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

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

CASE NOS. 24941-24942

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

CASE NOS. 25145-25148

APPLICATIONS OF V-F PETROLEUM INC.
FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO

CASE NOS. 24994-24995 & 25116

APPLICATIONS OF V-F PETROLEUM INC.
FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO

CASE NOS. 25115 & 25117

MOTION TO DISMISS READ & STEVENS' CASES NOS. 25145 – 25148 AND REQUESTS IN THE ALTERNATIVE

V-F Petroleum, Inc. ("V-F"), through its undersigned attorneys, submits to the New Mexico Oil Conservation Division ("Division" or "OCD") this Motion to Dismiss Read & Stevens' Case Nos. 25145 - 25148 ("Motion"). This Motion requests the dismissal of Case Nos. 25145-25148, or in the alternative, a dismissal of all the above-referenced cases or a reconsideration of the Parties Joint Motion for a Continuance. In support of this Motion, V-F provides the following:

I. Introduction and Summary:

At the eleventh hour of the upcoming January 28, 2025, hearing, Read & Stevens, Inc.

("Read & Stevens") approached V-F to see if it would agree to continuing Case Nos. 24941-24942, 24994-24995 and 25116 to a later date to allow the Division and Read & Stevens to provide required notice pursuant to 19.15.4.9(B) NMAC (requiring the Division to publish notice at least 20 days before the hearing) and 19.15.4.12(B) NMAC (requiring that Read & Stevens "shall" send notice at least 20 days before the hearing). V-F respecting these notice requirements agreed to the continuance recognizing the inherent due process issues and wanting Read & Stevens to be able to present all of its cases at the appropriate time in a manner that provides for a fundamentally fair adjudication in conformity with the Oil & Gas Act ("OGA") and its statewide rules. The Division understandably wanting to maintain an orderly and efficient docket denied the continuance, and instead, consolidated the new Case Nos. 25145 – 25148 with the existing cases to have the hearing on January 28, 2025, with the provision that after the actual hearing, "the hearing record will remain open for a sufficient time to receive objections."

By maintaining the scheduled hearing date, the order raises a number of concerns because without proper notice given prior to the actual hearing, any pooling order issued by the Division under such conditions, whether to Read & Stevens or to V-F, would likely be viewed as invalid under New Mexico law. The Parties' dismissal of the cases, which the order incentivizes, would have resolved the material defects in notice. V-F desired to mutually dismiss all the cases to pave the way for a proper adjudication at a later date, but as of the submission of the Motion, Read & Stevens has declined, even though it is Read & Stevens newly filed cases that suffer the notice defects. Under the circumstances, V-F submits this Motion to inform the Division of its concerns and the legal basis for such concerns.

II. Procedural History and Relevant Background.

1. The present cases were originally set for a contested hearing on March 4, 2025, pursuant to a status conference before the OCD on November 1, 2024. At Read & Stevens' request, V-F agreed to move the hearing to an earlier date in January, subject to witness availability. The Parties confirmed that a contested hearing was feasible on January 28, 2025, for Case Nos. 24941-24942, 24994-24995 and 25116, which became the subject-matter of the Pre-hearing Order, issued first on November 26, 2024, and reissued as amended on December 18, 2024 ("Original PHO").

2. On December 10, 2024, V-F filed applications in Case Nos. 25115 and 25117 asking for a January 9, 2025, hearing date. Case Nos. 25115 and 25117 do not cover interests proposed to be pooled in the original contested cases and are not subject to the Original PHO.

3. After objecting to Case Nos. 25115 and 25117, Read & Stevens approached V-F to inquire whether V-F would object to a continuance so that Read & Stevens could submit its applications that would compete with V-F's applications in Case Nos. 25115 and 25117 and to submit applications that would compete for the Third Bone Spring zone in V-F Case Nos. 24994 and 24995. V-F agreed to the continuance to give Read & Stevens opportunity to provide notice, and the Parties filed a Joint Motion for Continuance on January 17, 2024.

