

**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

**REPLY TO PERMIAN RESOURCES' RESPONSE TO CIMAREX'S
MOTION TO STRIKE SUPPLEMENTAL EXHIBIT C-12**

Cimarex Energy Co., (“Cimarex”), through its undersigned attorneys, submits to the New Mexico Oil Conservation Division (“Division”) its Reply (“Reply”) to Permian Resources’ Response (“Response”) to Cimarex’s Motion to Strike Supplemental Exhibit C-12, filed by Read & Stevens, Inc. and Permian Resources Operating, LLC (collectively “Permian Resources”). In support of its Reply, Cimarex states the following:

1. Permian Resources drafted two identical form letters, both dated September 29, 2023, which it sent to Marks Oil, Inc. (“Marks Oil”) and Wilbanks Reserve Corporation (“Wilbanks Reserve”). Based on these two letters, Permian Resources makes an unsubstantiated claim to additional working interest (“WI”), a claim being made more than a month after the contested hearing. These form letters do not express any meaningful reconsideration of the original neutral positions taken by Marks Oil and Wilbanks Reserve.

2. At the contested hearing, Permian Resources provided the Division with a letter dated March 24, 2023, that expressed for the record Marks Oil's actual, self-authored, thoughtful position on the cases. See Permian Resources' Exhibit I, Marks Oil's Letter to Permian Resources, attached hereto as Exhibit 1. In this letter, Marks Oil expresses its understanding of and position in the cases:

Marks understands that a dispute exists between Permian and Cimarex as to operational rights and privileges associated with both the Lands and applicable Joint Operating Agreements. Regardless of this dispute, Marks will exercise its rights of participation in any operational proposal on the Lands, drilling or otherwise, with a party authorized to conduct such operations by the New Mexico Conservation Division or other appropriate governing body. (Emphasis supplied). *Id.*

3. Marks Oil's self-authored expression provided at the hearing is different from the canned, strategically constructed language that Permian Resources drafted for Marks Oil and Wilbanks Reserve in the two form letters. Most of the text of the two form letters consists of recitals provided by Permian Resources and signed by its landman. See Permian Resources Supplemental Exhibit C-12. These form letters also contain one attached sentence that, by all appearances, Permian Resources drafted which reads as follows:

The undersigned herein acknowledges the importance of thoughtfully evaluating the co-development of the 3rd Bone Spring Formation along with the Wolfcamp XY in and around the vicinity of the referenced Joker unit and supports the scientific exploration of the two formations together, with consideration of the varying ownership interests in each formation. *Id.*

4. This one-sentence statement is the only language in the two form letters that could be considered the actual expression and intent of Marks Oil and Wilbanks Reserve.¹

¹ Wilbanks Reserve signed the same statement with only one small variation. In Wilbanks Reserve's statement, the Wolfcamp XY is described as "the Wolfcamp XY (aka Upper Wolfcamp)." The rest of the statement has the exact same language as Marks Oil's statement. See Permian Resources' Supplemental Exhibit C-12.

5. Review of Marks Oil's and Wilbanks Reserve's statement shows Permian Resources wrongly claims that the statement is an expression of support for Permian Resources' development plan. This statement does not directly support Permian Resources, does not credit the parties' interest to Permian Resources, and does not state that the parties have made any changes to their original position based on having observed the contested hearing.

6. This statement consists of two parts. First, it acknowledges "the importance of thoughtfully evaluating the co-development of the 3rd Bone Spring and Wolfcamp XY **in and around the vicinity**" of the referenced Joker unit. (Emphasis supplied). This is not an expression of support for Permian Resources' Joker unit but only an acknowledgement that the development of the two formations in this area should be thoughtfully evaluated. Cimarex's Mighty Pheasant unit is also "**in and around the vicinity**," as a competing plan, and its Option II thoughtfully evaluates the co-development of the 3rd Bone Spring and Wolfcamp XY. See Cimarex's Closing Statement, pp. 28 - 37. Thus, the first part of the statement applies to both Cimarex's and Permian Resources' proposed plans, the difference being that Cimarex's plan is the only plan that accurately evaluates and accounts for the nature of the geology in and around this vicinity. See *id.* at pp. 13-14.

