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

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

Case Nos. 23448 – 23455

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

Case Nos. 23594 – 23601

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

Case Nos. 23508 – 23523

REPLY TO PERMIAN RESOURCES' RESPONSE TO CIMAREX'S BRIEF FOR EVALUATING A SINGLE RESERVOIR

Cimarex Energy Co., ("Cimarex"), through its undersigned attorneys, submits to the New Mexico Oil Conservation Division ("Division") its Reply to Permian Resources' Response to Cimarex's Brief for Evaluating a Single Reservoir ("Reply"), the "Response" having been filed in the above-referenced cases on August 4, 2023, by Read & Stevens, Inc. ("Read & Stevens") and Permian Resources Operating, LLC ("Permian Resources") (collectively referred to as "Permian Resources"). Cimarex respectfully provides this Reply to assist the Division in clarifying certain regulatory and statutory matters under review in said cases, stating as follows:

1. Permian Resources alleges that Cimarex is "[u]nable to demonstrate how its plans fit under the [Oil and Gas] Act, the Division regulations, or the Division's designated pools," and consequently, claims that Cimarex relies "on a combination of conclusory or assumed geologic

and engineering statements." Permian Resources' Response, p. 2. In making its allegation, Permian Resources mischaracterizes Cimarex's findings and clear presentation of geologic and engineering data and evidence as mere "geologic and engineering statements," and on the basis of this mischaracterization, further distorts the issue as being solely a legal issue. *See id.* The Division by statute and regulation is charged with making geologic and engineering findings that are used to determine questions of waste under the Oil and Gas Act ("Act"), in order to carry out its "paramount" mission of preventing waste, and in its efforts to prevent waste, to protect correlative rights and avoid the drilling of unnecessary wells. *See* NMSA 1978 §§ 70-2-2, -3, -6, -11, and -12.

2. Cimarex's Closing Statement will address in greater detail the issues of waste and correlative rights that are central to a final decision in the above-referenced cases. This Reply is provided to counter Permian Resources' short-sighted claim which astonishingly alleges that the Division does not have the legal authority[1] or technical capability to consider Cimarex's viable, alternative approaches for the development of the Subject Lands. These approaches would not only avoid burdening the working interest (WI) owners with excessive amounts of financial obligations resulting in limited returns on investment but would also eliminate drilling numerous unnecessary wells.

3. If the Division agrees with the geologic and engineering evidence provided by Cimarex that shows Permian Resources' plan will result in the wasteful drilling of 18 unnecessary wells, 8 of which will be drilled unnecessarily in the Wolfcamp formation, at an additional cost of a quarter of a billion dollars without the benefit of obtaining additional hydrocarbons, then the Division should not authorize Permian Resources to go forward with its plan. The Division should not apply the Act and the Division's rules that were adopted to fulfill its statutory duties under the

[1] *See, i.e.,* Permian Resources' Response, p. 4 (wrongly claiming that Cimarex's options are without legal basis and unsupported by case law or basic principles of statutory interpretation).

Act in a manner that results in such excessive waste because it would undermine the purpose of the Act. Thus, the Division must reject Permian Resources' myopic interpretation of the Act since it would create waste and undermine correlative rights. Instead, the Division should adopt Cimarex's interpretation of the Act and rules because that interpretation satisfies the terms and meaning of the statutes and rules in a rational manner that does not exceed the Division's authority and is not arbitrary or capricious, thereby preventing waste, protecting correlative rights, and avoiding the drilling of unnecessary wells. *See Grace v. Oil Conservation Comm'n*, 1975-NMSC-001, ¶ 7.

4. In its Brief, Cimarex[2] offered the Division two options by which the reservoir underlying the Subject Lands can be developed without having to expend resources to drill wells in the Wolfcamp formation and by drilling 18 fewer wells overall, at a savings of a quarter of a billion dollars and much less risk and burden to the Subject Lands.

5. Permian Resources suggests that Cimarex's Option 1 violates correlative rights, an issue which Cimarex will address in its Closing Statement. Permian Resources further urges that Cimarex's "Option 2" is "legally invalid," based in particular on claims that it violates NMSA 1978 § 70-2-17 (C), 19.15.16.15.B(1)(a) NMAC, 19.15.16.7.G NMAC, 19.15.16.7.B NMAC, and 19.15.16.7H NMAC. *See* Permian Resources' Response, pp. 7-10. In this Reply, Cimarex addresses each statute and rule, demonstrating in each case that a viable and reasonable interpretation is available for approval of Cimarex's Option 2.