4. On January 17, 2025, the Division issued Order Granting and Denying In-Part Joint Motion To Amend Prehearing Order ("Updated PHO"). In the Updated PHO, the Division denied the continuance thereby maintaining the January 28, 2025, but consolidated the newly filed Case Nos. 25145-24148, 25115 and 25117, to be heard on January 28, 2025, along with the original cases.

5. After reviewing the Updated Order, V-F discussed its concerns with Read & Stevens that the Division's lack of notice pursuant to 19.15.4.9(B) and Read & Stevens' lack of

notice pursuant 19.15.4.12(B) for Cases Nos. 25145-24148 would likely invalidate the hearing and any orders issued therefrom. V-F offered that the means of resolving the concerns for everyone's benefit would be to dismiss all the cases and refile at a later date when notice could be properly provided, a viable option under the OCD's Updated Order.

6. In a good-faith effort to provide incentive for dismissing the cases and avoid any notice issues that would likely affect the status of the scheduled hearings, V-F provided Read & Stevens with a letter agreement in an effort to resolve their differences.

7. Read & Stevens indicated it was not satisfied with the proposal to dismiss the cases at the present time, stating that they intended to file exhibits and Pre-hearing Statements, but would consider dismissing the cases after exhibits were filed but before the actual hearing. Read & Stevens' position undoubtedly allows it to receive and review V-F's exhibits and details of its development plan, and if it decides to dismiss the cases, would have them in hand to prepare for a later hearing.

8. Read & Stevens and V-F prepared and submitted exhibits and Pre-hearing Statements pursuant to the Updated Order.

9. By email dated January 21, 2025, opposing counsel was notified of this Motion and provided an explanation of the nature of the Motion and all that it was requesting, asking if they opposed the Motion. Counsel followed up with opposing counsel by iPhone texts to further ask their position on the Motion. Opposing counsel's last response was that they were checking with their client. It was necessary to file the Motion without a final response. The main request of the Motion asserts that Read & Stevens' cases are defective, and thus the Motion is in direct opposition to Read & Stevens' interests; therefore counsel presumes that Read & Stevens would oppose the Motion.

III. Legal Arguments:

A. The Oil and Gas Act and its State-wide Rules Require the Posting of Division Notice and Notice by Letter at Least Twenty (20) Days before a Hearing.

10. Given the constant workload of the Division, V-F understands, and is supportive of, the Division's the need to maintain an orderly and efficient docket and its authority to deny continuances when such denials support the provision of the OGA and its rules. Accordingly, V-F does not lightly nor disrespectfully submit this Motion that expresses its concerns, but applicants before the Division have an obligation to inform the Division of concerns that directly impact the proceedings when the Division might benefit from their consideration. V-F in good faith views the issue of lack of notice in the present matter as presenting such concern.

11. Notice requirements under the OGA, are clearly prescribed. The Division "shall" prescribe by rule its rules of procedure in hearings before it. NMSA 1978 §70-2-7. Two essential rules that have been prescribed by the Division are: (1) The Division "shall" publish notice of each adjudicatory hearing before the Hearing Examiner at least 20 days before the hearing. 19.15.4.9(B) NMAC; and (2) the applicant "shall" send a notice letter to each owner at least 20 days prior the application's scheduled hearing date. 19.15.4.12(B) NMAC.

12. V-F's concerns focus on the Updated Order stating that after the hearing is held, "the hearing record will remain open for a sufficient time to receive objections." The Division's statement, provided to accommodate the inclusion of Read & Stevens' Case Nos. 25145-24148, is predicated on an interpretation of 19.15.4.9(B) NMAC and 19.15.4.12(B) NMAC that the Division can cure the posting of notice, and Read & Stevens can cure its lack of letter notice by leaving the record open after the actual hearing has taken place. V-F expresses concern that these material defects in notice would not be cured in this manner when the language of the Rules is clear and

unambiguous and respectfully asks the Division to consider the basis of its concern described herein.