7. Furthermore, the second part of the statement does not state support for Permian Resources or its plan, but instead states that the signatory "supports the scientific exploration of **the two formations together**, with consideration for the varying ownership interests in each formation." (Emphasis supplied). Both Cimarex and Permian Resources present plans for the exploration of the two formations together, with consideration for the varying ownership interests in each formation, the difference again being that Cimarex's plan is the more scientific plan because it accurately evaluates and accounts for the unique geology in this vicinity, and Cimarex

is the only party that provided the data which shows the Division that the two formations, 3rd Bone Spring and Upper Wolfcamp, together form essentially one reservoir because of the lack of baffling. *See id.* at pp. 13-14 and 28-37.

8. Thus, the statements of Marks Oil and Wilbanks Reserve provide no definitive support for Permian Resources' plan.² A comparison between the statement by Tierra Encantada, LLC, that directly supports Permian Resources, attached hereto as Exhibit 2, and the statements of Marks Oil and Wilbanks Reserve prove this point. In fact, given the contrived nature of the Permian Resources' form letters, the belated submission of these letters raises more questions than they answer. *See* Exhibit 3, attached hereto, listing the questions Cimarex would ask Permian Resources' landman with respect to the two form letters. Cimarex respectfully submits that the questions in Exhibit 3 if asked in the context of an adjudicative hearing would likely disclose the reasons that Marks Oil and Wilbanks Reserve signed a statement that (1) did not give their direct support to Permian Resources; (2) did not credit their interest to Permian Resources; and (3) did not state that they were changing their positions.

9. Because the statements of Marks Oil and Wilbanks Reserve do not support Permian Resources as an operator or its proposed plan, Permian Resources' claim that it now owns "a majority working interest ownership and support in the Wolfcamp" is factually mistaken. *See* Notice of Supplemental Exhibit C-12, p. 1. By expressing their support not for Permian Resources but only for "the scientific exploration of the two formations together," the interests

² Compare Permian Resources' Exhibit C-12 submitted at the hearing which clearly shows that Tierra Encantada, LLC, provides its definitive and unambiguous support for Permian Resources, stating: "It is agreed and understood that the undersigned supports Permian Resources Operating, LLC, as operator of the Joker Project Area." Permian Resources is well aware of how to draft and prepare a statement for a working interest owner that shows the owner's direct and unambiguous support, and the statement signed by Marks Oil and Wilbanks Reserve states no support for Permian Resources or its plan. *See* Exhibit 2, attached hereto.

of Marks Oil and Wilbanks Reserve could just as easily be credited to Cimarex instead of Permian Resources.

10. The inchoate and ambiguous language of the statements is wholly insufficient to establish whether the cumulative 4.9415% interest owned by Marks Oil and Wilbanks Reserve should be credited to (1) Permian Resources; (2) neither party because Marks Oil and Wilbanks Reserve are remaining neutral; or (3) whether the interest should be credited to Cimarex because Cimarex is the only applicant who presented a plan for the “scientific” exploration of the two formations based on an accurate analysis of the geology. These are questions that can only be addressed through examination under oath by the Division and counsel for the parties which at this point is no longer possible. Therefore, admission of the Supplemental Exhibit C-12 would violate Cimarex’s right to due process and undermine the fundamental fairness of the adjudication.

11. There is one assertion in its Response that Permian Resources gets right, pointing out that the amount of working interest owned at the time of the hearing is only one “compelling factor” of other factors the Division considers in its selection of the best development plan. *See* Permian Resources’ Response at ¶ 8. Ownership ranks number six in the list of seven factors whereas geology ranks number one. Cimarex is the only applicant that fully accounted for the nature of the geology in a manner that would make the scientific exploration of the two formations possible, thereby satisfying the most important factor to be considered. Based on its scientific assessment of the geology, Cimarex directly accounts for the varying ownership and correlative rights between the two formations by showing that under both its Options I and II, the owners in the Wolfcamp and Bone Spring, such as Marks Oil and Wilbanks Reserve, would receive not only their wish for the scientific exploration of the two formations but also a greater overall

financial benefit from production under Cimarex's plan -- not only because Cimarex avoids the magnitude of wasteful costs imposed by Permian Resources but also because whatever little amount of ownership Permian Resources believes it might have acquired from Marks Oil and Wilbanks Reserve would be lost in Permian Resources' giant blender of a plan that intermixes production from the Third Bone Spring and Upper Wolfcamp in direct violation of Rule 19.15.12.9. *See* Cimarex's Closing Statement, at pp. 21-30, for detailed discussion of this violation.

