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

FOR THE CONSIDERATION OF: APPLICATION OF SELECT WATER SOLUTIONS, LLC FOR APPROVAL OF SALTWATER DISPOSAL WELL, LEA COUNTY, NEW MEXICO.	**OCC CASE NO. 26053 [DESERT RAM]** OCD CASE NOS. 25547-25548 25899-25900
FOR THE CONSIDERATION OF: APPLICATION OF SELECT WATER SOLUTIONS, LLC FOR APPROVAL OF SALTWATER DISPOSAL WELL, LEA COUNTY, NEW MEXICO.	**OCC CASE NO. 26082 [PILOT]** OCD CASE NOS. 25547-25548 25899-25900

PILOT WATER SOLUTIONS SWD, LLC'S RESPONSE IN OPPOSITION TO SELECT WATER SOLUTIONS, LLC'S MOTION TO DISMISS

Pilot Water Solutions SWD, LLC ("Pilot"), by and through its undersigned counsel, respectfully submits this Response in Opposition to Select Water Solutions, LLC's ("Select") Motion to Dismiss Pilot's Application for Hearing De Novo (the "Motion"). In support of this Response, Pilot states the following.

I. INTRODUCTION

Select urges a construction of NMSA 1978, Section 70-2-13 (1981) under which a Hearing Examiner's order excluding a participant from a Division proceeding is unreviewable by the Commission. On Select's theory, an exclusion order is not reviewable when entered because it is not a final merits order, and it cannot be reviewed later because the act of exclusion erases the excluded participant from the record and leaves no status from which to claim adverse effect. That construction is irreconcilable with the text of Section 70-2-13, with the Commission's own

adjudication rules, and with the Commission's controlling precedent in Order No. R-14097-A.[1]

The statute resolves this Motion on its own terms. Section 70-2-13 provides that "[w]hen any matter or proceeding is referred to an examiner and a decision is rendered thereon, any party of record adversely affected shall have the right to have the matter heard de novo before the commission." NMSA 1978, § 70-2-13. The Hearing Examiner's February 25, 2026, Order denying Pilot's Motion for Reconsideration is a decision rendered on a matter referred to the Examiner. It conclusively excluded Pilot from the Division proceedings on Select's four proposed saltwater disposal wells—wells that bear directly on Pilot's same-formation disposal operations. Section 70-2-13 and Rule 19.15.4.23(A) NMAC authorize de novo review of that decision, thus Select's Motion should be denied.

This Response addresses only the jurisdictional premise of the Motion. Pilot's substantive arguments under Rule 19.15.4.11(C) NMAC and the merits of the Hearing Examiner's standing determination are set forth in Pilot's Application for Hearing De Novo (the "De Novo Application") and are expressly preserved and incorporated by reference. Those arguments belong at the de novo hearing Select seeks to prevent, not in a motion to dismiss that conflates jurisdiction with the merits.

II. PROCEDURAL BACKGROUND

On January 28, 2026, Pilot filed an Entry of Appearance and Notice of Intervention (the "Entry of Appearance") in Division Case Nos. 25547, 25548, 25899, and 25900, opposing Select's four proposed saltwater disposal wells. On February 2, 2026, Select moved to strike Pilot's Entry

[1] *In re Application of Matador Prod. Co. for Non-Standard Oil Spacing & Proration Unit, Compulsory Pooling, & Non-Standard Location, Lea Cty., N.M.,* Case No. 15366 (De Novo), Order No. R-14097-A (N.M. Oil Conservation Comm'n Mar. 10, 2016) (Exhibit A).

of Appearance. Pilot filed a substantive Response supported by the self-affirmed statements of David Grounds (Vice President, Regulatory Compliance, Pilot) and Ankush Gupta (Senior Vice President, Engineering and Planning, Pilot), together with Texas Railroad Commission records addressing same-formation pressure and reservoir-management considerations.

On February 5, 2026, the Hearing Examiner held a hearing at which Pilot appeared through counsel. At that hearing, the Hearing Examiner stated on the record that Pilot could seek review before the Commission. *See* Hr'g Tr. at 158, OCD Regular Hearing (Feb. 5, 2026) (Ex. E to Pilot's De Novo Application).

On February 19, 2026, Pilot moved for reconsideration under Rule 19.15.4.11(C) NMAC, tendering additional argument and evidentiary support. The Hearing Examiner denied reconsideration on February 25, 2026, in a written Order that reached the merits of Pilot's Rule 19.15.4.11(C) NMAC showing and rejected it on substantive grounds. Pilot filed its De Novo Application on March 27, 2026, within thirty days of the February 25 Order.

The Division has taken Case Nos. 25547, 25548, and 25900 under advisement, and Case No. 25899 is set for hearing on May 13, 2026. If the Division proceeds to final orders on Select's applications without Pilot's participation, the evidentiary record on those applications will be built, and then closed, without Pilot's same-formation operational evidence, cross-examination, or rebuttal.

