 4), Findings of Fact at ¶ 6 (stating that the single source of supply lies predominately in the Third Bone Spring Sand, not in the Upper Wolfcamp). As such, a substantial majority of production from Permian Resources' Wolfcamp wells would be taken from the Third Bone Spring. Yet, Permian Resources plans to distribute 100% of the production from those wells to Wolfcamp owners, entirely excluding Third Bone Spring owners from their rightful share. Thus, under the Final Order, Permian Resources would extract hydrocarbons from the Third Bone Spring owners without any compensation—an outcome that directly violates their correlative rights. In comparison, Coterra's development plan includes a carefully designed allocation formula that equitably distributes production between owners in the Third Bone Spring and the Upper Wolfcamp formations. This approach protects correlative rights by ensuring that each owner receives their "just and equitable" share of production based on their interest in the Wolfbone reservoir. *See, e.g.,* NMSA 1978 § 70-2-33(H).

18. Coterra's single set of eight (8) wells will effectively develop the Wolfbone Pool, while avoiding additional millions in economic waste caused by Permian Resource's drilling unnecessary wells in the Wolfbone pool, plus avoiding the additional millions in economic waste caused by the Final Order requiring Permian Resources to drill all of its wells in the Upper Bone Spring formations. *See, e.g.,* Ex. B, ¶ 26, Ex. B-21, Cimarex's Hearing Packet I, Case No. 23448; *see also* Cimarex's Closing Statement with Findings of Fact and Conclusions of Law, at p. 15 (filed Sept. 21, 2023). Overall, the Final Order found at the time of the original hearing that Permian Resources' development plan would cost approximately $256 Million more than Coterra's development. *See* Order No. R-23089-A, ¶ 33, attached hereto as Ex. 1. Nonetheless, the OCD's Final Order not only failed to address the legal necessity of an allocation formula to

prevent the unlawful taking of hydrocarbons, but it also misapplied the findings and conclusion of law of the Commission in Order No. R-10731-B, P 23(j), and misconstrued the OCC's conclusion concerning the massive amount of economic waste resulting from Permian Resources' development plan. *See* Coterra's Motion to Stay Division Order No. R-23089-A, ¶¶ 26-27 filed May 6, 2025, in the present OCC case (showing how the Final Order misapplied the original meaning of the Commission's language in order to exclude economic waste from consideration).

19. Thus, the Final Order failed to provide any consideration to the two main issues and overriding factors central to the evaluation of the competing plans – economic waste and the proper allocation of production to protect correlative rights. Economic waste is a significant factor that Coterra's development plan avoids by eliminating the need for unnecessary and duplicative wells— which constitutes "waste" as defined under NMSA 1978 § 70-2-3. Permian Resources' plan continues to maintain that a duplicative set of eight (8) wells are needed to develop the single reservoir of the Wolfbone Pool at an exorbitant and unnecessary cost estimated at the time of the hearing to be $95 Million more than Coterra's plan for the Wolfbone Pool.

20. Instead of acknowledging that Coterra's development plan prevents economic waste, the Final Order offers only one justification for granting operatorship to Permian Resources, found in Paragraph 44: the conclusory and unsupported assertion that Permian Resources' "proposal will result in a higher recovery of hydrocarbons and will produce the Wolfcamp portion of the Wolfbone which will prevent waste and protect correlative rights of the interest owners who own interest in the Wolfcamp portion." Order No. 23089-A, ¶ 44. On this unsupported conclusion, the Division ordered Permian Resources to drill all of its forty-eight

(48) proposed wells within one year—including 8 wells in the Upper Wolfcamp, which Permian Resources admitted might not be necessary[3], and including all upper Bone Spring wells that Permian Resources had explicitly asked to be removed. *See* Tr. (Cases 23448-23455 *et al.)*(Aug. 10, 2023). 170: 5-172: 16; *see also* Permian Resources' Closing Argument, pp. 9-10 (Permian Resources stating it will dismiss its initial proposed Bone Spring wells except for its Third Bone Spring and Upper Wolfcamp wells); Order No. R-23089-A, ¶ 10 ("OCD will not be dismissing these wells and will be evaluating the Applications as they were presented at the hearing.") Thus, the Final Order is severely flawed, having excluded the two major factors that the Division should have considered (economic waste and protection of correlative rights) while also requiring Permian Resources to drill wells it admitted are not necessary. Consequently, the Final Order ignored the very basis for creating the single Wolfbone pool in the first instance, *i.e.*, the lack of a frac baffle between the Third Bone Spring and Upper Wolfcamp formations.

21. Consequently, on April 17, 2025, Coterra submitted its Application for Hearing *De Novo* to the Commission.

II. Legal Issues that Should be Considered and Addressed in Conjunction with the Hearing *De Novo* in Case No. 25371 to Ensure a Proper Adjudication.

A. When Economic Waste Clearly Becomes a Major Factor in the Evaluation of Competing Applications, It Cannot be Disregarded.

[3] The Batman development plan that Permian Resources presented to the Commission, in support of its Joker-Bane plan, during the hearing on the motion to stay clearly demonstrates that Permian Resources has no intention of drilling all four (4) Upper Wolfcamp wells it proposed for Co-Development of the Third Bone Spring and Upper Wolfcamp. Permian Resources drilled all four of its proposed Third Bone Spring Wells in the Batman plan, same as Coterra proposed for the Mighty Pheasant and Loosey Goosey development plans. But Permian Resources, which had proposed a duplicate set of 4 wells for the Upper Wolfcamp, only drilled one token Upper Wolfcamp well and did not drill all the remaining three Upper Wolfcamp wells it had proposed, letting the pooling orders expire, thus confirming that the Third Bone Spring is the primary target for development of the Wolfbone Pool, as Coterra has argued and demonstrated from the beginning of the Subject Cases before the Division.

22. The two development plans being considered at the hearing *de novo* in Case No. 25371 are based on the applicant's original applications that present each parties' plan for developing the Third Bone Spring and Upper Wolfcamp intervals in the Wolfbone Pool designated as a single reservoir and common source of supply. Permian Resources' plan proposes to drill eight (8) wells in the Third Bone Spring interval of the Wolfbone and a duplicative set of eight (8) wells in the Upper Wolfcamp XY interval of the Wolfbone, while Coterra's plan proposes to develop the Wolfbone Pool by drilling one set of eight (8) wells in the basal Third Bone Spring interval. Furthermore, Permian Resource proposes to develop the remaining Bone Spring formation above the Wolfbone Pool with an additional thirty-two (32) wells, while Coterra proposes that only twenty-two (22) additional wells are necessary to develop the remaining Bone Spring formation. Thus, the overall variance in costs between the plans for developing the Wolfbone and the remaining Bone Spring formation is $256 million, a difference that the Division disregarded by stating that such differences in overall cost is irrelevant to the granting of operatorship. *See* Order No. R-23089-A, ¶ 33, attached hereto as Ex. 1.

23. However, under the statutory definition of waste in the Oil and Gas Act, Chapter 70, Article 2 NMSA 1978 (the "OGA) and under the precedent of prior Division and Commission cases and New Mexico case law, if two operators propose to develop a pool within a spacing unit, and one of the operators can develop the unit with fewer wells that will produce a very similar EUR, then the other operator is (1) drilling unnecessary wells, and (2) committing economic waste under the statutory definition of waste. Thus, disregarding economic waste and the drilling of unnecessary wells violates both the principles and goals of the OGA.

24. Under the OGA, "waste" is broadly defined to include its "ordinary meaning." *See* NMSA 1978 § 70-2-3 ("As used in this act, the term 'waste,' *in addition to its ordinary meaning*, shall include" other technical forms of waste, such as underground waste) (emphasis added). Accordingly, "[s]tatutory language should be interpreted literally." *See Anadarko Petroleum Corp. v. Baca,* 117 N.M. 167, 169, 870 P.2d 129, 131 (NM 1994) (citation omitted) (emphasis added). "When statutory language is clear and unambiguous, [this Court] *must give effect to that language and refrain from further statutory interpretation." Id.* (emphasis added). The plain language of § 70-2-3 expressly incorporates the ordinary meaning of waste. *See, e.g., Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 314-15, 373 P.3d 809, 812 (N.M. 1962) (referencing the phrase "in addition to its ordinary meaning" as part of the statutory definition of waste under Section 65-3-3, NMSA 1953 Comp., the precursor to § 72-2-3, NMSA 1978). Thus, when defining waste under OGA, one must consider first the "ordinary meaning" of waste, which includes "economic waste."[4]

25. The inclusion of economic waste into the statutory definition of "waste" has been confirmed by precedential rulings of the New Mexico Supreme Court. For example, *in Santa Fe Exploration Co. v. OCC*, 1992-NMSC-044, ¶ 16, 114 N.M. 103, 113, 835 P.2d 819, 829, the

[4] 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 Act 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.

Court held that the Division Director has a duty to prevent waste under §§ 70-2-2 and 70-2-3 and this obligation includes the duty to eliminate unnecessary drilling costs and expenses. Similarly, in *Rutter & Willbanks Corp. v. Oil Conservation Comm'n,* 1975-NMSC-006, ¶¶ 24-25, 87 N.M. 286, 532 P.2d 582, 585, the Court confirmed the Commission's established policy that the prevention of waste under the OGA includes the prevention of economic waste. This precedent, that "waste" under the OGA includes "economic waste," has been in place with the Division and Commission since at least 1972. *See, e.g.,* Order No. R-4353, ¶ 7 (and *de novo* Order R-2353-A) (the Commission finding that pooling the unit will "avoid the drilling of unnecessary well," "protect correlative rights," and affording the owners of each interest in the unit "the opportunity to recover or receive *without unnecessary expense* his just and share of the gas in said pool.") (emphasis added). Despite this precedent, the Division failed to consider economic waste in its Final Order.

26. Under the precedent of New Mexico case law and Division and Commission decisions, the proper standard for evaluating the difference in total costs between competing development plans is whether a plan creates economic waste—a standard inherent in the "ordinary meaning" of waste under § 70-2-3. Thus, disregarding excessive economic waste not only undermines the statutory duty to prevent waste but also harms the correlative rights of other owners. In *Earthworks' Oil & Gas Accountability Project v. N.M. Oil Conservation Comm'n,* 2016-NMCA-055, ¶ 26, 374 P.3d 710, 720, the New Mexico Court of Appeals recognized that the Commission "asserts that economic considerations exist at the very core of its statutory obligations." In *Earthworks*, the Commission revised a rule governing water pits to prevent economic waste—an action the court affirmed as consistent with its obligations under the OGA. Additionally, the *Earthworks* court further emphasized that "the division shall give due

consideration to the economic factors involved," and must "consider the economic loss caused by the drilling of unnecessary wells." *Id.* at ¶ 27. In support of that conclusion, the *Earthworks* court held that "[f]indings as to correlative rights and economic waste are sufficient to satisfy our requirement that administrative agencies state their reasoning for issuing an order." *Id. at* ¶ 32, citing *Rutter, supra,* at ¶ 18.

27. The definition of "correlative rights" under the OGA is expressly qualified and circumscribed by key terms such as "just," "equitable", "practicable" and "practicably." Under § 70-2-33(H), correlative rights refer to "the opportunity afforded" to an owner—but only "so far as it is *practicable* to do so"—to produce, *without waste,* the owner's *just and equitable share* of the oil or gas in the pool. That share is defined as "an amount so far as can be *practicably* determined and so far as can be *practicably* obtained *without waste*, substantially in the proportion that the quantity of recoverable oil or gas under the property bears to the total recoverable oil or gas in the pool, and for such purpose, to use the owner's just and equitable share of the reservoir energy." *See* § 70-2-33(H) (emphasis added).

28. Applying the statutory definition of "waste," with its inclusion of "economic waste," in conjunction with the concept of correlative rights under § 70-2-33(H), interest owners are entitled not to their unqualified share of production, but to their "just" and "equitable" share—obtained without economic waste and only to the extent it is "practicable." Thus, the fact that Permian Resources imposed on the owners the excessive costs of drilling additional wells on the speculative claim that there might be a possibility of recovering a negligible amount of additional hydrocarbons should not have been disregarded by the Division. *See, e.g.* Order No. R-23089-A, ¶ 22 (confirming that Cimarex's Reservoir Engineer testified that Permian Resources' development plan would raise operator expense due to drilling

additional wells but produce negligible additional reserves); *see also* Permian Resources' Batman Exhibit, attached hereto as Ex. 5. Permian Resources' Batman plan does not justify drilling a duplicative set of Wolfcamp wells, as explained in Footnote 3 herein. Permian Resources' final development of the Batman unit demonstrates their actual target is the basal Third Bone Spring, which replicates Coterra's development plan, not the plan Permian Resources' originally proposed before the Division. Therefore, the underlying basis of Division Order No. R-23089-A, ¶ 44, the speculation that Permian Resources might recover additional but negligible amount of hydrocarbons, without any consideration of costs and economic waste for such speculation, has resulted in a flawed pooling order which should not stand as a precedent for the development of the Subject Lands herein or other lands in the state of New Mexico.