12. The only certainty regarding ownership at this time is that Cimarex owns a majority interest in the Bone Spring formation, as acknowledged in Permian Resources' Notice of Supplemental Exhibit C-12, and now, based on the ambiguous language presented in Permian Resources' form letters and depending on how its landman would respond to the questions in Exhibit 3, Cimarex might also have a legitimate claim to the small additional 4.9415% owned by Marks Oil and Wilbanks Reserve because they have expressed their support not for any named or identified party, but for "the scientific exploration of the two formations." If the questions in Exhibit 3 justified crediting Cimarex, this would maintain Cimarex's majority interest in the Wolfcamp, increasing it from 41.7955% to 46.737%.

13. Conclusion: The Division's directive to evaluate the amount of working interest that each party owns or controls at the time of the hearing -- not the amount owned more than a month after the hearing -- is clear and binding. This is not a discretionary rule of evidence that can be overlooked, as suggested by Permian Resources. *See* Permian Resources' Response at ¶ 10. On the contrary, the directive is established policy stated in practically every Order of the Division and Commission which lists the seven factors governing a contested hearing. *See, e.g.*, Order Nos. R-21834, R-21416-A, and R-20223. It is the policy of the Division that should control

and receive administrative notice -- not the late filing of a flawed supplemental exhibit. Permian Resources' tactic -- the belated submission of form letters -- designed to introduce ambiguous evidence not subject to the crucible of cross examination not only violates the Division's clearly stated policy but also denies Cimarex's right to due process and violates every notion of fundamental fairness in an adjudicative proceeding. Accordingly, Cimarex respectfully requests that the Division grant its motion to strike from the record Permian Resources' Supplemental Exhibit C-12.

ABADIE | SCHILL PC

/s/ Darin C. Savage

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Attorneys for Cimarex Energy Co.

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 October 24, 2023:

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Adam G. Rankin – agrankin@hollandhart.com
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James Bruce – jamesbruc@aol.com

***Attorney for MRC Permian Company and
Foran Oil Company***

/s/ Darin C. Savage

Darin C. Savage



EXHIBIT
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March 24, 2023

**VIA U.S. REGULAR MAIL AND
EMAIL TO: travis.macha@permianres.com**

Mr. Travis Macha
Senior Landman
Permian Resources Operating, LLC
300 N. Marienfeld Street, Suite 1000
Midland, TX 79701

RE: Bane 4-9 Federal Com – Well Proposals
Sections 4 & 9, Township 20 South, Range 34 East
Lea County, New Mexico

Dear Mr. Macha:

On February 22, 2023, Marks Oil, Inc. (“Marks”) received a letter dated February 17, 2023, from Permian Resources Operating, LLC, as operator for Reed & Stevens, Inc. (“Permian”) setting forth the proposal (the “Permian Proposal”) to drill the following twenty-four (24) wells: Bane 4-9 Federal Com 111H, 112H, 113H, 114H, 121H, 122H, 123H, 124H, 125H, 126H, 127H, 128H, 171H, 172H, 173H, 174H, 131H, 132H, 133H, 134H, 201H, 202H, 203H, and 204H (collectively the “Wells”) located in Sections 4 & 9, Township 20 South, Range 34 East, Lea County, New Mexico (collectively the “Lands”).

Marks has also received proposals from Reed & Stevens, Inc. dated September 15, 2022, Cimarex Energy Co. (“Cimarex”) dated August 25, 2022, and MRC Permian Company dated August 30, 2022, all of which propose drilling multiple horizontal wells located on the Lands and targeting the same formations in the Permian Proposal.

Marks understands that a dispute exists between Permian and Cimarex as to operational rights and privileges associated with both the Lands and applicable Joint Operating Agreements. Regardless of this dispute, Marks will exercise its rights of participation in any operational proposal on the Lands, drilling or otherwise, with a party authorized to conduct such operations by the New Mexico Conservation Division or other appropriate governing body.

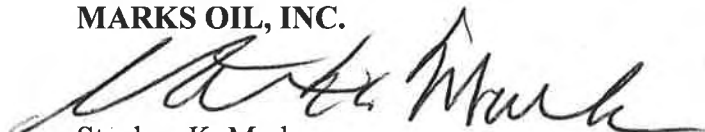
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Mr. Travis Macha
Permian Resources Operating, LLC
March 24, 2023
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If you have any questions, please contact me at (303) 861-1974 or by email to Steve.Marks@MarksOil.net.

