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:	**CASE NO. 25371 *De Novo***
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**

CONSOLIDATED PREHEARING STATEMENT

Coterra Energy Operating Co. ("Coterra"), through its undersigned attorneys, submits the following Prehearing Statement pursuant to the rules of the Oil Conservation Commission ("Commission" of "OCC") for the hearing *de novo* in Case No. 25371.

APPEARANCES

APPLICANT	ATTORNEY
Coterra Energy Operating Co.	Darin C. Savage Andrew D. Schill William E. Zimsky Abadie & Schill, PC 214 McKenzie Street Santa Fe, New Mexico 87501 Telephone: 970.385.4401 Facsimile: 970.385.4901 darin@abadieschill.com andrew@abadieschill.com bill@abadieschill.com Owen L. Anderson Attorney & Professor of Oil & Gas Law, University of Texas School of Law, 209 Hills of Texas Trail Georgetown, Texas 78633 Telephone: 405.641.6742 oanderson@law.utexas.edu *Pro Hac Vice* Co-Counsel
COMPETING PARTY	
Read & Stevens, Inc., and Permian Resources Operating, LLC	Michael H. Feldewert Adam G. Rankin Paula M. Vance Holland & Hart LLP Post Office Box 2208 Santa Fe, NM 87504 505-988-4421 Facsimile: 505-983-6043 mfeldewert@hollandhart.com agrankin@hollandhart.com pmvance@hollandhart.com

I. Proper Scope of Evidence in a Hearing *De Novo* Hearing before the Commission Pursuant to the Intent of the Drafters of NMSA 1978 § 70-2-13.

There is a persistent question about the evidentiary scope of a hearing *de novo* under § 70-2-30, whether it is a pure de novo hearing, which is very rare in the judicial system that completely excludes the underlying record, or if a hearing *de novo* should include the record from the Division. It is not uncommon for a party to request the Commission to take administrative notice of the Division's record in a hearing *de novo,* and the request to include the entire record for review and consideration is consistent with the intent of the original drafters of what would become § 70-2-13 as shown by the legislative history. *See* Commission Case No. 903, at p. 24.[1] (the drafters stating that "the record [of the Division] will be considered and you can introduce additional evidence [at the hearing de novo before the OCC]"). An excerpt of the transcript from Case No. 903 is attached hereto as Ex. 1. Given the extended duration of the OCD proceedings of the above-referenced cases over the past two years, and the related cases such as those that created the Wolfbone Pool, Coterra respectfully requests that the Commission consider the original intent of § 70-2-13 and allow the inclusion of the entire Division record in the Subject Cases and in the related Wolfbone cases for the Commission's review and consideration, as stipulated by the parties.

Coterra provides the following as its Prehearing Statement and incorporates, pursuant to the Division Director's request, the legal analysis from its "Motion Requesting the Commission to Acknowledge that the Statutory Definition of Waste Includes Economic Waste; and That an

[1] At the end of the discussion in Commission Case No. 903, at p. 25, there was agreement among the participants that the form of *de novo* hearing which considered the Division record but allowed new evidence at the hearing *de novo* should prevail:
GOVERNOR SIMMS: I think Bill is interpretating it as really *de novo* and not *de novo* on the record [*de novo* on the record meaning limited just to the Division record].
MR. KITTS: I feel that way. Is that the way you feel about it?
MR. KELLAHIN: Yes. I think you ought to consider the record before the [Division] Examiner.
MR. KITTS: Then we are in agreement.

Allocation Formula is Legally Necessary to protect Correlative Rights and Prevent and Unlawful Taking When There Exists Nonuniform Ownership Created by a Depth Severance in the Wolfbone Pool," filed August 30, 2025, in Case No. 25371.

II. Legal Issues Implicated in the Competing Development Plans Requiring Resolution for Proper Adjudication and Issuance of a Final Decision.

A. The statutory definition of "waste" includes economic waste in the form of proposing an unnecessary number of wells resulting in unnecessary costs and expense.

When economic waste becomes a central factor in the evaluation of competing applications, it cannot be disregarded. In this case, both development plans presented at the *de novo* hearing in Case No. 25371 were originally submitted to the Division as the applicants' proposed "best plans" to develop the Third Bone Spring and Upper Wolfcamp intervals in the Wolfbone Pool in order to prevent waste, protect correlative rights, and avoid the drilling of unnecessary wells.[2] 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. By contrast, Coterra's plan proposes to develop the Wolfbone Pool by drilling one set of eight (8) wells in the basal Third Bone Spring interval. Beyond the Wolfbone Pool, Permian Resource seeks to drill thirty-two (32) additional wells in the remaining Bone Spring formation, while Coterra proposes only twenty-two (22) wells to fully develop the same interval. The Division found that the difference in total development cost between the

[2] *See, e.g.,* Self-Affirmed Statement of Ira Bradford, Permian Resources, Hearing Packet dated July 20, 2023, Cases Nos. 23508-23523 (Permian Resources' Geologist stating to the Division that Permian's plan as presented at the August 9-11, 2025 hearing "*will maintain optimal spacing* and co-development across the acreage, including with respect to existing offsetting production in the Verna Rae and Riddler Units, which *will prevent waste and maximize recovery* across all this acreage.")(emphasis added); also, *see id.,* pp. 6-66, ¶ 5 in each application (Permian Resources' pooling applications, which collectively state that pooling the units in the Subject Lands based on Permian's forty-eight (48) initial wells proposed in the applications will "avoid the drilling of unnecessary wells, will prevent waste, and will protect correlative rights.")

plans—$256 million—was irrelevant to the question of operatorship. *See* Order No. R-23089-A, ¶ 33, attached hereto as Ex. 2.

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.