29. If the Final Order is allowed to stand, it will establish a policy that promotes the drilling of unnecessary wells without concern for excessive additional costs or economic waste because the Final Order at ¶ 33 concludes that the difference in costs between development plans, no matter how large, is not a significant factor to be considered for granting operatorship. Thus, this Final Order negates the OGA's prohibition against drilling unnecessary wells and creating waste, and instead, provides incentive for operators to propose drilling as many wells as they can to gain tactical advantage in a contested pooling hearing with no obligation to follow through with the actual drilling of the unnecessarily proposed wells and penalizes those operators who, in good faith, design and present, without pretext or false proposals, a forthright development plan that optimizes production while preventing economic waste and avoiding the drilling of unnecessary wells. *See* Motion to Stay Order No. 23089-A, pp. 11-20, for a full discussion of the negative policy implications and consequences promoted by Order No. 23089-A. Coterra respectfully submits that its prevention of massive amounts of economic waste by

avoiding the drilling of unnecessary wells in comparison with Permian Resources plan should be dispositive regarding who should receive operatorship given the requirement under the OGA to prevent waste.

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

30. If there were no depth severance in the Wolfbone Pool then there would be no issues concerning non-uniform ownership and the legal necessity to utilize an allocation formula to produce the Wolfbone Pool to protect correlative rights and prevent an unconstitutional taking. However, in the Subject Cases, the Wolfbone Pool contains a depth severance between the base of the Third Bone Spring and top of the Upper Wolfcamp Formations. This differentiation of ownership in an area of open communication between intervals above and below the severance located in the Wolfbone Pool raises certain legal issues in which a depth severance occurs that Coterra submits requires a review of the optimal method to address the depth severance for the proper allocation of production from the Wolfbone Pool in a manner that upholds the requirements and the fundamental purpose of OGA.

31. When a depth severance creates nonuniform ownership across the Wolfbone Pool, the Commission should require that operators maintain a proper accounting of the production from wells drilled into the Wolfbone Pool to protect correlative rights because any well drilled in the Wolfbone Pool will produce hydrocarbons from both the Upper and the Lower Intervals of the Pool, above and below the severance. The only way under the OGA to protect correlative rights and to prevent an unconstitutional taking is by employing an allocation formula that distributes a just and equitable share of production from each Interval to the interest owners.

32. The typical intent of a depth severance is to divide ownership between two

identifiable formations separated by natural barriers and baffling that prevent the open communication and sharing of hydrocarbons. When both intent and fact combine, a depth severance occurs that does result in two separate pools and the designation of two separate reservoirs. This more common scenario is what the Division assumed the geology to be when it assigned separate pool codes to the Third Bone Spring and the Upper Wolfcamp formations underlying the Subject Lands. If there are two separate reservoirs and therefore two separate pools, the OCD and OCC would be able to account for the nonuniform ownership and protect correlative rights by allowing the operator to drill two sets of wells, one below the depth severance (in the Lower Interval) and the other one above the severance (in the Upper Interval), with separate allocations of production. This is exactly what Permian Resources proposed in its applications -- the drilling of two sets of wells, one set for each Interval, based on the premise that two separate pools existed and under the assumption that two sets of wells are needed to produce two separate reservoirs and two separate common sources of supply, *viz*., the Third Bone Spring and the Upper Wolfcamp. This premise and assumption turned out to be misguided after the Division recognized what Coterra has argued from the beginning of these cases was true: the Third Bone Spring and Upper Wolfcamp constitute a single reservoir and common source supply.;

33. The method of drilling two sets of wells, one below and one above a depth severance, is based on the condition that the wells drilled in the Lower Interval will produce only from the Lower Interval and will not mix production with hydrocarbons from the Upper Interval, the only condition that would allow an operator to distribute 100% of production from the wells in the Lower Interval to all the owners in that Interval. Similarly, 100% of production from a well drilled into the Upper Interval, such as the Third Bone Spring, would be distributed to the

owners in that Interval, under the condition that the well in the Upper Interval is producing only the Upper Interval. This is the geological basis underlying the Division's long-standing policy of placing wells above and below a severance which allows each owner to receive its proper percentage of production. However, this method of drilling and producing both above and below the depth severance without an allocation formula is permitted only if the geology sequesters and maintains the production from the individual zones, preventing communication, due to presence of a natural barrier or baffling, carbonate or otherwise, between the Upper and Lower Intervals.

34. Here in the Wolfbone Pool underlying the Subject Lands, no natural barrier exists, which was the very reason for creating the Wolfbone Pool. When Coterra's geologist determined that there is no natural barrier at the depth severance between the Third Bone Spring and Upper Wolfcamp formations, Coterra asserted that wells in the Upper Interval (Third Bone Spring) would either drain or produce from both the Upper and Lower Intervals (depending on whether one viewed the extraction as drainage or production under the OGA), and that wells in the Lower Interval (Upper Wolfcamp) would also drain or produce from both Intervals. Coterra offered the Division two legal theories for developing the single reservoir under Coterra's development plan, one theory (referred to as Option I) is based on the legal understanding of drainage under the OGA and the other theory (referred to as Option II) is based on the legal definition of production that would require the use of an allocation formula. *See* Cimarex's Brief re: Single Reservoir, pp. 10-19 (Ex. 2). The Division rejected the interpretation based on "drainage" and preferred the finding that wells drilled in one formation would "produce" from the other formation. *See* Order No. 23089, ¶ 10. Thus, since each well drilled anywhere in the Wolfbone Pool underlying the Subject Lands would produce from both Third Bone Spring and Upper Wolfcamp formations, an allocation formula is necessary as a matter of law to properly allocate the production of each well

to the rightful owners in order to protect correlative rights. The OGA cannot be used to authorize an unlawful taking, in direct violation of correlative rights, without compensation, nor can the Division use its police powers to authorize and facilitate an unlawful taking. *See Manning v. New Mexico Energy, Minerals and Natural Resources Dep't,* 2006-NMSC-027, ¶ 46, 140 N.M. 528, 144 P.3d 87, 97.

35. This is why drilling and producing a well or wells above or below an ownership depth severance in a single reservoir with open communication cannot be done without the use of an allocation formula. In the motion hearing heard on June 24, 2024, Permian Resources claimed that not being able to bifurcate the Wolfbone into two spacing units and distributing all mixed Bone Spring and Wolfcamp production taken by its Upper Wolfcamp wells only to the Upper Wolfcamp owners at the exclusion of the Third Bone Spring Owners would conflict with the "long-held approach for force pooling spacing units with ownership depth severances and would upend years of precedence." *See* Tr. (Case 25371)(June 24, 2025), at 27: 5-9. However, Permian Resources fails to recognize that the Division has only used this practice and precedent when a depth severance corresponds with a natural geological barrier that sequesters the two zones and common sources of supply. Indeed, this is the only circumstance where this usage would be lawful and valid. On the other hand, in an atypical situation where there is open communication across the severance, the operator must propose a single allocation formula across the severance that accounts for the existence of a common reservoir, a precedent established in such cases as Case Nos. 13132, 20869, 13359, 14299, and 20169. *See* Paragraphs 41-43, below, for a description of these cases and the allocation formulae utilized based on the legal necessary to account for and compensate nonuniform ownership.

36. Therefore, Coterra respectfully requests that the Commission, during its

evaluation of the competing applications and the legal status of Order No. 23089-A, consider and address the issue of a single allocation formula as necessary to provide for the proper allocation of production from the Wolfbone Pool to protect correlative rights and prevent an unlawful taking of production.

C. When Non-uniform 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 Must Be Utilized to Prevent Violating the Takings Clause Pursuant to the Fifth and Fourteenth Amendments of the Constitution.

37. It is respectfully submitted that neither the Division nor the Commission have the statutory authority to approve Permian Resources' development plan that fails to include an allocation formula to distribute a just and equitable share of production to all the owners in the Wolfbone Pool, both above and below the severance. The State of New Mexico cannot authorize an unconstitutional taking of hydrocarbons without compensation in violation of the Fifth Amendment, applicable to the State through the due process clause of the Fourteenth Amendment, of the United States Constitution. Therefore, neither the Division nor the Commission have the statutory authority to authorize a development that would violate the Fifth and Fourteenth Amendments.

38. In the seminal case of *Manning, supra, at* 2006-NMSC-027, ¶¶ 4, 10-12, 144 P.3d at 88, 89-90, the Manning family brought a regulatory takings claim against the New Mexico Mining and Minerals Division of the Energy, Minerals, and Natural Resources Department and the New Mexico Environment Department (the "State Agencies") alleging that these State Agencies engaged in a regulatory taking of its property without just compensation under the Fifth Amendment of the United States Constitution, as applicable against the State of New Mexico through the due process clause of the Fourteenth Amendment.

39. The New Mexico Supreme Court held that the Court of Appeals erred in barring the Mannings' regulatory takings claim under the doctrine of sovereign immunity. *Id*. at ¶ 1, 144 P.3d at 88. The Court also held that the Takings Clause is self-executing, rejecting the State Agencies' claim that the Takings Clause created no claim for compensation without further congressional action. *Id.* at ¶ 47, 144 P.3d at 98.

40. Importantly, the Supreme Court noted that:

> A regulatory taking can be just as devastating to property rights as a taking by 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.

Id. at ¶ 22, 144 P.3d at 92.

41. Finally, the Court also held that the "Takings Clause creates an individual right to the remedy of just compensation." *Id.* at ¶ 46, 144 P.3d at 97. "More specifically, as incorporated through the Fourteenth Amendment, the Takings Clause mandates that states have made, at the time of the taking, 'reasonable, certain and adequate provision for obtaining compensation.'" *Id.* (*citing Williamson County Reg'l Planning Comm'n,* 473 U.S. at 194, 105 S.Ct. 3108) (emphasis added). The only means the Division and Commission have to avoid exposing the State of New Mexico to a takings claim that would vest in the adversely affected working interest owners at the time of the drilling and production of the Wolfbone Pool (that is, at the time of the taking) is to mandate that reasonable, certain and adequate provisions have been made for the owners to obtain compensation by mandating that the operator who produces the Wolfbone Pool utilize a proper allocation formula that provides owners with their just and equitable share of production, thereby protecting their correlative rights. If the Division and Commission do not require the use of an allocation formula, the owners in the Wolfbone Pool will be deprived of compensation from the production of their mineral interests, pursuant to *Manning*. *See id.* at ¶¶ 18 and 46.

Thus, the Division and Commission do not have authority to exercise their state police powers to approve Permian Resources' development plan when it results in a taking without compensation because the statutory scheme establishing the Division and Commission was designed to protect the correlative rights of owners. *See* NMSA 1978 § 70-2-11(A) and (B).

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

42. The state legislature enacted the OGA and charged the Commission and Division with upholding and advancing its purpose to protect correlative rights of ownership and prevent waste. *See, e.g., Continental Oil Co., supra, at* ¶¶ 10-11, 70 N.M. 310, 373 P.3d 809, 812, citing to the then existing statutes, Sections 65-3-3(e) N.M.S.A. 1953 (definition of waste) and 65-3-5 (Commission's powers and duties to prevent waste and protect correlative rights), now codified at Sections 70-2-3 N.M.S.A. 1978 (waste) and 70-2-11 (Commission powers and duties to prevent waste and protect correlative rights). Review of Commission policy and New Mexico case law demonstrates that the OGA cannot be used to violate correlative rights by allowing the production of hydrocarbons that precludes an owner's entitlement to their just and equitable share of production that would result in an unconstitutional regulatory taking.

43. The principle is illustrated by the Division and Commission's long-standing history of adopting and utilizing allocation formulas when necessary to account for nonuniform ownership across depth severances to protect correlative rights. As an example, Coterra presented OCD Order No. R-12094,[5] ¶¶ 7-8 that allocated production from the subject well to owners among three Morrow zones such that Zone A [11,366-11,761 feet], produces 76.4% of

[5] *See* Order OCD Order No. R-12094 at ¶¶ 7-8. A copy of Order No. R-12094 is attached hereto as Exhibit 6.

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).

44. Because a depth severance that results in creating nonuniform ownership in a common source of supply is rare, not many examples of a single allocation formula across a depth severance exist. But when such a severance does occur, an operator will propose and the Division and/or Commission will approve an allocation formula as necessary to protect correlative rights and prevent an unlawful taking, of which Order No. R-12094, above, is just one example.

45. Another highly illustrative example is Order No. R-21165, issued February 26, 2020, in Case No. 20869. Here, the operator identified two depth severances within the Wolfcamp formation and proposed a single allocation formula based on the vertical extent of each nonuniform interval whereby the operator would allocate 14% of production to owners in the Wolfcamp interval from 12,460 and 12,530 feet; 50% of the production to owners between 12,530 and 12,780 feet; and 36% of production to owners between 12,780 and 12,960 feet. The well in Case No. 20869 was drilled as a horizontal well across a 480-acre spacing unit, not a vertical well. This Case directly refutes Permian Resources' claim that an allocation formula as used for a vertical well in Order No. R-12094 does not apply to horizontal wells. As operators moved from drilling vertical wells to horizontal wells, operators continued to use and propose allocation formulae to protect correlative rights. The Division, under the direction of Adrienne Sandoval, approved the allocation formula in Case No. 20869. *See* Order No. R-21165, ¶ 5 and its Exhibit A, attached hereto as Exhibit 7.