Sincerely,

MARKS OIL, INC.

A handwritten signature in black ink, appearing to read "Stephen K. Marks". The signature is fluid and cursive, with a large initial "S" and "M".

Stephen K. Marks
President

Permian Resources-Bane Proposals_MOI Itr 032423_SKM

PERMIAN
RESOURCES

300 N. MARIENFELD STREET, SUITE 1000
MIDLAND, TX 79701

OFFICE 432.695.4222
FAX 432.695.4063

May 23, 2023

Tierra Encantada, LLC
P.O. Box 811
Roswell, NM 88202

RE: Joker & Bane Developments
Township 20 South, Range 34 East, Lea Co., New Mexico
Sections 4, 5, 8, & 9

To Whom It May Concern,

The purpose of this letter is to help bring a greater understanding and lessen any potential confusion surrounding the previously proposed developments in this area. As you may be aware Permian Resources Operating, LLC ("Permian") has recently closed the acquisition of Read & Stevens, Inc. and First Century Oil, Inc. effective February 16, 2023.

WHEREAS, on February 17, 2023, Permian proposed a twenty-four (24) well project within sections 4 & 9 of T20S-R34E (the "Bane" project) as well as a potash development area encompassing sections 5 & 8 of T20S-R34E (the "Joker" project). Permian subsequently sent formal Joker well proposals out in March subsequent to Cimarex Energy Company's ("Cimarex") filing for compulsory pooling on both Permian project areas.

To provide a brief update on the status of these projects to-date:

- **Bane**: Contested hearing at the New Mexico Oil Conservation Division ("NMOCD") between Permian and Cimarex presently scheduled for July 20th, 2023.
- **Joker**: Cimarex, Joseph W. Foran, and MRC Permian have issued protest of Permian's potash development area proposal which is necessary to have in place for development by any party. Similarly, to Bane a contested hearing is scheduled at the NMOCD for July 20th, 2023.
- **Applications for Permits to Drill ("APDs")**: Permian has conducted on sites with the Bureau of Land Management on both Joker and Bane, has fully prepared C-102s, and is ready to file permits. Permian is presently prevented by NMOCD rule and is refraining from filing these permits due to the contests.

Attached herein to this letter is a synopsis of Permian's well preparation, development plans, informal thoughts, and intentions for speedy and thoughtful development of Joker & Bane. Once you review the attached materials herein, if you so choose to elect to support Permian as operator of Joker & Bane you may sign below in the indicated space and return a copy of it using the enclosed return envelope.

EXHIBIT
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We look forward to taking the necessary steps forward to developing these projects in a meaningful manner and having any open conversations with you as seen fit. We appreciate the time and consideration taken into this, if you have any questions, please don't hesitate to reach out to the undersigned at travis.macha@permianres.com.

Respectfully,



Travis Macha
Senior Landman

It is agreed and understood that the undersigned supports Permian Resources Operating, LLC as operator of the Joker Project Area:

Company Name (If Applicable):

Sierra Encantada, LLC

By: Betty Young
Printed Name: Betty Young
Date: 7/11/2023

It is agreed and understood that the undersigned supports Permian Resources Operating, LLC as operator of the Bane Project Area:

Company Name (If Applicable):

Sierra Encantada, LLC

By: Betty Young
Printed Name: Betty Young
Date: 7/11/2023

Cross-examination questions that Cimarex Energy Co. would have asked Permian Resources' Landman, Mr. Travis Matcha about Supplemental Exhibit C-12, under oath and in the context of an actual hearing, if Cimarex were to be able to exercise its right of due process:

