

**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

MOTION TO STRIKE SUPPLEMENTAL EXHIBIT C-12c

Cimarex Energy Co., (“Cimarex”), through its undersigned attorneys, submits to the New Mexico Oil Conservation Division (“Division” or “OCD”) its Motion to Strike Supplemental Exhibit C-12c (“Motion”) filed by Read & Stevens, Inc., and Permian Resources Operating LLC (collectively referred to as “Permian Resources”) in the above-referenced cases (“Subject Cases”). Cimarex objects to Permian Resources submitting its “Notice of Assignment” and “*Corrected* Notice of Assignment” (“Notice” or “*Corrected* Notice”) and respectfully asks that the Division strike Permian Resources’ Notice and Supplemental Exhibit C-12c from the record. In support of its request, Cimarex states the following:

I. Facts and Background:

1. The hearing of the Subject Cases was concluded on August 11, 2023, at which time the Hearing Examiner determined what remaining pleadings were to be filed for the purpose of evaluating the cases; this included only those pleadings specified at the hearing: (1) a Reply from

Cimarex to a previous Response filed by Permian Resources and (2) the final Closing Statements. See Tr. dated August 11, 2024, at p. 87: 7-17.

2. These two remaining pleadings for the Subject Cases were filed with the Division as authorized, the Closing Statements being the last items submitted on September 22, 2023.

3. Thus, on August 11, 2023, when the hearing concluded, the Division had obtained for final evaluation all the exhibits and testimony entered into the record pursuant to proper due process procedures that described and quantified the ownership held by each party at the time the OCD heard the applications, and by September 22, 2023, when the Closing Statements were submitted, the Division certainly had in hand all exhibits authorized for showing what each party owned at the time the applications were heard.

4. On January 19, 2014, more than five months after the conclusion of the hearing, Permian Resources filed a Notice of Assignment informing the Division that Permian Resources has acquired 75% of the working interests owned by Union Hill Oil & Gas Company, LLC (“Union Hill”). Permian Resources attached to the Notice the Assignment, Conveyance and Bill of Sale, dated January 8, 2024, between the parties (“Union Hill Assignment”).

II. Legal Arguments:

A. Exhibits submitted for the explicit and/or implied purpose to alter the Division’s authorized scope of evaluation of ownership violates both due process and the integrity of the adjudication and should be stricken from the record.

5. In the context of evaluating completing pooling application, both the Oil Conservation Commission (the “Commission”) and the Division adhere to a long-standing policy to evaluate *“the mineral interest ownership held by each party at the time the application was”*

heard.” See, e.g., Orders R-21416-A at ¶ 9.f of the Commission’s Findings of Fact and, and R-20223 at ¶ 28.f of the OCD’s Findings.

6. The Division’s established policy to evaluate the amount of working interest that each party owns at the time of the hearing is clear and binding. It is a policy originating from the Division itself that has been expressed and historically followed in practically every Order of the Division and Commission that lists the seven factors governing a contested hearing; thus, it is not a mere discretionary rule of evidence to be overlooked.

7. Based on its well-established policy, the Division should exclude Permian Resources’ Supplemental Exhibit C-12c because, as set forth below, the significance and meaning of the information in the exhibit is inherently ambiguous and cannot at this point be evaluated in a manner fundamentally fair to the parties since it has been submitted outside the proceedings of the hearing in a manner that denies the OCD and Cimarex their right to cross-examination and questioning. Just as a party cannot supplement its geological exhibits post-hearing since such supplemental exhibits would not be exposed to the crucible of cross-examination, supplemental exhibits on working interest ownership should be similarly prohibited. Simply put, Permian Resources is seeking to violate Cimarex’s basic rights to due process and the established notions of fundamental fairness that a Division’s hearing process is specifically designed to uphold and protect.

8. Furthermore, Cimarex submits that Permian Resources continues to burden the Division with these post-hearing submissions of such minor amounts of working interest (“WI”) in what appears to be an effort to influence the Division through theatrics rather than substance. At the time of the hearing, Cimarex owned or controlled 50.23% working interest (“WI”) in the Bone Spring under the proposed units compared to the 34.18% WI owned or controlled by

Permian Resources. *See* Cimarex's Closing Statement with Findings of Fact and Conclusions of Law ("Closing Statement"), Part G, at p. 11; *see also* Permian Resources' Supplemental Exhibit I at p. 2. In the Wolfcamp, Cimarex owned or controlled 41.80% WI compared to the 39.48% WI owned or controlled by Permian Resources. *See id.*