46. Other examples of applicant-operators proposing allocation formulae for the

allocation of costs and/or production based on nonuniform percentages of ownership at different depths include:

- Order No. R-12283, issued February 15, 2005, in Case No. 13359, in which costs are allocated based on nonuniform ownership in different depth intervals;
- Order No. R-13137, issued June 17, 2009, in Case No. 14299, in which costs are allocated based on nonuniform ownership in different depth intervals; and
- Case No. 20169, heard May 16, 2019, in which a Pugh clause caused a depth severance 100' below the top of the Wolfcamp formation, creating nonuniform ownership involving five (5) acres between that 100' interval and the remaining Wolfcamp formation below the interval.

47. In Case No. 20169, the applicant amended its application to propose the following allocation formula: "Only as to 5 Acre Interest Marathon proposes to allocate 20% of production from the unit attributable to the 5 Acre Interest to the Top Interest Owner and the remaining 80% of production from the unit attributable to the 5 Acre Interest to the Bottom Interest Owner." *See* Amended Application in Hearing Packet, filed on May 15, 2019, in Case No. 20169, a copy of which is attached hereto as Exhibit 8. Thus, as shown by Case No. 20169, even the rights of small interests of nonuniform ownership, such as 5 net acres, must be accounted for and protected and cannot be taken without proper allocation of production and compensation.[6]

48. Furthermore, the Division's policy for utilizing an allocation formula when it is necessary to protect correlative rights is fully supported by established case law. In *Rutter, supra*, the New Mexico Supreme Court upheld the Commission's use of an allocation formula in OCC Case No. 4763 – that did not utilize surface acreage -- because the Commission found that "there

[6] In Case No. 20169, the Applicant finally reached a voluntary agreement with the owner in the Top Interval and provided proper compensation for the 5-acre interest through a private agreement. As a result, the Applicant withdrew the allocation formula at the owner's request. *See* Landman's Affidavit, ¶¶ 10-13, Hearing Packet, Case No. 20169; *see also* Tr. (Case 20169, dated May 16, 2019) 3:11-21; 4: 19-25 (counsel for applicant confirming that a private allocation agreement had been reached which compensates the owner for the difference in ownership; therefore, the private allocation agreement can replace the allocation formula).

was some indication" that a certain tract in a spacing unit "had no recoverable gas underlying [the owners'] property." *Id.,* at 1975-NMSC-006, ¶25, 532 P.2d at 587. Thus, an allocation formula – not based on surface acreage – was required to distribute interest to the owners in the nonproducing tract in order for the owners to receive their just and equitable share of production from the unit, thereby protecting their correlative rights, which is the primary purpose of the OGA.

49. 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. *Rutter,* at ¶¶ 12, 18, 24 and 27, 532 P. 2d at 585, 586, 587, 588 (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*," which is the legal standard for the Commission and courts approving an allocation formula. *See Id.,* at ¶ 27, 588 P.2d at 588 (emphasis added).

50. 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 the violation of correlative rights in *Santa Fe Exploration Co., supra*. In *Santa Fe Exploration*, the Division joined three adjacent 160-acre tracts, where ownership was nonuniform 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. *Id.* at ¶¶ 5-6, 114 N.M. at 106-07, 835 P.3d at 822-23. Because each tract differed in its geological productivity and because there was open communication between each tract in the unit, each well, in addition to producing hydrocarbons from its own tract at a different rate from the other tracts, would also produce and take hydrocarbons from the owners in the other two tracts. An allocation based on surface acreage would have meant that each of the three tracts would be allocated 1/3 of the production, which would not have accounted for the ownership of the unit's total production. Therefore, 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, 114 N.M. at 106, 835 P.3d at 822.

51. The principle on which the Commission and the New Mexico Supreme Court in *Santa Fe Exploration* based the need to have an allocation formula to protect correlative rights and therefore prevent an unlawful taking is the same principle on which Coterra has 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 depths, directly analogous to *Santa Fe Exploration*. This basic principle remains true and must be maintained in both vertical and horizontal (depth)

severances.

52. At the June 24, 2025, motion hearing, Permian Resources' counsel argued that the Third Bone Spring Interval (Upper Interval) and the Upper Wolfcamp Interval (Lower Interval) should be segregated as separate spacing units as a necessity to maintain a divided allocation. *See* Tr. (Case 25371)(June 24, 2025), at 27: 5-9. However, just the opposite is true. The depth (horizontal) severance in the Wolfbone is not fundamentally different from a vertical subdivision, as described in *Santa Fe Exploration.* As an illustration, imagine turning the depth severance in this case 90 degrees to simulate a vertical severance. Then, the Upper Interval would be one tract (Tract 1) and the Lower Interval would be the adjacent tract (Tract 2), oriented to represent adjacent surface tracts. The Commission, absent a voluntary pooling agreement, would not hesitate to force pool the two tracts into a single unit and allocate production fairly between Tracts 1 and 2 in accordance with the pooling statute. *See* §70-2-17.C. By the same token, where the Upper Interval and the Lower Interval are contained within a common source of supply but separated by a depth severance, absent a voluntary pooling agreement, the Commission should not, indeed, must not, hesitate to force pool the zone as a unit and allocate production fairly between the two depths, which under *Rutters* and *Santa Fe Exploration* can be easily accomplished in keeping with the purpose of the OGA, including its pooling statute.

53. The fact that the pooling statute speaks of allocation by surface acreage can be addressed in a sensible, lawful, and constitutional manner by imagining that the depths of the Upper and Lower Intervals are turned 90 degrees so that they are analogous to surface Tracts 1 and 2. Then, the allocation formula can be properly applied based on the portion of production that each Interval contributes to the unit as though the Commission were pooling the proportional

interest based on surface tracts, Tract 1 (corresponding to the Upper Interval) and Tract 2 (corresponding to the Lower Interval). For the reasons stated herein, the legal "necessity" is to pool the Third Bone Spring (Upper Interval) and Upper Wolfcamp (Lower Interval) and allocate the interest to protect correlative rights and prevent an unlawful taking.

54. Thus, one can easily see an illustration of the principle that the Division and Commission are 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 the Upper and Lower Intervals), a principle recognized and upheld by the New Mexico Supreme Court in both *Santa Fe Exploration* and *Rutters.* Fundamentally, a property subdivision, whether vertical or horizontal, should not subvert the major goals of oil and gas conservation acts, the prevention of waste and the protection of correlative rights.

55. In Order No. R-23089, ¶ 6, the Division found that the single reservoir and common source of supply encompassed by the Wolfbone Pool is "located predominantly in the Third Bone Spring Sand." This finding is consistent with Coterra's geological analysis which determined that the Third Bone Spring Interval contributes approximately 72.8% of Wolfbone production and the Upper Wolfcamp Interval contributes about 27.2% of the production. *See* Ex. B, ¶ 15, Cimarex's Hearing Packet I, Case No. 23448. This distribution of hydrocarbons in the Wolfbone is further confirmed by Permian Resources' Batman plan, which targeted the Third Bone Spring formation with all four (4) of its proposed wells, but drilled only one (1) token well in the Upper Wolfcamp, which, itself, was placed in very close proximity to the basal Third Bone Spring. *See* Exhibit 5, attached hereto. Thus, even Permian Resources' Batman plan --

which excluded as unnecessary most of the Upper Wolfcamp wells it had originally proposed to the Division as necessary to drill – confirms that the Third Bone Spring is the predominate and primary location of the productive reservoir in the subject area. Accordingly, the common production from wells drilled in the Wolfbone Pool should be allocated based on these approximate percentages in order to conform to the Division's finding, and Coterra is the only party that has proposed a "reasonable" and "logical" allocation formula for protecting correlative rights and the preventing an unlawful taking that meets the standard of the *Rutter* Court. *See Rutter,* 1975-NMSC-006, ¶ 27, 588 P.2d at 588 (the New Mexico Supreme Court determining that allocation formula used by the Commission does not have to be perfectly accurate or completely provable but only needs to be "reasonable" and "logical"). Accordingly, the allocation formula proposed by Coterra, that corresponds with the Division's finding that the reservoir is located predominantly in the Third Bone Spring, is "logical" and "reasonable."

E. The Division Needs the Commission to Address Economic Waste and Depth Severances to Protect Correlative Rights, Prevent the Unlawful Taking of Hydrocarbons, and Prohibit the Drilling of Unnecessary Wells.

56. Currently, the issue of whether "waste" under the OGA includes "economic waste" remains in flux at the Division, resulting in rulings, as in the Final Order (Order No. R-23089-A), which are arbitrary and capricious and inconsistent with previous OCD and OCC cases and New Mexico case law. The OCD in previous cases, such as Case No. 4763, has issued rulings consistent with rulings by the New Mexico Supreme Court stating that the Division and Commission have a duty to prevent waste, which includes economic waste *see Rutter*, 1975-NMSC-006, ¶ 24, 588 P.2d at 588; *see also Santa Fe Exploration*, 1992-NMSC-044, P ¶ 16, 114 N.M. at 109-110, 835 P.2d at 825-26. In the Final Order, the Division has contravened this stated obligation by disregarding and ignoring economic waste as a factor to be considered. This

arbitrary inconsistency undermines any sense of a firm and principled foundation for advising operators and presenting development plans that must meet the requirements of the OGA; instead, such unpredictability by the Division creates an opportunity for operators to impose exorbitantly unnecessary costs on the owners by proposing the drilling of unnecessary wells under the pretext and sole consideration that the additional wells will prevent underground waste. Therefore, Coterra respectfully requests that the Commission address the issue of whether the Division must include the consideration of economic waste under the statutory definition of waste, pursuant to New Mexico case law and uphold a principled consistency regarding the Division's obligation to prevent economic waste.

57. For example, when counsel for an operator filed an application on June 8, 2025, in Case No. 25432, counsel encountered the same type of depth severance as it had previously encountered when it filed an application for an operator in 2019 in Case No. 20169, a severance that created nonuniform ownership in the interval from the top of the Wolfcamp formation to 100' below the top of the Wolfcamp. Curiously, in Case No. 25432, the counsel did not propose or include an allocation formula to protect the owners' correlative rights in the severed top interval as it had done in Case No. 20169, and the Division took the case under advisement without questioning counsel about the legal necessity to utilize an allocation formula to protect correlative rights and prevent an unlawful taking of hydrocarbons as proposed in Case No. 20169. Thus, Coterra respectfully asks the Commission to resolve these kinds of inconsistencies so that correlative rights will be protected and not arbitrarily neglected.

58. Similarly, in competing applications in Case Nos. 24941-24942, 24145-24148, 24994-24995, and 25115-25117, Permian Resources presented a development plan in which it proposed to drill the lower interval of the Third Bone Spring, due to a depth severance creating

nonuniform ownership in the reservoir and acknowledged that its well below the severance would also produce the upper two thirds of the Third Bone Spring above the severance. *See* Tr. (Case Nos. 24941 *et al.*) (Jan. 28, 2025) at 62: 10-25; 63: 18-25; and 64:10-11. Yet, in these cases, Permian Resources did not provide an allocation formula to protect the correlative rights of owners above the severance. Instead, Permian Resources claimed it had a right to produce and take the owners' hydrocarbons under the supposed justification that owners in the upper interval of the Third Bone Spring could drill their own well in the upper interval. *See* Tr. (Case Nos. 24941 et al.)(Feb. 27, 2025) at 120:9 to 121: 11. This justification is without merit for a number of reasons. First, no rational owner or operator would spend the resources to drill a well in an interval that is already being produced. Second, the operator and the Division are obligated to protect correlative rights under the OGA when seeking an order to force pool the owners in a common source of supply. *See, e.g.,* NMSA 1978 70-2-33(H) (defining an owner's corrective rights to be protected).

59. Coterra respectfully submits that Permian Resources' pattern of disregarding correlative rights and proposing to take owners' production without compensation, as evidenced in the Subject Cases and other cases referenced herein, such as Case Nos. 24941 *et al.* should be addressed by the Commission to establish a precedent that harmonizes pooling orders with the requirements of the OGA. Counsel for Permian Resources has been informed about this Motion and has stated that Permian Resources opposes it.

III. Conclusion:

58. Coterra respectfully seeks from the Commission resolution of these two legal issues: (1) that the statutory definition of waste includes economic waste; and (2) that an allocation formula is legally necessary to protect correlative rights and prevent an unlawful

taking of production when here exists nonuniform ownership created by a depth severance in the Wolfbone Pool.

59. In its request, Coterra respectfully submits that the two issues – economic waste and the protection of correlative rights to prevent unlawful taking of hydrocarbons across a depth severance – remain unresolved before the Division and asks the Commission to address and resolve these two critical issues by concluding during its evaluation of the two competing development plans submitted by Coterra and Permian Resources that: (1) "waste" includes economic waste; and (2) an allocation formula is legally necessary to protect correlative rights of owners in the Wolfbone Pool. Accordingly, Coterra respectfully requests that the Commission issue an order that provides proper precedent and guidance in these matters for future adjudications before the Division and Commission in order to reclaim consistency, protect correlative rights, prevent waste, and avoid the excessive costs and expense of drilling unnecessary wells.

