

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

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

CASE NOS. 23448-23455

**APPLICATIONS OF CIMAREX ENERGY CO.
FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO**

CASE NOS. 23594-23601

**APPLICATIONS OF READ & STEVENS, INC.
FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO.**

CASE NOS. 23508-23523

RESPONSE IN OPPOSITION TO MOTION TO CONTINUE

Read & Stevens, Inc. (“Read & Stevens”) and Permian Resources Operating, LLC (“Permian Resources”) vigorously oppose Cimarex Energy Co.’s (“Cimarex”) motion to continue the contested hearing in these matters. As explained in the prehearing statement, Cimarex’s proposed development plan is fatally flawed. Cimarex fails to account for the differences in working interest owners and the share of ownership between the Bone Spring and Wolfcamp formations in this contested acreage. Not only does Cimarex’s plan propose to drain reserves from the Wolfcamp,¹ but Cimarex also now proposes to prohibit owners in the Wolfcamp from accessing and developing their own minerals in favor of Cimarex’s standalone Bone Spring

¹ See, e.g., Cimarex Application in Case No. 23594-23601, stating that proposed Bone Spring wells “will properly produce both the Wolfcamp and Third Bone Spring, as demonstrated by the history of production in this area[.]” See also, Cimarex Supplement to Proposal to Drill, dated June 15, 2023, attached as **Exhibit A** (stating that Cimarex’s wells will “produce the primary concentrations of hydrocarbons in the Wolfcamp”).

development.² No amount of extra time, additional data, or further analysis can cure this fundamental defect in Cimarex's competing proposal. For the reasons more fully stated below, Cimarex's motion should be denied and the contested hearing should go forward as planned.

ARGUMENT

A. Additional Time, Data, and Analysis Will Not Cure Cimarex's Fundamental Defect.

1. As demonstrated on a tract-by-tract basis in Read & Stevens' Exhibit C-8 and explained in Travis Macha's self-affirmed statement,³ the mineral ownership between the Bone Spring and Wolfcamp formations is not uniform. Some owners in the Wolfcamp formation own a larger proportion of working interest in the Wolfcamp formation than they do in the Bone Spring formation. And some owners in the Wolfcamp formation do not own any interests in the Bone Spring formation at all. For example, Read & Stevens,⁴ MRC Permian, Northern Oil & Gas, First Century,⁵ CBR Oil, CLM Production, Marks Oil, Wilbanks, HOG Partnership LP, and Warren Associates, own a greater share of working interest in the Wolfcamp formation than in the Bone Spring formation in this acreage. Significantly, CLM Production and Warren Associates own no interest in the Bone Spring formation in this acreage.

2. This ownership break is significant because Cimarex proposes to land some of its wells at the base of the Bone Spring formation and to develop and drain the underlying Wolfcamp formation with its wells, production from which is required to be shared on a proportionate basis only with the owners in the Bone Spring.⁶ But because the ownership between the formations is different and Cimarex does not propose to drill and complete any

² See Cimarex's Motion for an Order Prohibiting the Drilling of Wells in the Upper Wolfcamp at ¶ 11, filed on July 13, 2023.

³ See Read & Stevens' Exhibit C at ¶¶ 16-22.

⁴ A Permian Resources subsidiary.

⁵ A Permian Resources-owned interest.

⁶ See, *infra*, ¶ 4.

wells in the Upper Wolfcamp, the owners in the Wolfcamp formation will be irreparably impaired under Cimarex's proposal. Owners with a greater share of interests in the Wolfcamp than in the Bone Spring will not be allocated an equitable share of the production as between the two formations. And owners with no interests in the Bone Spring formation will have no means to share in production from the Bone Spring wells, which, by design, will produce a substantial portion of their Wolfcamp minerals. *See* Exhibit A.

3. What Cimarex proposes will result in textbook impairment of correlative rights.

4. New Mexico's compulsory pooling statute mandates that production be shared within a pooled spacing unit strictly on a surface acreage basis. *See* NMSA § 70-2-17 ("For the purpose of determining the portions of production owned by the persons owning interests in the pooled oil or gas, or both, such production shall be allocated to the respective tracts within the unit in the proportion that the number of surface acres included within each tract bears to the number of surface acres included in the entire unit." (emphasis added)). That means it is not possible to issue an order pooling Bone Spring spacing units and allocate production to owners in both the Bone Spring and Wolfcamp formations on a surface acreage basis from wells completed in only the Bone Spring when ownership is not uniform.

5. The correlative rights of owners in the Wolfcamp will be irreparably impaired under Cimarex's plan and no amount of additional data or analysis will change that. The ownership differences is a serious concern for Wolfcamp owners. *See, e.g.*, Permian Resources Exhibit C-12 p. 9 (Northern Oil & Gas statement that it "supports the scientific exploration of the two formations [Bone Spring and Wolfcamp] together, with consideration for the varying ownership interests in each formation."). The only cure is to also develop the Upper Wolfcamp, which is what Read & Stevens proposes to do.

6. Unfortunately for Cimarex, it has come to this realization too late. After sitting on this acreage for years, it is only now moving to institute a cookie-cutter development plan that does not take into account these ownership issues.

7. Additional time and data are not required to fairly evaluate the parties' competing proposals. Extra time and further analysis will not mitigate Cimarex's fundamental defect.

