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 CONSOLIDATED MOTION TO STRIKE PERMIAN'S OPINION LETTER FROM ITS SUPPLEMENTAL EXHIBIT C-12 AND RESPONSE TO PERMIAN'S MOTION TO STRIKE BEALL'S INTERVENTION

V-F Petroleum Inc. ("V-F"), through its undersigned attorneys, files with the Oil Conservation Division ("Division" or "OCD") this Motion to Strike ("V-F's Motion") from the record the Opinion Letter Regarding the Operating Rights of Carolyn Beall, Charles B. Read, the Charles B. Read Trust "A", and Jean Read in the N1/2 Section 14 ("Opinion Letter") that Read & Stevens, Inc. and Permian Operating Resources, LLC (collectively "Permian") improperly submitted as part of their Supplemental Exhibit C-12 to its Revised Exhibits filed March 10, 2025. Permian's Opinion Letter addresses legal matters outside the Division's jurisdiction and was not requested or authorized by the Technical Examiner ("Technical Examiner" or "Examiner") or the Division; therefore, Permian's submission is a violation of administrative procedures that undermines the integrity of the adjudicative process which V-F has a vested interest in protecting.

Furthermore, V-F's Motion includes a Response to Permian's Motion to Strike Beall's Intervention ("Response"). The Division has already ruled on Beall's intervention, issuing an order that granted Carolyn Beall ("Beall") the right to participate in the hearing as a party of record based on the fact her appearance and participation in the cases contributes to the protection of correlative

rights. In relation to the competing applicants, Beall's position in the hearing highlights a fundamental distinction between V-F's development plan and Permian's plan involving the status of correlative rights in the Third Bone Spring. In support of its Motion and Response, V-F states the following:

I. Procedural Background:

1. On February 27, 2025, at the conclusion of the contested hearing for the cases referenced above ("Subject Cases"), the OCD Technical Examiner gave very specific instructions to Permian's Counsel for providing precise additional information. Specifically, the Examiner requested "additional testimony, or written testimony…from the landman that describes all the depth severances including Ms. Beall's." Transcript ("Tr.") dtd 2-27-25, 227: 10-23. The Examiner further clarified that this "supplemental exhibit" should be "a document showing that 9,397 [ft] depth severance that's in the southeast quarter of the southwest quarter," the Examiner recalling that Permian's Landman had referenced such a title document. *Id.*

2. In response, Permian's counsel asked the Examiner if he wanted "a document" or "a description of that," "that" referring to a description of the depth severances requested. *See id.* at 227: 24-25. The Examiner clarified, specifically stating that if there is "a document, I'd like to see that," but a "description at the bare minimum." S*ee id.* at 228: 1-6. Permian's counsel responded that "[w]e can provide a description."

3. Upon hearing this, the Examiner was not satisfied with Permian's offering only a description; in response, he reiterated and further clarified the specific request: "[I]f Permian does have a document available, you'll be able to provide that as well; is that correct?" *See id.* at 228: 9-10. The Examiner then proceeded to describe the title document he was requesting: (1) "It should be something referenced to some wells." (2) "And there's some sort of depth severance;" and (3)

"[The document(s)] have some sort of ownership that ends at that ninety – or approximately 9,400 feet." *See id.* at 228: 14-20.

4. After the Examiner fully explained what he needed, Permian's counsel challenged his authority to request this kind of document, stating concerns "about providing all this title information when the Division doesn't have jurisdiction over title," and questioning "why the Division would need to review title documents." *See id.* at 228: 21-25; 229: 1-3.

5. In response to Permian's challenge, the Examiner correctly stated that "[t]he Division's not going to use the title for purposes of reviewing it. The purpose is to have an understanding of where the depth severance is, especially where it relates to the vertical limit that the Division is force pooling the interest of." *Id.* at 229: 4-5.