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 New Mexico Oil Conservation Commission and was served on counsel of record via electronic mail on August 30, 2025:

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

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**
ORDER NO. R-23089-A

ORDER

The Director of the New Mexico Oil Conservation Division ("OCD"), having heard this matter through a Hearing Examiner from August 9, 2024, through August 11, 2024, and after considering the testimony, evidence, and recommendation of the Hearing and Technical Examiners, issues the following Order.

FINDINGS OF FACT

1. These cases involve competing compulsorily pooling applications with overlapping horizontal spacing units filed by Cimarex Energy Co. ("Cimarex") and Read & Stevens, Inc ("Read"). These cases were consolidated for hearing and a single order is being issued for the consolidated cases.

2. Both Cimarex and Read have the right to drill within the proposed spacing units, and each seeks to be named operator of its proposed wells and spacing units.

3. Read submitted sixteen (16) applications under case numbers 23508 to 23523, each of which is to compulsorily pool the uncommitted oil and gas interests in either the Bone Spring or Wolfcamp formation. Together these cases are comprised of approximatly 2,562.40 acres, described as ("Subject Lands"):

   Township 20 South, Range 34 East, N.M.PM.
   Section 4: Lots 1, 2, 3, 4, S/2N/2, S/2 (a/k/a All)
   Section 5: Lots 1, 2, 3, 4, S/2N/2, S/2 (a/k/a All)
   Section 8: All
   Section 9: All

4. Cimarex submitted sixteen (16) applications under case numbers 23448 to 23455 and 23594 to 23601 to compulsorily pool the uncommitted oil and gas interests in

EXHIBIT 1

the Bone Spring and Wolfcamp formations, underlying the Subject Lands as previously described.

5. Read proposes to dedicate to the Subject Lands, two well families known as the Bane and Joker wells..

6. Cimarex proposes to dedicate to the Subject Lands two well families known as the Might Pheasant and Loosey Goosey wells.

7. Read's and Cimarex's proposed wells are all two-mile horizontal wells.

8. Read presented four witnesses in support of its applications:
   a. Travis Macha, Landman
   b. Ira Bradford, Geologist
   c. John Fechtel, Reservoir Engineer
   d. Davro Clements, Facilities Engineer

9. Cimarex presented four witnesses in support of its applications:
   a. John Coffman, Landman
   b. Staci Meuller, Geologist
   c. Eddie Behm, Reservoir Engineer
   d. Calvin Boyle, Facilities Engineer

10. Read stated in its closing argument that it would elect to dismiss some wells in order to alleviate Cimarex's claim that Read was not comparing "apples-to-apples" with Cimarex (see Read's closing statement page 9). However, OCD will not be dismissing these wells and will be evaluating the Applications as they were presented at the hearing.

11. The Oil and Gas Act authorizes OCD to compulsory pool the lands or interests in a spacing unit. When the owners of the interests in a spacing unit have not agreed to voluntarily pool their interests, and when one owner, who has the right to drill, applies to OCD, OCD can pool the lands or interests in the unit "to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste". Section 70-2-17.C.

12. The Oil Conservation Commission ("Commission") and OCD have developed several factors they "may consider" in evaluating competing compulsory pooling applications which are listed as follows:
   a. A comparison of geologic evidence presented by each party as it relates to the proposed well location and the potential of each proposed prospect to efficiently recover the oil and gas reserves underlying the property.
   b. A comparison of the risk associated with the parties' respective proposal for the exploration and development of the property.
   c. A review of the negotiations between the competing parties prior to the applications to force pool to determine if there was a "good faith" effort.
   d. A comparison of the ability of each party to prudently operate the property and, thereby, prevent waste.

e. A comparison of the differences in well cost estimates (AFEs) and other operational costs presented by each party for their respective proposals.
f. An evaluation of the mineral interest ownership held by each party at the time the application was heard
g. A comparison of the ability of the applicants to timely locate well sites and to operate on the surface (the "surface factor").

Geological Evidence:

13. Cimarex and Read both acknowledged that wells completed in the Third Bone Spring Sand and Upper Wolfcamp will share production from both the Bone Spring and Wolfcamp formations.

14. Cimarex's Geologist testified (when discussing the lack of frac barrier between the third Bone Spring Sand and the Wolfcamp) that the Third Bone Spring Sand is at least 72.8% of the total reservoir, while the Wolfcamp Sands are 27.2% of the total reservoir.

15. On April 8, 2024, OCD issued Order R-23089 denying both applications except insofar as either applicant or both applicants choose to propose a special pool, a Wolf bone pool, that would account for the lack of frac baffles between the Bone Spring and Wolfcamp formations in this area. The record was left open for such a proposal and will prompt a reopening of the hearing record on both applications.

16. OCD issued Order R-23751 establishing the Quail Ridge, Wolfbone Pool, (Pool Code 98396), therefore prompting a reopening of these applications.

17. Read's Geologist testified that Read has drilled a pilot hole on the Batman No. 132H (southwest of the Subject Lands) through the Penn Shale and collected a full log suite and sidewall cores to characterize the existing and future targets. Testimony also included that Read has purchased thirty-six square miles of 3D seismic which includes the Subject Lands to aid in a fulsome subsurface understanding.

18. Read's Landman testified that Read plans to develop the Subject Lands as part of a comprehensive development plan that includes Read's Riddler Bone Spring and Wolfcamp spacing units in Sections 3 and 10, which are approved under Order Nos. R-22748 and R-22754 and Read's Batman and Robin Bone Spring and Wolfcamp spacing units, which are approved under Order Nos. R-22277, R-22284, R-22319, and R-22326, respectively. (Read exhibit C-14).

19. Cimarex's Landman testified that Cimarex is attempting to establish a Federal Bone Spring Unit consisting of 14 sections just to the North of the Subject Lands (Cimarex Exhibit A-7) which will allow all Bone Spring wells to have a central facility, and the Wolfcamp wells will require commingling permits or a separate facility.

20. OCD finds that both the Applicants are attempting to develop the Subject Lands as part of a larger development plan and neither party found any faulting, pinch outs, or other geologic impediments that would impede production. OCD further finds that Read has taken additional steps in securing knowledge of the geology of the Subject Lands.

Risk and Development:

21. Read's Reservoir Engineer testified that co-development of the Wolfbone (Third Bone Spring Sand and the Wolfcamp A) is necessary to recover incremental reserves (see Read's exhibit K) that would otherwise risk being left unproduced if the acreage was only developed with wells in the Third Bone Spring Sand portion of the Wolfbone. Testimony further included that undeveloped reserves would harm correlative rights of owners who own a greater share of interest in the Wolfcamp or own only interest in the Wolfcamp.

22. Cimarex's Reservoir Engineer testified that Read's development plan would raise operator expense due to drilling additional wells and produce negligible additional reserves.

23. OCD finds Read's proposal will result in a higher recovery of hydrocarbons and will produce the Wolfcamp portion of the Wolfbone which will prevent waste and protect the correlative rights of the interest owners who own interest in the Wolfcamp portion.

Negotiations:

24. Cimarex and Read each presented testimony and exhibits on their efforts to negotiate with the interest owners and included a chronology of contact with the interest owners (see Read exhibit C-11, and Cimarex exhibit A-4).

25. OCD finds each Applicant made effort to negotiate with each party in the Subject Lands as each party gained support from various interest owners.

Prudent of Operator:

26. Cimarex's Facilities Engineer testified that Cimarex is taking steps to minimize its environmental impact. Testimony also included that Cimarex would utilize the "best-in-class" capture technology and operations, and has secured proposals for oil, water, and gas takeaway using such technology.

27. Read's Facilities Engineer testified that Read is taking steps to minimize its environmental impact. Testimony also included that Read would utilize "innovative" technology and operations. At the time of the Hearing, Read had secured water takeaway and was in discussions with multiple companies for oil and gas takeaway.

28. OCD finds that both Applicants are active operators in the Permian Basin and both Applicants are taking prudent steps to minimize surface and environmental impact.

Comparison of Cost:

29. Cimarex and Read, both, propose a 200% risk charge.

30. Cimarex and Read, both, propose a supervision cost of $8,000 per month while drilling and $800 per month while producing.

31. Cimarex's applications have an associated total cost of just over $283 million, with each individual well's cost ranging from $9.7 million to $10.6 million.

32. Read's applications have an associated total cost of just over $539 million, with each individual well's cost ranging from $10.7 million to $11.9 million.

33. OCD finds Cimarex's total development cost is lower than Read's total development cost. However, under Order R-10731-B, differences in cost estimates "are not significant factors in awarding operations and have only minor significance in evaluating an operator's ability to prudently operate the property". ¶23(j).

Working Interest:

34. The ownership interest in the Bone Spring and Wolfcamp formations underlying the Subject Lands are not uniform. There is a difference in the percentage of ownership between the formations and in some circumstances the owners are different between the formations.

35. In the Bone Spring formation underlying the Subject Lands Read owns 29.31% interest and Cimarex owns 29.12% interest. In the Wolfcamp formation underlying the Subject Lands Read owns 33.29% interest and Cimarex owns 21.63% interest.

36. At the time of the hearing, when including working interest support Read owns 34.18% in the Bone Spring formation and 39.48% in the Wolfcamp underlying the Subject Lands, while Cimarex owns 50.23% in the Bone Spring and 41.8% in the Wolfcamp underlying the Subject Lands.

37. OCD finds the differences between Cimarex's and Read's working interest control are not very significant and that makes it difficult to use working interest control as the deciding factor in this case. The gap between the parties is either around 2% or 16% in the various formations. In cases where working interest control has been the deciding factor, the differences were quite clear. In two OCD orders, one case had one party with a 96% interest in its proposed unit and a 50% interest in the competing unit, while in the other case, one party had at least a 62.5% interest (and therefore a 25% greater interest) in each of 4 proposed units. *COG Operating LLC*, R-21826, Aug. 31, 2021; *Matador Production Company*, R-21800, Aug. 26, 2021.

Surface Factor:

38. For competing horizontal well proposals, OCD added consideration of the "surface factor": a comparison of the ability of the applicants to timely locate well sites and to operate on the surface. *Ascent Energy, LLC,* Order R-14847 ¶26 (Aug. 31, 2018). The Commission has now included the surface factor in its list of factors. See, e.g., Order R-21420-A.

39. Cimarex's Facilities Engineer testified that Cimarex's development plan of the Subject Lands will consist of 33.9 acres of surface disturbance.

40. Read's Facilities Engineer testified that Read's development plan of the Subject Lands will consist of 30.9 acres of surface disturbance

41. Cimarex's Facility Engineer testified that Cimarex has obtained drilling permits for the Subject Lands, and conducted an onsite inspection with the BLM to confirm its locations.

42. Read's Facility Engineer testified that Read has coordinated with and received on-site approved from the BLM for its locations. Testimony further discussed that Read met with the BLM and the Center of Excellence ("CEHMM") on locations to coordinate use of existing roads and right-of-way corridors to produce the area and to avoid disturbance of critical sand dune wildlife habitats like the Dunes Sagebrush Lizard.

43. OCD finds both Cimarex and Read have taken steps with the BLM to obtain approval to operate the Subject Lands. In addition, Read had met with the CEHMM and Read's plan will result in three (3) acres less surface impact.

Conclusion:

44. OCD finds Read's proposal will result in a higher recovery of hydrocarbons and will produce the Wolfcamp portion of the Wolfbone which will prevent waste and protect the correlative rights of the interest owners who own interest in the Wolfcamp portion.

45. Read will dedicate the well(s) described in Exhibit A ("Well(s)") to the Subject Lands.

46. Read proposes the supervision and risk charges for the Well(s) described in Exhibit A.

47. Read identified the owners of uncommitted interests in oil and gas minerals in the Subject Lands and provided evidence that notice was given.

CONCLUSIONS OF LAW

48. OCD has jurisdiction to issue this Order pursuant to NMSA 1978, Section 70-2-17.

49. Read is the owner of an oil and gas working interest within the Subject Lands.

50. Read satisfied the notice requirements for the Application and the hearing as required by 19.15.4.12 NMAC.

51. OCD satisfied the notice requirements for the hearing as required by 19.15.4.9 NMAC.

52. Read has the right to drill the Well(s) to a common source of supply at the depth(s) and location(s) in the Unit described in Exhibit A.

53. The Subject Lands contains separately owned uncommitted interests in oil and gas minerals.

54. Some of the owners of the uncommitted interests have not agreed to commit their interests to the Subject Lands.

55. The pooling of uncommitted interests in the Subject Lands will prevent waste and protect correlative rights.

56. This Order affords to the owner of an uncommitted interest the opportunity to produce his just and equitable share of the oil or gas in the pool.

ORDER

57. The uncommitted interests in each Unit within the Subject Lands are pooled as set forth in Exhibit A.

58. The Units within the Subject Lands shall be dedicated to the Well(s) set forth in Exhibit A.

59. Read is designated as operator of each Unit within the Subject Lands and the Well(s).

60. Cimarex's Applications are hereby denied.

61. If the location of a well will be unorthodox under the spacing rules in effect at the time of completion, Read shall obtain the OCD's approval for a non-standard location in accordance with 19.15.16.15(C) NMAC.