13. The Division is a creature of statute, expressly defined, limited and empowered by the laws creating it. *Continental Oil Co. v. Oil Conservation Comm'n,* 1962-NMSC-062, ¶ 11, 373 P.2d 809. New Mexico courts are less likely to give deference to an agency's interpretation of a statute and its rules if the statute and rules are clear and unambiguous. *See Marbob Energy Corp. v. N.M. Oil Conservation*, 2009-NMSC-013 ¶ 7; *see also Bass Enters. Prod. Co., v. Mosaic Potash Carlsbad Inc.,* 2010-NMCA-067 ¶ 11, 238 P.3d 885 (stating that a ruling should be reversed if the agency unreasonably misinterprets of misapplies the law). In the present matter, the Division has prescribed by statute two specific rules that are clearly stated and unambiguous.

14. The first Rule (19.15.4.9(B) NMAC) clearly states that "[t]he division *shall* publish notice of each adjudicatory hearing before the commission or a division examiner *at least 20 days before the hearing."* (Emphasis added). The hearing commences on January 28, 2025, and thus "before the hearing" would mean any day before the scheduled hearing date. Read & Stevens submitted its applications in Case Nos. 25145-25148 on January 14, 2025, requesting a February 13, 2025, docket. Based on a review of the Division's website where public notices are posted for the February docket, and that no emails providing OCD notice for this docket has been received, V-F concludes that the Division has not provided public notice for Case Nos. 25145-25148, and if this conclusion is correct, the Division has not met its public notice requirement prior to the scheduled hearing.

15. The second Rule (19.15.4.12(B) NMAC) clearly states that "the applicant *shall* send a notice letter [to owners of record] to the last known address of the person to whom notice is to be given at least 20 days prior to the application's *scheduled hearing date.*" (Emphasis added).

The scheduled hearing date as ordered by the Hearing Examiner is January 28, 2025. *See* Original PHO. It is V-F's understanding that as of January 20, 2025, Read & Stevens had not sent its notice letters. Thus, Read & Stevens cannot meet the clearly stated twenty-day notice requirement prior to the hearing.

16. The issue is whether Read & Stevens and the Division can cure these material defects of notice by leaving the record open after the scheduled hearing, and this issue is a matter of statutory and rule construction. When confronted with the construction of statute and rules, the New Mexico courts look to "the plain language of the statute" or rule and will not read into "a statute [or rule] language which is not there." *See Bass Enters*, at 2010-NMCA-067 ¶ 12 (also confirming that "[a]gency rules are construed in the same manner as statutes); *see also Marbob* at 2009-NMSC-013 ¶ 7 (courts "are less likely to defer to an agency's interpretation of the relevant statute if the statute is clear and unambiguous"). In the present matter, both rules clearly state that notice "shall" be provided at least 20 days prior to the scheduled hearing.

17. It is a practice of the Division to allow certain types of defects in notice to be cured by accommodating discrete oversights such as a notice letter being neglected or the record remaining open and the case continued to a later date to accommodate secondary notice by publication. But these are minor incidences which can be cured by an owner being notified and a letter sent after the 20 days but prior to the hearing and/or the owner waiving its right to notice or notice by publication, published prior to the hearing but not timely, thereby allowing a few additional days to meet the 10 business days. Minor oversights can and do occur, and the Division is within its authority to make accommodations to cure individual occurrences. However, such narrowly tailored accommodations should not be used in bulk as a substitute for the clear and unambiguous requirements of the rules; the OCD's individual accommodations are provided in

the context of the OCD's notice being timely pursuant to 19.15.4.9(B) NMAC and the bulk of notice letters timely mailed by the applicant pursuant to 19.15.4.12(B) NMAC. Given that such accommodations are part of OCD practice, it would, on its face, be reasonable to assume that required mailings en masse and public postings could also be similarly accommodated, but that is not the case under the OGA and its rules.

