

**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 PERMIAN RESOURCES' MOTION FOR
EXPEDITED ORDER STAYING APPROVAL OF CIMAREX'S APDS**

Cimarex Energy Co. ("Cimarex"), through its undersigned attorneys, submits to the New Mexico Oil Conservation Division ("Division" or "OCD") its Response ("Response") to the Motion for Expedited Order Staying the Administrative Approval of Cimarex's APDs Pending Issuance of a Pooling Order ("Motion" or "Motion to Stay BLM Approval") filed by Read & Stevens, Inc., and Permian Resources Operating LLC (collectively referred to as "Permian Resources") in the above-referenced cases ("Subject Cases"). In support of its Response, Cimarex provides the following:

I. Relevant facts and background:

1. During the course of its preparation of its plan to develop the Bone Spring formation in all of Sections 4 and 9, Township 20 South, Range 34 East (the "Subject Lands"), Cimarex made sufficient progress that qualified it to submit applications for federal drilling permits ("APDs") to the BLM. On or about March 17, 2022, more than a year prior to the contested

hearing for the Subject Cases, Cimarex submitted its APDs for its proposed Bone Spring wells on the Subject Lands.

2. On or about March 9, 2023, Cimarex submitted its pooling applications for the Bone Spring formation of the Subject Lands and sent notice of its applications. Permian Resources objected to the cases going forward by affidavit.

3. Prior to the contested hearing, the parties held a status conference on April 6, 2023, to determine dates for the contested hearing at which point Permian Resources acknowledged it would be drafting competing applications. On May 19, 2023, Permian Resources amended the Pre-hearing Order to include its competing applications. Permian Resources' applications included pooling both the Bone Spring and the Wolfcamp, which Cimarex determined to be highly imprudent given the unique nature of the geology between the Third Bone Spring and Upper Wolfcamp.

4. On or about July 13, 2023, Cimarex informed the Division about the geological anomaly (the lack of baffling and the single reservoir located primarily in the Third Bone Spring but extending into the Upper Wolfcamp) unique to the Subject Lands and surrounding area and the history of developing the Bone Spring in this area and not the Wolfcamp. *See* Cimarex's "Motion for an Order to Prohibit the Drilling of Wells in the Upper Wolfcamp to Protect Correlative Rights and Optimize Production of the Subject Lands," filed July 13, 2023.

5. After assessing the complexity of the issues resulting from the geologic anomaly and Permian Resources' plan to produce the single reservoir by drilling both the Third Bone Spring and Upper Wolfcamp, Cimarex requested a continuance, cited three Options/Questions for the Division to consider, and requested a pre-hearing conference to consider its questions that would have provided examination of the geological anomaly to address the geological issues. *See*

Cimarex's "Motion to Continue" filed July 18, 2023. Permian Resources filed a Response in which it "vigorously opposed" the continuance, stating that the Division need not and should not evaluate the geology claiming that "the geology and engineering in this acreage are not complex...nor unique," thereby making every effort to suppress the inquiry into and consideration of the geology. *See* Permian Resources' "Reply to Response to Motion to Continue," filed July 19, 2023. The Division granted Cimarex's motion to continue but denied the pre-hearing conference, setting the hearing date for August 9, 2023.

6. After additional review of the challenges it faced due to a lack examination of, and without the benefit of feedback on, the unique geology prior to the hearing, Cimarex submitted, with the Division's consent, a comprehensive brief that addressed the unique geology of the Subject Lands and its implications regarding the protection of correlative rights, the prevention of waste, and avoiding the drilling of unnecessary wells by means of two options for pooling either the Bone Spring formation by itself or in conjunction with the Wolfcamp. *See* "Cimarex Energy Co.'s Brief Providing the Basis for Evaluating a Single Reservoir Situated in the Third Sand of the Bone Spring Formation in an Area that Lacks a Baffle Separating it from the Underlying Wolfcamp Formation" filed on July 27, 2023.

7. On July 20, 2023, the Division heard competing applications between Cimarex and Pride Energy Company ("Pride Energy") in Case Nos. 23295 and 22853. These cases involved lands in the same area as the Subject Lands that had the same geological anomaly - a single reservoir in the Bone Spring that communicates with the Upper Wolfcamp due to the absence of baffles between the two formations. Cimarex proposed to drill the Third Bone Spring while Pride proposed to drill the Upper Wolfcamp. Cimarex introduced the concept of a vertical setback, proposing it as a means to protect correlative rights. At the conclusion of the hearing, the Hearing

Examiner realized the extent to which the geologic anomaly did in fact present issues of first impression that needed to be considered.¹ A decision on these cases is still pending.