62. If an Unit is a non-standard horizontal spacing unit which has not been approved under this Order, Read shall obtain the OCD's approval for a non-standard horizontal spacing unit in accordance with 19.15.16.15(B)(5) NMAC.

63. Read shall commence drilling the Well(s) within one year after the date of this Order, and complete each Well no later than one (1) year after the commencement of drilling the Well.

64. This Order shall terminate automatically if Read fails to comply with the preceding paragraph unless Read requests an extension by notifying the OCD and all parties that required notice of the original compulsory pooling application in accordance with 19.15.4.12.B and 19.15.4.12.C NMAC. Upon no objection after twenty (20) days the extension is automatically granted up to one year. If a protest is received the extension is not granted and Read must set the case for a hearing.

65. Read may propose reasonable deviations from the development plan via notice to OCD and all parties that required notice of the original compulsory pooling application in accordance with 19.15.4.12.B and 19.15.4.12.C NMAC. Upon no objection after twenty (20) days the deviation is automatically granted. If a protest is received the deviation is not granted and Read must set the case for a hearing.

66. The infill well requirements in 19.15.13.9 NMAC through 19.15.13.12 NMAC shall be applicable.

67. Read shall submit each owner of an uncommitted working interest in the pool ("Pooled Working Interest") an itemized schedule of estimated costs to drill, complete, and equip the well ("Estimated Well Costs").

68. Read shall submit the Estimated Well Costs no sooner than 60 days before the commencement of the drilling of each initial well, and the owner of a Pooled Working Interest shall have 30 days upon receipt of the Estimated Well Costs to elect whether to pay its share of the Estimated Well Costs or its share of the actual costs to drill, complete and equip the well ("Actual Well Costs") out of production from the well. An owner of a Pooled Working Interest who elects to pay its share of the Estimated Well Costs shall render payment to Read no later than thirty (30) days after the expiration of the election period, and shall be liable for operating costs, but not risk charges, for the well. An owner of a Pooled Working Interest who fails to pay its share of the Estimated Well Costs or who elects to pay its share of the Actual Well Costs out of production from the well shall be considered to be a "Non-Consenting Pooled Working Interest."

69. No later than one hundred eighty (180) days after Read submits a Form C-105 for a well, Read shall submit to each owner of a Pooled Working Interest an itemized schedule of the Actual Well Costs. The Actual Well Costs shall be considered to be the Reasonable Well Costs unless an owner of a Pooled Working Interest files a written objection no later than forty-five (45) days after receipt of the schedule. If an owner of a Pooled Working Interest files a timely written objection, OCD shall determine the Reasonable Well Costs after public notice and hearing.

70. No later than sixty (60) days after the expiration of the period to file a written objection to the Actual Well Costs or OCD's order determining the Reasonable Well Costs, whichever is later, each owner of a Pooled Working Interest who paid its share of the Estimated Well Costs shall pay to Read its share of the Reasonable Well Costs that exceed the Estimated Well Costs, or Read shall pay to each owner of a Pooled Working Interest who paid its share of the Estimated Well Costs its share of the Estimated Well Costs that exceed the Reasonable Well Costs.

71. The reasonable charges for supervision to drill and produce a well ("Supervision Charges") shall not exceed the rates specified in Exhibit A, provided however that the rates shall be adjusted annually pursuant to the COPAS form entitled "Accounting Procedure-Joint Operations."

72. No later than within ninety (90) days after Read submits a Form C-105 for a well, Read shall submit to each owner of a Pooled Working Interest an itemized schedule of the reasonable charges for operating and maintaining the well ("Operating Charges"), provided however that Operating Charges shall not include the Reasonable Well Costs or Supervision Charges. The Operating Charges shall be considered final unless an owner of a Pooled Working Interest files a written objection no later than forty-five (45) days after receipt of the schedule. If an owner of a Pooled Working Interest files a timely written objection, OCD shall determine the Operating Charges after public notice and hearing.

73. Read may withhold the following costs and charges from the share of production due to each owner of a Pooled Working Interest who paid its share of the Estimated Well Costs: (a) the proportionate share of the Supervision Charges; and (b) the proportionate share of the Operating Charges.

74. Read may withhold the following costs and charges from the share of production due to each owner of a Non-Consenting Pooled Working Interest: (a) the proportionate share of the Reasonable Well Costs; (b) the proportionate share of the Supervision and Operating Charges; and (c) the percentage of the Reasonable Well Costs specified as the charge for risk described in Exhibit A.

75. Read shall distribute a proportionate share of the costs and charges withheld pursuant to the preceding paragraph to each Pooled Working Interest that paid its share of the Estimated Well Costs.

76. Each year on the anniversary of this Order, and no later than ninety (90) days after each payout, Read shall provide to each owner of a Non-Consenting Pooled Working Interest a schedule of the revenue attributable to a well and the Supervision and Operating Costs charged against that revenue.

77. Any cost or charge that is paid out of production shall be withheld only from the share due to an owner of a Pooled Working Interest. No cost or charge shall be withheld from the share due to an owner of a royalty interests. For the purpose of this Order, an unleased mineral interest shall consist of a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest.

78. Except as provided above, Read shall hold the revenue attributable to a well that is not disbursed for any reason for the account of the person(s) entitled to the revenue as provided in the Oil and Gas Proceeds Payment Act, NMSA 1978, Sections 70-10-1 *et seq.*, and relinquish such revenue as provided in the Uniform Unclaimed Property Act, NMSA 1978, Sections 7-8A-1 *et seq.*

79. A Unit in the Subject Land shall terminate if (a) the owners of all Pooled Working Interests in that Unit reach a voluntary agreement; or (b) the well(s) drilled on the Unit are plugged and abandoned in accordance with the applicable rules. Read shall inform OCD no later than thirty (30) days after such occurrence.

80. OCD retains jurisdiction of this matter for the entry of such orders as may be deemed necessary.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

Date: 4/1/2025

GERASIMOS RAZATOS
DIRECTOR (Acting)
GR/jag

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

APPLICATIONS OF CIMAREX ENERGY CO.
FOR A HORIZONAL SPACING UNIT
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APPLICATIONS OF READ & STEVENS, INC.
FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO

Case Nos. 23508 – 23523

CIMAREX ENERGY CO.'S BRIEF PROVIDING THE BASIS FOR EVALUATING A SINGLE RESERVOIR SITUATED IN THE THIRD SAND OF THE BONE SPRING FORMATION IN AN AREA THAT LACKS A BAFFLE SEPARATING IT FROM THE UNDERLYING WOLFCAMP FORMATION,

Cimarex Energy Co., ("Cimarex"), through its undersigned attorneys, respectively submits this Brief in support of the options that it believes that the New Mexico Oil Conservation Division ("Division") should consider in resolving the above-referenced cases.

These cases involve development plans proposed by Cimarex, on the one hand, and Read & Stevens, Inc., in association with Permian Resources Operating, LLC (collectively "Permian Resources"), on the other hand, that reflect a magnitude of differences in cost, prevention of waste, and the protection of correlative rights. The fundamental differences between the plans can be traced to Permian Resources' deliberate decision to ignore a significant geological feature of the area to be developed – the lack of a baffle between the 3rd Sand of the Bone Spring and the Upper

EXHIBIT 2

It is the achievement of optimal production of the Subject Lands that Cimarex, as a prudent operator, seeks with its development plan. However, because Cimarex adheres to its scientific and engineering data based on its close study of the geology, Cimarex did not and will not propose additional wells in the Wolfcamp that are clearly unnecessary and would create massive additional costs with no concomitant increase in ultimate recoverable reserves. It is Cimarex's position that the regulatory framework should conform as closely as possible to the existing geology, not the other way around, and therefore Cimarex respectfully presents two viable options for its proposed development plan for properly producing the Subject Lands under the pooling statutes what is essentially a single reservoir and common source of supply, one option ("Option 1") proposes to pool the Bone Spring formation without the need to force pool the Wolfcamp formation, and the other option ("Option 2") proposes to force pool both the Bone Spring formation and the Wolfcamp formation should the Division decide that any incidental drainage from the Upper Wolfcamp must be accounted for under a forced pooling in order to shift the capture of oil and gas from "drainage" to "production," at which point Cimarex would produce the both the Bone Spring and the Wolfcamp

I. OPTION 1 FOR CIMAREX'S DEVELOPMENT PLAN

In Option 1, as presented in its hearing packet, Cimarex proposes to pool just the Bone Spring formation, and not the Wolfcamp formation. Pooling solely the Bone Springs formation follows long established and time-tested practice of how prudent operators, including Cimarex's extensive operations in the Subject Area, have optimized development of similar lands in the Subject Area. The predominate and overwhelming majority of units in the Subject Area are Bone Spring units, with primary focus on the Third Bone Spring. This outcome is the direct result of the unique geology of the area, which has no natural barrier between the Third Bone Spring and

the Upper Wolfcamp, being a single reservoir that is located primarily in the Bone Spring formation. As a result, Cimarex submits that the best plan for drilling and developing the Subject Lands is to pool only the Bone Spring, and then, pursuant to the applicable regulations, fully "produce" and develop the Bone Spring formation to achieve the most efficient and optimal production of this reservoir, as Permian Resources has also done in 10 of the 11 applications it filed for units in the Subject Area besides those in the present contested cases.

Under Option 1, any drainage of the Upper Wolfcamp that may occur should be naturally characterized as incidental to the primary target in the Bone Springs, as it has been viewed in the hundreds of Bone Spring wells that form the vast majority of units in the Subject Area. The production from Bone Spring units will result in some undetermined drainage from the Upper Wolfcamp, which may range anywhere from 5 percent on the low end to 26 percent on the high end, being an exact amount which cannot be fully determined until data is collected from the drilling operations. For its exhibits covering the Subject Lands, Cimarex has in good faith included in its testimony the higher end of the range, although production from the Upper Wolfcamp could actually end up being on the lower end.

Option 1 would allow Cimarex to pool, and consequently, produce the Bone Spring formation as a unit. All the WI owners in the Bone Spring formation are represented as WI owners in the Wolfcamp formation, except for two WI owners, CLM Production ("CLM") and Warren Associates ("Warren"). CLM and Warren only own a very small interest in the W/2 W/2 units of the Subject Lands and do not own in any other units that have been proposed; however, Cimarex has an open offer to CLM and Warren to provide them the same working interest in the Bone Spring that each of them own in the Wolfcamp formation the W/2 W/2 of the Subject Lands, thus affording them the opportunity to have their just and equitable share in the Bone Spring if they

decide to claim the interest.

The only remaining issue raised by Permian Resources is that because a handful of WI owners[4] own a higher interest in the Wolfcamp than the Bone Spring their correlative rights are not protected under Option 1. However, the small variation in ownership between the Bone Spring and Wolfcamp for these 8 owners is irrelevant when one accounts for the costs owners would have to pay to participate in the Cimarex's plan compared to the burden of the massive additional costs they would have to pay to participate in Permian Resources' plan to recover substantially the same amount of production.

For example, Northern Oil & Gas owns a .369075% WI in the Bone Spring but a little more in the Wolfcamp. If Cimarex's Option 1 plan to pool just the Bone Spring were adopted for development of the Subject Lands, Northern Oil's share of estimated costs would be $1,045,418.83 while their share of estimated costs under Permian Resources plan would be $2,835,005.00. [5]

What becomes readily evident when reviewing the return on investment for these eight owners is how small the variations of working interest that Permian Resources is trying to account for by pooling and drilling the Wolfcamp in the name of protecting correlative rights compared to the additional $95 million dollars all working interest owners would have to bear to account for these minor variations. These eight owners would have a greater return on investment if the Division adopts Cimarex's plan pursuant to Option 1 to pool and develop just the Bone Spring formation.

Permian Resources might try to argue that not accounting for the incidental drainage is a violation of correlative rights, but such and argument would be an ineffectively narrow application

[4] Read & Stevens, MRC Permian, Northern Oil & Gas, First Century, CBR Oil, Marks Oil, Wilbanks, and HOG Partnership LP.
[5] These differences will be provided by exhibit at the hearing.

of the statutory meaning of correlative rights. Under the Act, "'correlative rights' means the opportunity afforded, so far as it is practicable to do so, 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 or both in the pool, being an amount, so far as can be practicably determined and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas or both under the property bears to the total recoverable oil or gas or both in the pool and, for such purpose, to use the owner's just and equitable share of the reservoir energy." Section 70-2-33 (Emphasis supplied).

There are a number of important items to unpack in this definition; first, the Division should note that that the owner has no absolute right under the statute to a concrete and specific percentage. Permian Resources lists Read & Stevens and HOG Partnership LP as having different percentages of ownership in the Bone Spring and the Wolfcamp and therefore claims their correlative rights would be violated. *See* Permian Resources Response, Para. 1 Permian Resources, for example lists Read & Stevens as owning 23.0056% in the Wolfcamp underlying the W/2 W/2 of Sections 4 and 9, and 23.006% in the Bone Spring unit underlying the same W/2 W/2, representing a 0.0004% difference between the formations, and they list HOG Partnership LP as owning 6.8787% in the Wolfcamp unit underlying the same W2 W 2 and 4.380% in the Bone Spring under the same W2 W2, representing an approximate 2.5% difference, which is one of the larger differences among the 8 owners listed by Permian Resources. Assuming that the W2 W2 of Section 4 and 9 is a 320-acre unit, Permian Resources would likely argue that HOG has an absolute right to 320 X 6.8787% in the Wolfcamp or about 22 net acres and HOG has an absolute right to 320 X 4.380% in the Bone Spring or about 14 net acres, a difference of 6 net acres.