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."[3]

[3] 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

The New Mexico Supreme Court has repeatedly confirmed that economic waste falls within the statutory prohibition against waste. For example, *in Santa Fe Exploration Co. v. OCC*, 1992-NMSC-044, ¶ 16, 114 N.M. 103, 113, 835 P.2d 819, 829, the 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 legal precedent, the Division failed to consider economic waste in its Final Order. Ignoring that standard undermines the Division's statutory duty and harms correlative rights.

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"

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.

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.

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).

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. 3. 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.

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, filed May 6, 2025, 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 persuasive regarding who should receive operatorship given the requirement under the OGA to prevent waste.

B. An allocation formula is necessary to protect correlative rights and prevent an unlawful taking where nonuniform ownership exists due to a depth severance in the Wolfbone Pool.

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 Formation. Because this severance occurs in a reservoir with open communication between the intervals, it creates a unique ownership conflict that requires a lawful allocation mechanism. To uphold both the OGA and constitutional protections, the Commission must ensure that production is properly allocated.

Whenever a depth severance results in nonuniform ownership across a reservoir, the Commission has a duty to require operators to account for production from both sides of the severance. Every well drilled in the Wolfbone Pool will inevitably produce hydrocarbons from both the Upper and the Lower Intervals. Without an allocation formula, owners in one interval would be deprived of their share of production, resulting in both a violation of their correlative rights under the OGA and an unlawful taking without compensation under the Fifth and Fourteenth Amendments.

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.

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.

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. 4). 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. *Manning v. New Mexico Energy, Minerals and Natural Resources Dep't,* 2006-NMSC-027, ¶ 46, 140 N.M. 528, 144 P.3d 87, 97.

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 (or should have 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 (R-12094), 20869, 13359, 14299, and 20169. *See* pp. 15-17, below, for a description of these cases and the allocation formulae utilized based on the legal necessary to account for and compensate nonuniform ownership.

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 an allocation formula being a fundamentally necessary component of a development plan in order to provide for the proper allocation of production from the Wolfbone Pool, to protect correlative rights, and prevent an unlawful taking of production.

B.1 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 is required to prevent violating the Takings Clause of the Fifth and Fourteenth Amendments.

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.

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.

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.

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.

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, '<u>reasonable, certain and adequate provision for obtaining compensation.</u>'" *Id.* (*citing Williamson County Reg'l Planning Comm'n,* 473 U.S. at 194, 105 S.Ct. 3108) (emphasis added). 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. NMSA 1978 § 70-2-11(A) and (B).

B.2 New Mexico case law and Commission policy is clear: the Oil & Gas Act cannot be interpreted or applied to violate correlative rights or facilitate an unconstitutional taking of hydrocarbons.

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.

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,[4] ¶¶ 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 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).

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.

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

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

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 formulas 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, ¶, attached hereto as Exhibit 6.

Other examples of applicant-operators proposing allocation formulas 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.

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 7. 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.[5]

[5] 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,

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 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.

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 fundamental 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).

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).

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.

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.

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 within a drilling [spacing] unit, as described in *Santa Fe Exploration.* As an illustration, imagine turning the depth/horizontal severance in this case 90 degrees to simulate a geographic/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 adjacent tracts into a single unit and allocate production to protect correlative rights 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/horizontal 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 to protect correlative rights 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.

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 (e.g., corresponding to the Upper Interval) and Tract 2 (e.g., 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.

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.

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." *See* Order No. R-23089 attached hereto as Ex. 11. This finding is consistent with Coterra's geological analysis which determined that the Third Bone Spring Interval

contributes approximately 70% of Wolfbone production and the Upper Wolfcamp Interval contributes about 30% 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 3, 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 to protect correlative rights and prevent 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 common reservoir is located predominantly in the Third Bone Spring, is "logical" and "reasonable."

B.3 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.

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.

Furthermore, there are inconsistencies that appear in cases involving nonuniform ownership across depths severances. 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, despite that a well drilled in the Wolfcamp pool would produce and take hydrocarbons from the

top interval, 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; instead, the top interval was excluded from the unit thereby excluding the owners compensation for their interest produced and taken.

The Division took Case No. 25432 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, and the Hearing Examiner pursuant to §70-2-13 recommended to the Division that the application be granted resulting in the issuance of Order No. R-23964 on September 2, 2025. *See* Order attached hereto as Ex. 8. Such inconsistencies between Case Nos. 20169 and 25432 concern Coterra, who has made every effort to harmonize its development plan with the actual geology underlying the Subject Lands, and with New Mexico case law and the requirements under the OGA, in order to protect correlative rights and prevent an unlawful taking. *Manning* clearly indicates that the owners in the top interval excluded by Order No. R-23964 could pursue a takings' claim against the state.[6] Coterra wants the Division to be protected against any and all such potential claims and therefore

[6] The New Mexico Supreme Court case, *Manning v. New Mexico Energy, Minerals and Natural Resources Dep't,* 2006-NMSC-027, 140 N.M. 528, 144 P.3d 87, was presented to the Division and addressed on March 21, 2025 (prior to Case No. 25432) in Case Nos. Case Nos. 24941-24942, 24145-24148, 24994-24995, and 25115-25117. *See* V-F Petroleum Inc.'s Closing Statement, filed March 21, 2025, p. 5, excerpt attached hereto as Ex. 9 (stating that if the Division approves Permian Resources' unlawful taking in Cases 24941 *et al*. without providing a means for compensation, this would result in unconstitutional use of the OCD's police powers). Furthermore, the rulings under *Manning* were also presented to the Division on July 29, 2025, in Case Nos. 22853 and 23295. *See* Unnopposed Motion Requesting Leave to Submit an Allocation Formula and Requesting Review of the Legal Necessity to Utilize an Allocation Formula when Producing the Wolfbone Pool to Protect Correlative Rights and Prevent the Unconstitutional Taking of Hydrocarbons Where There is Both Open Communication and Nonuniform Onwership Across a Depth Severance Within the Wolfbone Pool, filed July 29, 2025, ¶¶ 20-21, attached as Ex. 10. (Counsel for both competing applicants in the contested hearing agreeing that an allocation formula is legally necessary under *Manning* and previous OCD cases in order to properly produce the Wolfbone Pool containing a depth severance and nonuniform ownership, to protect correlative rights, and to prevent an unlawful taking of hydrocarbons).

respectfully asks the Commission to resolve these kinds of inconsistencies regarding the allocation of interests at the Division level to protect correlative rights and provide guidance to applicants.

