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

APPLICATION OF CHEVRON U.S.A. INC. TO REOPEN CASE NO. 24185 (ORDER NO. R-23684 (E.G.L. RESOURCES, INC.) AND CASE NO. 24886 (ORDER NO. R-23685 PBEX, LLC) TO REQUIRE SUBMISSION OF PROPER STATEMENTS OF WELL COSTS BY OPERATOR AND RECOGNIZE THE CONSENTING STATUS OF CHEVRON

CASE NO. 25878

CHEVRON U.S.A. INC.'S OPPOSITION TO PBEX/EGL'S EXPEDITED MOTION TO STAY SUBPOENA DUCES TECUM

INTRODUCTION

PBEX/EGL seeks to shield itself from legitimate discovery by requesting this Division stay the subpoena pending resolution of an unsupported and insubstantial claim that Chevron lacks standing to seek the relief requested in its Application in this case. PBEX/EGL's Motion should be denied because: (1) PBEX/EGL has failed to demonstrate good cause for issuance of a stay; (2) the information sought is non-burdensome, routine information concerning communications and negotiations with the working interest owners concerning elections to participate in the wells authorized by the compulsory pooling orders; and (3) the information sought is needed by Chevron to respond to issues that PBEX/EGL may raise in a motion to dismiss for lack of standing.

ARGUMENT

I. PBEX/EGL HAS NOT DEMONSTRATED GOOD CAUSE FOR STAYING THEIR RESPONSE TO THE SUBPOENA.

PBEX/EGL's motion to stay discovery of readily accessible documents that are fundamental to its duties as operator under the referenced orders lacks good cause. Chevron's subpoena seeks basic information evidencing its standing in this matter and demonstrating that PBEX/EGL failed to comply with its duties under the Division's orders. Although the Division's

rules provide that the director or the division examiner assigned to hear the case may consider pre-hearing motions for protection or quashing of subpoenas prior to the hearing, they do not address the standards for granting such motion. Under Rule 19.15.4.23 NMAC, the Commission may grant a stay of an order by the division "if the stay is necessary to prevent waste, protect correlative rights, protect public health or the environment or ***prevent gross negative consequences to an affected party***." (Emphasis added). The motion to stay fails to demonstrate gross negative consequences (or any other good cause) and seeks to deny Chevron information needed to respond to PBEX/EGL's unsupported claim that Chevron lacks standing. As a party to the original cases filed by PBEX and EGL that was provided a deficient statement of well costs, Chevron has standing to challenge the sufficiency of that statement and PBEX/EGL's bad faith in seeking dismissal of its extension cases and treating it as a nonconsenting pooled party. *See* Rule 19.15.4.10, NMAC. The motion to stay only contains a naked allegation that Chevron lacks standing, unsupported by evidence authority or even argument. Therefore, Chevron is left to guess as to the basis for such allegation. A mere allegation that a party lacks standing fails to establish recognized grounds for granting a stay of discovery.

A party seeking a stay of discovery stay carries a heavy burden to demonstrate the necessity of its request and discovery stays pending adjudication of motions to dismiss are disfavored. *J.D. Heiskell Holdings, LLC v. Willard Dairy, LLC*, 2024 WL 3829970 at *2 (D.N.M. August 15, 2024); *New Mexico ex rel. King v. Bank of Am. Corp*., 2013 WL 12328915, at *1 (D.N.M. Oct. 23, 2013). As a result, motions to stay discovery pending the resolutions of motions to dismiss have been routinely denied by New Mexico federal courts. *See Human Rights Defense Center v. Grisham*, 2025 WL 2051451 at *3, No. 1:24-cv-1091-SMD-KRS (D.N.M July 22, 2025) (denying motion to stay pending resolution of a motion to dismiss where Governor Grisham failed to provide facts

or details to explain conclusory characterization of the discovery requests as being extraordinarily burdensome); *Valtierra v. Nyamsuren*, 2025 WL 754169 at *4 (D.N.M. March 10, 2025) (denying motion to stay pending resolution of motion to dismiss where Defendant failed to show that burden it will bear should discovery be allowed to proceed "is in any way out of the ordinary or would be wasteful" since "it is also possible that Defendants' Motion to Dismiss will be denied, or granted as to some of Plaintiff's claims but not all, in which case discovery will still be necessary.").