But this is not the case under the statutory meaning of correlative rights as there are a

number of qualifications inherent to the definition that come into play. For example, the owner is afforded an opportunity not an absolute right, and it is an opportunity as far as practicable to do so to produce without waste the owners just and equitable share of hydrocarbons. Thus, if the granting of the opportunity is not practical, then the Division has the authority to alter the amounts involved. And, the owners share has to be a just and equitable share, not an unqualified percentage. Thus, if under Permian's Resources' plan which burdens HOG with its proportionate share of an additional $225 million in costs ($130 million added to the Bone Spring development and $95 million added to the Wolfcamp development), HOG receives much less for its 6.8787% in the Wolfcamp under Permian Resources' plan that it would receive for its 4.380% in the Bone Spring; thus, the just and equitable share to HOG would be the greater amount paid to HOG based on the 4.380% HOG owns in the Bone Spring, and payment of the lesser amount of revenue to HOG even though it has a slightly higher percentage ownership in the Wolfcamp would be an unjust and inequitable share.[6] Thus, it is the massive costs associated with Permian Resources' plan that undermines and violates the owners' correlative rights, not Cimarex's plan to pool and produce solely the Bone Springs Formation

Kramer and Martin echo this conclusion by stating: "Having correlative rights in a common source of supply does not mean that each owner is guaranteed to recover a proportionate share of the oil and gas in the reservoir, but only that each owner shall be afforded the opportunity to produce or to share in the production on a reasonable and fair basis. The point bears repeating for emphasis: The correlative right is having the opportunity to produce, not having a guaranteed share of production. Once the state has afforded that opportunity, it has protected the correlative rights of a party; it need not ensure a share of production to a party." Kramer & Martin, *supra* §5.01(4)

[6] Cimarex's exhibits at the hearing will show exact numbers and percentages.

at 24. Thus, the Division allowing HOG to receive the substantially extra amounts of of revenue (and other owners to receive more based on the same calculations) by approving Cimarex's plan for the pooling and producing only the Bone Spring formation better protects HOG's correlative rights in the common source of supply situated predominately in the Bone Spring than if the Division allowed Permian Resources to subdivide the common source with a severance at the top of the Wolfcamp that would result in HOG receiving much less for its percentage ownership due to the magnitude of costs imposed by Permian Resources' plan. Furthermore, "the Division as a general policy avoids the vertical subdivision of common sources of supply." *See* Division Order No. R-14051, Para. 20(b). And, Cimarex's development plan under Option 1 better upholds this policy. Thus, Cimarex's Option 1, if selected by the Division, would consist of the Division allowing Cimarex to pool the Bone Spring formation and denying Permian Resources' applications for the Wolfcamp formation.

II. OPTION 2 FOR CIMAREX'S DEVELOPMENT PLAN

There is a second option ("Option 2") that the Division can approve for the drilling and development of Cimarex's proposed plan to have wells located in the Bone Spring, particularly the Third Bone Spring, but not in the Upper Wolfcamp, thereby saving the owners from a proportionate burden of an extra $95 million in costs. Cimarex has in good faith been grappling with the best approach for complying with and satisfying the regulatory framework, and Cimarex's prevailing philosophy regarding the application of the statutes and rules is that that the regulatory framework to the extent possible should be tailored to the geology in order to achieve the most efficient and economical production without waste while protecting correlative rights. Cimarex could have proposed additional wells in the Upper Wolfcamp, as Permian Resources did after it filed its competing Bone Spring applications, but Cimarex has confirmed from its study of the

geological data that drilling additional wells in the Upper Wolfcamp would be costly, unjustified, and would result in the drilling of unnecessary wells, which is a direct violation of the pooling statute. See Section 70-2-17(B) (showing the Division, when establishing a proration unit for a pool, is required to consider and address the "economic loss caused by the drilling of unnecessary wells" and the "avoidance of the augmentation of risks arising from the drilling of an excessive number of wells.")

Cimarex could have taken a conventional approach and proposed wells in the Upper Wolfcamp, but since it knew that the geology did not justify such wells, Cimarex understood that such a conventional approach would be misleading to the Division, an artificial contrivance used to cross T's and dot I's at great extra costs rather than actually preventing waste and protecting correlative rights as required by the Act.

Instead, Cimarex has stood firmly by the geological data and has made every effort to devise approaches that would allow Cimarex to apply the existing regulatory framework in a manner that (1) complies with and satisfies the statutory requirements of the Act and its rules, and (2) that allows Cimarex to drill its wells into the Third Bone Spring for the efficient, economic, and proper development of the Subject Lands. Cimarex explained above one approach as Option 1, which would pool and produce the Bone Spring in a manner such that the optimal production from the Bone Spring itself would fully protect correlative rights and properly compensate owners. Here, Cimarex provides another approach to its development plan, as Option 2, which also complies with and satisfies the statutory and regulatory requirements of the Act.

In Option 1, the focus was on producing the Bone Spring formation and allowing any drainage that might come from the Wolfcamp to be deemed as an acceptable level of incidental drainage. However, if the Division decides that it would be better to reclassify the drainage from

the Wolfcamp as production, then Option 2 would allow for this reclassification by pooling the Wolfcamp formation in addition to the Bone Spring formation. In order to provide the Division with Option 2, Cimarex filed pooling applications in Case Nos. 23594-23601 in which it proposed to pool the Wolfcamp formation based not on drilling unnecessary and costly additional wells in the Wolfcamp itself, but by dedicating the Wolfcamp units to Cimarex's wells that it had already proposed to drill into the Third Bone Spring as part of the Bone Spring applications. This novel approach to proposing a unit in the Wolfcamp is made possible by the unique geology that shows no baffles or natural barriers between the Bone Spring formation and the Wolfcamp formation, thus, resulting in a single reservoir as a common source of supply situated predominately in the Bone Spring, particularly the Third Bone Spring. As previously noted, given this unique geology, a well drilled into the Third Bone Spring will result in a certain amount of drainage from the Wolfcamp, whether 5, 10, 15 or 25 percent, to be determined after drilling and testing.

This drainage can be accounted for as production if the Division decides to allow Cimarex to produce the Wolfcamp formation based on the location of its Third Bone Spring Wells as wells dedicated to producing the Wolfcamp formation once it is pooled. To be clear, Cimarex when it first considered this approach was uncertain that it could constitute a valid approach because conventionally it appeared as if just about all horizontal units covering a formation had its dedicated well drilled into the formation itself. But a close examination of the rules and the geology of the Subject Lands reveals that Option 2 is not only a viable approach, but in the end, there may be grounds for the Division to consider it to be the best approach.

Rule 19.15.16.15 specifically states that "[e]ach horizontal well shall be dedicated to a standard horizontal spacing unit or an approved non-standrard horizontal spacing unit." The plain language meaning of "dedicate," as described in a number of online dictionaries, is "to devote."

There is nothing in the Rule that requires the well that is dedicated or devoted to a unit to have to be actually drilled in the formation that the unit covers. In most cases, it would make sense to drill the dedicated well into the same formation as the unit being pooled because in most cases there are natural barriers and baffles between the formations that confine the common source of supply to the formation itself; however, in the Subject Lands the common source of supply, located predominately in the Bone Spring, communicate openly with the Wolfcamp, and therefore, there is justification to pool the Wolfcamp by dedicating Cimarex's Third Bone Spring wells to the Wolfcamp unit so that any percentage of hydrocarbons drained from the Wolfcamp formation would be classified as production and thus produced from the Wolfcamp.

In this way, Cimarex, in its Option 2, applies and tailors, with precision, the regulatory framework to the unique geology in order accommodate the best location of the wells in the Third Bone Spring in a manner that complies with and satisfies the statutory and regulatory requirement, and more importantly, in a manner that avoids the unnecessary drilling of wells in the Upper Wolfcamp at an extra cost of $95 million.

Given that, under Option 2, the majority of production would come from the Bone Spring formation, from 74 to 95 percent, and the minority of production would come from the Wolfcamp formation, from 5 to 26 percent, the proper application of the allocation language in Section 70-2-17 in order comply with and satisfy the statutory requirements would be as follows: First, the allocation language requires that "[f]or purposes of determining 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 in each tract bears to the number of surface acres included in the entire unit." Section 70-2-17(C).

Second, in Option 2, even though there is one common source of supply for the two

formations, the two formations, Bone Spring and Wolfcamp, have a severance between them to account for the differences of ownership between the formations, as one would sever a single formation and pool separate intervals to account for differences of ownership in order to comply with the statutory allocation language. Thus, once separated out, the ownership in each separate formation is uniform, same as the ownership would be uniform in each separate interval of a severed formation. Now, let us assume that after Option 2 has been applied as the proper regulatory framework, Cimarex drilled and tested the Third Bone Spring wells and determined that 85 percent of hydrocarbons were coming from the Bone Spring and 15 percent were coming from the Wolfcamp. That 85 percent would constitute 100 percent of production from the pooled Bone Spring unit, and that amount would be allocated to the respective tracts in the Bone Spring unit which have uniform ownership and proportioned so that that the number of surface acres in each tract of the Bone Spring unit bears to the number of surface acres included in the entire Bone Spring unit. In the same way, the 15 percent would constitute 100 percent production from the pooled Wolfcamp unit, and that amount would be allocated to the respective tracts in the Wolfcamp unit in which ownership is uniform and proportioned so that the number of surface acres in each tract of the Wolfcamp unit bears to the number of surface acres included in the entire Wolfcamp unit. Thus, Cimarex's Option 2 as applied in the present cases complies with and satisfies the statutory and regulatory requirements of the pooling statute and the Act, and it directly account for the differences of ownership between the Bone Spring and the Wolfcamp.

III. CONCLUSION:

These contested cases boil down to a few indisputable and dispositive facts based on clear differences between the competing development plans. Permian Resources has proposed a plan that costs, and burdens the owners, with what is almost an additional quarter of a billion dollars

STATE OF NEW MEXICO

ENERGY, MINERALS, AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

SANTE FE, NEW MEXICO

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

Docket No. 47-24

Case Nos. 23448, 23449, 23450, 23451, 23452, 23453, 23454, 23455, 23508, 23523, 23594, 23595, 23596, 23597, 23598, 23599, 23600, 23601, 24289, 24585, 24586, 24632, 24633, 24751, 24752, 24756, 24757, 24758, 24759, 24760, 24761, 24762, 24763, 24764, 24765, 24766, 24767, 24807, 24808, 24809, 24810, 24826, 24827, 24829, 24831, 24832, 24843, 24844, 24845, 24846, 24847, 24848, 24882, 24883, 24888, 24894, 24895, 24896, 24905, 24913, 24914, 24915, 24916,

EXHIBIT 3

24921, 24922, 24923, 24927,
24930, 24931, 24933, 24939,
24941, 24944

HEARING

DATE: Thursday, November 21, 2024
TIME: 9:00 a.m.
BEFORE: Gregory A. Chakalian, Hearing Examiner
LOCATION: Pecos Hall
Wendell Chino Building
1220 Street Saint Francis Drive
Santa Fe, NM 87505
REPORTED BY: James Cogswell
JOB NO.: 6773992

THE HEARING EXAMINER: Okay. Then we're off the record in this case, and we'll wait for you to prepare a proposed order for the director --

MS. TREVINO: Thank you.

THE HEARING EXAMINER: All right. Thank you.

Okay. Before we go through the rest of our regular docket, I want to call a separate set of cases. These cases were heard, I believe, in August of 2023 before I got here. These are case numbers 23448 through 23455. Those are applications of Cimarex Energy for -- spacing unit and compulsory pooling in Lee County. We have 23594 through 23601. Those are Cimarex competing application -- no, these are applications for Cimarex compulsory pooling. Then we have competing applications in case number 23508, 23523. These are Read Stevens cases for compulsory pooling. And finally, we have 24528 and 24541. These are Read Stevens for creation of a special pool and Cimarex's application for a special pool.

May I have entries of appearance, please.

MR. RANKIN: Good morning, Mr. Hearing Examiner. Adam Rankin with the office of Hollard Hart appearing on behalf of Read & Stevens, Permian

on that. The order clearly shows that Permian Resources' application was denied because it was illegal under the conditions of the two pools. Their development plan has not changed, and we believe it is still illegal under the way it would redundantly produce, not only $80 million worth of waste, but also illegal under the rules and the statute.

THE HEARING EXAMINER: So let me understand something. You're saying that their proposal which has a set of wells above the depth severance and a set of wells below the depth severance -- I hope I said that right -- is somehow illegal. Why is it illegal?

MR. SAVAGE: It's illegal because the well bores -- because there's open communication between the two formations, a single pool, a single -- and there's open communication between the two formations. So their upper Wolfcamp well bores -- so the ownership is different between the two. So the Wolfcamp well, upper Bone Spring -- Wolfcamp wells are going to illegally produce --

THE HEARING EXAMINER: I understand.