9. Months after the hearing concluded and after the final Closing Statements were submitted, Permian Resources submitted Suppl. Exhibits C-12, C-12a, and C-12b, showing that Permian Resources had acquired a small 4.9415% WI, giving Permian Resources a 36.7533% WI in the Bone Spring compared to Cimarex's majority 50.23%, and a 44.4197% WI in the Wolfcamp compared to Cimarex's 41.80% WI. *See, e.g.,* Permian Resources' "Notice of Suppl. Ex. C-12" and "Notice of Suppl. Ex. C-12a & C-12b." And now, most recently, Permian Resources submits yet another Suppl. Ex. C-12c showing that it was assigned a small 0.6244% WI¹ from Union Hill Oil & Gas Company, LLC ("Union Hill"), which provides Permian Resources with 44.6297% WI in the Wolfcamp compared to Cimarex's 41.7955% WI, and in the Bone Spring, Permian Resources now claims 37.36% WI compared to Cimarex's majority 50.2277% WI. *See* Permian Resources' *Corrected* Notice of Assignment, at p. 1.

10. The Division's consideration of ownership ranks sixth in its list of factors to consider in a contested hearing. Even if the Division should grant Permian Resources the illegitimate post-hearing consideration it seeks, these small bits of working interest that Permian Resources has scraped together after the hearing are immaterial to the status and weight of ownership as a factor in the Subject Cases.

¹ Union Hill assigned 75% of its interest to Permian Resources and retained 25%. Based on calculations from Permian Resources' numbers in its Supplemental Exhibit I, Union Hill originally owned 0.6244% WI, conveyed 0.4683% WI and retained for itself a 0.1561% WI.

11. For example, comparison of interest in the Wolfcamp, 39.48% for Permian Resources and 41.80% for Cimarex at the time of the hearing, when Cimarex controlled the plurality, showed then that Permian Resources and Cimarex were essentially neck and neck in the Wolfcamp, and with Permian Resources now claiming control of 44.6297% WI compared to 41.7955% WI for Cimarex, Permian Resources can now claim the plurality just edging out Cimarex (although neither party have an absolute majority of more than 50%). Thus, Cimarex and Permian Resources still remain essentially neck and neck in the Wolfcamp. As it turns out, Permian Resources' post-hearing submissions result in no major or substantive changes to the comparisons of WI in the Wolfcamp, a substantive change of interest traditionally considered to be in the range of 15% to 20%, and therefore, the parties' interest are basically on par with one another, neither owning an absolute majority, and thus the sixth factor of ownership is a wash for the Wolfcamp.

12. In the Bone Spring, at the time of the hearing, Cimarex's owned or controlled 50.23%, which being over 50% meets the definition of an absolute majority for the Bone Spring, and now, based on Permian Resources' numbers in its supplemental exhibits, Permian Resources owns 37.36% compared to Cimarex's majority of 50.23%. Again, there are no major or substantive changes in Bone Spring ownership to be derived from Permian Resources' supplemental exhibits that would form a deciding factor. Cimarex continues to be the majority interest owner, and Permian Resources continues to trail behind by a significant amount in the Bone Spring that, as shown by the geology, is the more desirable formation that houses the primary reservoir for the Subject Lands. *See* Cimarex's Closing Statement, Part F, at pp. 8-11.

13. Thus, Permian Resources' supplemental exhibits are not only immaterial since they fail to substantively change the comparative mineral ownership between the parties, but the

exhibits also violate the Commission's and OCD's well-established policy of evaluating ownership at the time of the hearing. Furthermore, whatever small amounts of interest Permian Resources might have acquired, or will acquire, after the hearing does nothing to address the dispositive geological factors inherent in the Subject Lands, geology being the top factor in the list of seven factors,² which Permian Resources failed to account for. *See* Cimarex's Closing Statement, at pp. 8-11, and pp. 21-30, for detailed discussion of the consequences, including the magnitude of excessive costs associated with Permian Resources' proposed drilling of unnecessary wells, caused by Permian Resources' failure to accurately account for the geology.

B. The true nature and purpose of the Assignment from Union Hill to Permian Resources cannot be discerned since Permian Resources submitted it to the Division outside the due process safeguards of a hearing .

14. At first blush, the Assignment may appear to be a routine transaction between parties common in the oil and gas industry. However, such assumptions many times crumble under the weight of cross-examination under oath. Cimarex submits that the Assignment may not be a routine, arms-length transaction.