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 correlative rights to be protected).

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.

III. Statement of Cases: The Competing Development Plans

A. Applicant's statement of Coterra's cases

Coterra submitted the applications described below to the Division in Case Nos. 23448-23455, and 23594-23601 for the efficient and optimal development of the Wolfbone Pool underlying the Subject Lands and optimal development of the upper Bone Formation, from the top of the Bone Spring to the base of the Second Bone Spring formation, excluding the Third Bone Spring formation, underlying the Subject Lands. Coterra presents to the Commission the same plan that it presented to the Division, which Coterra designed pursuant to the geological reality that the Third Bone Spring and Upper Wolfcamp constituted a single reservoir (the Wolfbone Pool).

Accordingly, in its applications, Coterra places eight (8) wells in eight (8) in the Wolfbone units across Sections 4 and 9 and 5 and 8 in the prime location of the basal Third Bone Spring and also places a well in the Second Bone Spring underlying the E/2 E/2 of Sections 5 and 8 and a well in the Second Bone Spring underlying the E/2 E/2 of Sections 4 and 9. This is the first installment of Coterra's development plan for which the commencement of drilling and completion of the wells can be accomplished within one year. Coterra plans an additional twenty (20) wells for efficient and optimal development of the remaining upper Bone Spring formations, which are listed in a table, p. 11-12, in the statement provided by Coterra's Landman.

B. Description of Permian Resources' competing development plan and cases.

The Division granted operatorship in Order No. R-23089-A to Permian Resources based on the original development plan it presented to Division, a development plan which Permian Resources also presented to the working interest owners, stating that it would maximize production, prevent waste and protect correlative rights. *See* FN 1 above. Permian Resources plan

consisted of proposing eight (8) units across Sections 5 & 8 (containing the Joker wells) and Section 4 &9 (containing the Bane wells). Permian Resources' development plan proposes to drill one set of eight (8) wells in the Third Bone Spring formation and an additional set of eight (8) wells in the Upper Wolfcamp XY formation, a shallow distance below the Third Bone Spring wells. The Third Bone Spring and Upper Wolfcamp formations form the Wolfbone Pool, which the Division found to be a single reservoir and common source supply with open communication between the two formations such that the reservoir is "located predominately in the Third Bone Spring Sand." *See* Order No. R-23089, ¶ 6.

Thus, Permian Resources is proposing to drill twice as many wells as Coterra to develop the same single reservoir. Furthermore, Permian Resource's original plan proposes to drill an additional thirty-two (32) wells to develop the upper Bone Spring pool (96637) that now excludes the Third Bone Spring formation after creation of the Wolfbone Pool, for a total of forty-eight (48) wells. Permian Resources' plan is presented by a total of 16 applications in Case Nos. 23508-23523.

C. Material facts relevant to the competing development plans

The Division issued a number of findings and conclusions in its final Order No. R-23089 (See Ex. 11 attached) which form the basis for the creation of the Wolfbone Pool. *See* Order No. R-23089, ¶¶ 1-10. This Order denied the applications of both Permian Resources and Coterra and therefore was an adverse decision against both parties. Under § 70-2-13, a party of record subject to an OCD's adverse decision has thirty (30) to appeal the decision to the Commission. Neither Permian Resources nor Coterra appealed this adverse decision to the Commission and therefore the findings and conclusions of the Order have been established of record and form the basis for the creation of the Wolfbone Pool in Case Nos. 24528 and 24541. The only order under

appeal and review by the Commission is Order No. R-23089-A granting operatorship to Permian Resources. Therefore, the following material facts have been established and affect the two development plans:

Fact 1: The Third Bone Spring formation and the Upper Wolfcamp formation "lack natural barriers that would prevent communication" between the two formations and therefore there is open communication of hydrocarbons and fluids. Order No. R-23089, ¶ 6.

Fact 2: The Third Bone Spring and Upper Wolfcamp formations together represent a single reservoir and common source of supply that is "located predominantly in the Third Bone Spring Sand." *Id.*

Fact 3: "[W]ells completed in the Bone Spring and Wolfcamp formations will share production from both the Bone Spring and Wolfcamp formations." *Id.* at 10

Fact 4: There exists depth severance between the base of the Third Bone Spring formation and the top of the Upper Wolfcamp formation and nonuniform ownership between the two formations. Both parties have stipulated to Fact 4.

COTERRA'S PROPOSED EVIDENCE AND WITNESS QUALIFICATIONS

WITNESS	ESTIMATED TIME	EXHIBITS
Landman: Ashley St. Pierre	Approx. 35 min	Approx. 25

Qualifications: Ms. St. Pierre graduated in 2007 from Texas Tech University with a Bachelor of Business Administration degree in Energy Commerce. She has worked at Coterra for approximately 9 months with a primary focus on Lea County, New Mexico. Prior to Coterra, She has been working in the Permian Basin for the past 11 years with various operators. Her credentials as an expert witness in petroleum land matters have been accepted by the Division and made a matter of record.

Geologist: Staci Frey	Approx. 35 min	Approx. 15

Qualifications: Ms. Frey has a Bachelor of Science Degree in Geophysical Engineering from Colorado School of Mines, and a Master of Science Degree in Geophysics from Colorado School of Mines. She has worked on New Mexico Oil and Gas matters since July 2018. Her credentials as an expert witness in geology have been accepted by the Division and made a matter of record.