MR. SAVAGE: -- pooling and -- vice versa.

THE HEARING EXAMINER: But the Division

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

IN THE MATTER OF APPLICATION FOR COMPULSORY POOLING SUBMITTED BY CIMAREX ENERGY COMPANY	**CASE NOs. 23448 - 23455**
IN THE MATTER OF APPLICATION FOR COMPULSORY POOLING SUBMITTED BY CIMAREX ENERGY COMPANY	**CASE NOs. 23594 - 23601**
IN THE MATTER OF APPLICATION FOR COMPULSORY POOLING SUBMITTED BY READ & STEVENS, INC	**CASE NOs. 23508 - 23523**
	ORDER NO. R-23089

ORDER

The Director of the New Mexico Oil Conservation Division ("OCD"), having heard this matter through legal and technical Hearing Examiners on August 9, 2023, through August 11, 2023, and after considering the administrative record including the sworn testimony, evidence, and recommendations of the Hearing Examiners, issues the following Order.

FINDINGS OF FACT

1. Cimarex Energy Company ("Cimarex") submitted a total of sixteen applications ("Cimarex Applications") to compulsory pool the uncommitted oil and gas interests within the spacing unit as seen in Cimarex' exhibits.

2. Read & Stevens, Inc. ("Read & Stevens") submitted a total of sixteen applications ("Read & Stevens Applications") to compulsory pool the uncommitted oil and gas interests within the spacing unit as seen in Read & Stevens' exhibits.

3. Both parties are proposing to develop Sections 5 and 8, Township 20 South, Range 34 East. Cimarex' plan for these lands is named "Mighty Pheasant" and Read & Stevens' plan is named "Joker." Both parties are also proposing to develop Sections 4 and 9, Township 20 South, Range 34 East. Cimarex' plan for these lands is named "Loosey Goosey" and Read & Stevens' plan is named "Bane.".

4. Cimarex' applications proposed drilling twelve wells per section with all twelve wells being distributed between the Bone Spring formation intervals.

5. Read & Stevens' applications proposed drilling twenty-four wells per section with those twenty-four wells being distributed between the Bone Springs formation and the Wolfcamp formation intervals.

EXHIBIT 4

6. The lands proposed for drilling by both parties lacks natural barriers that would prevent communication between the Third Bone Spring Sand and Upper Wolfcamp, thereby creating a single reservoir or common source of supply located predominantly in the Third Bone Spring Sand.

7. Cimarex' geologist Staci Mueller affidavit testimony paragraph twelve states:

> *There are no indications of any major geomechanical changes/frac baffles in between Cimarex's 3rd Sand target and Permian Resources' Wolfcamp Sands target, indicating that these two intervals are most likely one shared reservoir tank.*

8. Read & Stevens' Reservoir Engineer John Fechtel testified that:

> *The – both wells developed in the third bone sand and the wells developed in the XY will share – have some resources from either formation."*
>
> *(See Tr. (DD 8-10-23) 181: 2-4)*

9. Read & Stevens' Geologist Ira Bradford was questioned about the substantial communication issues and testified:

> *Q: So, Mr. Bradford, you talked a little bit about that you do agree with Ms. Mueller that there is substantial communication between the third Bone Spring and the upper Wolfcamp; is that correct?*
>
> *A: Yes.*
>
> *(See* Tr. (DD 8-10-23) 206: 11-1)

10. Cimarex and Read & Stevens both acknowledged that wells completed in the Bone Spring and Wolfcamp formations will share production from both the Bone Spring and Wolfcamp formations.

11. Neither Cimarex nor Read & Stevens requested in their applications or at hearing the creation of a special pool to accommodate the communication of the Bone Springs and Wolfcamp formations such that there is a common supply.

12. Neither applicant requested a special pool order accounting for the common source of supply, or provided notice of a special pool request.

CONCLUSIONS OF LAW

13. OCD has jurisdiction to issue this Order pursuant to NMSA 1978, Section 70-2-17.

14. A "Pool" is defined as "an underground reservoir containing a common accumulation of oil or gas. Each zone of a general structure, which zone is completely separated from other zones in the structure, is covered by the word pool as used in 19.15.2 NMAC through 19.15.39 NMAC. "Pool" is synonymous with "common source of supply" and with "common reservoir." 19.15.2.7.P(5) NMAC.

15. NMSA 1978, Section 70-2-12 B of the Oil and Gas Act requires OCD:

(2) to prevent crude petroleum oil, natural gas or water from escaping from strata in which it is found into other strata;

(7) to require wells to be drilled, operated and produced in such manner as to prevent injury to neighboring leases or properties;

(12) to determine the limits of any pool producing crude petroleum oil or natural gas or both and from time to time redetermine the limits;

16. 19.15.16.9 NMAC requires that during the drilling of an oil well, injection well or other service well, the operator shall seal and separate the oil, gas and water strata above the producing or injection horizon to prevent their contents from passing into other strata.

17. 19.15.12.9 NMAC requires that an operator shall produce each pool as a single common source of supply and complete, case, maintain and operate wells in the pool so as to prevent communication within the well bore with other pools. An operator shall at all times segregate oil or gas produced from each pool. The combination commingling of production, before marketing, with production from other pools without division approval is prohibited.

18. OCD has the authority to create special pool orders when required pursuant to 19.15.2.9 NMAC, when proper notice has been satisfied.

19. The evidence currently in the record before OCD indicates that Read & Stevens' and Cimarex' proposals would lead to either impairment of correlative rights or illegal allocation. Both parties testify that their production would extend outside of their respective pools and impact other pools, as such both requests extend outside of a standard compulsory pooling request.

20. Neither application can be approved while remaining in compliance with OCD rules and regulations that require pool segregation, prevent waste and protect correlative rights.

ORDER

21. OCD hereby denies both applications except insofar as either applicant or both 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

this area. The record is left open for such a proposal and will prompt a reopening of the hearing record on both applications.

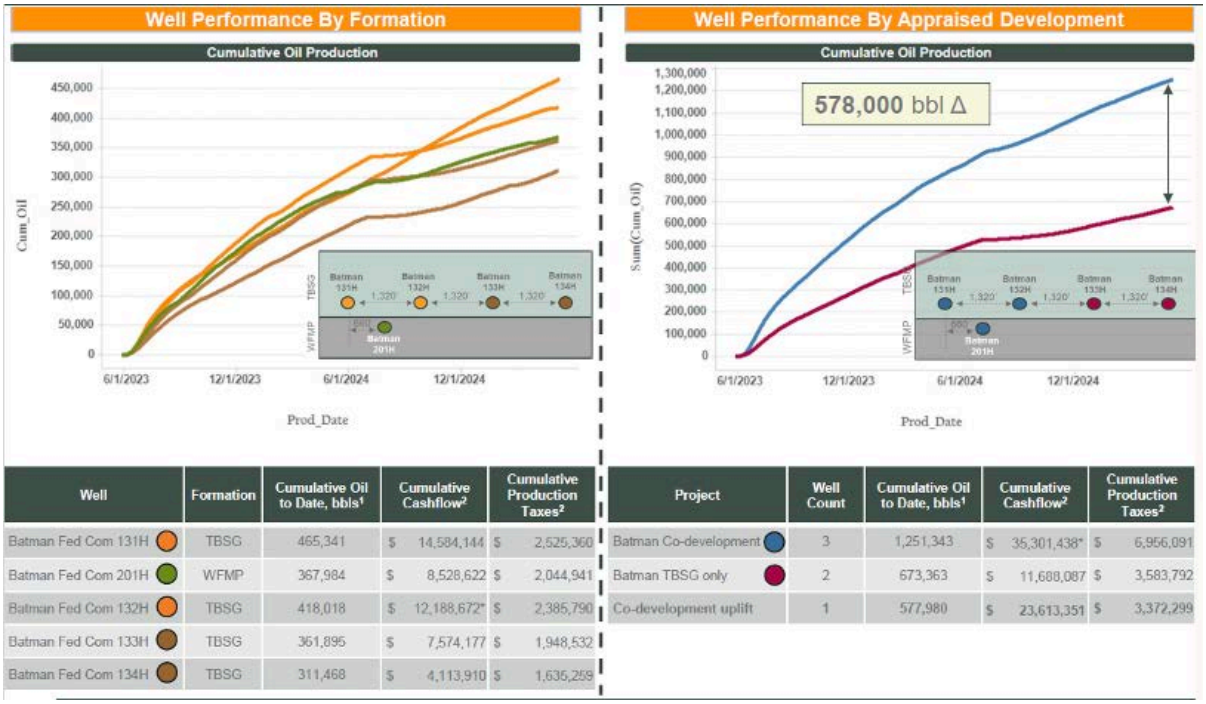
22. It is not necessary for the parties to repeat the testimony or resubmit the exhibits regarding their original proposed plans; they may refer to existing evidence to the extent needed to justify the special pool request.

23. OCD retains jurisdiction of this matter for the entry of such orders as may be deemed necessary.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

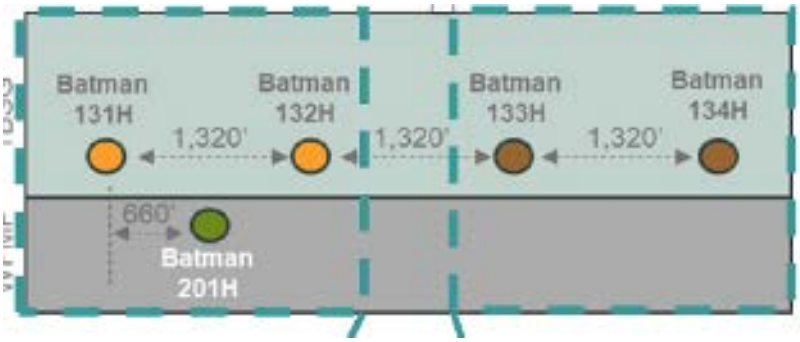
Date: 4/8/24

DYLAN M FUGE
DIRECTOR (Acting)
DMF/jag



Well	Formation	Cumulative Oil to Date, bbls[1]	Cumulative Cashflow[2]	Cumulative Production Taxes[2]
Batman Fed Com 131H	TBSG	465,341	$ 14,584,144	$ 2,525,360
Batman Fed Com 201H	WFMP	367,984	$ 8,528,622	$ 2,044,941
Batman Fed Com 132H	TBSG	418,018	$ 12,188,672*	$ 2,385,790
Batman Fed Com 133H	TBSG	361,895	$ 7,574,177	$ 1,948,532
Batman Fed Com 134H	TBSG	311,468	$ 4,113,910	$ 1,635,259

Project	Well Count	Cumulative Oil to Date, bbls[1]	Cumulative Cashflow[2]	Cumulative Production Taxes[2]
Batman Co-development	3	1,251,343	$ 35,301,438*	$ 6,956,091
Batman TBSG only	2	673,363	$ 11,688,087	$ 3,583,792
Co-development uplift	1	577,980	$ 23,613,351	$ 3,372,299



Graphic illustrations from Permian Resources' presentation to the Commission on June 24, 2025, showing the final wells and spacing of Permian Resources' Batman Plan. The Plan originally proposed to the OCD 4 wells in the Third Bone Spring and 4 wells in the Upper Wolfcamp; however, Permian Resources' final Plan only drilled the 4 Third Bone Spring wells and one token Upper Wolfcamp XY well, letting the pooling order for the other 3 Upper Wolfcamp wells expire, demonstrating that they were unnecessary wells.

EXHIBIT 5

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 6

(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 APPLICATION FOR COMPULSORY POOLING SUBMITTED BY MARATHON OIL PERMIAN LLC

CASE NO. 20869
ORDER NO. R-21165

ORDER

The Director of the New Mexico Oil Conservation Division ("OCD"), having heard this matter through a Hearing Examiner on November 14, 2019, and after considering the testimony, evidence, and recommendation of the Hearing Examiner, issues the following Order.

FINDINGS OF FACT

1. Marathon Oil Permian LLC ("Operator") submitted an application ("Application") to compulsory pool the uncommitted oil and gas interests within the spacing unit ("Unit") described in Exhibit A. The Unit is expected to be a standard horizontal spacing unit. 19.15.16.15(B) NMAC. Operator seeks to be designated the operator of the Unit.

2. Operator will dedicate the well(s) described in Exhibit A ("Well(s)") to the Unit.

3. Operator proposes the supervision and risk charges for the Well(s) described in Exhibit A.

4. Operator identified the owners of uncommitted interests in oil and gas minerals in the Unit and provided evidence that notice was given.

5. The Application was heard by the Hearing Examiner on the date specified above, during which Operator presented evidence through affidavits in support of the Application. No other party presented evidence at the hearing.

6. Operator seeks a depth severance as described in Exhibit A

EXHIBIT 7

CONCLUSIONS OF LAW

7. OCD has jurisdiction to issue this Order pursuant to NMSA 1978, Section 70-2-17.

8. Operator is the owner of an oil and gas working interest within the Unit.

9. Operator satisfied the notice requirements for the Application and the hearing as required by19.15.4.12 NMAC.

10. OCD satisfied the notice requirements for the hearing as required by 19.15.4.9 NMAC.

11. Operator has the right to drill the Well(s) to a common source of supply at the described depth(s) and location(s) in the Unit.

