

**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 TO CIMAREX'S MOTION TO STRIKE SUPPLEMENTAL EXHIBIT C-12

Read & Stevens, Inc. and Permian Resources Operating, LLC ("Permian Resources") (collectively "Permian Resources"), through undersigned counsel, file this response to Cimarex Energy Co.'s motion to strike. For the reasons stated, the motion should be denied. The Division should accept Supplemental Exhibit C-12 into the record and take into consideration the changed position of the interest owners and the effect on working interest control in its evaluation of these contested cases.

1. Marks Oil, Inc. and Wilbanks Reserve Corp. thoughtfully reserved committing their interests in these contested cases until after having the opportunity to observe the proceedings and weigh the parties' arguments and evidence.

2. Following a three-day hearing, Marks Oil and Wilbanks determined they prefer Permian Resources' proposed development for the reasons stated in Supplemental Exhibit C-12.

3. The Division should recognize their change of position and support for Permian Resources and how that affects calculating working interest control as a factor in awarding operatorship for at least the following five reasons.

4. First, the Division's guidance that working interest control should be calculated at the time of the hearing is not properly applied here. In this instance, the hearing itself was the impetus for Marks Oil and Wilbanks to choose a preferred operator and announce their voluntary commitment. Both owners reserved making a commitment until after considering the parties' evidence and arguments. They should not be penalized for their deliberative approach; instead, their preference for Permian Resources should be recognized and taken into consideration.

5. Second, Cimarex contends that accepting the exhibits will impair their right to due process because they did not have an opportunity to examine Permian Resources' witness regarding the exhibit. However, such questioning would be unavailing. It would simply confirm what is apparent from the supplemental exhibit: Both companies now support Permian Resources over Cimarex for the reasons stated.

6. Following the hearing, Cimarex could have capitalized on its evidence and arguments to obtain for itself the support of Marks Oil and Wilbanks and other uncommitted working interest owners. The companies chose instead to support Permian Resources.

7. Third, even if the Division were to decide against recalculating the working interest control supporting Permian Resources, it should nevertheless consider the significance of the companies' change in position and the reasons for it.

8. As explained in Permian Resources' closing brief, calculation of working interest control is not a significant factor when other "compelling factors"—such as geologic and prospective differences and efficient recovery of reserves—control, as they do in these contested

cases. *See* Permian Resources Closing at I.C; *see also* Order No. R-10731-B, ¶ 24. But what is significant and should not be ignored is the fact that Marks Oil and Wilbanks decided against supporting Cimarex and in favor of supporting Permian Resources after observing the hearing and over their concerns about co-development and correlative rights.

9. Fourth, because the companies submitted letters of support directly to the Division and are now part of the Division's files, the examiner can take administrative notice of them and their support for Permian Resources. *See* 19.15.4.17.A NMAC (providing for taking administrative notice of Division files in adjudicatory hearings). The companies' concerns and the reasons for supporting Permian Resources stated in the letters go to the heart of the contested issues in these cases. Thus, even if the Division does not accept Supplemental Exhibit C-12 into the record, the Division can and should take administrative notice of the letters, which are now part of the Division's files.

10. Finally, the rules of evidence do not control but serve as guidance in Division adjudications. *See* 19.15.4.17.A. A core purpose for the rules of evidence is to "ascertain[] the truth[.]" *See* 11-102 NMRA. To ignore the fact that Marks Oil and Wilbanks changed positions to support Permian Resources after observing the hearing would turn a blind eye to an uncontested truth in deference to rigid formality in a way that would undermine the intent behind the working-interest-control factor.

11. The purpose of the factor is to determine which company has greater working interest support. It is most compelling to consider that Marks Oil and Wilbanks remained neutral until after considering the evidence and arguments at hearing. Rather than ignore their change in position simply because of timing, the Division should instead acknowledge the change and give

additional weight to the fact that they announced their support for Permian Resources after the hearing and after weighing the evidence and arguments.

CONCLUSION

For the reasons stated, Cimarex's motion should be denied and the Division should accept Supplemental Exhibit C-12 into the evidentiary record in these cases and re-calculate the working interest support for Permian Resources. In the alternative, the Division should take administrative notice of the letters supporting Permian Resources and give additional weight to the fact that the companies announced support for Permian Resources after the hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2023, I served a copy of the foregoing document to the following counsel of record via Electronic Mail:

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