Reservoir Engineer: Kent Weinkauf Aprox. 45 minutes Approx. 16
Qualifications: Mr. Weinkauf holds a Bachelor of Science in Petroleum Engineering and a Bachelor of Science in Business and Finance from the University of Tulsa. He has worked in oil and gas for 11 years, including over 7 years as a reservoir engineer. Kent has worked on New Mexico oil and gas matters since 2021 through reservoir engineer roles within Coterra's Permian Business Unit and the Asset Evaluation Team. He has previously testified before the Division as an expert reservoir engineer, and his credentials have been accepted of record.

Facilities Engineer: Calvin Boyle Aprox. 20 minutes Approx. 5
Qualifications: Mr. Boyle has a Bachelor of Science Degree in Petroleum Engineering from The University of Oklahoma, and a Master of Business Administration from Oklahoma State University. He has approximately 8 years of experience as facilities engineer working in various technical capacities and has testified previously before the Division.

PERMIAN RESOUCES' PROPOSED EVIDENCE AND WITNESS QUALIFICATIONS

To be submitted in Permian Resources' Pre-hearing Statement

PROCEDURAL MATTERS

The parties have conferred and have agreed to the following stipulations as to admission of evidence into the record and allocation of hearing time.

- Location of Depth Severance:
  - The Wolfbone Pool within the Subject Lands incorporates a depth severance created by ownership instruments noting nonuniform ownership between the formations that is located at the division between the base of the Bone Spring formation and the top of the Wolfcamp formation. Accordingly, the ownership depth severance is found at a stratigraphic equivalent of approximately 10,876 feet, measured depth, as found in the five-inch Dual Lateral Micro Log SFL in the Matador 5 Federal #1 well (API No. 30- 025-31056)."

- Inclusion of OCD record into the record of the OCC de novo proceedings
  - Given the length of proceedings of the Subject Cases at the Division level and the number of related cases involved, such as the two cases that created the Wolfbone Pool underlying the Subject Lands, the parties stipulate that the entire OCD record in the Subject Cases and in the Wolfbone cases should be part of the OCC record for review in this de novo hearing.

- Draft C-102s
  - The parties stipulate to admission into the record for this de novo hearing the same C-102s submitted as exhibits at the OCD hearing; provided, that the C-102s may require updating and/or revising for final submission to the Division based on the Division's pool designations.

- Witness Qualifications
    - The parties stipulate to the expert qualifications of the witnesses, but reserve the right to voir dire individual witnesses if opinion testimony goes beyond their expert qualifications in their resume/CV.

The parties agree and stipulate to allocate the hearing time as follows and based on the following assumptions, subject to OCC agreement/approval:

- Hearing starts at 9 a.m. both days
- 15-minute, mid-morning breaks at 10:30-10:45
- Lunch breaks 12-1:30 (1.5 hours provides cushion to travel to/from hearing during lunch hour)
- 15-minute, mid-afternoon breaks 3-3:15
- End of hearing on Thursday at 5 p.m. and 4 p.m. on Friday to give Commission time to deliberate on Friday
- Total hearing time
    - Thursday 6 hours
    - Friday 5 hours
    - Total hearing time 11 hours
- Time for OCC to ask questions about 1 hour (but as much time as they need)
- Allocation for each party – 5 hours for each party for opening, direct, cross, rebuttal (if any), and oral closing (if any)
- Allocation for OCC examinations – 1 hour
- Allocation for OCC deliberation – 1 hour
- Coterra plans to present its case first in order, and Permian Resources will follow.

Respectfully Submitted,

ABADIE & SCHILL, PC

/s/ Darin C. Savage
Darin C. Savage

Andrew D. Schill
William E. Zimsky
214 McKenzie Street
Santa Fe, New Mexico 87501
Telephone: 970.385.4401
Facsimile: 970.385.4901
darin@abadieschill.com
andrew@abadieschill.com
bill@abadieschill.com
Attorneys for Coterra Energy Operating Co.

Owen Anderson, Attorney and Professor of Oil and Gas Law, University of Texas School of Law

/s/ Owen L. Anderson
Owen L. Anderson

209 Hills of Texas Trail
Georgetown, Texas 78633
Telephone: 405.641.6742
oanderson@law.utexas.edu
Pro Hac Vice Co-counsel for Coterra Energy Operating Co.

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 September 11, 2025:

Michael H. Feldewert – mfeldewert@hollandhard.com
Adam G. Rankin -- arankin@hollandhart.com
Paula M. Vance – pmvance@hollandhart.com
Attorneys for Read & Stevens, Inc. and
Read Resources Operating, LLC

/s/ Darin C. Savage
Darin C. Savage

BEFORE THE

Oil Conservation Commission

SANTA FE, NEW MEXICO

IN THE MATTER OF:

CASE NO. 903

TRANSCRIPT OF PROCEEDINGS

ADA DEARNLEY AND ASSOCIATES
COURT REPORTERS
ROOMS 105, 106, 107 EL CORTEZ BUILDING
TELEPHONE 7-9546
ALBUQUERQUE, NEW MEXICO

EXHIBIT 1

Received by OCD: 9/11/2025 11:52:01 PM

BEFORE THE
OIL CONSERVATION COMMISSION
STATE OF NEW MEXICO
Santa Fe, New Mexico

May 18, 1955

IN THE MATTER OF:

Application of the Commission upon its own motion for an order establishing rules and regulations with regard to hearings to be conducted before examiners (as provided in Chapter 235, Laws of 1955).

Case No. 903

Before: Honorable John F. Simms, E. S. (Johnny) Walker, and William B. Macey.

TRANSCRIPT OF HEARING

MR. MACEY: The next case is 903. Does anyone have a statement or testimony they wish to give in regard to Case 903? Mr. Woodward.

