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

APPLICATION OF CIMAREX 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

UNOPPOSED MOTION REQUESTING OPPORTUNITY TO SUBMIT UPDATED POOLING APPLICATIONS AND UPDATED CLOSING ARGUMENTS AS NECESSARY SUBMISSIONS AFTER THE DIVISION ISSUES ITS ORDER FOR CREATION OF THE WOLFBONE POOL PURSUANT TO CASE NOS. 24721 AND 24736

Cimarex Energy Co., ("Cimarex"), through their undersigned attorneys, submit to the Oil Conservation Division ("Division" or "OCD") this Unopposed Motion Requesting Opportunity

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to Submit Pooling Applications and Updated Closing Arguments as Necessary Filings After the Division Issues the Order for Creation of the Wolfbone Pool Pursuant to Case Nos. 24721 and 24736 ("Motion"). In support of the Unopposed Motion, the Cimarex submits the following:

I. Factual and procedural background:

1. On May 4, 2022, Pride submitted a pooling application in Case No. 22853 that proposes to drill a single well, the Go State Com. Well No. 401H, in the Upper Wolfcamp formation underlying the W/2 W/2 of Sections 12 and 13, Township 19 South, Range 34 East, NMPM, Lea County, New Mexico ("Subject Lands"). There is a depth severance at the top of the Upper Wolfcamp and the base of the Third Bone Spring which creates nonuniform ownership between the Third Bone Spring and the Upper Wolfcamp (the "Depth Severance"). Pride's Go State proposed well is located below the Depth Severance.

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

3. The Division heard Case Nos. 22853 and 23295 (referred to herein as the "GoState/Showbiz Cases") on July 20, 2023, and issued Order No. R-23132, in which the Division denied both Pride's and Cimarex's Pooling Applications based on the geology testimony, stating that both parties "acknowledged that wells completed in the Bone Spring and Wolfcamp formations *will share production from both the Bone Spring and Wolfcamp formations.*" Order No. R-23132, ¶ 9 (emphasis added). Moreover, the Division ruled that the Third Bone Spring and Upper Wolfcamp together constitute a single reservoir and therefore a single pool and not two

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pools as originally classified. *See id.,* at ¶¶ 13-19 (discussing the need for a single pool).

4. As a result, the OCD denied both applications except insofar as the applicants choose to propose a special pool, a Wolfbone Pool that would account for the lack of frac baffles between the Bone Spring and Wolfcamp formations in the area, thus justifying the creation of a new pool to account for the single reservoir. Order No. R-23132, at ¶ 2. Pride and Cimarex interpreted the requirement of creating a Wolfbone Pool to include all necessary subsequent steps to properly incorporate the new Wolfbone pool into the application and hearing process, including submitting updated applications and closing arguments.

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

6. Filing new pooling applications to include the allocation formulas and account for the newly created Wolfbone Pool as a single reservoir reflected what Pride and Cimarex assumed was agreed upon in the companion cases, Case Nos. 23448 *et al.* (the "Joker/Mighty Pheasant Cases"), which Cimarex and Pride followed closely in order to understand how their own cases involving the Wolfbone should proceed. In the Joker/Mighty Pheasant Cases, the Division issued Order No. R-23089, which arrived at the same conclusions of fact and law for the Upper Wolfcamp and Third Bone Spring as Order No. R-23132 in the GoState/Showbiz Cases. Specifically, the

OCD found that there was a lack of baffles between the Third Bone Spring and Upper Wolfcamp resulting in a single reservoir that constituted one pool, not two. The OCD found that both parties acknowledged "that wells completed in the Bone Spring and Wolfcamp formations will share production from both the Bone Spring and Wolfcamp formations," which is the same finding as in the GoState/Showbiz Cases. *Compare:* Order No. R-23089, ¶ 10 with Order No. R-23132, ¶ 9.

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

8. However, in the Joker/Mighty Pheasant Cases, the Division held a hearing with Permian Resources Operating, LLC, ("Permian"), and Cimarex, to discuss Cimarex's Motion filed on October 29, 2024, seeking to re-open the evidentiary hearing in order for the parties to submit updated pooling applications that would include the allocation proposed that they removed from their joint Wolfbone application and to update the closing arguments based on the impact of the new Wolfbone Pool to be created underlying the lands covered by the Joker/Might Pheasant cases. During questioning, Cimarex stated that it agreed to remove the allocation from its Wolfbone Application by relying on the expressed expectation that Cimarex would be able to include the formula in new pooling applications submitted to account for pooling the newly created Wolfbone Pool, since the previous pooling applications sought to pool the entire Wolfcamp formation and the entire Bone Spring formations and not the specific formations within the Wolfbone Pool, which

are limited to the Third Bone Spring and Upper Wolfcamp. After Permian received the benefit of Cimarex's having removed its allocation formula to allow for the joint Wolfbone application to go forward, the Division denied Cimarex's request that the parties submit updated applications or updated closing arguments.