Given this authority, PBEX/EGL's reliance on a Colorado federal district court case is unavailing.[1] *See* Motion, ¶ 8. It also failed to cite a New Mexico case that denied a motion to stay discovery pending resolution of a motion for judgment on the pleadings challenging standing. *See SWEPI, Inc. v. Mora County of New Mexico*, 2014 WL 7474084 at *24 (D.N.M. Dec. 19, 2014). In *SWEPI*, Judge Browning surveyed the case law and concluded that the because the motion challenging standing could be considered as motion challenging subject-matter jurisdiction under Rule 12(b)(1) in which matters outside the pleading are considered, the discovery should be allowed. *Id*. The same outcome is warranted here.

PBEX/EGL's citation to a criminal case that simply stated that a defendant's standing to challenge the constitutionality of a search of a car he was driving that was owned and leased by others was a "threshold issue" has no bearing on the issues here. *See* Motion, ¶ 7 (citing *State v. Van Dang*, 2005-NMSC-033, ¶ 7). The defendant's standing in that case was resolved *in an evidentiary hearing* where testimony and other evidence was presented. Because the Division's compulsory pooling power is an exercise of the police power of the State, any challenge to

[1] Although the Colorado case cited in the motion involved questions of both jurisdiction and standing. Colorado federal courts have recognized that a stay of all discovery is generally disfavored. *Bustos v. United States*, 257 F.R.D. 617, 623 (D. Colo. 2009); *Chavez v. Young Am. Ins. Co.*, No 06-cv-02419-PSF-BNB, 2007 WL 683973, at *23 (D. Colo. Mar. 2, 2007) (citation omitted).

Chevron's standing should be resolved through an evidentiary hearing in which Chevron is afforded a right to obtain discovery to establish its standing.

Additionally, where the discovery at issue is needed to respond to a jurisdictional challenge, the request for a stay should be denied. *See De Baca v. United States* 403 F.Supp.3d 1098 (D.N.M 2019) (noting that courts are particularly reluctant to stay discovery where a party requires additional evidence to support a response opposing a jurisdictional challenge and discovery should be allowed to respond to such motions); *see also, Feldman v. Flood,* 176 F.R.D. 651, 652 (M.D. Fla. 1997) (A court "ordinarily should not stay discovery which is necessary to gather facts in order to defend against the motion.") (citing *Wilderness Soc. v. Griles*, 262 U.S. App. D.C. 277, 824 F.2d 4 (D.C. Cir. 1987)).

Rule 1-026(C) NMRA provides further support for why the Motion should be denied. That rule requires a showing of "good cause" for entry of a protective order. "Good cause is established [by] showing that disclosure will work a clearly defined and serious injury to the party seeking closure. The injury must be shown with specificity." *Krahling v. Executive Life Ins. Co*., 1998-NMCA-071, ¶ 15, 125 N.M. 228,; *Cf. Blake v. Blake*, 1985-NMCA-009, ¶ 21, 102 N.M. 354 ("Before the trial court can enter a protective order, or modify [a] subpoena, there must be some showing that it is unreasonable and oppressive. That burden rests upon the party seeking to quash . . . ."). The burden is on the moving party to demonstrate that the discovery sought will cause a clearly defined and serious injury. PBEX/EGL has failed to meet this burden. Since PBEX/EGL has failed to articulate the basis for its challenge to Chevron's standing, Chevron is left to guess as to its contentions. However, it is likely that any questions regarding standing will be intertwined with merits issues and may present factual questions that should be determined at an evidentiary hearing, "making discovery even more essential." *De Baca*, 403 F. Supp. at. 1128. Good cause for

a stay of discovery manifestly is not established by a stated intent to file a future motion challenging standing. Any motion that may be filed challenging Chevron's standing undoubtedly will involve the resolution of disputed facts intertwined with the merits that must be resolved through an evidentiary hearing. The documents sought by the subpoena are not only critical to issues involving the merits and standing but will aid the hearing officer in deciding any standing question that may be raised by PBEX/EGL.