6. Thus, Permian's challenge led the Examiner to correctly explain in clear and unambiguous terms the limited and narrow purpose for the title document; the scope of the Division's review and use of the document; and that the Division needed the document for the specific purpose of "understanding where the depth severance is," and not for the purpose of adjudicating title and ownership. *See id.*

II. Legal Arguments:

A. Permian Directly Disregarded the Examiner's Specific Instructions and Request.

7. In its Revised Exhibits filed March 10, 2025, Permian did not provide the Examiner with any kind of supplemental or additional statement from Permian's Landman that verifies in the title the location of the depth severances; in fact, the Landman statement did not even mention or describe Supplemental Exhibit C-12, as the Landman stated that only Exhibits C-1 through C-9 (and not Supplemental Exhibit C-12) were prepared by him or compiled under his direction and

supervision; thus, Supplemental Exhibit C-12 has not been properly submitted or recognized as a valid and authenticated exhibit. *See* Landman Statement, ¶¶ 10-25.

8. In his Revised Statement, the Landman describes the vertical extent of the spacing units and depth severances with reference to Permian's Geological Exhibit D-7. *See* Landman Statement, ¶¶ 6-8, and Geology Exhibit D-7, Permian's Revised Exhibits. However, Exhibit D-7 is a geological exhibit that provides no evidence whatsoever that a depth severance was created by an assignment and did not provide the location of the depth severance as described in the title. Furthermore, the Landman does not claim as its own exhibit and does not describe, explain or authenticate Supplemental Exhibit C-12 or the Opinion Letter; the Landman only claims and describes Exhibits C-1 through C-9. *See* Landman Statement, ¶¶ 10-25, Permian's Revised Exhibits. Thus, the Opinion Letter is not a valid landman exhibit, as requested by the Examiner, nor was it submitted by an approved expert witness in the proceedings; instead, Permian has improperly introduced into the proceedings an unauthorized Opinion Letter and unauthorized testimony provided by the authors of the Opinion, who have not appeared as witnesses in the case, in total disregard of the Technical Examiner's instructions.

9. Compounding the problem, Permian did not provide any actual title documents that show depth severances in relations to wells, as the Examiner specifically requested, nor did Permian provide any documents that examine ownership at the depth severance of 9,397 feet and 9,400 feet, as requested. The Examiner requested title documents that describe the depth severances at 9,397 – 9,400 feet (*see* Paragraph 3, *supra*) because that depth denotes the actual vertical extent that Permian proposes to pool, to wit, from around 9,397 - 9,400 feet (a severance located in the lower 1/3 of the Third Bone Spring) to the base of the Bone Spring. *See* Landman's Statement, ¶¶ 7-8, Exhibit C, Permian's Revised Exhibits. The technical Examiner, having heard during testimony that there are

multiple depth severances in the Third Bone Spring, specifically requested as evidence a description from Permian's Landman, in written testimony or by actual title document, showing (1) how title created "all the depth severances," and (2) "including Ms. Beall's [depth severances]." *See* Paragraphs 1-3, *supra.*

10. Permian ignored the Examiner's request and instead submitted the Opinion Letter, which consists of a short, truncated title opinion drafted by persons ("Opinion Drafters") whom the Division has not recognized or certified as counsel or expert witnesses in title matters. Permian's submission of the Opinion Letter resulted in the Opinion Drafters making an unauthorized appearance in the proceedings, without voir dire or opportunity for parties of record to question the nature of their opinion or expertise, or the basis of their title examination, in which they are testifying. Moreover, the Opinion Letter was not subject to cross-examination. Instead, Opinion Drafters directly stated to the Division: "We have prepared this letter in response to our receipt of a .pdf that Permian Resources Corporation forwarded to us regarding the interest of Carolyn Beall." *See* Opinion Letter, Supplement to Exhibit C-12, Permian's Revised Exhibits, p. 165.