III. ARGUMENT

A. Section 70-2-13 Plainly Authorizes De Novo Review of the Hearing Examiner's February 25, 2026, Order

Section 70-2-13 provides, in relevant part:

> *When any matter or proceeding is referred to an examiner and a decision is rendered thereon, any party of record adversely affected shall have the right to*

> *have the matter heard de novo before the commission upon application filed with the division within thirty days from the time any such decision is rendered.*

NMSA 1978, § 70-2-13 (1981) (emphases added).

Section 70-2-13 does not limit de novo review to a final merits order on the underlying applications. The statute supplies three requirements: (1) a "matter or proceeding" "referred to an examiner"; (2) a "decision … rendered thereon"; and (3) a "party of record adversely affected." Pilot satisfies each. Section 70-2-13 does not restrict de novo review to a final merits order on the underlying applications, does not require the affected party to wait until the proceedings are otherwise complete, and does not permit an Examiner's threshold participation ruling to become unreviewable merely because the ruling prevents the affected party from participating in the merits hearing.

1. The "matter" referred to the Examiner was Pilot's right to participate, and the Examiner rendered a "decision" on that matter

The first two statutory elements are satisfied on the face of the record. The relevant "matter" was not only Select's underlying injection-well applications, it was also Pilot's participation in those adjudications. Select placed that matter before the Hearing Examiner by filing a Motion to Strike Pilot's Entry of Appearance. Pilot then placed the same matter before the Examiner by filing a Motion for Reconsideration supported by additional argument and evidence. The Examiner decided both.

That is exactly how the Commission's rules structure examiner authority. Rule 19.15.4.11(C) NMAC authorizes the division examiner to strike a notice of intervention if the intervenor fails to show standing, unless the intervenor shows that its participation will contribute substantially to the prevention of waste, protection of correlative rights, or protection of public health or the environment. Rule 19.15.4.16(C) NMAC authorizes the director or division examiner

to "rule on motions that are necessary or appropriate for disposition prior to a hearing on the merits." Rule 19.15.4.19 NMAC empowers the division examiner to conduct proceedings and rule on objections. Those rules confirm that intervention, participation, and exclusion are not collateral abstractions outside the adjudicatory framework. They are matters the rules assign to the examiner for decision.

The Hearing Examiner's February 25, 2026, Order denying reconsideration therefore satisfies the statutory trigger. A matter was referred to the Examiner: Pilot's right to participate in active adjudications. A decision was rendered on that matter: Pilot's exclusion was confirmed on the merits of its Rule 19.15.4.11(C) NMAC showing. Section 70-2-13 requires nothing more on this element.

2. The statute is triggered by an examiner "decision," not a final order on the merits order

Select's argument changes the statutory trigger. Section 70-2-13 does not say that de novo review is available only after the Division enters a final order on the underlying application, and it does not say that review is limited to orders disposing of the merits. The statute says something materially different: when "any matter or proceeding is referred to an examiner and a decision is rendered thereon," an adversely affected party of record has the right to have "the matter heard de novo before the commission" upon timely application. NMSA 1978, § 70-2-13.

The operative word is "decision." The Legislature used that word twice: first to identify the examiner action that triggers review, and again to measure the thirty-day deadline from "any such decision." *Id.* The Legislature did not say "final order." It did not say "order on the merits." It did not say "order granting or denying the application." Select's proposed limitation depends on words the Legislature did not enact. New Mexico courts do not add statutory language, especially

where the statute makes sense as written. *Burroughs v. Bd. of Cnty. Comm'rs*, 1975-NMSC-051, ¶ 14, 88 N.M. 303, 540 P.2d 233.

The statutory structure confirms that omission of "final order" or "decision by the division" was deliberate. In Section 70-2-25(A), the Legislature required rehearing after "an order or decision of the commission." NMSA 1978, § 70-2-25(A). That language ties rehearing to Commission final action. Section 70-2-13 contains no comparable qualifier. It does not require a decision "of the division"; it applies when a referred matter is decided by an examiner. That distinction must be given effect. Section 70-2-13 plainly governs the path from an examiner decision to the Commission.

The February 25, 2026, Order denying Pilot's Motion for Reconsideration was a "decision" under any ordinary reading of the term. It resolved a contested issue submitted to the Hearing Examiner. It rejected Pilot's "contribute substantially" showing under Rule 19.15.4.11(C) NMAC on substantive grounds. And it conclusively excluded Pilot from further participation in Cases 25547, 25548, 25899, and 25900. That was not a ministerial act or informal procedural comment; it was an adjudicatory determination of Pilot's right to participate. Section 70-2-13 is triggered by that decision.