8. On August 9-11, 2023, the Division heard the contested cases between Cimarex and Permian Resources in the Subject Cases. Prior to the hearing, the BLM had given public notice of Cimarex's APDs pursuant to 43 CFR 3171.12(a)(1). At the hearing, Cimarex informed Permian Resources and the Division that Cimarex had applied to the BLM for APDs. *See* Tr. dated August 9, 2023, at 76: 8-20. The BLM approved the drilling permits on September 18, 2023, about a month after the hearing.

9. At the time of the contested hearing, Permian Resources' development plans lacked the necessary elements under statewide rules to apply for permits and, as far as can be publicly determined, remains at present unqualified to make application.

10. The Subject Cases were 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; these 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, as well as any existing exhibits that needed to be revised. *See* Tr. dated August 11, 2023, at p. 87: 7-17. 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.

11. Thus, as of the conclusion of the hearing on August 11, 2023, the Division had obtained all the exhibits and testimony entered into the record pursuant to proper procedures in

¹ The Hearing Examiner: "In the other Cimarex case [the present cases], your opponent [Permian Resources]...says that there aren't any issues of first impression. So you know, we're left in a bit of a conundrum, and I think it would be to the Division's best interest to understand the big picture as much as possible from both side's perspectives in this case, and then we'll hear an entirely new perspective in the other Cimarex case." Tr. dated July 20, 2023, at 285: 25; 286: 1-11, for Case Nos. 23295 and 22853.

order to make a final evaluation of the Subject Case. Undeterred by the accepted practices and policies of the Division, Permian Resources continued to litigate the case after the parties submitted their Closing Statements by filing additional pleadings on October 16, 2023, November 30, 2023, and January 19, 2024, asserting that Permian Resources had acquired new mineral ownership. *See, e.g.,* Order No. Order R-20223, ¶ 28(f) (stating that mineral ownership is to be evaluated at the time of the pooling application is heard). Cimarex filed motions to strike the post-hearing pleadings; rulings on the motions have not been issued.

12. On or about November 10, 2023, Permian Resources sent Cimarex a letter that asked Cimarex to agree, for the sake of expediency, to very broad language that would waive both parties' rights to seek review of *"any finding, ruling, or any such portion of the Orders"* issued for the pending cases, including *"an application for de novo hearing,"* and waive *"the right to bring any related or associated regulatory proceedings, suit, civil action, complaint, arbitration or administrative action arising out of or relating to the underlying facts of the Pending Cases or pertaining to the Property."* *See* Exhibit A, attached hereto (emphasis in the original). Cimarex considers the geological issues and related underlying facts of the pending cases to be critically important not only for the Division's and/or the Oil Conservation Commission's ("OCC's") full understanding and consideration of the pending cases but to future cases involving the same geological issues unique to this area with the same underlying facts and therefore declined to agree to such broad language that could suppress and jeopardize Cimarex's right to communicate such critical information to the Division and/or OCC if and when necessary.

13. On or around February 13, 2024, counsel for Permian Resources emailed and called Cimarex's counsel to inquire if Cimarex would agree to curtail its rights under its approved drilling permits by formally agreeing not to drill until the pooling orders were issued. Cimarex's

counsel replied that Cimarex would not enter into a formal agreement curtailing any rights it had earned from the BLM toward the preparations of its development plan but assured counsel that Cimarex was a prudent operator, that it fully understood the risks and consequences of drilling prior to completion of the adjudication and had no plans to act imprudently.

II. Permian Resources' claim that the stay is necessary to maintain the status quo is unfounded.

14. Cimarex's submitted its APDs to the BLM as an integral part of laying the groundwork for its development plan and to demonstrate that it is a diligent and prudent operator. By earning the right to apply for federal permits and completing the extensive permit applications more than a year prior to the hearing, Cimarex has fulfilled a number of factors on which the Division bases its decision of operatorship, in particular, "a comparison of the ability of each party to prudently operate the property and, thereby, prevent waste," and "a comparison of the ability of the applicants to timely locate well sites and to operate on the surface." *See, e.g.*, Order R-20223, ¶ 28.

15. The amount of scrutiny Cimarex had to undergo and the number of requirements Cimarex had to meet to obtain approval took more than a year to complete and provides the Division with a clear record that Cimarex satisfied relevant criteria for consideration of operatorship. For example, Cimarex had to show the BLM that it fulfilled environmental requirements under NEPA and the Endangered Species Act as well as having satisfied rigorous requirements for its surface plans. *See* 43 CFR § 3171.13 (a).