11. Not only is the Opinion Letter unauthorized, it is also misplaced and irrelevant as a supplemental exhibit for a number of reasons. First, the Opinion Drafters did not provide the Division or the parties of record in the Subject Cases with a copy of the .pdf describing and disclosing Permian's request to the Opinion Drafters on which drafting the opinion's authorship was based. Second, the Opinion Letter provides only the opinion of its drafters unsubstantiated by the submission of any actual title documents describing the depth severances that the Technical Examiner specifically requested.

12. Third, the Opinion Letter utterly fails to address or even mention any depth severances around 9,397 – 9,400 feet, the proposed upper limit of Permian's spacing unit, which is the focus

and basis of the Examiner's request for an additional description or additional documents. The requested depths, 9,397 – 9,400 feet, are not even mentioned in the Opinion Letter much less described as a focus of examination. Fourth, the sole purpose of the Opinion Letter is expressed in its concluding paragraph in which the Opinion Drafters state that "we currently have no basis upon which to recognize the Estate of Jean Read or these other predecessors to Carolyn Read Beall as owning Bone Spring Formation WI/Operating Rights in these lands in the N2 of Section 14 other than in the NENW." Clearly, the Examiner never once asked for an opinion on Beall's title and ownership for the purpose of reviewing title; the Examiner specifically asked for a statement from Permian's Landman "that describes all the depth severances including Ms. Beall's," directing that Permian's "supplemental exhibit" should be "a document showing that 9,397 [ft] depth severance that's in the southeast quarter of the southwest quarter." *See* Paragraph 1, *supra.*

13. Thus, the Opinion Letter fails to deliver: It fails to meet the criteria of the supplemental exhibit requested by the Technical Examiner, is improper, irrelevant and unauthorized, and should be stricken from the record.

B. Permian Was Fully Cognizant that the Opinion Letter was Unauthorized and Irrelevant to the Proceedings at the Time Permian Submitted It

14. At the hearing on February 27, 2025, Permian's counsel raised concerns about submitting additional title descriptions and title documents, stating that the Division does not have jurisdiction over title and therefore questioned why the Division would need to review title documents. *See* Tr. dtd 2-27-2025, 228: 21-25; 229: 1-3. This challenge to the Technical Examiner clearly demonstrates that Permian was fully aware and well-informed that presenting title descriptions and title documents to the Division for the purpose of having the Division adjudicate and determine actual ownership is improper and unauthorized because, as Permian's counsel

correctly acknowledged, adjudication of ownership itself is outside the Division's jurisdiction. *See id.*

15. After the Technical Examiner explained that the title documents would not be used to adjudicate title but to determine the location and depths of the ownership severances, one would have expected Permian to have provided the Division with a title document or documents that describe the depth severance at 9,397 – 9,400 feet (Permian's upper vertical limit of its spacing unit) and describe how the severance demarcates lines that separate the owners above the severance from the owners below the severance, including the depth severance at the upper limit of Permian's spacing unit, the point at which Beall's interest is excluded.

16. However, Permian failed to provide a title document or title documents, or any evidence, that show or describe critical severances at 9,397 – 9,400 feet. In disregard of the Examiner's instructions, Permian provided only an Opinion Letter that offers no description or explanation of the depth severances that form the vertical extent of Permian's spacing unit. The nature of the information contained in the Opinion Letter has only one purpose, expressed in its concluding paragraph, and that is to dispute Beall's ownership by opining that Beall does not own working interest in the Third Bone Spring except in the NENW of Section 14. *See* Opinion Letter, Permian's Revised Exhibits, p. 167. Thus, it is apparent that the sole purpose for Permian's submission of the Opinion Letter is to persuade the Division to adjudicate Beall's ownership in the Third Bone Spring and induce the Division to adopt the conclusion of the Opinion Letter as the Division's official ruling, that Beall does not have the property rights that she purports to own.