Select's contrary reading would produce a self-defeating construction of the statute. It would allow an examiner to exclude a participant before the merits hearing, prevent that participant from presenting evidence or cross-examining witnesses, and then declare Commission review is unavailable until after the merits record has been made without the excluded participant. Nothing in Section 70-2-13 requires that result. The statute exists to provide de novo Commission review when an examiner has decided a referred matter. An order excluding a participant from the case is precisely the kind of examiner decision that must be reviewable—and reviewable now, before the

proceedings advance to a final order on a record from which the excluded party has been categorically erased.

3. Pilot is a "party of record adversely affected" under Section 70-2-13 and Order No. 14097-A

Select's Motion does not meaningfully contest that Pilot is a "party of record adversely affected" within the meaning of Section 70-2-13. That element is therefore not a live dispute in this Motion. In any event, Pilot is a "party of record adversely affected" under both the Commission precedent and New Mexico law.

In Order No. R-14097-A, the Commission adopted the "legally significant participation" standard articulated in *New Energy Economy, Inc. v. Vanzi*, 2012-NMSC-005, ¶ 47, 151 N.M. 317, 274 P.3d 53, and denied party-of-record status to an entity that filed no pre-hearing entry of appearance, submitted no evidence or argument, entered the case only after the record had closed, and offered no excuse for the delay. Order No. R-14097-A ¶¶ 13–15 (Mar. 10, 2016). Pilot did the opposite. It entered its appearance while the case was active, appeared through counsel at the February 5 hearing, filed substantive written opposition supported by two sworn corporate-officer statements and documentary evidence, moved for reconsideration under Rule 19.15.4.11(C) NMAC, and received a written merits ruling on that motion. Pilot took every formal step the Commission identified in R-14097-A as necessary to participate in a legally significant manner.

Additionally, Pilot is also "adversely affected" in the most concrete sense the phrase can carry. The exclusion stripped Pilot of any further ability to participate in proceedings that directly implicate its same-formation operations—foreclosing evidentiary submission, cross-examination, and argument in a docket where Pilot holds a concrete operational stake. That foreclosure itself is an immediate and concrete adverse effect. Select cannot transmute that injury into a jurisdictional disqualification by pointing to the very orders that inflicted it. Section 70-2-13 is a remedial

provision; it was enacted to ensure that parties harmed by examiner decisions have a path to Commission review—not to permit the agency to bar the door with the very ruling under challenge.

Select may suggest that R-14097-A involved review of a final merits order on a compulsory pooling application, and that the Commission's analysis there focused only on "party of record" status because adversely-affected status was conceded. *See* Order No. R-14097-A ¶ 9. That observation confuses scope with holding. R-14097-A construed Section 70-2-13's "party of record" element under the framework of *Vanzi*; it did not construe the "decision is rendered" element to mean only "final order on the merits." That question was not before the Commission, and the order's reasoning rests squarely on the statute's text, which uses "decision" rather than "final order," and on *Vanzi's* substantive participation standard—neither of which depends on whether the underlying decision is final or interlocutory. R-14097-A does not exclude participation orders from de novo review; it simply did not present the question.

If anything, R-14097-A's reasoning supports Pilot affirmatively. The Commission adopted *Vanzi's* legally-significant-participation standard precisely because the agency's bare "party" classifications were "something of a moving target" unsuited to identifying who could invoke Section 70-2-13. Order No. R-14097-A ¶ 14 (quoting *Vanzi*, 2012-NMSC-005, ¶ 49). The Commission chose a substantive, conduct-based test over a label-based one. Select's gloss on Section 70-2-13—that the "decision rendered" must be a final order on the merits—would reintroduce the kind of formalistic label test the Commission rejected. Whether the Examiner's ruling is reviewable should not turn on the label affixed to it; it should turn on what the ruling does. Pilot's exclusion is functionally and legally final as to Pilot. R-14097-A's preference for substance over label cuts decisively in Pilot's favor.

Select may also point to R-14097-A's reference to NMSA 1978, Section 70-2-6(B), as

suggesting that direct Division-Director referral is the proper path for early Commission involvement. *See* Order No. R-14097-A ¶ 16. That observation is descriptive, not prescriptive. Section 70-2-6(B) referral is discretionary with the Division Director and is unavailable to a party who has been excluded from a proceeding by an examiner ruling. An excluded party cannot petition for, much less compel, a Section 70-2-6(B) referral. R-14097-A's reference to that mechanism was descriptive context for parties who prospectively want the Commission to hear a case before any Division proceeding occurs; it has nothing to say about parties who have been retrospectively excluded by an examiner decision. Section 70-2-13—not Section 70-2-6(B)—is the remedy the Legislature provided to a party of record adversely affected by an examiner decision.