MR. WOODWARD: At the risk of wearing out our welcome, we would like to make a very brief statement as to the types of orders which we think should be adopted in supplementing this statute. Pursuant to Senate Bill 229, we think the Commission should issue a procedural order that would make some provision for the following matters.

We are not prepared to make any recommendation, but based on the examiner system in other states, I think it would be appropriate to cover the following things. Of course, the Commission is working within the framework set up by the statute and must exercize its powers with reference to those provisions.

The first of these provisions that I think the Commission has to deal with in the statute is the clause that authorizes them to provide for the appointment of one or more examiners to be members

Released to Imaging: 9/12/2025 7:50:49 AM

BEFORE THE

Oil Conservation Commission

SANTA FE, NEW MEXICO

June 28, 1955

IN THE MATTER OF:

CASE NO. 903

TRANSCRIPT OF PROCEEDINGS

ADA DEARNLEY AND ASSOCIATES
COURT REPORTERS
605 SIMMS BUILDING
TELEPHONE 3-6691
ALBUQUERQUE, NEW MEXICO

Received by OCD: 9/11/2025 11:52:01 PM

their order on the basis of the record. What the purpose of coming back then for hearing de novo, certainly I agree wholeheartedly that the record should be introduced in the hearing before the Commission on a de novo hearing. At the same time, it was the intent of the law, in my opinion, that the hearing de novo means they would have the opportunity to argue about this record and to introduce additional testimony, if any were available, to the Commission.

There is some question under our Statute. I don't believe what Mr. Kitts says agrees with what I am going to say. When the Statute says de novo, that means a new trial. I don't believe the Supreme Court of New Mexico says that. In some cases you may be faced with the proposition that the de novo hearing means de novo on the record. If that were the interpretation under this Statute, it would be meaningless because you have had a review of the record by the Commission. While I approve of the language that the record can't be offered in a hearing before the Commission, I would like to hear it expanded, and let them --

GOVERNOR SIMMS: I know that two members of the Commission will. It is not de novo on the record, the record will be considered and you can introduce additional evidence.

MR. KELLAHIN: I understood that. I think that is correct, in the matter of interpretation that may have.

GOVERNOR SIMMS: Suppose we had the matter that we were hearing this morning, about this decision down at Eunice, and you had a trial examiner who had heard the whole thing, and it had gone six months and the study had been completed, and there were facts that you didn't know about at the time of the Examiner's recommendation or ruling, I think it would be very discriminatory not to be able

Released to Imaging: 9/12/2025 7:50:49 AM

Received by OCD: 9/11/2025 11:52:01 PM

to introduce new evidence as a result of this additional study.

MR. KELLAHIN: I agree with you, and I think that was the intent of the Statute, The point I am trying to make, I think the Commission should solely interpret the Statute and proposals, even in their rules which would give us a precedent in case we need it.

GOVERNOR SIMMS: The only case we have that applies to us says de novo on the record, and it is a Supreme Court --

MR. KELLAHIN: (Interrupting) District Court. We have had no Supreme Court cases on the Statute. That is the reason I am a little concerned about the interpretation about this Statute. I think the interpretation placed on it by the Commission will be material.

GOVERNOR SIMMS: I think Bill is interpreting it as really de novo and not de novo on the record.

MR. KITTS: I feel that way. Is that the way you feel about it?

MR. KELLAHIN: Yes. I think you ought to consider the record before the Examiner.

MR. KITTS: Then we are in agreement.

MR. MACEY: Anyone else? Does anyone else have anything further in Case 903? The Case will be continued to July 14th. We will take a recess until 1:15.

(Noon recess.)

Released to Imaging: 9/12/2025 7:50:49 AM

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 2

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.*

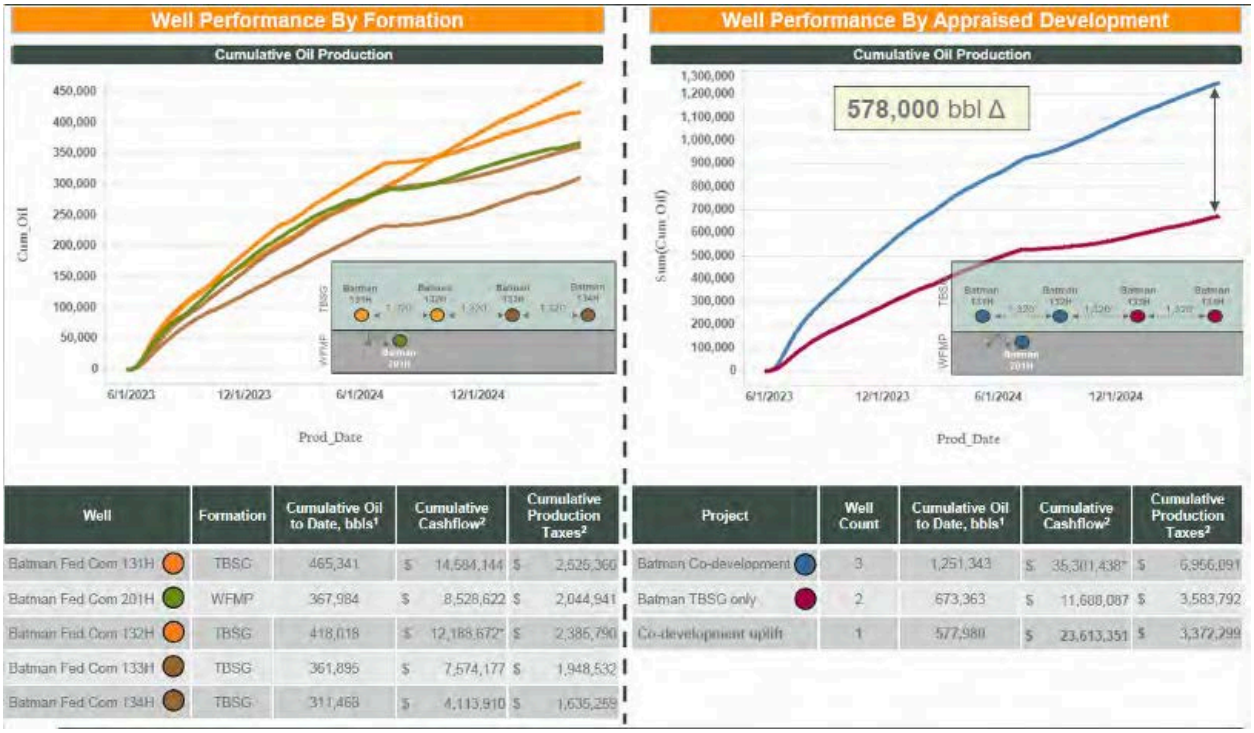
79. A Unit in the Subject Land shall terminate if (a) the owners of all Pooled Working Interests in that Unit reach a voluntary agreement; or (b) the well(s) drilled on the Unit are plugged and abandoned in accordance with the applicable rules. Read shall inform OCD no later than thirty (30) days after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