1. Mr. Matcha, you signed the two letters, dated September 29, 2023, from Permian Resources that were sent to Marks Oil, Inc. and to Wilbanks Reserve Corporation, the letters referenced as Supplemental Exhibit C-12, is that correct?
2. And would it be accurate to say that you, or someone at Permian Resources, drafted these two letters?
3. I direct your attention to the one-sentence statement at the bottom of the letter that is now signed by Marks Oil and Wilbanks Reserve. Was that sentence part of the original letter that you drafted and sent to Marks Oil and Wilbanks Reserve?
4. So you drafted that one-sentence statement as well, and prepared it for the signatures of Marks Oil and Wilbanks Reserve, is that correct?
5. And this one-sentence statement at the bottom of the letter is the only statement that Marks Oil and Wilbanks Reserve adopted by their signature, is that correct?
6. Your Notice of Supplement Exhibit C-12 states that the Presidents of Marks Oil and Wilbanks Reserve voluntarily committed their interests to Read & Stevens as a result of having observed the contested hearing, is that correct?
7. Where in the letter or the one-sentence statement do Marks Oil or Wilbanks Reserve commit their interest or express their support to Permian Resources?
8. Isn't it accurate to say that there is no statement in the letter or in their one-sentence statement where they state or express their support for Permian Resources?
9. And isn't it true that they never state that they now support Permian Resources or commit their interest based on having observed the contested hearing?
10. So, wouldn't it be fair to say that the assertion in the Notice of Supplemental Exhibit C-12, that Marks Oil and Wilbanks Reserve committed their interest to Read & Stevens as a result of having observed the contested hearing, that this assertion has no factual basis in the signed letters and statements?
11. Would you agree that the one-sentence statement signed by Marks Oil and Wilbanks Reserve has two parts, the first part is where the undersigned "acknowledges the importance of thoughtfully evaluating the co-development of the 3rd Bone Spring Formation along with the Wolfcamp XY in and around the referenced Joker Unit," would you agree this acknowledgment is the first part of the statement?

12. And would you agree that second part of statement is where the undersigned “supports the scientific exploration of the two formations together, with consideration for the varying ownership interests in each formation”?
13. In the first part of the statement, isn't it true that Marks Oil and Wilbanks Reserve never state that they support the Joker Unit, but only acknowledge the importance of developing the 3rd Bone Spring Formation and the Wolfcamp XY (the Upper Wolfcamp) in and around the vicinity of the referenced Joker unit?
14. Isn't it correct that Cimarex's Mighty Pheasant Unit is also in and around the exact same vicinity as Permian Resources' Joker Unit, both Units being proposed for Sections 5 and 8, Township 20 South, Range 34 East?
15. And doesn't Cimarex's Option II propose a thoughtful co-development of both the 3rd Bone and Upper Wolfcamp formations in this same vicinity?
16. So the first part of the statements for Marks Oil and Wilbanks Reserve statement could apply just as easily to Cimarex's plan as it would apply to Permian Resources' plan, do you agree?
17. And in the second part of the statement, Marks Oil's and Wilbanks Reserve do not give their support to Permian Resources' plan, but give their support only to the scientific exploration of the two formations together, with consideration for the varying ownership interests in each formation, would you agree with that?
18. And doesn't Cimarex propose a development plan that pursues the scientific exploration of the two formations together, based on the scientific understanding of the geology, that the two formations consist of a single reservoir?
19. Wouldn't it be fair to say, therefore, based on the second part of the sentence that Cimarex could have an equal claim on Marks Oil's and Wilbanks Reserve's interest, based on their statement, since Cimarex's plan also provides for the scientific exploration of the two formations?
20. You drafted and sent a letter to Tierra Encantada, LLC, dated May 23, 2023, in which Tierra signed a statement that does directly support Permian Resources as the operator of the Joker Project Area, correct? This letter is in Permian Resources' Exhibit C-12, correct?
21. And in the letter to Tierra, there is no ambiguity that Tierra states that it directly supports Permian Resources as the operator of the Joker Unit, correct? It actually states that the “undersigned supports Permian Resources Operating, LLC, as operator,” correct?
22. And the statement that you drafted for Tierra is very different than the statement you drafted for Marks Oil and Wilbanks Reserve isn't that true? In the Marks and Wilbanks

Reserve statements, neither of them state that they support Permian Resources as operator or that they support Permian Resources' development plan, is that correct?

23. So would it be fair to say that you know the difference between a statement that gives its direct support for Permian Resources as the operator and for its development plan versus one that does not?
24. Did you offer Marks Oil and Wilbanks Reserve any incentive, financial, trade options, or otherwise, for their signature on the statement that you drafted for them to sign?

The foregoing are the types of questions Cimarex would have wanted to have asked Permian Resources in order to assess the credibility and accuracy of the claims it made in its Notice of Supplemental Exhibit C-12 and in the Supplemental Exhibits themselves. Cimarex respectfully submits that without the opportunity to question Permian Resources' Landman under oath at a hearing, its right to due process is denied. Therefore, the Permian Resources' Supplemental Exhibits C-12 should be struck from the record and not considered in the Division's evaluations pursuant to its established policy.