6. Permian Resources first claims that Cimarex's Option 2 is invalid because § 70-2-17 (C) requires a well to be drilled "on the unit." To evaluate this claim, the Division must look to

[2] Cimarex Energy Co.'s Brief Providing the Basis for Evaluating a Single Reservoir Situated in the Third Sand of the Bone Spring Formation in an Area that Lacks a Baffle Separating it from the Underlying Wolfcamp Formation ("Brief").

the plain language of the authorizing statute for pooling interests and read the statute as a whole and not in piecemeal fashion, a basic rule of statutory interpretation[3] that Permian Resources failed to follow. Permian Resources misstates what "on the unit" means by quoting only a portion of a phase in the pertinent sentence in the statute omitting language that is essential to the meaning of the statute:

> By Statute, the Division is authorized to pool interest in a proposed spacing unit where owners have not agreed to pool their interests and where a well has been drilled or is proposed to be drilled "on said unit." *(Emphasis supplied by Permian Resources.)*

Permian Resources' Response, p. 9. To properly interpret this statute, Permian Resources should have stated:

> By Statute, the Division is authorized to pool interest in a proposed spacing unit where owners have not agreed to pool their interests and where a well has been drilled or is proposed to be drilled "on said unit to a common source of supply." *(Emphasis supplied.)*

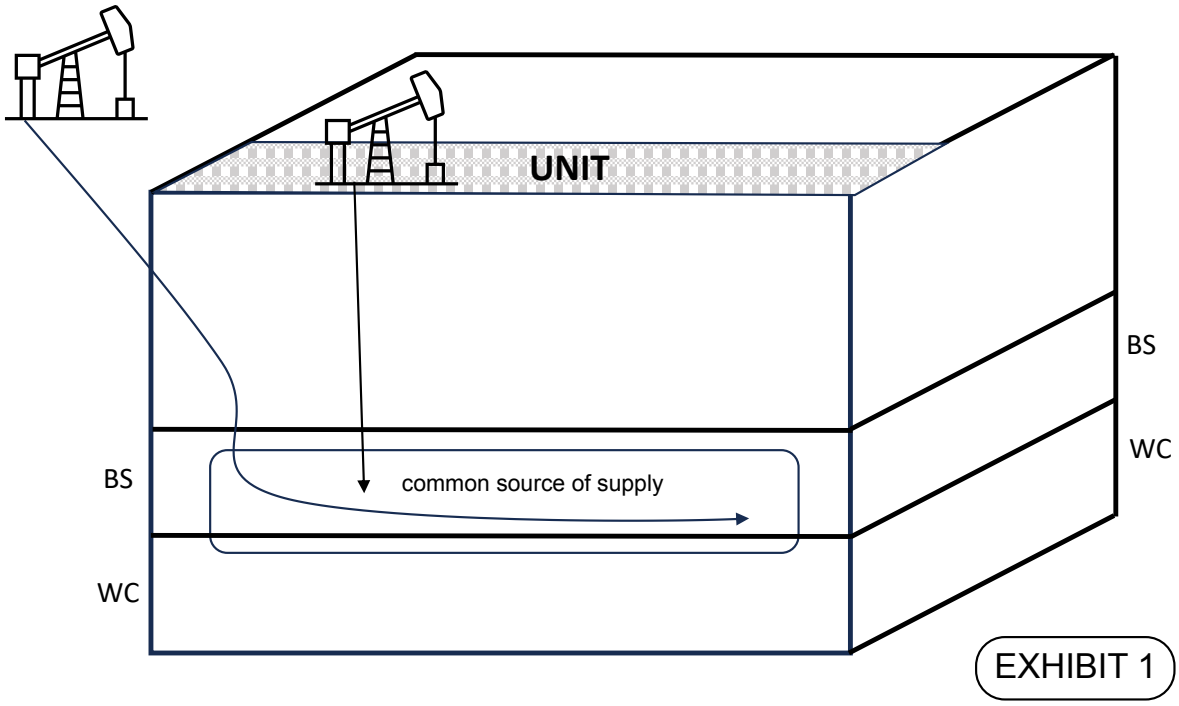
By including the statutory language "to a common source of supply," it is readily apparent that § 70-2-17 (C) does not require that the well be drilled "in said unit" or "into said unit," but only requires that the well be drilled "on said unit" and once drilled on said unit, that it be drilled "to a common source of supply."