16. Furthermore, under the 43 CFR § 3171.12(a)(1) the BLM provides at least 30 days public notice before the BLM may approve an APD on federal lands. Thus, not only did the BLM provide public notice of Cimarex's APDs, but Permian Resources had been informed at the

hearing that Cimarex had qualified to apply for the drilling permit and had submitted its applications. *See* Tr. dated August 9, 2023, at 76: 8-20. Therefore, Permian Resources was fully aware that Cimarex had made applications with the BLM and would likely be receiving BLM approval of its permits.

17. If Permian Resources had any real concerns about Cimarex's APDs, then Permian Resources should have voiced its concern at the hearing when the APDs were pending. That would have been the proper time for Permian Resources to request an assurance that the wells would not be drilled until pooling orders were issued if it believed it to be necessary to do so.

18. But such an assurance is not necessary, and that may be why Permian Resources did not request it at the hearing. Cimarex is a prudent operator, as demonstrated by its long, established history of prudent operatorship, especially in the area containing the Subject Lands. *See* Cimarex's Closing Statement with Findings of Fact and Conclusions of Law ("Cimarex's Closing Statement") at pp. 6-8. As a prudent operator, Cimarex respects the authority and integrity of the Division's adjudicatory process. *See e.g.*, Cimarex's Closing Statement at pp. 38-40; *see also* Motion to Strike Read & Stevens' Supplemental Exhibit C-12, filed October 7, 2023, decision pending (Cimarex advocating to uphold due process and the integrity of the proceedings); Cimarex's Motion to Strike Supplemental Exhibit C-12c, filed January 30, 2024, decision pending (same). In the oil and gas industry, the term "prudent" has both specific and general meanings. First, the more specific meaning of "prudent" refers to the "prudent standard" that determines when an operator, or a lessee, should drill an additional well to prevent drainage or optimize production of a tract or unit. *See, e.g., Chenoweth v. Pan American Petroleum Corporation*, 314 F.2d 63, 66 (10th Cir. 1963). Secondly, "prudent" in oil and gas law can also have a more general, plain language usage to mean reasonable, circumspect, judicious, or

cautious. *See, e.g. McNeill v. Rice Engineering Operating*, 2003-NMCA-078, ¶ 33 (deciding whether a “prudent” operator would not use an underground system with steel junctions that corrode). The Division’s use of “prudent” when evaluating competing applications appears to encompass both meanings, the specific and the general, as it considers: “A comparison of the ability of each party to prudently operate the property and, thereby, prevent waste.” *See, e.g.*, Order R-20223, ¶ 28(d).

19. Drilling wells prematurely based on a federal APD without the Division having granted operatorship would be the height of imprudence, and such a transgression of Division policy would disqualify Cimarex as a prudent operator and forfeit Cimarex’s chances at operatorship, not to mention cause financial waste. Permian Resources’ claim that by not providing Permian Resources the private agreement it wanted, Cimarex somehow created an emergency that demands the Division to respond *tout de suite* is absurd. Clearly, there is no impending emergency or threat of any kind that requires or justifies “an expedited order staying the administrative approval” of federal APDs in these proceedings. The status quo is preserved by the nature and integrity of the proceedings themselves.

III. The working relationship between the BLM and Division depends on mutual respect for the lines of jurisdictional authority, and acting upon Permian Resources’ urging the Division to order a stay of the federal approval of the permit would violate jurisdictional boundaries.

20. By requesting an expedited order to stay federal approval, Permian Resources is urging the Division to act imprudently without consideration for the proper approach. Not only is the stay unnecessary, but the rules Permian Resources cite to authorize and justify issuing an order to stay BLM approval are misplaced. Permian Resources first cites Rule 19.15.4.23.B. This Rule is only applicable to stay “Division Orders” and “Commission Orders” and does not

authorize staying the approval of a federal agency, which has already been granted, especially when the federal approval of a permit for federal lands does not qualify as an administrative order. *See, e.g.,* Black's Law Dictionary, 7th Edition (administrative order is defined as an order issued by a governmental agency after an adjudicatory hearing).