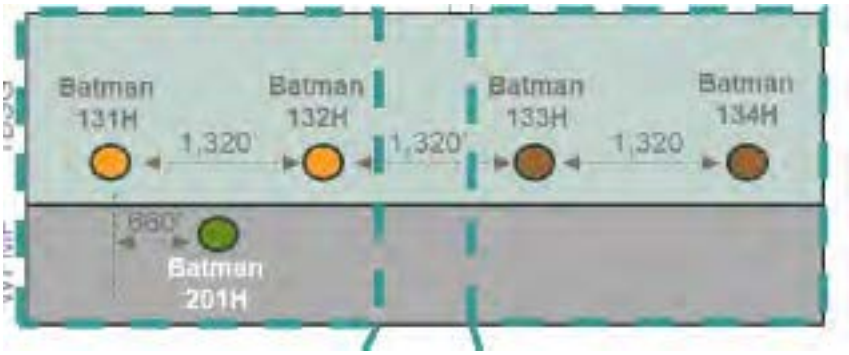
Date: 4/1/2025

GERASIMOS RAZATOS
DIRECTOR (Acting)
GR/jag



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 original 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 3

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

APPLICATIONS OF CIMAREX ENERGY CO.
FOR A HORIZONAL 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

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

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

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 5

Received by OCD: 9/11/2025 11:52:01 PM

(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

Released to Imaging: 9/12/2025 7:50:49 AM

Received by OCD: 9/11/2025 11:52:01 PM

(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.

Released to Imaging: 9/12/2025 7:50:49 AM

Received by OCD: 9/11/2025 11:52:01 PM

(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.

Released to Imaging: 9/12/2025 7:50:49 AM

(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."

Received by OCD: 9/11/2025 11:52:01 PM

(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.

Released to Imaging: 9/12/2025 7:50:49 AM

(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 6

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.

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

Released to Imaging: 9/12/2025 7:50:49 AM

Received by OCD: 9/11/2025 11:52:01 PM

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
7

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.

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

IN THE MATTER OF APPLICATION FOR COMPULSORY POOLING SUBMITTED BY CHEVRON U.S.A. INC.

CASE NO. 25432
ORDER NO. R-23964

ORDER

The Director of the New Mexico Oil Conservation Division ("OCD"), having heard this matter through a Hearing Examiner on August 7, 2025, and after considering the testimony, evidence, and recommendation of the Hearing and Technical Examiners, issues the following Order.

FINDINGS OF FACT

1. Chevron U.S.A. Inc. ("Operator") submitted an application ("Application") to compulsory pool the uncommitted oil and gas interests within the spacing unit ("Unit") described in Exhibit A. 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.

CONCLUSIONS OF LAW

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

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

8. Operator satisfied the notice requirements for the Application and the hearing as required by 19.15.4.12 NMAC.

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

10. Operator has the right to drill the Well(s) to a common source of supply at the

EXHIBIT 8

depth(s) and location(s) in the Unit described in Exhibit A.

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

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

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

14. 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

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

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

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

18. 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 in accordance with 19.15.16.15(C) NMAC.

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

20. The Operator 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.

21. This Order shall terminate automatically if the Operator fails to comply with the preceding paragraph unless the Operator 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 the Operator must set the case for a hearing.

22. Operator may propose reasonable deviations from the development plan via notice to 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 deviation is automatically granted. If a protest is received the deviation is not granted and the Operator must set the case for a hearing.

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

24. Operator 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").

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 one hundred eighty (180) days after Operator submits a Form C-105 for a well, Operator 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.

27. 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 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 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.

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. Operator 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.

33. Each year on the anniversary of this Order, and no later than ninety (90) days after each payout, Operator 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.

34. 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.

35. 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.*

36. 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.