17. It is concerning that Permian intentionally submitted the Opinion Letter knowing that it was not what the Technical Examiner requested and knowing that the Division is not authorized to confirm or adopt the assertions made by the Opinion Letter as a ruling; thus, one can only

conclude that Permian's submission was an intentional disregard of the Division's request and jurisdiction. *See, e.g.,* Continental Oil Company v. OCC, 1962-NMSC-062, ¶ 28, 373 P.2d 809 (stating that the Division cannot determine property rights because that would be performing a judicial function "and grave constitutional problems would arise.")

C. Its Motion to Strike Beall's Intervention Reveals Permian's Improper Ulterior Motive for Submitting the Opinion Letter and Therefore Permian's Motion Should be Denied.

18. Permian used the Examiner's request for information regarding the depth severance as an excuse to submit the Opinion Letter. That Permian submitted the Opinion Letter for the purpose of inducing the Division to adjudicate title and ownership is confirmed by statements in its Motion to Strike Beall's Intervention. *See* Permian's Motion to Strike, ¶ 2 (Permian stating that it included a title opinion for the purpose of responding to Ms. Beall's ownership exhibits).

19. In effect, Permian, without seeking permission from the OCD, has introduced into the proceedings the unauthorized expert testimony of the Opinion Drafters, in order to opine on legal matters that Permian's authorized counsel had already acknowledged, prior to submitting the Opinion, were outside the Division's jurisdiction. *See* Tr. dtd 2-27-2025, 228: 21-25; 229: 1-3. The purpose of the Opinion Letter is further revealed in the last paragraph of Permian's Motion to Strike, which asks the Division to exclude Beall's notice of intervention from the OCD's consideration, which would require the OCD to rule on the status of Beall's ownership based on the assertions in the Opinion Letter. *See* Permian's Motion to Strike, p. 2. The assertions in the Opinion Letter are unsubstantiated because the Opinion Letter provides no actual title documents that substantiates its conclusions nor does it provide the full chain of title in the tracts necessary for accurately evaluating title. Instead, it relies in part on conjecture, speaking in the language of "*possibilities*" for ownership and that the Opinion Drafters "*currently* have no basis on which to recognize" ownership, implying

that in the future with additional information, they could have a basis. *See* Opinion Letter, Supplemental Exhibit C-12, ¶¶ 4 and 7 (Emphasis added). Even if Permian had attempted to qualify the Opinion Drafters as expert witnesses in the proceedings by asking the Division to accept them as experts on legal matters, the basis for objecting to such request could not be better stated than Permian's counsel herself, expressing concerns "about providing all this title information when the Division doesn't have jurisdiction over title," and questioning "why the Division would need to review title documents." *See id.* at 228: 21-25; 229: 1-3.

20. Furthermore, Permian's Motion to Strike is procedurally in error. Beall's Notice of Intervention has already been formally adjudicated and ruled on by the Division with issuance of an order as a preliminary matter to the February 27, 2025, hearing designating Beall as a party of record to the proceedings. *See* Tr. 2-27-25, 65: 9-11 (the Division is "ruling in favor for intervention in this case based on the record from the last hearing, *so that issue is decided.")* (Emphasis added); *see also* the Division's email to counsel attached hereto as Exhibit 1, stating that Beall's Intervention is granted on the basis of correlative rights. Thus, a Motion to Strike the Intervention, at this point in the proceedings, is invalid and ineffective. Permian would need to submit a motion for reconsideration of the Division's order if it wishes to see it overturned. However, if Permian should submit a motion to reconsider the order based on the Permian's desire to use the Opinion Letter to adjudicate Beall's title and ownership, that effort would be futile because, as expressed by Permian's counsel, the Division cannot review title for purposes of determining ownership since it does not have jurisdiction over this issue. *See id.* at 228: 21-25; 229: 1-3.