II. PBEX/EGL HAS NOT ESTABLISHED THAT PRODUCTION OF THE DCUMENTS REQUESTED BY THE SUBPOENA IS BURDENSOME.

PBEX/EGL's motion offers no evidentiary support for its claim of burdensomeness, Chevron's discovery requests are neither broad nor burdensome, and PBEX/EGL has not shown how it will suffer prejudice from them. Chevron requested the Division to issue a subpoena to PBEX/EGL, as it is entitled to under the Division's rules. "The discovery rules were adopted in the first place to eliminate surprise and allow for full preparation of a case." *Lewis ex rel. Lewis v. Samson*, 2001-NMSC-035, ¶ 15, 131 N.M. 317 (internal quotation marks omitted). PBEX/EGL's motion offers no evidentiary support for its claim of burdensomeness, much less establish that it will suffer the gross negative consequences required by Rule 19.15.4.23 NMAC. Chevron's discovery requests are not particularly burdensome, and PBEX/EGL has not shown how it will suffer *any* prejudice from them. Just because PBEX/EGL has made a naked contention that Chevron lacks standing to bring its Application seeking to establish that PBEX/EGL failed to comply with the Division's pooling orders requiring a statement of well costs and in bad faith has refused to recognize Chevron's right to participate in the wells authorized by such orders, does not entitle it to avoid the simple production of documents pertaining the well election process and status of the wells.

The documents sought are clearly relevant and PBEX/EGL's characterization of the discovery sought as "burdensome" is unfounded. The subpoena seeks the production of routine information concerning correspondence with working interest owners, the submission of a statement of estimated statement of wells costs, the election process, any formal joinder though a JOA and the status of the wells since the orders were entered, all of which Chevron requested before filing its Application to try and resolve the matters without the need for filing an Application:

1. Any joint operating agreement covering the lands comprising the horizontal spacing units and/or wells authorized by the Orders issued by the New Mexico Oil Conservation Division ("NMOCD") in Cases 24185 (Order No. R-23684) and Case No. 24886 (Order No. R-23685) (collectively "Orders");
2. A true and correct copy of any letter or email sent to Chevron enclosing a copy of a joint operating agreement covering the lands comprising the horizontal spacing unit or the wells authorized by the Orders;
3. All correspondence with Chevron concerning proposals to drill any of the wells authorized by the Orders;
4. All correspondence with Chevron or any other working interest owners regarding negotiations for a joint operating agreement covering the lands comprising the horizontal spacing units and/or wells authorized by the Orders;
5. Any document that sets the percentage working interest owned by the owner of each tract comprising the horizontal spacing units and/or wells authorized by the Orders;
6. Correspondence with the other working interest owners regarding any election to participate in the cost of drilling, completing and equipping the wells;
7. Correspondence with the BLM or NMOCD concerning APDs for the wells authorized by the Orders;
8. Any contract for drilling the wells; and
9. Correspondence with the drilling contractor regarding the planned spudding of the wells.

This information is essential to Chevron's case and directly relevant to the issue of whether PBEX/EGL has complied with its obligations under the pooling orders and falsely represented to the Division when seeking dismissal of the cases it filed to extend the time for drilling that it "has commenced drilling the wells." An unsupported claim that Chevron lacks standing fails to

establish good cause for preventing Chevron from obtaining basic information needed to establish its standing and the merits of its claims raised in its Application.