4. Rule 19.15.4.23(A) NMAC confirms the statute's breadth, and Select's contrary reading would render exclusion orders categorically unreviewable

Select's jurisdictional theory is internally incoherent. At the moment the exclusion order is entered, Select says no de novo review can be held as no final merits order has been issued. After a final merits order is issued, Select's own logic forecloses review because the excluded participant has been erased from the record—every pleading stricken, every filing removed, the participant's name appearing nowhere in the case—with no status from which to claim adverse effect. Under Select's reading, exclusion orders are categorically unreviewable at every stage. The very ruling Pilot challenges would be the ruling that forecloses Pilot's right to challenge it. That cannot be what Section 70-2-13 means.

The New Mexico Supreme Court has "rejected a formalistic and mechanical statutory construction when the results would be absurd, unreasonable, or contrary to the spirit of the statute." *State v. Smith*, 2004-NMSC-032, ¶ 10, 136 N.M. 372, 98 P.3d 1022; *see also Baker v.*

Hedstrom, 2013-NMSC-043, ¶ 11, 309 P.3d 1047 (statutes must be construed to give effect to legislative intent). The Legislature did not design Section 70-2-13 as an unreachable remedy.

The Commission's own rule dispels any ambiguity Select attempts to manufacture. Rule 19.15.4.23(A) NMAC provides:

> *When the division enters an order pursuant to a hearing that a division examiner held, a party of record whom the order adversely affects has the right to have the matter heard de novo before the commission.*

The rule imposes exactly one (and no other) procedural condition on the Section 70-2-13 right: the adverse order must be issued "pursuant to a hearing that a division examiner held." It does not add a finality requirement. It does not limit de novo review to orders "disposing of the merits." It does not carve out orders that terminate a party's participation. The Commission promulgated Rule 19.15.4.23(A) NMAC under the same Oil and Gas Act authority that underlies Section 70-2-13 and could have written a finality limitation into it at any time. It did not.

There is therefore no conflict between the statute and the rule—they work in tandem to secure the same right from different angles. Section 70-2-13 creates the substantive entitlement: de novo Commission review of any examiner decision adversely affecting a party of record on any referred matter, bounded by a thirty-day jurisdictional deadline. Rule 19.15.4.23(A) NMAC adds one procedural predicate: the order must follow a hearing a division examiner held. Both are satisfied here. The Hearing Examiner presided over the February 5, 2026, hearing at which Pilot's participation was disputed on the record, and the February 25, 2026, written order issued pursuant to that proceeding, conclusively barring Pilot from Cases 25547, 25548, 25899, and 25900.

Select's contrary reading would produce a result the statute and rule cannot bear. If "decision" in Section 70-2-13 and "order" in Rule 19.15.4.23(A) NMAC reach only the Division Director's final merits disposition and nothing else, then every ruling the Hearing Examiner issues

short of that final order — orders striking parties, excluding evidence, terminating participation — exists in a zone entirely beyond Commission review. That construction would not merely limit the Hearing Examiner's authority; it would render the Hearing Examiner rulings unaccountable by the Commission to which the Act assigns ultimate adjudicatory authority.

The Commission did not promulgate Rule 19.15.4.23(A) NMAC as a dead letter for excluded participants. The architecture of the adjudication rules—which require that orders be mailed to "each party or attorney of record," Rule 19.15.4.24 NMAC, and which define parties broadly to include "each person who has entered an appearance in the case . . . by filing a protest, pleading or notice of appearance with the division or commission clerk," *Id.*—presumes that excluded participants remain entitled to receive and respond to Division action until review is complete.

Where a statute or rule is susceptible to two constructions, courts adopt the construction that avoids constitutional infirmity. *Lovelace Med. Ctr. v. Mendez*, 111 N.M. 336, 340, 805 P.2d 603, 607 (1991) ("statutes should be construed, if possible, to avoid constitutional questions"). The construction Pilot urges—that a decision conclusively resolving a participation dispute is a "decision rendered" on a "matter" within the meaning of Section 70-2-13—is textually grounded, consistent with the Commission's rules, was understood by the Hearing Examiner himself to be available at the time of the exclusion order,[2] and avoids the substantial constitutional concerns

[2] At the February 5, 2026, hearing, the Hearing Examiner stated on the record that Pilot could seek review before the Commission. *See* Hr'g Tr. at 158 (Exhibit A). Pilot does not contend that this statement conferred jurisdiction; jurisdiction arises from Section 70-2-13 and the Commission's adjudication rules. The statement is offered for a narrower point: it reflects the adjudicator's contemporaneous understanding—expressed at the same hearing in which Pilot's Entry of Appearance was struck—that Commission review was immediately available to an excluded participant. Select's reference to a subsequent April 16, 2026, statement described as a "clarification" does not alter that analysis. *See* Select Water Solutions, LLC's Motion to Dismiss Pilot Water Solutions SWD, LLC's Application for Hearing De Novo at 4 n.2 (Apr. 20, 2026). A later recharacterization cannot retroactively extinguish reliance already exercised in good faith, nor can it override the plain text of Section 70-2-13 and Rule 19.15.4.23(A) NMAC,

Select's construction would raise.