21. Next, Permian Resources claims that the Division has authority to issue an order to stay federal approval by citing Rule 19.15.2.11B, a rule which grants the Division the authority to issue an order without a hearing or notice in the event the Division finds an emergency. However, this rule does not apply to the present matter because there is no emergency. Cimarex is a prudent operator who has no intention of acting imprudently in violation of one of the main factors the Division uses to assess the suitability of an operator. Cimarex applied for federal permits in the normal course of preparing for its development plan and pooling applications. Cimarex qualified to make application for its permits under both federal and statewide regulations more than a year prior to the contested hearing and informed both the Division and Permian Resources during the hearing that it had applied for federal permits. By applying for and receiving the federal permits, Cimarex submits that it acted prudently pursuant to the factors used by the Division to evaluate an applicant's qualifications for operatorship.

22. Cimarex respects the working relationship between the BLM and Division, that the BLM looks to the Division for its expertise and leadership. "The federal government and the NMOCD have a cooperative regulatory relationship," as the federal government respects and often relies on the Division's standards for such things as spacing, setbacks and poolings. *See Ute Mountain Ute Tribe v. Rodriguez*, 660 F.3d 1177, 1182 (10th Cir. 2011). However, when dealing with federal lands and minerals, the BLM, as a matter of law, does have separate and primary jurisdiction over the lands, and it should be taken into account that the BLM grants final approval

of decisions that involve federal interests. *See Kirkpatrick Oil & Gas Co. v. U.S.* 675 F.2d 1122, 1125-26 (10th Cir. 1982). This is why Permian Resources' unqualified urging of the Division to issue an order to stay federal approval of Cimarex's APDs, which have already been approved, carries the hazard of leading the Division across jurisdictional boundaries.

23. If the Division decides an assurance that formally restricts drilling is needed or would be useful, Cimarex respectfully submits that the better approach would be for the Division to add a condition to the existing five conditions the Division has already placed on the permit that would not seek to stay federal approval, but would delay the exercise of the rights already vested and granted by the APD until the Division issues an order that grants operatorship of the Subject Lands and all appellate rights under the Oil and Gas Act involving such order have been exhausted or expired. *See* Exhibit B for proposed language. Such a condition, if well crafted, would satisfy Rule 19.15.14.10(B) in a manner that allows the Division to execute its authority but in a way that also respects BLM's authority, avoids crossing jurisdictional boundaries, and upholds the best aspects of the working relationship between the Division and the BLM. *See also* Order No. R-12108-C, ¶ 8(f) (The [Oil Conservation] Commission concludes that the approval of a permit "confers rights that should not be revoked arbitrarily.")

IV. Conclusion: A response to the additional arguments embedded and asserted in Permian Resources' Motion.

24. Permian Resources' Motion for a Stay of BLM Approval represents the third additional pleading that Permian Resources has filed since the Division authorized the Closing Statements to be the final submissions in the contested hearing. The first two post-hearing pleadings filed by Permian Resources encouraged the Division to take into consideration that Permian Resources had acquired additional amounts of working interest long after the hearing

had concluded, which is an affront to due process and established policy, given that in a contested hearing, the Division only considers minerals owned or controlled at the time the applications are heard. *See, e.g.*, Order R-20223, ¶ 28; *see also* Cimarex's two motions to strike Permian Resources' supplemental exhibits, filed October 7, 2023, and January 30, 2024, respectively, decisions pending.

25. Now, Permian Resources has filed a motion conjuring up a state of emergency where none exists, making claims that an expedited order to stay is necessary, when clearly it is not, and in doing so, using the motion, the third post-hearing pleading, as a platform to continue to litigate the issues of the case after final submission of the Closing Statements. For example, Permian Resources uses the Motion to argue that the Wolfcamp XY (Upper Wolfcamp) represents the sweet spot for drilling (*see* Permian Resources' Motion at ¶ 6) when the data shows and Permian Resources' own geologist concurs, agreeing with Cimarex, that there is an absence of frac baffles which results in communication of hydrocarbons between the formations. *See* Cimarex's Closing Statement at p. 11; *see also* Tr. dated August 10, 2023, at 206:11-15.

26. Permian Resources continues to argue that Cimarex's plan violates correlative rights (*see* Permian Resources' Motion to Stay BLM's Approval at ¶ 5) when Cimarex has shown that Permian Resources' plan decimates any meaningful application of correlative rights by burdening the owners with an additional quarter billion dollars of financial waste for drilling 18 unnecessary wells in the Upper Wolfcamp that would result in no more significant amounts of production than Cimarex's plan to drill the primary reservoir in the Third Bone Spring (*see* Cimarex's Closing Statement at p. 19 & pp. 33-35), and by drilling the Upper Wolfcamp, Permian Resources' Wolfcamp wells would capture the majority of hydrocarbons produced not from the Upper Wolfcamp but from the Third Bone Spring, thereby commingling production of the two

formations in direct violation of Rule 19.15.12.9, which renders impossible the ability to account for ownership, leaving correlative rights unprotected. *See* Cimarex's Closing Statement at pp. 21-26.