7. Section 70-2-17 (C) was originally drafted for vertical wells and the Division must now apply its plain language to both vertical wells and horizontal wells. In doing so, it becomes clear that the parameters of the "unit" are referenced on the surface of the Subject Lands, "on" which a well is drilled ("on said unit"), and the unit parameters are projected down "to the common

[3] *See, e.g.*, *Chavez v. Bridgestone Americas Title Operations, LLC*, 2022-NMSC-006, ¶ 39 (resting its decision on "well-settled principles of statutory construction" including using the "plain language of a statue" as the "guiding principle" and considering the statute "as a whole") *(citations omitted). See also*, *N.M. Bd. of Veterinary Med. v. Riegger* , 2007-NMSC-044, ¶ 13, 142 N.M. 248, 164 P.3d 947 (relying on principle of statutory interpretation that "all provisions of a statute . . . must be read together").

source of supply." *See* § 70-2-17 (C); *see also* Exhibit 1, herein (showing the unit "on" which a well is drilled, and how the well, pursuant to the statute, is drilled from the unit to the common source of supply beneath the well).

Section 70-2-17(c)
"on said unit"

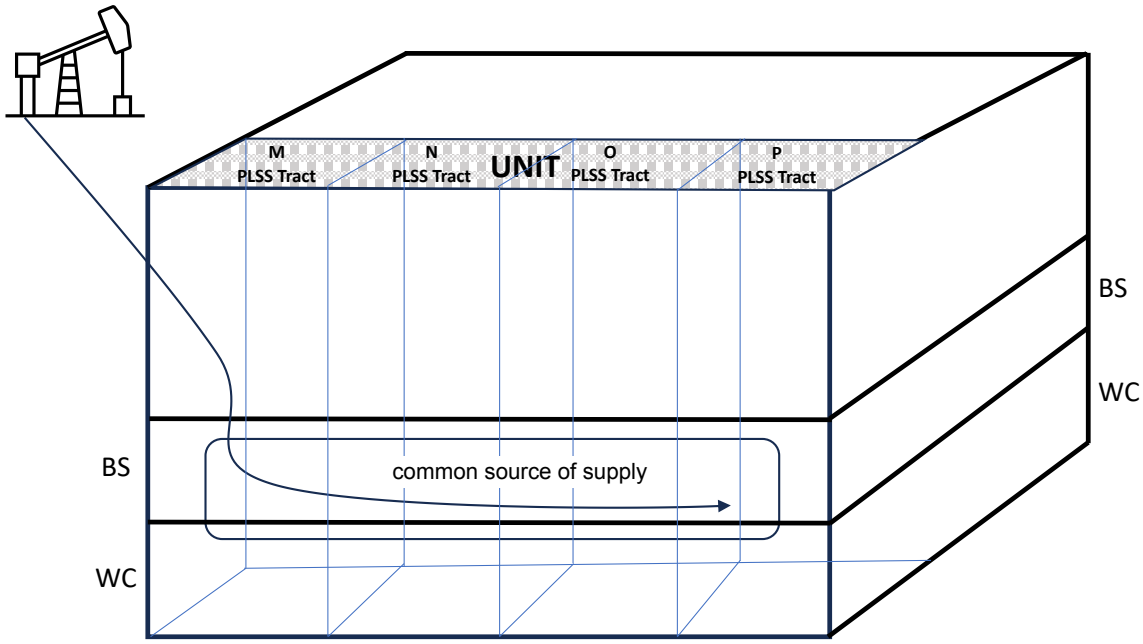


8. Under Option 2, Cimarex proposes to drill a horizontal well "on said unit" which occurs when the wellbore crosses the area delineated as the unit and continues to the common source of supply as authorized by § 70-2-17 (C). In the Subject Lands, the common source of supply is located primarily in the Bone Spring formation, but a small percentage of the common source of supply extends into the Upper Wolfcamp due to a lack of frac baffles. Under the plain meaning of the language of the authorizing statute, the wellbore does not need to be drilled "into" or "in" the spacing unit itself but drilled "on said unit" and into the "common source of supply" so

that it produces from "the common source of supply." The Third Bone Spring wells that Cimarex proposes under Option 2 would be "on said unit" - literally positioned on top of the unit - and would produce from the unit's "common source of supply," thereby satisfying the plain language of the authorizing statute. Once positioned "on said unit" and drilled to the common source of supply, the Third Bone Spring wells can then be dedicated to the Wolfcamp Unit under 19.15.16.15A(2) NMAC if Option 2 is pursued.