B. Select's Piecemeal-Litigation and Floodgates Concerns are Misplaced

Select invokes *Handmaker v. Henney*, 1999-NMSC-043, 128 N.M. 328, 992 P.2d 879, and *Sundial Press v. City of Albuquerque*, 1992-NMCA-068, 114 N.M. 236, 836 P.2d 1257, for the general proposition that New Mexico disfavors piecemeal interlocutory review.[3] That policy is real, but it does not control here for two reasons.

First, both cases concern civil appellate jurisdiction under NMSA 1978, § 39-3-2 (1966)—not administrative de novo review under an agency's own organic statute. As Select itself acknowledges,[4] de novo review before this Commission is not an "appeal" in the § 39-3-2 sense. It is a statutorily authorized new hearing conducted within the same administrative system that the Legislature specifically designed to be bifurcated between the Division and the Commission. *Compare* NMSA 1978, § 70-2-13, *with* § 39-3-2. The policy concerns that animate the final-judgment rule in civil litigation apply differently to a statutorily authorized administrative process the Legislature has structured for dual-level review.

Second, Select's "floodgates" argument has no foothold in the order the Commission is actually called upon to review. Scheduling determinations, discovery disputes, and evidentiary objections—the rulings Select's floodgates rhetoric evokes—regulate "how" a party participates in an ongoing proceeding. They presuppose that the affected party remains in the case and will develop a record, present evidence, and, if dissatisfied, seek review after a final order. An exclusion order does the opposite. It terminates participation; it is final as to the excluded party; it forecloses

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which independently confer the Commission's jurisdiction.

[3] *See* Select Water Solutions, LLC's Motion to Dismiss Pilot Water Solutions SWD, LLC's Application for Hearing De Novo at 4 (Apr. 20, 2026).

[4] *See Id*. at 6.

any contribution to the record; and, on Select's own theory, it eliminates review at any later stage. That is a dispositive threshold determination, not an interlocutory ruling. Recognizing the distinction does not open any floodgates. It draws a narrow, principled line around a specific category of orders that conclusively extinguish a participant's ability to participate at all—a category the New Mexico Supreme Court has itself treated as meaningfully different from routine interlocutory rulings.[5]

The efficiency calculus also cuts the other way. Deferring review of an exclusion order does not conserve administrative resources; it wastes them. If the Commission declines to address the participation question now, the Division will close its record and potentially issue final orders on Select's four applications without a party whose exclusion may later be determined improper—inviting remand, record reopening, and duplicative proceedings on the Commission's own docket. Section 70-2-13 exists to prevent that result, not to produce it.

C. Select's Standing Arguments Address the Merits of the De Novo Hearing, Not the Threshold Reviewability Question

Select devotes a substantial portion of its Motion (at 7–11) to re-litigating the Hearing Examiner's standing determination. Whether Pilot's same-formation evidence is probative, whether Pilot holds a cognizable operational interest, and whether the Hearing Examiner correctly applied Rule 19.15.4.11(C) NMAC and the Oil and Gas Act are questions the Commission must consider in the de novo hearing that Select's Motion seeks to prevent. They are not grounds for

[5] *See Carrillo v. Rostro*, 1992-NMSC-054, ¶¶ 13–14, 23–24, 114 N.M. 607, 845 P.2d 130 (recognizing that only a "small class" of rulings qualifies for immediate review and adopting the requirement that the order "conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment" (*quoting Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978))); *see also Handmaker v. Henney*, 1999-NMSC-043, ¶ 7, 128 N.M. 328, 992 P.2d 879 (reaffirming the narrowness of interlocutory review and the distinction between immediately reviewable collateral rulings and routine interlocutory orders).

refusing to hold such a Hearing.

Pilot's substantive responses to Select's standing arguments are set forth in Pilot's De Novo Application and are expressly preserved and incorporated by reference.

D. A Stay of the Division's Proceedings, or in the Alternative an Abeyance, Is Authorized and Warranted

Rule 19.15.4.23(B) NMAC specifically authorizes stays of Division orders in the context of de novo proceedings. It provides that "[a] party requesting a stay of a division or commission order shall file a motion with the commission clerk and serve copies of the motion upon the other parties who appeared in the case," and authorizes a stay where "necessary to prevent waste, protect correlative rights, protect public health or the environment or prevent gross negative consequences to an affected party." NMSA 1978, Section 70-2-6(B), further confirms the Commission's concurrent jurisdiction with the Division to the extent necessary to discharge its duties under the Act. The stay provision exists because the Commission recognized, when it adopted its rules, that de novo review can become nugatory if the underlying proceeding races to conclusion in the interim.