9. The Division's decisions in the Joker/Mighty Pheasant Cases raises concerns about how Pride and Cimarex should proceed after the Wolfbone Pool is created to cover the Subject Lands in the GoState/Showbiz Cases, and whether the Parties will be allowed to: (1) submit subsequent pooling applications that include the allocation formulas, as originally contemplated; (2) provide proper notice of the allocation formulas to interested parties since the Parties removed those formulas from the Wolfbone application; and (3) submit updated closing arguments that account for the new Wolfbone Pool's impact on the legal arguments relevant to the development plans.

10. Based on the foregoing, Cimarex is submitting this Motion to provide the Division with analysis of the relevant issues confronting the Division after the Wolfbone is created and a request regarding how best to proceed in the subject cases.

II. Argument:

A. When a single well, or a single set of wells, is able to optimally produce a single reservoir pool because there are no natural baffles between formations with severed ownership, the practice of drilling a well or wells both above and below a depth severance[1] constitutes a violation of correlative rights; thus, the only way to protect correlative rights is through the use of an allocation formula.

11. Both Pride and Cimarex propose drilling a single well to produce from the Wolfbone Pool. Pride proposes drilling its well in the Upper Wolfcamp formation, and Cimarex

[1] A depth severance that cuts across a single reservoir is the line of demarcation that denotes non-uniformity of ownership above and below the line.

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

12. However, in the present cases, subject to Order No. R-23123, the Wolfbone Pool contains a depth severance at the base of the Third Bone Spring and top of the Upper Wolfcamp, same as the depth severance in the Joker/Mighty Pheasant units subject to companion Order No. R-23089. This raises the question of the best way to address the depth severance for the proper production of the pool, and therefore, the best way to proceed with the present cases after creation of the Wolfbone Pool.

13. When a depth severance creates non-uniform ownership between two formations -- Third Bone Spring and the Upper Wolfcamp – the Division must ensure that operators maintain a proper accounting of the production from the well or wells to protect correlative rights. For example, an owner who owns 10 net acres in the Third Bone Spring and 5 net acres in the Upper Wolfcamp has a right to receive its 10 net acres of Bone Spring production from the well and its 5 net acres of Upper Wolfcamp production. One clear method used by the Division of accounting for this difference of ownership of production between the formations is to have an allocation formula in place that allocates the interests in each formation so that correlative rights are protected.

14. The other method used by the Division in an effort to account for the non-uniform ownership is the drilling of two wells, or two sets of wells, one below the depth severance (in the

Upper Wolfcamp) and the other one above the severance (in the Third Bone Spring). However, this method is based on the assumption that the well or wells drilled in the Upper Wolfcamp below the severance will produce only from the Upper Wolfcamp, and the operator would distribute 100% of production from the Wolfcamp well all to the owners in the Upper Wolfcamp; therefore, an owner owning 5 net acres in the Upper Wolfcamp would receive its percentage of production from the Wolfcamp well that reflects the 5 net acres. Similarly, 100% of production from the Bone Spring well or wells would be distributed to the owners in the Third Bone Spring, under the assumption that the well in the Third Bone Spring is producing only the Third Bone Spring; thus, each owner, such as the owner who owns 10 net acres in the Third Bone Spring, would receive its proper percentage of Bone Spring production. The Division will allow an operator to use this method, but it should only be used under the right conditions.

15. The method of drilling above and below the severance, instead of using an allocation formula, only works if the geology sequesters and maintains the production from the individual zones, meaning that there would need to be some kind of natural barrier or baffling, carbonite or otherwise, between the Third Bone Spring and Upper Wolfcamp that prevents intermixing of product and therefore allows distributing all of the production from the Third Bone Spring well to the Third Bone Spring owners and all of the production from the Upper Wolfcamp well to the Upper Wolfcamp owners. If there is no natural barrier at the depth severance, as in the present cases, then the Upper Wolfcamp well or wells would produce from both the Upper Wolfcamp and Third Bone Spring and the Third Bone Spring well or wells would also produce from the Upper Wolfcamp and the Third Bone Spring.