9. Next, Permian Resources objects to the validity of Cimarex's Option 2 based on 19.15.16.15B(1)(a), which states that the "horizontal unit shall comprise one or more contiguous tracts that the horizontal well's completed interval penetrates, each of which consists of a governmental quarter-quarter section or equivalent." *See* Permian Resources' Response p. 9. When interpreting and applying this Rule, the Division should note that the OCD Rules define a "tract" as "a legal subdivision of the United States public survey substantially in the form of a square or rectangle." 19.15.16.7N NMAC. By definition under the PLSS, a tract, or legal subdivision, is a square or rectangular form measured on the surface of the land as part of a survey of the surface, same as the unit under § 70-2-17 (C) is referenced by a legal description on the surface. Thus, if the contiguous tracts described in 19.15.16.15B(1)(a) are viewed as originating as PLSS tracts on the surface and projected down onto the Wolfcamp formation, then a horizontal well drilled "on said unit" (not "in" said unit) would have a completed interval that penetrates the parameters of every contiguous tract as it is drilled to the common source of supply, thus conforming to and satisfying a reasonable interpretation of 19.15.16.15B(1)(a) NMAC. *See* Exhibit 2, herein, illustrating the application of the rule.

Contiguous Unit Tracts Under the United States Land Survey System (PLSS)



Well's completed interval positioned "on said unit" penetrating the contiguous tracts

19.15.16.7 O NMAC
19.15.16.15 B(1)(a) NMAC

EXHIBIT 2

10. Permian further contends that Cimarex's Option 2 is invalid because it violates the definitions of "Completed Interval" in 19.15.16.7B NMAC and "Horizontal Well" in 19.15.16.7G. In 19.15.16.7G, a horizontal well means a "well bore with one or more laterals that extend a minimum of 100 feet laterally in the target zone." Permian Resources' Response at p. 9 (*emphasis added).* "Target zone" is not defined in the rules or in the statutes of the Act, but it is clear from Rule 19.15.16.7G that "target zone" can be separate and distinct from "formation," as

the rule states: "A well with multiple laterals from a common well bore in the same or different target zones or formations shall be considered one well." *(emphasis added).* Thus, the well can be either in a "target zone" or in a "formation" or both if the target zone and formation should overlap. The plain language of the rule suggests that "target zone" is more closely analogous to "common source of supply" or "reservoir" than "formation."

11. Accordingly, Cimarex's Third Bone Spring wells, if drilled under Option 2, would be drilled "on" the unit to the common source of supply, as authorized by § 70-2-17 (C), and once drilled into the common source of supply, the wells would certainly "extend a minimum of 100 feet laterally in the target zone," thus satisfying the terms of 19.15.16.7G. Furthermore, there is a clear corollary that arises from this Rule, which is: A well bore that produces two different formations "shall be considered one well." In effect, Rule 19.15.16.7G contemplates that one well is able to produce two formations if the hydrocarbons from the formations enter into the common well bore; thus, Cimarex's Third Bone Spring wells, under Option 2, could produce both the Third Bone Spring and Upper Wolfcamp formations because the nature of the geology would allow hydrocarbons from both formations to enter into a common wellbore, once the formations are pooled and the wells are dedicated to the units. Such an arrangement would also satisfy 19.15.16.7B because the wellbore or lateral is "perforated" within the target zone and open (in that it directly communicates with) the formation.

12. In its final objection to Option 2, Permian Resources provides a sentence fragment from Rule 19.15.16.7H to claim that infill wells are defined by reference to the "previously drilled or proposed horizontal well in the same pool," suggesting that the previous well has to be drilled in the same pool. *See* Permian Resources' Response, pp. 9-10. However, the full sentence states:

> "Infill horizontal well'" means a horizontal well the completed interval or intervals of which are located wholly within the horizontal spacing unit

> dedicated to a previously drilled or proposed horizontal well in the same pool. (*Emphasis added).*

When read in its entirety, the reference to a "previously drilled or proposed horizontal well" includes a well to which the horizontal spacing unit is dedicated to the same pool not necessarily drilled in the same pool. This is exactly what Cimarex has proposed in its Option 2, *viz*., that its Third Bone Spring wells proposed as horizonal wells be dedicated in the same pool (the Wolfcamp formation) for which Cimarex would seek a compulsory pooling order. Once Cimarex's well is dedicated to the Wolfcamp pool under Option 2, then any infill wells drilled in the Wolfcamp unit would satisfy 19.15.16.7H NMAC because they would be located in the same pool to which Cimarex's initial well is dedicated.

13. Conclusion: In its Brief and in this Reply, Cimarex has provided justification for its interpretation and application of the Act and the rules that accomplish the Division's underlying statutory mandate to prevent waste, protect correlative rights, and avoid the drilling of unnecessary wells.

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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 August 25, 2023:

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