B. Proper Notice Provided Prior to the Scheduled Hearing Date is a Bright Line Requirement that Would Invalidate a Pooling Order if Not Satisfied.

18. The purpose of the twenty (20) day notice requirement is clear. It establishes a bright-line threshold that must be met under the plain language of 19.15.4.9(B) NMAC and 19.15.4.12(B) NMAC to provide a blanket insurance that notice has been generally met and due process is upheld in Division proceedings. An owner, entitled to notice, has a right to be sent notice by letter prior to the scheduled hearing. The New Mexico Supreme Court confirms that owners have a right to notice pursuant to the rules, and if not provided proper notice, "are entitled to relief because the *notice procedures required by the OGA and the Oil and Gas Rules were not followed.*" *Johnson v. New Mexico Oil Conservation Commission*, 1999-NMSC-021 ¶ 18, 978 P.2d 327; *see also Atlixco Coalition v. Maggiore*, 1998-NMCA-134, P15, 965 P.2d 370 (concluding that an administrative agency "is required to act in accordance with its own regulations").

19. If the deadline requirements of a specific rule are not met, that is, if the applicant fails to timely send notice by letter as prescribed by the rules, the *Johnson* court held that NMSA 1978 § 70-2-23 prescribes the minimum notice required prior to a hearing, defined as "reasonable notice" under the OGA:

> Except as provided for herein, before any rule, regulation or order, including revocation, change, renewal or extension thereof, *shall be made under the provisions of this act*, a public hearing shall be held at such time, place and manner as may be prescribed by the division. The *division shall first give reasonable notice of such hearing (in no case less*

> *than ten days, except in an emergency)* and at any such hearing any person having an interest in the subject matter of the hearing shall be entitled to be heard. (Emphasis added)
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> *Johnson* court, at 1999-NMSC-021 ¶ 18, *citing* § 70-2-23, requiring at a minimum that notice be provided ten (10) days prior to the scheduled hearing.

20. The *Johnson* court further notes that although § 70-2-7, which states the Division shall prescribe by rule its rules of order or procedure in hearings or other proceedings before it under the OGA, "does not expressly mention the word 'notice,' the Division pursuant to the authority in this section, has adopted rules establishing notice requirements for oil and gas hearings." *Johnson*, at 1999-NMSC-021 ¶ 20. OCD Rules for notice, prescribed under the authority of § 70-2-7, include 19.15.4.9(B) and 19.15.4.12(B).

21. Thus, in the present Case Nos. 25145-25148 the requirements of the statewide rules for notice are not met, but also not met are statutory minimum requirements of "reasonable notice" under the OGA's catch-all statute that allows the Division to narrow the notice requirements under time-restricted circumstances.

22. Proceeding with the consolidated cases under these conditions would likely result in the any order issued by the Division being invalidated due to Read & Stevens' Case Nos. 25145-25148 lacking the minimum notice required by statute. This would apply both to an order issued in favor of V-F or an order issued in favor Read & Stevens. Given the statutory requirement for "reasonable notice" under § 70-2-23, which mandates notice be provided at least ten (10) days prior to the scheduled hearing, V-F is concerned that leaving the record open after the hearing is held would not suffice to cure notice. A material defect in notice, as defined by statute and the rules would likely invalidate orders and result in substantial waste of the Division's time and resources. *See Uhden,* at 1991-NMSC-089, ¶ 13 (the court voiding OCD orders based on a defect in notice).