16. In both Order Nos. R-23123 and R-23089, the Division found that "wells completed in the Bone Spring and Wolfcamp formations will share production from both the Bone Spring

and Wolfcamp formations." Order No. R-23123, ¶ 9; Order No. R-23089, ¶ 10. This finding creates a situation within the Wolfbone Pool where, if wells were drilled both above and below the severance, an owner who owns interest in the Third Bone Spring would also receive substantial production from the Upper Wolfcamp, and an owner in the Upper Wolfcamp would receive substantial production from the Third Bone Spring. Thus, an owner who owns 10 acres net acres in the Upper Wolfcamp and five net acres in the Third Bone Spring would be taking (through improper taking from other owners) more than the owner's share of production from the Third Bone Spring.

17. Such outcomes violate correlative rights and are prohibited under the Oil and Gas Act (the "Act). *See* NMSA 1978 § 70-2-33(H) (stating that correlative rights mean the opportunity afforded to the owner of each property in a pool to produce without waste the owner's just and equitable share of the oil and gas in the pool). For example, assume a company owned a working interest in the Upper Wolfcamp formation but owned less or no interest in the Third Bone Spring. If an Upper Wolfcamp well produced more hydrocarbons from the Third Bone Spring than it did from the Upper Wolfcamp, that company would end up receiving more than its just and equitable share of hydrocarbons violating the correlative rights of the owners who owned a greater interest in the Third Bone than they did in the Upper Wolfcamp. Conversely, that company's correlative rights would be violated if a Third Bone Spring well produced more from the Upper Wolfcamp than it did from the Third Bone Spring well.

18. This is why drilling a well or wells above and below a depth severance is not a proper method for allocating production in a pool where there are no barriers between the severed depths of the pool. The only proper method of protecting correlative rights in a situation of open communication between the formations of the pool, as exists in the present cases, is through an

allocation formula thus necessitating: (1) the submission of new pooling applications after the Wolfbone Pool is created; (2) providing notice of the allocation formula to the owners in the new pool; and (3) the updating of closing arguments so that the Division has the benefit of understanding the legal arguments as they apply to the new Wolfbone Pool. Since the Wolfbone Pool should be produced by one well or one set of wells pursuant to an allocation formula, the Division should have the opportunity to evaluate how the Wolfbone Pool impacts the proportions and quantities of working interest along with the other factors the Division uses to compare competing applications.

B. Drilling a well or wells both above and below a depth severance when there is open communication between the severed formations constitutes substantial economic waste that is prohibited by the Act.

19. As described above, Cimarex and Pride each propose to drill one well to produce the new Wolfbone Pool and both Parties provide an allocation formula to protect correlative rights. Requiring or allowing an operator to drill an additional well or wells both above and below a depth severance when there is open communication in the pool due to the lack of frac barriers between the severed formations would constitute waste under the Oil and Gas Act.

20. It is appropriate to drill a well or wells above and below a depth severance when there is non-uniform ownership only in situations in which there are natural barriers that maintain separation of production above and below the severance so that wells drilled in the formation above the severance will distribute production only from that upper formation and wells drilled in the formation below the severance will distribute production only from the lower formation. In fact, depth severances often occur in title because the parties are aware that the two formations are separate and discrete formations that would produce independently from one another.

21. However, there are certain discrete areas in New Mexico, such as the Subject Lands

in Lea County, in which the Third Bone Spring and Upper Wolfcamp are distinct enough to be identified as Bone Spring and Wolfcamp but have unique geology (lack of frac baffles) that results in open communication between the formations thereby creating a single reservoir consisting of the Third Bone Spring and Upper Wolfcamp, that require creation of a Wolfbone Pool.

22. The Act clearly prohibits the drilling of unnecessary wells. *See, e.g.,* NSMA 1978 § 70-2-17. Drilling an additional well or wells both above and below this depth severance across open communication of hydrocarbons results in drilling unnecessary wells when, in the alternative, a single well or a single set of wells drilled either below or above the severance, but not both, will optimally produce the pool. The drilling of wells above and below the severance results in economic waste to the tune of millions of dollars of unnecessary costs.

23. Waste is broadly defined in the Act to include its "***ordinary meaning***." *See* NSMA 1978 § 70-2-3 (Emphasis added).

24. When construing the meaning of a statute, the New Mexico Supreme Court determines and gives effect to the Legislature's intent. *See Marbob Energy Corp. v. OCC,* 2009-NMSC-013, ¶ 9, 146 N.M. 24, 206 P.2d 135 (citing *N.M. Indus. Energy Consumers* 2007-NMSC-053, ¶ 20, 142 N.M. 533, 168 P.3d 105). When discerning such intent, the court looks first "'to the plain language of the statute, giving the words their ordinary meaning, unless the Legislature indicates a different one was intended.'" *Id.* "When statutory language is clear and unambiguous, [this Court] *must give effect to that language and refrain from further statutory interpretation."* *Id.* (citing *Anadarko Petroleum Corp. v. Baca,* 117 N.M. 167, 169, 870 P.2d 129, 131 (1994)) (Brackets in the original) (Emphasis added).