15. As an initial matter, the amount paid for this acquisition as well as the incentives provided are unknown. For example, Permian Resources may have paid an exorbitant premium, for the acquisition in an effort to provide Permian Resources with the appearance of gaining ground in the Subject Cases, but in actuality, the Assignment offers no substantive evidence of gain, as shown herein. *See supra*, ¶¶ 10-12.

² OCD Order No. R-10731-B, ¶ 23(f) ("the most important consideration in awarding operations to competing interest owners is geologic evidence as it relates to well location and recovery of oil and gas and associated risk.") (emphasis added).

16. Furthermore, Union Hill, presumptively a neutral party, originally owned a 0.6244% interest in the proposed units.³ Union Hill did not assign all of its interest to Permian Resources but assigned only an undivided 75% of its interest. See Permian Resources' *Corrected* Notice of Assignment, 2nd ¶ in the body of the Assignment, attached thereto (emphasis in original). Thus, Union Hill assigned 75% of its interest (or a 0.4683% WI) while retaining 25% (or 0.1561% WI). Based on the Assignment alone, Permian Resources states in its *Corrected* Notice that Union Hill "had been" a neutral party, implying that Union Hill is no longer neutral because of the Assignment. See Permian Resources' *Corrected* Notice of Assignment, at p. 1. However, this assertion is misleading.

17. While Union Hill did assign 0.4683% to Permian Resources for some undisclosed amount, it retained for itself a 0.1561% WI in the proposed units, an amount over which Permian Resources currently does not demonstrate control or show Union Hill's support for Permian Resources' development plan.

18. Thus, as best as can be determined outside of a hearing, Union Hill remains neutral for the interest that it retained and currently owns, which means Union Hill has the right to participate with its retained interest under whichever plan is selected, Cimarex's or Permian Resources'.

19. Therefore, instead of the Assignment showing that Union Hill is no longer neutral but now supports Permian Resources' plan, as implied in the *Corrected* Notice, it appears that Union Hill was motivated by a very different set of considerations: Union Hill, a small, non-operating company, is hedging its bet on which applicant will become the operator by positioning

³ The 0.6244% is derived based on ownership numbers for Union Hill in Permian Resources' Supplemental Exhibit I.

its 0.1561% WI to be applied to the plan ultimately selected, in the hope that the selected plan will provide the better value and return on its interest and protection of its correlative rights.

20. Because of the magnitude of excessive costs that Permian Resources' plan imposes on pooled parties -- more than a quarter of a billion more than Cimarex's plan⁴ -- one can estimate the financial value Union Hill would receive from Permian Resources' plan compared to Cimarex's plan, and the comparison is striking. If Union Hill had retained and participated with the entirety of its 0.6244% interest, it is estimated based on PV-10 values⁵ that the value of Union Hill's 0.6244% under Cimarex's plan would be approximately \$723,101.00 while its value under Permian Resources' plan is estimated at approximately \$200,911.00. *See* Exhibit 1, attached hereto. Because Cimarex's accurate assessment of the geology allows its plan to avoid the excessive economic waste of drilling unnecessary wells, Union Hill's original 0.6244% WI is worth more than 3 times as much under Cimarex's plan. However, Union Hill, to receive the full value of its interests, would have to pay its proportionate share of the upfront costs which can be steep for a smaller company.

21. By selling 75% of its 0.6244% interest and retaining 25%, Union Hill would be able to participate with its remaining 0.1561% and only have to pay a proportionate share of costs for the lower percentage, which would be much more affordable. Under Cimarex's plan, Union Hill's 0.1561% would have a value of approximately \$180,775.00; in comparison, Union Hill's

⁴ *See* Cimarex's Closing Statement, at p. 19-20.

⁵ At the hearing, in order to show economic comparisons of the plans, Cimarex used PV-10 values based on data collected from existing co-development plans that are analogous and comparable to Permian Resources' proposed plan. *See* Engineering Statement, Exhibit D, at pp. 19-20 and Exhibits D-20 through D-22, in Cimarex's Hearing Packet I. Cimarex applies PV-10 values to Union Hill's decision to assign only 75% of its interest to Permian Resources to demonstrate the Assignment is not necessarily of an act of support for Permian Resources' plan as implied by Permian Resources' *Corrected* Notice but may likely reflect Union Hill's efforts to hedge its bet on who is selected as operator.