C. Notice is the Foundation of Property Law and the Cornerstone of Practice before the Division.

23. In *T.H. McElvain Oil & Gas Ltd. P'ship v. Benson-Montin-Greer Drilling Corp*., 2017 NMSC 004, ¶25, 388 P.3d 240, 248, the New Mexico Supreme Court reiterated the bedrock principle that "The fundamental requisite of due process of law is the opportunity to be heard," quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950) (internal quotation marks and citation omitted). The New Mexico Supreme Court also referenced the Restatement (Second) on Judgments § 65 (Am. Law Inst. 1982), for the same well-established rule: "A court has authority to render judgment in an action when the court has jurisdiction of the subject matter of the action ... and ...[a]dequate notice has been afforded the party.") *Id.*

24. While the Court in *T.H. McElvain* held that under the specific facts of that case, notice by publication met the constitutional due process requirement for adequate notice, the Court emphasized "that we make clear that constructive service of process by publication satisfies due process if and only if the names and addresses of the defendants to be served are not "reasonably ascertainable." *Id*. ¶ 31, 388 P.3d at 249-50, quoting *Mennonite Bd. of Missions v. Adams* , 462 U.S. 791, 800, 103 S.Ct. 2706, 2706 (1983).

25. In the present cases, the names and addresses of the interested parties are known to the parties, thus letter notice must be timely provided to the parties and public notice is insufficient to provide them with adequate notice of the hearing, notice to which they have a constitutional right to receive. The OGA by statute upholds this right by requiring the division to provide "reasonable notice" to any hearing from which an order will be issued. *See* § 70-2-23. Reasonable notice is defined as "*no less than ten days, except in an emergency." Id.* (Emphasis added).

26. Therefore, notice after the hearing on the pooling applications is constitutionally inadequate. While it is recognized that in the context of administrative hearings affecting liberty and property, "[w]here ... the state must act *quickly*, a meaningful postdeprivation hearing is adequate," *Clark v. City of Draper*, 168 F.3d 1185, 1189 (10th Cir. 1999) (Emphasis added). However, in the present cases, there is no pressing need, and no emergency, requiring the Division to move forward with the hearing on the pooling under conditions of defective notice. Thus, because interested parties in Read & Stevens' Case Nos. 25145-25148 did not receive the constitutionally protected right to notice, as codified by §§ 70-2-23 and 70-2-7, the Division should dismiss these cases from the consolidated hearing and return Case Nos. 25115 and 25117 to their uncontested status if the January 28, 2025, hearing date is to be properly maintained. In the alternative, V-F asks the Division to dismiss all the cases or reconsider the Parties' Joint Motion for a continuance.

IV. Conclusion

The Division relies on its practitioners to inform the Division of legal issues involving proper procedure same as the practitioners rely on the Division to provide the necessary procedural guidance that facilitates a fair and reliable adjudication. If the Division issues an order that raises concerns, a practitioner, in an abundance of caution, should exercise its obligation to express those concerns. *See, e.g.,* NMRA 16-303: Candor toward the tribunal (the authorities, in particular *Johnson v. New Mexico Oil Conservation Comm'n,* 1999-NMSC-021, 978 P.2d 327, cited herein, are adverse to V-F's opportunity to have a proper adjudication on January 28, 2025, and therefore should be disclosed to the Division for review and consideration).

For the foregoing reasons, V-F respectfully requests that the Division reconsider the consolidation of Case Nos. 25145-25148, 25115 and 25117, and grant V-F's Motion to dismiss

Read & Stevens Case Nos. 25145-25148 thereby returning Case Nos. 25115 and 25117 to its uncontested status to be further considered on the February 13, 2025, docket.

In the alternative, on the basis of the authorities cited herein, V-F respectfully requests that the Division dismiss all the cases referenced above, thereby resolving any issue of a material defect in notice, and allow the Parties to re-resubmit their applications under conditions that satisfy the statutes and rules for notice, or to the extent the Division might be willing, reconsider its Order Granting and Denying in-part Joint Motion to Amend Pre-Hearing Order issued January 17, 2025, and grant a continuance of the consolidated cases to a date that would satisfy notice.

Respectfully Submitted,

ABADIE & SCHILL, P.C.

/s/ Darin C. Savage

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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 January 21, 2025:

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