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

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

Albert Chang

Date: 9/2/2025

ALBERT CHANG
DIRECTOR
AC/asf

Exhibit A

COMPULSORY POOLING APPLICATION CHECKLIST	
ALL INFORMATION IN THE APPLICATION MUST BE SUPPORTED BY SIGNED AFFIDAVITS	
Case: 25432	**APPLICANT'S RESPONSE**
Hearing Date:	**August 7, 2025**
Applicant	**Chevron U.S.A. Inc.**
Designated Operator & OGRID (affiliation if applicable)	**Chevron U.S.A. Inc. (4323)**
Applicant's Counsel:	Modrall Sperling
Case Title:	APPLICATION OF CHEVRON U.S.A. INC. FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO.
Entries of Appearance/Intervenors:	None
Well Family	Weller
Formation/Pool	
Formation Name(s) or Vertical Extent:	Wolfcamp
Primary Product (Oil or Gas):	Gas
Pooling this vertical extent:	Wolfcamp excluding that portion from the top of the Wolfcamp to 100' below the top of the Wolfcamp. See description of depth severance below.
Pool Name and Pool Code:	Purple Sage Wolfcamp (98220)
Well Location Setback Rules:	Purple Sage Order
Spacing Unit	
Type (Horizontal/Vertical)	Horizontal
Size (Acres)	640
Building Blocks:	320 acres
Orientation:	**North-South**
Description: TRS/County	W/2 of Sections 16 and 21, Township 25 South, Range 27 East, NMPM, Eddy County, New Mexico
Standard Horizontal Well Spacing Unit (Y/N), If No, describe and is approval of non-standard unit requested in this application?	Yes.
Other Situations	
Depth Severance: Y/N. If yes, description	Yes. There is a depth severance within the proposed spacing unit in the Wolfcamp formation at 100' below the top of the Wolfcamp, which was created by Pugh clauses in certain existing Oil and Gas leases. It is described as the interval located between the top of the Wolfcamp (being the stratigraphic equivalent of 8,642' TVD) and 8,742' TVD, as described on the Gamma Ray Neutron/Density log for the Cottonwood Draw Unit #1 at API # 30-015-21530. Chevron is seeking to pool from 100' below the top of the Wolfcamp (being the stratigraphic equivalent of 8,742' TVD) to the base of the Wolfcamp (being the stratigraphic equivalent of 10,260' TVD).

EXHIBIT A tabbies

CASE NO. 25432
ORDER NO. R-23964

Proximity Tracts: If yes, description	N/A
Proximity Defining Well: if yes, description	N/A
Applicant's Ownership in Each Tract	See Exhibit A-4/A-5
Well(s)	
Name & API (if assigned), surface and bottom hole location, footages, completion target, orientation, completion status (standard or non-standard)	Add wells as needed
Well #1: Weller 21 16 Federal Com #462H	API No. 30-015-55759 SHL: 1384' FSL & 1782' FWL, (Unit K), Section 21, T25S, R27E BHL: 25' FNL & 380' FWL, (Unit D) Section 16, T25S, R27E FTP: 330' FSL & 380' FWL, Section 21, T25S, R27E LTP: 330' FNL & 380' FWL, Section 16, T25S, R27E Completion Target: Wolfcamp A (Approx. 9,042' TVD) Orientation: North/South
Well #1: Weller 21 16 Federal Com #463H	API No. 30-015-55760 SHL: 1384' FSL & 1802' FWL, (Unit K), Section 21, T25S, R27E BHL: 25' FNL & 1025' FWL, (Unit D) Section 16, T25S, R27E FTP: 330' FSL & 1025' FWL, Section 21, T25S, R27E LTP: 330' FNL & 1025' FWL, Section 16, T25S, R27E Completion Target: Wolfcamp A (Approx. 9,073' TVD) Orientation: North/South
Well #1: Weller 21 16 Federal Com #464H	API No. 30-015-55761 SHL: 1384' FSL & 1822' FWL, (Unit K), Section 21, T25S, R27E BHL: 25' FNL & 1670' FWL, (Unit C) Section 16, T25S, R27E FTP: 330' FSL & 1670' FWL, Section 21, T25S, R27E LTP: 330' FNL & 1670' FWL, Section 16, T25S, R27E Completion Target: Wolfcamp A (Approx. 8,879' TVD) Orientation: North/South
Well #1: Weller 21 16 Federal Com #465H	API No. 30-015-55762 SHL: 1383' FSL & 1842' FWL, (Unit K), Section 21, T25S, R27E BHL: 25' FNL & 2314' FWL, (Unit D) Section 16, T25S, R27E FTP: 330' FSL & 2304' FWL, Section 21, T25S, R27E LTP: 330' FNL & 2314' FWL, Section 16, T25S, R27E Completion Target: Wolfcamp A (Approx. 8,906' TVD) Orientation: North/South Note: This well is at a standard location even though portions of the lateral are proposed at 2314'/2317' FWL because the Sections are slightly irregular. Put another way, the completed lateral for this well is proposed to 330' or more from the center line of both Sections 16 and 21.
Horizontal Well First and Last Take Points	Exhibit A-3
Completion Target (Formation, TVD and MD)	Exhibit A-6

AFE Capex and Operating Costs	
Drilling Supervision/Month $	$14,240. See Exhibit A-6 (Proposal Letter)
Production Supervision/Month $	$1,600. See Exhibit A-6 (Proposal Letter)
Justification for Supervision Costs	See Exhibit A-2, Paragrah 20
Requested Risk Charge	200%. See Exhibit A-6 (Proposal Letter)
Notice of Hearing	
Proposed Notice of Hearing	Exhibits A-1; C-1
Proof of Mailed Notice of Hearing (20 days before hearing)	Exhibit C-2 and C-3
Proof of Published Notice of Hearing (10 days before hearing)	Exhibit C-4
Ownership Determination	
Land Ownership Schematic of the Spacing Unit	Exhibit A-4
Tract List (including lease numbers and owners)	Exhibit A-4
If approval of Non-Standard Spacing Unit is requested, Tract List (including lease numbers and owners) of Tracts subject to notice	NA
Pooled Parties (including ownership type)	Exhibit A-5
Unlocatable Parties to be Pooled	N/A
Ownership Depth Severance (including percentage above & below)	See Exhibit A.2, Paragraph 14
Joinder	
Sample Copy of Proposal Letter	Exhibit A-6
List of Interest Owners (ie Exhibit A of JOA)	Exhibit A-4
Chronology of Contact with Non-Joined Working Interests	Exhibit A-7
Overhead Rates In Proposal Letter	Exhibit A-6
Cost Estimate to Drill and Complete	Exhibit A-6
Cost Estimate to Equip Well	Exhibit A-6
Cost Estimate for Production Facilities	Exhibit A-6
Geology	
Summary (including special considerations)	Exhibit B
Spacing Unit Schematic	Exhibit B-4
Gunbarrel/Lateral Trajectory Schematic	Exhibit B-4
Well Orientation (with rationale)	Exhibit B, Para. 11
Target Formation	Exhibit B-2
HSU Cross Section	Exhibits B-3
Depth Severance Discussion	See Exhibit A.2, Paragraph 14 for a description of the depth severance.
Forms, Figures and Tables	