That concern is concrete here. The Division has taken Case Nos. 25547, 25548, and 25900 under advisement and has set Case No. 25899 for hearing on May 13, 2026. If the Division closes its evidentiary record and issues final orders on Select's four applications while Pilot's De Novo Application remains unresolved, those orders will have been entered on a record developed entirely without Pilot's same-formation operational evidence, without cross-examination of Select's technical assumptions, and without adversarial testing of the formation-level questions the Division is statutorily required to evaluate. If the Commission later determines that Pilot was entitled to participate, the only remedies will be remand, record reopening, and duplicative

proceedings on the Commission's and the Division's dockets—precisely the waste a brief stay is designed to prevent.

Select suffers no corresponding prejudice from maintaining the status quo. The proposed Select wells are new facilities, not existing operations; Select has been pursuing these applications for months; and Select has identified no concrete harm from a short stay during the pendency of this De Novo Application. In the alternative, and as a less-intrusive measure, Pilot requests that any final Division decision be held in abeyance pending the Commission's resolution of this De Novo Application.

IV. CONCLUSION

Select asks the Commission to read Section 70-2-13 in a way that produces an indefensible result: a Division order that permanently removes a participant from a proceeding can be reviewed by no one, at no time, under no circumstances. At the moment of exclusion, Select says no review lies because no final merits order has issued. After a final merits order issues, Select's own logic forecloses review because the excluded participant has been erased from the record and has no status from which to claim adverse effect. The Legislature did not design Section 70-2-13 as a right that evaporates the moment it becomes necessary.

Pilot has been removed from proceedings that will determine the permitting of four wells bearing directly on Pilot's same-formation operations, with no opportunity to present evidence, cross-examine witnesses, or contribute to the record on which those wells will be evaluated. Each statutory element of Section 70-2-13 is met. The Motion should be denied.

Requested Relief.

Pilot respectfully requests that the Commission:

1. Deny Select Water Solutions, LLC's Motion to Dismiss in its entirety;

2. Accept jurisdiction over Pilot Water Solutions SWD, LLC's Application for Hearing De Novo under NMSA 1978, § 70-2-13;

3. Stay further Division proceedings on Case Nos. 25547, 25548, 25899, and 25900 pending resolution of Pilot's De Novo Application, or, in the alternative, hold any final Division decision in abeyance pending such resolution; and

4. Grant such other and further relief as the Commission deems just and proper.

Respectfully submitted,

BEATTY & WOZNIAK, P.C.

By: _____

Miguel A. Suazo
James P. Parrot
Jacob L. Everhart
Ryan McKee
Raj K. Lahoti
Valkyrie E. Buffa
500 Don Gaspar Ave.
Santa Fe, NM 87505
(505) 946-2090
msuazo@bwenergylaw.com
jparrot@bwenergylaw.com
jeverhart@bwenergylaw.com
rmckee@bwenergylaw.com
rlahoti@bwenergylaw.com
kbuffa@bwenergylaw.com

Attorneys for Pilot Water Solutions SWD, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served to counsel of record by electronic mail this 1st day of May 2026, as follows:

Dana S. Hardy
Jaclyn M. McLean
Yarithza Peña
Jamie R. Kennedy
125 Lincoln Ave, Ste. 223
Santa Fe, NM 87501
Phone: (505) 230-4410
dhardy@hardymclean.com
jmclean@hardymclean.com
ypena@hardymclean.com
jkennedy@hardymclean.com
Counsel for Select Water Solutions, LLC

Elizabeth Ryan
Keri L. Hatley
ConocoPhillips
1048 Paseo de Peralta
Santa Fe, New Mexico 87501
(505) 780-8000
beth.ryan@conocophillips.com
keri.hatley@conocophillips.com
Counsel for COG Operating

Michael H. Feldewert
Adam G. Rankin
Paula M. Vance
A. Raylee Starnes
Post Office Box 2208
Santa Fe, New Mexico 87504
(505) 988-4421
(505) 983-6043 Facsimile
agrankin@hollandhart.com
pmvance@hollandhart.com
arstarnes@hollandhart.com
mfeldewert@hollandhart.com
Attorneys for Devon Energy Production Company, L.P.

Deana M. Bennett
Earl E. DeBrine, Jr.
MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A.
Post Office Box 2168
500 Fourth Street NW, Suite 1000
Albuquerque, New Mexico 87103-2168
Telephone: 505.848.1800
deana.bennett@modrall.com
earl.debrine@modrall.com
Attorneys for Coterra Energy Operating Co.

Matthias Sayer
Bradfute Sayer, P.C.
125 Lincoln Ave, Suite 222
Santa Fe, NM 87501
307-365-1814
matthias@bradfutelaw.com

Reagan Marble
Jackson Walker, LLP
1900 Broadway, Suite 1200
San Antonio, TX 78215
(210) 978-7770
rmarble@jw.com
Counsel for Desert Ram, Inc.