12. The Unit contains separately owned uncommitted interests in oil and gas minerals.

13. Some of the owners of the uncommitted interests have not agreed to commit their interests to the Unit.

14. The pooling of uncommitted interests in the Unit will prevent waste and protect correlative rights, including the drilling of unnecessary wells.

15. This Order affords to the owner of an uncommitted interest the opportunity to produce his just and equitable share of the oil or gas in the pool.

ORDER

16. The uncommitted interests in the Unit are pooled as set forth in Exhibit A.

17. The Unit shall be dedicated to the Well(s) set forth in Exhibit A.

18. Operator is designated as operator of the Unit and the Well(s).

19. If the Surface Location or Bottom Hole Location of a well is changed from the location described in Exhibit A, Operator shall submit an amended Exhibit A, which the Division shall append to this Order.

20. If the location of a well will be unorthodox under the spacing rules in effect at the time of completion, Operator shall obtain the OCD's approval for a non-standard location before commencing production of the well.

21. The Operator shall commence drilling the initial well within one (1) year after the date of this Order; and (b) for an infill well, no later than thirty (30) days after completion of the well.

22. Operator shall comply with the infill well requirements in 19.15.13.9 NMAC through 19.15.13.12 NMAC.

23. This Order shall terminate automatically if Operator fails to comply with Paragraphs 20 or 21.

24. Operator shall submit to OCD and each owner of a working interest in the pool ("Pooled Working Interest") an itemized schedule of estimated costs to drill, complete, and equip the well ("Estimated Well Costs") no later than: (a) for an initial well, no later than thirty (30) days after the date of this Order; (b) for an infill well proposed by Operator, no later than (30) days after the later of the initial notice period pursuant to 19.15.13.10(B) NMAC or the extension granted by the OCD Director pursuant 19.15.13.10(D) NMAC; or (c) for an infill well proposed by an owner of a Pooled Working Interest, no later than thirty (30) days after expiration of the last action required by 19.15.13.11 NMAC.

25. No later than thirty (30) days after Operator submits the Estimated Well Costs, the owner of a Pooled Working Interest shall elect whether to pay its share of the Estimated Well Costs or its share of the actual costs to drill, complete and equip the well ("Actual Well Costs") out of production from the well. An owner of a Pooled Working Interest who elects to pay its share of the Estimated Well Costs shall render payment to Operator no later than thirty (30) days after the expiration of the election period, and shall be liable for operating costs, but not risk charges, for the well. An owner of a Pooled Working Interest who fails to pay its share of the Estimated Well Costs or who elects to pay its share of the Actual Well Costs out of production from the well shall be considered to be a "Non-Consenting Pooled Working Interest."

26. No later than within one hundred eighty (180) days after Operator submits a Form C-105 for a well, Operator shall submit to OCD and each owner of a Pooled Working Interest an itemized schedule of the Actual Well Costs. The Actual Well Costs shall be considered to be the Reasonable Well Costs unless OCD or an owner of a Pooled Working Interest files a written objection no later than forty-five (45) days after receipt of the schedule. If OCD or an owner of a Pooled Working Interest files a timely written objection, OCD shall determine the Reasonable Well Costs after public notice and hearing.

27. No later than sixty (60) days after the later of the expiration of the period to file a written objection to the Actual Well Costs or OCD's order determining the Reasonable Well Costs, each owner of a Pooled Working Interest who paid its share of the Estimated Well Costs shall pay to Operator its share of the Reasonable Well

Costs that exceed the Estimated Well Costs, or Operator shall pay to each owner of a Pooled Working Interest who paid its share of the Estimated Well Costs its share of the Estimated Well Costs that exceed the Reasonable Well Costs.

28. The reasonable charges for supervision to drill and produce a well ("Supervision Charges") shall not exceed the rates specified in Exhibit A, provided however that the rates shall be adjusted annually pursuant to the COPAS form entitled "Accounting Procedure-Joint Operations."

29. No later than within ninety (90) days after Operator submits a Form C-105 for a well, Operator shall submit to OCD and each owner of a Pooled Working Interest an itemized schedule of the reasonable charges for operating and maintaining the well ("Operating Charges"), provided however that Operating Charges shall not include the Reasonable Well Costs or Supervision Charges. The Operating Charges shall be considered final unless OCD or an owner of a Pooled Working Interest files a written objection no later than forty-five (45) days after receipt of the schedule. If OCD or an owner of a Pooled Working Interest files a timely written objection, OCD shall determine the Operating Charges after public notice and hearing.

30. Operator may withhold the following costs and charges from the share of production due to each owner of a Pooled Working Interest who paid its share of the Estimated Well Costs: (a) the proportionate share of the Supervision Charges; and (b) the proportionate share of the Operating Charges.

31. Operator may withhold the following costs and charges from the share of production due to each owner of a Non-Consenting Pooled Working Interest: (a) the proportionate share of the Reasonable Well Costs; (b) the proportionate share of the Supervision and Operating Charges; and (c) the percentage of the Reasonable Well Costs specified as the charge for risk described in Exhibit A.

32. Each year on the anniversary of this Order, and no later than ninety (90) days after each payout, Operator shall provide to OCD and each owner of a Non-Consenting Pooled Working Interest a schedule of the revenue attributable to a well and the Supervision and Operating Costs charged against that revenue.

33. Any cost or charge that is paid out of production shall be withheld only from the share due to an owner of a Pooled Working Interest. No cost or charge shall be withheld from the share due to an owner of a royalty interests. For the purpose of this Order, an unleased mineral interest shall consist of a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest.

34. Except as provided above, Operator shall hold the revenue attributable to a well that is not disbursed for any reason for the account of the person(s) entitled to the revenue as provided in the Oil and Gas Proceeds Payment Act, NMSA 1978,

Sections 70-10-1 *et seq.*, and relinquish such revenue as provided in the Uniform Unclaimed Property Act, NMSA 1978, Sections 7-8A-1 *et seq.*

35. The Unit shall terminate if (a) the owners of all Pooled Working Interests reach a voluntary agreement; or (b) the well(s) drilled on the Unit are plugged and abandoned in accordance with the applicable rules. Operator shall inform OCD no later than thirty (30) days after such occurrence.

36. OCD retains jurisdiction of this matter for the entry of such orders as may be deemed necessary.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

ADRIENNE SANDOVAL
DIRECTOR
AS/jag

Date: February 26, 2020

Exhibit "A"

Applicant: Marathon Oil Permian LLC
Operator: Marathon Oil Permian LLC, (OGRID 372098)

Spacing Unit: Horizontal Oil
Building Blocks: quarter-quarter sections
Spacing Unit Size: 480 acres, more or less
Orientation of Unit: North/South

Spacing Unit Description:
E/2 of Section 11 and the NE/4
of Section 14, Township 25 South, Range 34 East, NMPM, Lea County, New Mexico

Pooled Depth Interval: Wolfcamp formation

Depth Severance? (Yes/No): Yes. There are two depth severances within the Wolfcamp formation. All references to depths are to the stratigraphic equivalent of depths shown on the log of the Fairview 14 Fee #1 well (API 30-025-27083) located in Section 14, 25S-34E.One depth severance occurs at approximately 12,530 feet and the other occurs at approximately 12,780 feet. The depth severances create a difference in working interest ownership.

Allocation Formula: Marathon shall allocate 14% of production to the working interest owners who own interests between 12,460 and 12,530 feet, 50% of the production to the working interest owners who own interests between 12,530 and 12,780 feet, and 36% of production to working interest owners who own interests between 12,780 and 12,960 feet. This same allocation formula shall apply to allocation of costs. No party appeared at the hearing or opposed this allocation formula.

Pool: Pitchfork Ranch; Wolfcamp, South Pool (Pool code 96994)
Pool Spacing Unit Size: quarter-quarter sections
Governing Well Setbacks: Horizontal oil well rules – 19.15.16.15.C NMAC

Proximity Tracts: Yes
Proximity Defining Well: **Ender Wiggins 14 WA FC 19H** is to be drilled closer than 330 feet from the Proximity Tracts and therefore defines the Horizontal Spacing Unit.

Monthly charge for supervision: While drilling: $7500 While producing: $750
As the charge for risk, 200 percent of reasonable well costs.

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Proposed Wells:

Ender Wiggins 14 WA FC 14H: API No. Pending
SHL: 2289 feet from the North line and 1224 feet from the East line,
(Unit H) of Section 14, Township 25 South, Range 34 East, NMPM.
BHL: 100 feet from the North line and 2178 feet from the East line,
(Unit B) of Section 11, Township 25 South, Range 34 East, NMPM.

Completion Target: Wolfcamp A Formation at approx 12,684 feet TVD.
Well Orientation: South to North
Completion Location expected to be: standard

Ender Wiggins 14 WA FC 19H: API No. Pending
SHL: 2289 feet from the North line and 1164 feet from the East line,
(Unit H) of Section 14, Township 25 South, Range 34 East, NMPM.
BHL: 100 feet from the North line and 1254 feet from the East line,
(Unit A) of Section 11, Township 25 South, Range 34 East, NMPM.

Completion Target: Wolfcamp A Formation at approx 12,706 feet TVD.
Well Orientation: South to North
Completion Location expected to be: standard

Ender Wiggins 14 WA FC 20H: API No. Pending
SHL: 2290 feet from the North line and 1105 feet from the East line,
(Unit H) of Section 14, Township 25 South, Range 34 East, NMPM.
BHL: 100 feet from the North line and 330 feet from the East line,
(Unit A) of Section 11, Township 25 South, Range 34 East, NMPM.

Completion Target: Wolfcamp A Formation at approx 12,735 feet TVD.
Well Orientation: South to North
Completion Location expected to be: standard

Before the Oil Conservation Division
Examiner Hearing May 16, 2019

Case No. 20169:

Ned Pepper 18 WA Federal Com 2H, Ned Pepper 18 WXY Federal Com 6H, Ned Pepper 18 WA Federal Com 9H

Marathon Oil

EXHIBIT
8

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

APPLICATION OF MARATHON OIL PERMIAN LLC FOR APPROVAL OF A SPACING UNIT, COMPULSORY POOLING, AND ALLOCATION FORMULA LEA COUNTY, NEW MEXICO.

CASE NO. 20169

AMENDED APPLICATION

Marathon Oil Permian LLC ("Marathon"), OGRID Number 372098, through its undersigned attorneys, hereby submits this amended application to the Oil Conservation Division pursuant to the provisions of NMSA (1978), Section 70-2-17, for an order: (1) approving the creation of a 320-acre, more or less, spacing unit covering the W/2 of Section 18, Township 24 South, Range 34 East, NMPM, Lea County, New Mexico underlying the Wolfcamp formation; and (2) pooling all uncommitted mineral interests in the proposed spacing unit. In support of this application, Marathon states as follows:

1. Marathon is an interest owner in the subject lands and has a right to drill a well thereon.

2. Marathon seeks to dedicate the W/2 of Section 18, Township 24 South, Range 34 East, NMPM, Lea County, New Mexico underlying the Wolfcamp formation to form a 320-acre, more or less, spacing unit.

3. Marathon plans to drill the **Ned Pepper Federal 24 34 18 WA 2H, Ned Pepper Federal 24 34 18 WXY 6H,** and **Ned Pepper Federal 24 34 18 WA 9H** wells to a depth sufficient to test the Wolfcamp formation. These wells will be horizontally drilled and will comply with the

Division's setback requirements. The location of the Ned Pepper Federal 24 34 18 WXY 6H well is less than 330' from the adjoining 40-acre tracts and the Division's rules allow for the inclusion of proximity tracts within the proposed spacing unit for the wells.

4. Ownership is uniform across the Wolfcamp formation except for a 5.02083320 net acre interest ("5 Acre Interest") which changes working interest ownership at 100' below the top of the Wolfcamp formation.

5. One working interest owner owns that 5 Acre Interest as to the top 100' of the Wolfcamp,("Top Interest Owner"), and another working interest owner owns that 5 Acre Interest as to depths below 100' from the top of the Wolfcamp ("Bottom Interest Owner").

6. Marathon proposes the following allocation formula to address the difference in working in interest ownership. Only as to the 5 Acre Interest Marathon proposes to allocate 20% of production from the unit attributable to the 5 Acre Interest to the Top Interest Owner and the remaining 80% of production from the unit attributable to the 5 Acre Interest to the Bottom Interest Owner. This same allocation formula would apply to allocation of costs.

7. Marathon sought, but has been unable to obtain a voluntary agreement from all interest owners in the proposed depths within the Wolfcamp formation underlying the proposed spacing unit to participate in the drilling of the wells or to otherwise commit their interests to the wells.

8. The creation of a spacing unit, pooling of the proposed depths in the Wolfcamp formation underlying the proposed unit, and approving Marathon's proposed allocation formula will prevent the drilling of unnecessary wells, prevent waste and protect correlative rights.

9. Marathon further requests that it be allowed one (1) year between the time the first well is drilled and completion of the well.