Released to Imaging: 7/31/2025 3:09:17 PM

Released to Imaging: 9/12/2025 7:50:49 AM

C-102	Exhibit A-3
Tracts	Exhibit A-4
Summary of Interests, Unit Recapitulation (Tracts)	Exhibit A-5
General Location Map (including basin)	Exhibit B-1
Well Bore Location Map	Exhibit B-1
Structure Contour Map - Subsea Depth	Exhibit B-2
Cross Section Location Map (including wells)	Exhibits B-1
Cross Section (including Landing Zone)	Exhibits B-3
Additional Information	
Special Provisions/Stipulations	
CERTIFICATION: I hereby certify that the information provided in this checklist is complete and accurate.	
Printed Name (Attorney or Party Representative):	Deana M. Bennett
Signed Name (Attorney or Party Representative):	Deana M. Bennett
Date:	7/31/2025

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

APPLICATIONS OF V-F PETROLEUM INC.
FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO **Case Nos. 24994- 24995**
& 25115-25117

APPLICATIONS OF READ & STEVENS, INC.
FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO **Case Nos. 24941-24942**
& 25145-25148

V-F PETROLEUM INC.'S CLOSING STATEMENT

V-F Petroleum Inc. ("V-F"), through its undersigned attorneys, submits to the Oil Conservation Division ("Division" or "OCD") its Closing Statement in support of V-F's applications in Case Nos. 24994-24995 and 25115-25117 and in opposition to the applications filed by Read & Stevens, Inc. and Permian Resources Operating, LLC (collectively "Permian") in Case Nos. 24941-24942 and 25145-25148.

I. Introduction and Background.

1. V-F first began devising its plan to develop Sections 15 and 16, Township 18 South, Range 31 East, NMPM, Eddy County, New Mexico, 1 year and 9 months ago, at which time it began evaluating title. On September 6, 2023, after making substantial progress toward acquiring mineral interests in the subject lands, V-F sent well proposals to working interest ("WI") owners for the Rainier 16-15 Fed Com wells. *See* V-F's Exhibits A-5, Consolidated Hearing Packet.

2. Mewbourne Oil Company ("Mewbourne") was a WI owner in Section 15 which received V-F Petroleum's well proposal.

3. When Mewbourne received V-F's proposal, Permian, which eventually acquired Mewbourne's WI in Section 15, owned no interest in Section 15; it owned WI only in Section 14. Thus, at the time that V-F sent its well proposal for Sections 15 and 16, Permian could just as easily

EXHIBIT 9

Permian hastily and reluctantly[2] sent well proposals for the Third Bone Spring, followed by applications, that sought to pool the entire Third Bone Spring, from the top of the Third Bone Spring to its base, only to make material changes at the hearing to the vertical extent of spacing units that excludes owners in the upper two-thirds above the severance while taking their hydrocarbons without compensation.

11. Permian's material changes represent a fatal flaw in its development plan that violates the correlative rights of the owners in the upper part of the Third Bone Spring by allowing Permian to produce the upper two-thirds of the Third Bone Spring without compensating the owners for the taking of their hydrocarbons. *See* Tr. dtd 1-28-25, 62: 10-25; 63: 18-25; 64: 10-11 (Permian's geologist confirming that due to the absence of geological barriers, the wells that Permian proposes to drill below the depth severance in the Third Bone Spring will produce and drain resources belonging to the owners above the depth severance). Such taking without compensation is a textbook violation of the owners' correlative rights under the Oil and Gas Act [Ch. 70, Art. 2 1978] ("OGA"), and when state action facilitates such a taking, it is a violation of owners' constitutionally protected property rights. *See* NMSA 1978 §70-2-33(H); *see also Manning v. Energy, Minerals,* 2006-NMSC-027, ¶ 46, 144 P.3d 87 (showing that state action creating a taking requires adequate provision for obtaining compensation). If the Division approves Permian's development plan, it will be using its state police powers to create the conditions for a taking without compensation which is unconstitutional. *See id.* at ¶¶ 45-47. Thus, the Division must reject Permian's development plan.

12. During discussions over an objection, Permian's counsel, referring to 19.15.4.8A(3) NMAC, argued that Permian's applications only had to include a general description of the common source being sought to pool. *See* Tr. dtd 2-27-25, 157: 22-25. However, Permian did not provide a

[2] Permian's January 9, 2025 well proposal states that it had planned to pool only to the base of the Second Bone Spring in order to avoid a depth severance in the Third Bone Spring. Permian reluctantly targeted the Third Bone Spring as an afterthought in an attempt to remain competitive with V-F's plan.

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

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

Case No. 24721

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

Case No. 24736

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

Case No. 22853

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

Case No. 23295

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

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

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

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

EXHIBIT 10

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

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

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

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

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

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

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

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

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 11

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

Sante Fe Main Office
Phone: (505) 476-3441

General Information
Phone: (505) 629-6116

Online Phone Directory
https://www.emnrd.nm.gov/ocd/contact-us

State of New Mexico
Energy, Minerals and Natural Resources
Oil Conservation Division
1220 S. St Francis Dr.
Santa Fe, NM 87505

QUESTIONS

Operator: Coterra Energy Operating Co. 6001 Deauville Blvd Midland, TX 79706	OGRID: 215099
	Action Number: 505534
	Action Type: [HEAR] Prehearing Statement (PREHEARING)

QUESTIONS

Testimony

Please assist us by provide the following information about your testimony.

Number of witnesses	4
Testimony time (in minutes)	135