Rachael Ketchledge

EXHIBIT A

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

APPLICATION OF MATADOR PRODUCTON COMPANY FOR A NON-STANDARD OIL SPACING AND PRORATION UNIT, COMPULSORY POOLING, AND NON-STANDARD LOCATION, LEA COUNTY, NEW MEXICO.

CASE NO. 15366 (De Novo)
ORDER NO. R-14097-A

ORDER OF THE COMMISSION

This matter came before the New Mexico Oil Conservation Commission ("Commission") for hearing on February 11, 2016, at Santa Fe, New Mexico, to consider the motion of Matador Production Company ("Matador") to dismiss the appeal filed by Amtex Energy, Inc. ("Amtex") of Order No. R-14097. The Commission, having considered the Motion, the briefs and arguments of counsel, and being otherwise fully advised, enters the following findings of fact, conclusions of law and orders.

THE COMMISSION FINDS THAT:

(1) This matter concerns the definition of a "party of record" under the New Mexico Oil and Gas Act ("Act"), Sections 70-2-1 et seq., and, therefore, who has the right to apply for a de novo hearing before the Commission after a decision on an adjudicatory matter is rendered by the Oil Conservation Division of the Energy, Minerals and Natural Resources Department ("Division"). Section 70-2-13 NMSA 1978.

(2) On August 3, 2015, Matador filed an application ("Application") with the Division seeking approval of a non-standard 160-acre, more or less, oil spacing and proration unit (project area) in the Bone Spring formation, Quail Ridge, Bone Spring Pool (pool code 50460) comprised of the W/2 E/2 of Section 16, Township 19 South, Range 34 East, NMPM, Lea County, New Mexico (the "Unit"). The Application sought an order pooling all uncommitted interests in the Unit and approval of a non-standard location for the well. Order R-14097 Findings 2, 4.

(3) Matador owns or controls 100% of the interest in north half of the Unit and Amtex owns approximately 92.8% working interest in the south half of the Unit. Notice of the Application was provided to all uncommitted mineral interest owners, including Amtex. Order R-14097 Findings 6, 12.

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(4) An evidentiary hearing was held on the Application by the Division on September 3, 2015, which was presided over by a technical hearing examiner, Phillip Goetze, and a legal hearing examiner, Gabriel Wade. Matador appeared at the Division hearing and presented evidence in support of the Application. Prior to the hearing, no other person filed a written entry of appearance. No other party appeared at the hearing, or otherwise opposed the granting of the application. Order R-14097 Finding 7.

(5) On September 25, 2015, 22 days after the Division hearing was held, an Entry of Appearance was filed by Amtex Energy, Inc. and William Savage stating they opposed the application. The entry of appearance did not assert the basis for opposing the application, nor did it request that the record be reopened for further evidence. Matador filed a Motion to Quash Entry of Appearance. Order R-14097 Findings 8, 9.

(6) On December 14, 2015, the Division entered Order No. R-14097 granting the Application and ordering that the "Entry of Appearance filed by Amtex Energy, Inc. on September 25, 2015 for this case is untimely and no further testimony will be accepted." Order R-14097, ¶20.

(7) On January 7, 2016, Amtex filed a De Novo Hearing Application with the Commission regarding Division Order No. R-14097 to request that the case be heard de novo before the Commission pursuant to NMSA 1978 §70-2-13 and Rule 19.15.4.23(A) NMAC.

(8) On January 26, 2016, Matador filed a Motion to Dismiss Amtex's Appeal. On February 2, 2016, Amtex filed its Response to the Motion and on February 10, 2016, Matador filed its Reply. On February 11, 2016 the Commission held a hearing on the Motion to Dismiss and heard oral arguments from counsel for Matador and Amtex.

(9) The Act provides that after a matter is referred to a Division hearing examiner and a decision is then rendered by the Division, "any party of record adversely affected shall have the right to have the matter heard de novo before the commission upon application filed with the division within thirty days from the time any such decision is rendered." Section 70-2-13 NMSA 1978. (emphasis added). There is no claim that Amtex is "adversely affected" by the Division Order. The only issue is whether Amtex is a "party of record".

(10) The Act does not define "party of record". The term does appear several other times in the Act to determine who may request a rehearing of, or appeal, a decision of the Commission.

> Any party of record to the proceeding before the commission or any person adversely affected by a rule adopted under the Oil and Gas Act may appeal to the court of appeals within thirty days after filing of the rule under the State Rules Act.
> Section 70-2-12.2(C).

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> Within twenty days after entry of an order or decision of the commission, a party of record adversely affected may file with the commission an application for rehearing in respect of any matter determined by the order or decision...
> Section 70-2-25(A)
>
> A party of record to the rehearing proceeding dissatisfied with the disposition of the application for rehearing may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.
> Section 70-2-25(B).