The discovery requests seek routine information that any operator should maintain in the ordinary course of business. In addition, and contrary to the Motion, the Division's jurisdiction is not as constrained as PBEX/EGL contend. *See* Motion, ¶ 5 ("To begin with, joint operating agreements are contractual matters over which the Division does not have authority."). The Oil and Gas Act authorizes the Commission and the Division to "examine properties, leases, papers, books and records." NMSA 1978, § 70-2-12(A)(3). Thus, the Division does have authority to review contractual documents in furtherance of the Division's continued jurisdiction over pooling orders. The Division's pooling orders also contemplate continued good faith negotiations even after a pooling order is issued. For example, the Orders in these cases state that the spacing unit will terminate if "owners of all Pooled Working Interests reach a voluntary agreement," which clearly contemplates continued discussions between the operator and the Pooled Working Interest Owners regarding voluntary joinder. *See* Order R-23684, ¶ 36, Order R-23685, ¶ 36. In addition, the Orders require that statements of well costs be submitted after the order is entered and confirm the Divisions on-going jurisdiction post issuance of a pooling order. *See* Order R-23684, ¶ 37; Order R-23685, ¶ 37. Thus, communications with other working interest owners is relevant to whether PBEX/EGL treated all working interest owners equally and acted in good faith in its dealings with Chevron and are clearly within the Division's jurisdiction.

The Division's orders governing good faith negotiations further supports Chevron's request for the JOAs and for Chevron's requested discovery. *See, e.g.*, Order No. R-13165, ¶ 5(c) (noting "[a] proposed form of joint operating agreement should not required in every case but *should be furnished with reasonable promptness if requested*" (emphasis added)). Here,

PBEX/EGL did not provide Chevron with a JOA covering all of the proposed wells despite Chevron's request. In addition, PBEX/EGL's negotiations with other working interest owners, as reflected in the JOAs and communications, are relevant to whether PBEX/EGL has dealt with Chevron in good faith. This is especially important given that PBEX/EGL's Orders include 12 wells, with well costs over $120,000,000.

The Motion contains only a conclusory allegation about burden and expense without identifying specific discovery requests that are problematic or explaining why routine discovery would be unduly burdensome or *any* gross prejudice PBEX/EGL will suffer. A party resisting discovery on the ground that it is supposedly unduly burdensome "must specifically show how each discovery request is overly broad, burdensome or oppressive by submitting affidavits or offering evidence revealing the nature of the burden to substantiate the objection with supporting evidence." *King v. Gilbreath*, 2015 WL 12910671 at *2 (D.N.M. Feb. 27, 2015) (quoting *Oleson v. K-mart Corp.*, 175 F.R.D. 570, 571 (D. Kan. 1997).

The documents requested are undoubtedly electronically maintained by the land personnel involved in negotiations with working interest owners and easily accessible. Vague claims of burden that "some will necessitate motion practice" are insufficient to support a stay of discovery. Moreover, PBEX/EGL waived any further objection to the discovery brought by the subpoena by failing to raise them in its motion to stay. PBEX/EGL's refusal to provide basic information while failing in its motion to stay to articulate the basis for seeking dismissal has forced the unnecessary motion practice on procedural issues rather than substantive resolution of the issues presented in Chevron's Application.

CONCLUSION

The Motion to Stay seeks to deny Chevron information needed by Chevron to demonstrate that it has standing to assert the claims set for in its Application. PBEX/EGL seeks to use its Motion as a shield to avoid routine discovery related to its compliance with the Division's Orders. The Division should deny PBEX/EGL's Motion because PBEX/EGL has failed to demonstrate good cause, the information sought by the subpoena is relevant and proportionate, will be used by Chevron to respond to any issue of standing and a stay would prejudice Chevron while minimally burdening PBEX/EGL. Chevron respectfully requests that the Division deny PBEX/EGL's Expedited Motion to Stay Subpoena Duces Tecum and require it to respond to the subpoena issued by the Division.

Respectfully submitted,

MODRALL, SPERLING, ROEHL, HARRIS
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following counsel by electronic mail on January 15, 2026:

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