0.1561% under Permian Resources' plan would be valued only at approximately \$50,228.00. *See id.*

22. This is why Cimarex views Union Hill's Assignment as an effort to hedge its position. If Union Hill received a premium price from Permian Resources for 75% of its interest, then it could apply those funds to its proportionate share of its costs for participating with its remaining 0.1561% interest. If Cimarex were granted operatorship, Union Hill would receive an approximate value of \$180,775.00 for its interest, which would make Union Hill's sale truly a win-win outcome, covering its participation costs and receiving a high value, plus any surplus that might be left over from the sale. On the other side of the hedge calculation, if Permian Resources were granted operatorship, then Union Hill would receive a value of approximately \$50,228.00 for its interest, a far lesser amount. But the hedge would come into play if Union Hill's participation costs were covered from the proceeds of Union Hill's sale to Permian Resources at an inflated value. Under those facts, the value received under Permian Resources' plan, although lower, might be viewed by Union Hill as acceptable compared with having to pay up-front participation costs on Union Hill's original 0.6244% interest. Thus, Union Hill's Assignment is not necessarily a show of support for Permian Resources' plan but just a very smart decision Union Hill made pursuant to game theory logic that, at worst, would provide Union Hill an acceptable outcome under Permian Resources' plan and at best, provide a truly win-win outcome under Cimarex's plan.

23. However, at this point in time, because the hearing has concluded and is long past, it is no longer possible to evaluate and determine, through proper adjudicatory procedures, the motivations, incentives, and intentions involved in the decisions made by an owner to sale or assign its interest or agree to enter a JOA with one party or another. Thus, Cimarex respectfully

submits that therein resides the wisdom behind the Division's policy that it will only evaluate "the mineral interest ownership held by each party at the time the application was heard." See, e.g., Order Nos. R-21834, R-21416-A, and R-20223 (emphasis added).

C. Conclusion:

At the time of the hearing, Cimarex had an absolute majority interest in the Bone Spring compared with Permian Resources for all four sections, which it still maintains after accounting for Permian Resources' new "*Corrected* Notice of Assignment," and Cimarex's plurality in the Wolfcamp may have eroded to a minor extent after Union Hill's Assignment, as Permian Resources now claims a plurality in the Wolfcamp; nonetheless, Cimarex and Permian Resources are still neck and neck for the amount of Wolfcamp interest each owns. Thus, overall, the additional post-hearing interests submitted by Permian Resources are immaterial and inconsequential, yet Permian Resources is willing to run afoul of established OCD policy in order to parade these small interests before the Division long after the hearing has concluded in an effort to bolster a single factor (ownership) that itself is lower in priority compared to other overriding factors (geology and waste) at the top of the list for consideration.

Moreover, the narrative that Permian Resources implies in its post-hearing submission of the "*Corrected* Notice of Assignment," that Union Hill has abdicated its neutrality in favor of a new-founded support for Permian Resources' plan is at best speculative, not having been subjected to the due process requirements of questioning and examination under oath.

Thus, for the foregoing reasons, Cimarex respectfully requests that the Division, in accordance with its established policy, strike from the record Permian Resources' Suppl. Ex. 12c, as well as the other supplemental exhibits that Permian Resources submitted well after the hearing

concluded, to wit – Suppl. Ex. 12, 12a and 12b, and select the plan that provides the highest value and benefit for owners such as Union Hill.

Respectfully submitted,

ABADIE | SCHILL PC

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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 30, 2024:

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Union Hill - PV10 Comparison Total Contract Area

Union Hill Total Contract Area Ownership ATax PV10 of Competing Wolfcamp 3rd Development Plans					
Company / Ownership	WI %	NRI %	PV10 (\$) Permian Plan	PV10 (\$) Cimarex Plan	PV10 (\$) (Cimarex Plan - Permian Plan)
Union Hill Original	0.6244	0.4995	\$200,911	\$723,101	\$522,190
Union Hill 1/29/24	0.1561	0.1249	\$50,228	\$180,775	\$130,548
June 2023 Strip Pricing, 80% 8/8ths Assumed					

Competing development plans for the 3rd Sand and Upper Wolfcamp are modeled for Union Hill's retained interest.

- Under Cimarex's single landing plan, the retained interest is valued at \$180,775 ATax PV10.
- Under Permian Resources' co-development plan, the retained interest is valued at \$50,228 ATax PV10.
- Union Hill's retained .1561% WI would increase by \$130,548 ATax PV10 under Cimarex's plan.