(11) The Division's rules regarding adjudicatory hearings do not define "party of record" but do define who is, or who may become, a "party" in an adjudicatory proceeding before either the Division or the Commission. Rule 19.15.4.10 NMAC reads in part:

> A. The parties to an adjudicatory proceeding shall include:
> 1. the applicant;
> 2. a person to whom statute, rule or order requires notice (not including those persons to whom 19.15.4.9 NMAC requires distribution of hearing notices, who are not otherwise entitled to notice of the particular application), who has entered an appearance in the case; and
> 3. a person who properly intervenes in the case.
> B. A person entitled to notice may enter an appearance at any time by filing a written notice of appearance with the division or the commission clerk, as applicable, or, subject to the provisions in Subsection C of 19.15.4.10 NMAC, by oral appearance on the record at the hearing.
> C. A party who has not entered an appearance at least one business day prior to the pre-hearing statement filing date provided in Paragraph (1) of Subsection B of 19.15.4.13 NMAC shall not be allowed to present technical evidence at the hearing unless the commission chairman or the division examiner, for good cause, otherwise directs.

(12) Amtex argues that it only needed to qualify as a "party" in the Division proceeding in order to be a "party of record" and therefore have the right to a de novo Commission hearing. As a person who was entitled to notice, Amtex therefore only needed to file an entry of appearance to be a "party" under 19.15.4.10(A), and that entry of appearance could be filed "at any time" under 19.15.4.10(B). At oral argument, Amtex argued that the entry of appearance could be filed at the same time an application for a de novo hearing is filed up to 30 days after the Division order is issued, 19.15.4.23(A) NMAC. Amtex further argued that participation in the Division hearing is unnecessary since the Commission hearing will be de novo. Matador argued that given the limitations in 19.15.4.10(B) and (C), a person must file an entry of appearance prior to the hearing in order to be a party.

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(13) In New Energy Economy, Inc. v. Vanzi, the New Mexico Supreme Court considered which participants in several administrative proceedings below had the right to intervene in an appeal to the Court of Appeals. 2012-NMSC-005. The Court found that those who had participated "in a legally significant manner" had the right to intervene. Vanzi, ¶ 47. These included entities that had been petitioners below or who had presented technical evidence at a hearing. However, the Court rejected the right to intervene of an entity that did appear and speak at an adjudicatory proceeding but did not file any entry of appearance or request to intervene prior to the hearing. "This decision not to take formal steps to participate before [the agency] bears significant consequences." Vanzi, ¶ 53

(14) The Supreme Court chose to adopt the "legally significant" participation standard rather than rely on whether someone was classified as a "party" by the agency below. "We recognize, however, that if we were to allow all parties or other participants in an underlying rule-making proceeding automatically to be made parties to an appeal, then serious unintended consequences could arise." Vanzi, ¶ 48. "[W]e recognize that the administrative definition of a "party" to a rule-making proceeding is something of a moving target. As discussed earlier, administrative rules may be changed to define a party more broadly or narrowly, such that "party" may not always mean the same thing." Vanzi, ¶ 49

(15) The Commission finds that Amtex did not take the necessary actions to become a "party of record" in the Division proceeding and therefore have the right to a de novo Commission proceeding. Amtex did not take any actions to become part of the record in the proceeding either by submitting any evidence or arguments in writing or at the hearing, or by filing an entry of appearance prior to, or at, the hearing, or by appearing at the hearing. Amtex filed an entry of appearance well after the record was closed and the case was under advisement by the Division. Even then, Amtex offered no excuses for its late filing and did not request the record be reopened or offer to submit any new evidence.

(16) The Commission does not agree that the term "party of record" should be given an overly broad meaning simply because the Commission proceeding will be de novo. First, "party of record" is used in the Act to determine who has the right to appeal both Division and Commission decisions, and Commission decisions are subject to record review proceedings in the district court and the Court of Appeals. Sections 70-2-12.2 and 70-2-25 NMSA 1978. Second, the Act and the Commission rules intend for a full and fair proceeding before the Division hearing examiners and the Division Director, including notice to all affected parties, in the hopes that the issues will be fully developed and addressed by the Division. Finally, if a person wants the Commission to hear the case initially, they can request that the Division Director assert his authority under the Act to hold the hearing before the Commission. "In addition, any hearing on any matter may be held before the commission if the division director, in his discretion, determines that the commission shall hear the matter." Section 70-2-6(B) NMSA 1978.

THE COMMISSION CONCLUDES THAT:

(1) The Commission has jurisdiction over the parties and the subject matter of this case.

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(2) Amtex is not a "party of record" in Case 15366 and therefore does not have the right to a de novo Commission hearing.

IT IS THEREFORE ORDERED THAT:

(1) The Motion to Dismiss Amtex's Appeal filed by Matador is granted. Case 15366 (De Novo) is hereby dismissed.

DONE at Santa Fe, New Mexico this 10th day of March, 2016.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

ROBERT BALCH, Member

PATRICK PADILLA, Member

David R. Catanach

DAVID R, CATANACH, Chair

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