21. After it slipped the Opinion Letter into its Revised Exhibits by taking advantage of the Technical Examiner's request for descriptions of the depth severance, Permian in its Motion to Strike concocts an excuse for including the Opinion Letter as an exhibit separate from the

Examiner's request, stating that the unrequested Opinion Letter should be admitted as a rebuttal exhibit to testimony provided on Beall's behalf. *See* Permian's Motion to Strike, ¶¶ 1-2 and Footnote 1-2. However, this reason is without merit. First, the testimony and Beall's exhibits were not submitted to induce the Division to adjudicate a title dispute but was part of Beall's good-faith effort to show that she met the threshold as an owner in the Third Bone Spring to have standing as a party of record in the proceedings, a threshold test that the Division requires parties to satisfy, which is analogous to an applicant meeting the threshold for standing by stating in its pooling application that it is a working interest owner and has a right to drill a well.

22. The submission of Permian's unrequested and unauthorized Opinion Letter turns Beall's showing that she met the threshold for standing into a title dispute that the Division cannot adjudicate after it has ruled that a party has satisfied its threshold requirement and has been granted by decree the right to be a party of record; therefore, the Opinion Letter should be rejected as a rebuttal exhibit. Furthermore, at the end of the proceedings on February 27, 2025, Permian had ample opportunity to request that it be allowed to submit an additional rebuttal exhibit if it believed it might be necessary to the proceedings but failed to make any such request or provide reasons for such request; instead, after the conclusion of the hearing, Permian manipulated and distorted the Examiner's clear explanation -- that he wanted a title document describing the depth severances only for evaluating the locations and vertical extent of the depth severances – to seize an opportunity to slide the unauthorized Opinion Letter in front of the Division. *See* Permian's Motion to Strike, ¶ 2 (Permian acknowledges that the "technical examiner" requested the revised hearing packet "to clarify the location of the depth severance and affected parties," but then admits it "included a title opinion," not for the purpose of clarifying the location of the depths severances, but specifically for

the purpose of responding "to Ms. Beall's late filed [title] exhibits.") Permian's ulterior motive and unauthorized purpose for submitting the Opinion Letter cannot be expressed more clearly.

D. The Protection of Correlative Rights is the Substantive Reason for the Division to have Granted Ms. Beall's Intervention Designating her a Party of Record in the Proceedings.

23. An email dated February 14, 2025, from Ms. Tschantz to counsel, stated that the Hearing Examiner is granting Carolyn Beall's intervention in Case Nos. 24145-24146, citing to 19.15.4.11 NMAC in which it highlighted the provision: The division examiner may strike a notice of intervention on a party's motion if the intervenor fails to show standing, "*unless the intervenor's participation will contribute substantially to the prevention of waste, protection of correlative rights, or protection of public health or the environment*." (Emphasis in the original by highlight). The email concluded that there existed "an issue regarding correlative rights." *See* Exhibit 1 attached hereto.

24. Permian is proposing to pool a spacing unit whose vertical extent encompasses only the lower third of the Third Bone Spring formation, approximately from 9,397 - 9,400 feet to its base. Permian's geologist has acknowledged that there is no baffling or geological barrier separating the lower third from the upper two-thirds of the formation and therefore the well Permian proposes to drill below the depth severance will produce and drain the hydrocarbons both below and above the severance. *See* Tr. dtd 1-28-25, 62: 10-25; 63: 18-25; 64: 10-11. There are a number of owners who own above the severance, including Ms. Beall, and Permian has proposed a development plan in which it will produce the hydrocarbons above the severance and take them for its own profit and the profit of the select owners below the severance, thereby excluding the owners above the severance from their equitable share of production and creating a textbook violation of their correlative rights. *See* NMSA 1978 § 70-2-33H. V-F distinguishes its development plan from

Permian's plan based on the applicants' treatment of correlative rights in the Third Bone Spring, and therefore, V-F has a vested interest in Beall's participation in the proceedings as well as wanting the integrity of the adjudication to be preserved. Thus, V-F requests that Permian's unauthorized Opinion Letter be stricken from the record and Permian's Motion to Strike Beall's Intervention be denied.