B. Cimarex's Justifications for a Continuance Have No Merit.

8. The fact that no additional data, analysis, or time will cure Cimarex's fatal defect is sufficient basis alone to deny the motion for a continuance. But the justifications Cimarex raises to support a continuance do not justify their last-minute request.

9. First, Cimarex's argument that the voluminous exhibits and testimony in these cases requires additional time is a red herring. The materials are voluminous due to the number of cases, not complexity. The Division and applicants regularly confront circumstances where ownership is not uniform within pools and between formations, whether there are frac barriers, or baffles, or not. Operators are expected to take these factors into account when proposing development plans that protect correlative rights. Read & Stevens has thoughtfully taken these geologic and ownership issues into account in its development plan. Cimarex has not and no additional time will rectify that.

10. Second, Cimarex's proposals for how the Division can address the "geological feature" in this acreage are based on a faulty premise. It is not the Division that must assess the circumstances of the geology and the pools in this acreage; rather, Cimarex must assess the implications of non-uniform ownership between the Bone Spring and Wolfcamp formations vis-à-vis their development. The onus is on Cimarex to propose development that prevents waste and protects correlative rights. It is not the Division's job to attempt to alter the pools to accommodate Cimarex's oversight. More importantly, the Division has no authority to do so; it

must pool spacing units in a manner that allows for allocation among owners on a surface acreage basis. There is no circumstance where an assessment of the geology, drainage, and engineering will resolve the ownership issues in a manner that avoids impairing correlative rights under Cimarex's plan.

11. Finally, Cimarex vaguely contends these cases present a novel issue that requires further technical and engineering analysis justifying additional time, data, and information. Cimarex points to the volume of exhibits, the number of pages, and the parties' minor technical challenges compiling and filing large electronic files as support for the need for more time to assess and deliberate. However, the geology and engineering in this acreage are not complex, nor are they unique. The circumstances presented here between the Bone Spring and Wolfcamp formations are no different than in the circumstance where there is an ownership break within a Division-designated pool.

12. Permian Resource's recent production data from its offsetting Batman project that co-develops the Bone Spring and Upper Wolfcamp formations is what it is. The data only serves to confirm the longstanding, existing co-development of the Bone Spring and Wolfcamp formations in Matador's offsetting Verna Rae spacing unit, which Cimarex inexplicably excluded from its analysis. No additional data or engineering analysis is going to substantially change these results to Cimarex's benefit.

C. A Continuance Without Good Cause Would Unfairly Delay Read & Stevens and Permian Resources.

13. Permian Resources, the proposed designated operator of this acreage, has its proposed wells on a rig schedule with plans to spud in the first quarter of 2024. Permian Resources recently acquired Read & Stevens and intends to timely co-develop its acreage following the successful offsetting spacing and wine-rack pattern established by Matador's

Verna Rae spacing unit and Permian Resources' Batman project. A continuance would likely push this contested hearing out into the October or November timeframe, delaying Permian Resources' planned schedule by months without good cause.

14. Moreover, Permian Resources witnesses are enroute to Santa Fe in preparation to present their well development plans. Granting a continuance at this late hour, when there is no good cause for doing so, would unfairly delay and prejudice Read & Stevens and Permian Resources.

CONCLUSION

Cimarex has put forward no valid justification for delaying the contested hearing these matters, which has been scheduled for months. The hearing should go forward as planned.

Respectfully submitted,

HOLLAND & HART LLP

By:  _____

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CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2023, I served a copy of the foregoing document to the following counsel of record via Electronic Mail:

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EXHIBIT A

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June 15, 2023

CM Resources II, LLC
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Re: Supplement to Proposal to Drill

Re: Supplement to Proposal to Drill
Mighty Pheasant 5-8 Fed Com 301H, 302H, 303H, and 304H Wells
Sections 5 & 8, Township 20 South, Range 34 East
Lea County, NM

Dear Working Interest Owner:

Cimarex Energy Co. ("Cimarex") is providing this Supplement to the Proposal to Drill for the above referenced wells ("Supplement") to be incorporated into the original Proposal to Drill that was sent on August 25, 2022 in order to clarify the extent and scope of projected production from the Wells given their respective depths and locations described in the original proposal.

The Mighty Pheasant 5-8 Fed Com 301H, 302H, 303H and 304H Wells ("Wells") were originally proposed for production from the Bone Spring formation. However, our geologists and engineers have thoroughly evaluated the Bone Spring formation in relation to the Wolfcamp formation in the above-referenced lands ("Subject Lands") and have determined that due to the extensive communication between the Bone Spring and the Wolfcamp, the Wells, as proposed, will produce the primary concentrations of hydrocarbons in the Wolfcamp, those being in the Upper Wolfcamp, and Cimarex believes they will do so more optimally given their current location within the 3rd Bone Spring than if additional and unnecessary wells were drilled into the Wolfcamp itself. Cimarex has determined that drilling new wells into the Wolfcamp would be an improper use of resources, and result in significant financial waste in developing in the most prudent manner the hydrocarbons contained within both formations underlying the Subject Lands, as is confirmed by the recent historical development of wells in the area surrounding the Subject Lands.

All specifications of the Wells, including location and depth, as described in the original Proposal to Drill remain the same, and this Supplement is provided to confirm that the target formations, based on the originally proposed specifications, include both the Bone Spring and Wolfcamp.

EXHIBIT A

Please call the undersigned with any questions or comments.

Respectfully,

John Coffman

John Coffman

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