25. Thus, the plain language of Section 70-2-33 defines "waste," to include the ordinary meaning of waste. *See, e.g., Continental Oil Co. v. OCC*, 1962-NMSC-062, ¶ 7, 70 N.M. 310, 373

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P.2d 809 (defining waste by first recognizing and citing its ordinary meaning: "Waste – Definitions – As used in this act, *the term waste, in addition to its ordinary meaning*, shall include (e) The production in this state of natural gas from any gas well or wells, or from any gas pool, in excess of the reasonable market demand….") (Emphasis added).

26. Examples of the ordinary meaning of waste from online dictionaries include: (1) "an unnecessary or wrong use of money, substances, time, energy, abilities, etc." as defined by the online Cambridge English Dictionary (https://dictionary.cambridge.org/us/dictionary/english/waste#); (2) "loss of something valuable that occurs because too much of it is being used or because it is being used in a way that is not necessary or effective," as defined by the online Britannica Dictionary (https://www.britannica.com/dictionary/waste); and (3) "Action or process of wasting: II.5 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#14999243). Thus, the definition of waste under the Act includes such ordinary meanings as "economic waste," that is, waste from the unnecessary expenditure of money and funds when drilling, operating and producing wells, in addition to the waste of resources, time and energy from drilling, operating, and producing unnecessary wells. Thus, drilling two wells in a single reservoir when one will sufficiently produce the pool constitutes waste under the Act.

27. In *Earthworks' Oil & Gas Accountability Project v. N.M. Oil Conservation Comm'n,* 2016-NMCA-055, ¶ 26, 374 P.3d 710, 720, the court of appeals noted that the New Mexico Oil Conservation Commission "asserts that economic considerations exist as the very core of its statutory obligations." In *Earthworks*, the Commission revised a rule for the regulation of water pits and adopted a revision of the rule that assisted in the prevention of economic waste. The *Earthworks* court noted that in carrying out its duties under the Act, "the division shall give

due consideration to the economic factors involved," and in addition, the Division must "consider the economic loss caused by the drilling of unnecessary wells." *Id.* at ¶ 27. In support of its decision, the *Earthworks* court, relying on *Rutter,* 1975-NMSC-006, ¶ 18, 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.

28. The exclusion of economic waste from the definition of waste in § 70-2-3 would not only require disregarding the unambiguous language specifying that waste includes its "ordinary meaning," it would fundamentally undermine the Division's ability to properly regulate oil and gas operations and activities in a reasonable and practicable manner that corresponds with the practicalities of the oil and gas industry, and it would militate against the practicable protection of correlative rights that is the Act mandates. *See* NMSA 1978 § 70-2-33 (the definition of "correlative rights" is qualified and restricted by the limiting terms of "practicable" and "practicably," as "correlative rights" means "the opportunity afforded" to an owner, but only "so far as it is *practicable* to do so," for the owner "to produce *without waste* the owner's *just and equitable share* of the oil or 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.") (Emphasis added).

29. Thus, the proper protection of correlative rights must account for what is "practicable" and the OCD must protect those rights in such a manner that owners can receive their fair and equitable share of production "without waste," which, according to the ordinary definition of waste, means that owners should receive their share of production without

"economic waste." Hence, forcing the working interest owners to pay the costs of drilling unnecessary wells would constitute waste that the Act prohibits.

30. Therefore, the Division should be provided with the opportunity to thoroughly evaluate the issue of having one well, drilled below the severance as Pride proposes, or one well drilled above the severance, as Cimarex proposes, both pursuant to an allocation formula, as the better option for preventing waste than the practice of drilling wells both above and below a severance when there is open communication within the single reservoir being produced. In order to properly evaluate which party has the better location for its single well and the better allocation formula, the Division should allow the Parties' submission of new pooling applications that include their allocation formulas and the submission of updated closing arguments explaining how the new Wolfbone Pool impacts the legal arguments.

II. Conclusion:

For the foregoing reasons, Cimarex respectfully request that the Division grant this Motion allowing the Parties to (1) submit updated pooling applications that account for both the creation of the Wolfbone Pool and include the allocation formulas that each party is presenting for the protection of correlative rights; (2) provide notice of such updated applications and allocation formulas to affected parties; and (3) submit updated closing arguments in the present cases to inform the Division how each competing plan addresses the prevention of waste within the new Wolfbone Pool and accounts for the Pool's impact on ownership. Counsel has been informed of this Motion, and no party opposes it.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed with the New Mexico Oil Conservation Division and was served on counsel of record via electronic mail on March 7, 2025:

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