25. Ms. Beall is the only owner who showed up at the hearing to object to Permian's taking without compensation. Others might not have showed up to object because Permian represented to all the owners, by representations in its pooling applications,[1] that Permian would be pooling the entire Third Bone Spring, from top to base, and therefore, the owners may have mistakenly thought that their interests above the severance were being pooled and allocated to them, or they might not have understood that Permian planned to exclude them by materially altering the vertical extent of its spacing unit and thereby taking their hydrocarbons for their own profit. Thus, Ms. Beall's presence and participation in the cases is critical for addressing these issues to ensure that the protection of correlative rights are highlighted and remain in front of the Division.

III. Conclusion:

For the foregoing reasons, V-F respectfully requests that the Division grant its Motion and strike from the record the unauthorized Opinion Letter that Permian included, without OCD approval or permission, as a part of its Supplement Exbibit C-12 for the illicit purpose of having the Division adjudicate Ms. Beall's property rights and ownership. Permian's tactics reflect acts of bad faith; and

[1] *See, e.g.,* Permian's Landman Statement, ¶ 4, Revised Exhibits (In Case Nos. 24145-25148, "Permian seeks to pool all uncommitted interests in a portion of the Bone Spring formation, from the top of the Third Bone Spring formation to the base of the Bone Spring formation."); *see also* Permian's Pooling Applications in Case Nos. 24145-25148, Revised Exhibits, pp. 34 - 46 (Permian seeking to pool the entire Bone Spring, "from the top of the Third Bone Spring formation to the base of the Bone Spring formation.")

consequently, V-F asks that the Division recognize the submission of the Opinion Letter as an act of bad faith which must not be tolerated.

Furthermore, for the reasons stated herein, V-F respectfully requests that the Division deny Permian's Motion to Strike Ms. Beall's Notice of Intervention. Ms. Beall's appearance and participation in the proceedings contributes to the protection of correlative rights for all owners in the Third Bone Spring and parties of record. Permian attempted to lay the foundation for its Motion to Strike Beall's Intervention by submitting the unauthorized and unrequested Opinion Letter. Permian's foundation for its Motion to Strike, the Opinion Letter itself, is fatally flawed, and therefore Permian's Motion to Strike should be denied.

Respectfully submitted,

ABADIE & SCHILL, PC

/s/ Darin C. Savage

_____

Darin C. Savage

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

Attorneys for V-F Petroleum Inc.

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 24, 2025:

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

Kaitlyn A. Luck - luck.kaitlyn@gmail.com
Attorney for Carolyn Beall

/s/ Darin C. Savage
Darin C. Savage

From: **Tschantz, Freya, EMNRD** <Freya.Tschantz@emnrd.nm.gov>
Date: Fri, Feb 14, 2025 at 10:11 AM
Subject: Permian Resources Operating, LLC Response to Beall NOI re: Permian Case Nos. 24941-24942 & 25145-25148 & V-F Petroleum Case Nos. 24994-24995 & 25115-25117
To: Kaitlyn Luck <luck.kaitlyn@gmail.com>, Paula M. Vance <PMVance@hollandhart.com>
CC: Darin Savage <darin@abadieschill.com>, Andrew Schill <andrew@abadieschill.com>, Bill Zimsky <bill@abadieschill.com>, Adam Rankin <AGRankin@hollandhart.com>, Kari D. Perez <KDPerez@hollandhart.com>

Good morning:

The Hearing Examiner is granting Carolyn Beall's intervention in 25145-25146 citing to:

NMAC 19.15.4.11 ADJUDICATORY PROCEEDING INTERVENTION:

C. The division examiner or the commission chairman may strike a notice of intervention on a party's motion if the intervenor fails to show that the intervenor has standing, unless the intervenor shows that the intervenor's participation will contribute substantially to the prevention of waste, protection of correlative rights or protection of public health or the environment.

Based on the testimony provided at the January 28th hearing, there is an issue regarding correlative rights.

Therefore, the Division wants additional evidence offered on this

EXHIBIT 1

matter.

Respectfully,

Freya Tschantz, Law Clerk

EMNRD-Oil Conservation Division