27. The geological anomaly -- lack of baffling between the Third Bone Spring and Upper Wolfcamp and the location of the reservoir primarily in the Third Bone Spring but accessible by drilling the Upper Wolfcamp -- created a complicated and novel set of facts and issues for approaching the development and pooling of the Subject Lands. Cimarex is the only party prior to the hearing that identified the geological anomaly, recognized its impact on waste and correlative rights, and brought it to the attention of the Division by asking for a pre-hearing conference to address and clarify this geological issue, and Cimarex is the only party that wants the Division and Commission to be fully informed, without restriction, of the issues and underlying facts related to this unique geology underlying the Subject Lands and surrounding area.

28. The Bone Spring formation, especially the Third Bone Spring, is the primary location of the productive reservoir, and consequently, the cost and value of Bone Spring minerals often runs at a premium compared to Wolfcamp minerals. This is why the history of development in this area overwhelmingly shows the Bone Spring to be the main target for drilling, and once the Bone Spring is drilled, there is little to no economic reason to drill the Upper Wolfcamp because the primary reservoir has already been drilled and produced. *See* Cimarex's Hearing Packet I, Exhibit D-3 (showing the extent of Bone Spring development and lack of Wolfcamp development in the Subject Area).

29. Cimarex has encountered situations in nearby areas surrounding the Subject Lands where an operator who has ownership in the Upper Wolfcamp but not in the Third Bone Spring

will attempt to take advantage of the geological anomaly to drill the Upper Wolfcamp thereby gaining the benefit of capturing the hydrocarbons from the Third Bone Spring. This was the focus of Cimarex's contested hearing in Case Nos. 23295 and 22853, decision pending, heard prior to Cimarex's contested hearing with Permian Resources.

30. Cimarex finds that Permian Resources in the Subject Cases appears to have been strategically attempting to gain leverage by seeking to suppress information about the importance and impact of the geological anomaly and rushing to hearing without a plan to account for the unique geology and, in doing so, proposes to incur for the working interest owners a gratuitous quarter of a billion dollars of financial waste by redundantly drilling the same reservoir from two formations, the Third Bone Spring and the Upper Wolfcamp. *See* Cimarex's Closing Statement at p. 19 & pp. 33-35. By drilling 18 unnecessary wells in the Upper Wolfcamp, Permian Resources can claim it is conforming to how the Division defined the two pools without examining, and providing the Division essential information about, the nature and consequences of the underlying geology. A prudent operator has a duty to inform the Division how best to prevent waste, not create waste in order to take advantage of an existing geological anomaly about which the Division may be unaware or not fully informed.

31. Since neither Cimarex nor the Division had the benefit of a prehearing conference prior to the hearing to consider the nature of the reservoir and the underlying geology in relation to how the pools are and/or should be defined, Cimarex was placed in an untenable position of having to propose options that would best avoid the drilling of unnecessary wells, avoid the burden of excessive and wasteful costs, and protect correlative rights within the single reservoir. Since a prehearing conference was not allowed, Cimarex provided a comprehensive brief, "Cimarex Energy Co.'s Brief Providing the Basis for Evaluating a Single Reservoir Situated in

the Third Sand of the Bone Spring Formation in an Area that Lacks a Baffle Separating it from the Underlying Wolfcamp Formation,” which it filed on July 26, 2023, discussing the legal nature of correlative rights in this novel situation of first impression, and provided options that would allow the Division to select the best way to develop the single reservoir either by pooling just the Bone Spring with an option to utilize a vertical setback, or pooling both the Bone Spring and Wolfcamp in a manner that would allow drilling the single reservoir with Third Bone Spring wells and thus avoid unnecessary wells.

32. The New Mexico Legislature has empowered the Division with the authority to address novel situations and fashion creative solutions when necessary to prevent waste and protect correlative rights.² Cimarex has proposed a creative solution to the anomalous geology of the Subject Lands – a vertical setback based on the same principle as a horizontal setback provided for under Division rules designed to protect correlative rights of adjacent owners. While Permian Resources suggests that such a buffer zone would violate the correlative rights of the owners of mineral interests in the Wolfcamp formation, its own proposed development plan violates the correlative right of the Bone Spring owners by capturing and commingling hydrocarbons from the much more productive Third Bone Spring reservoir by way of drilling the Upper Wolfcamp formation. Cimarex’s proposed vertical setback is an option for the Division to consider given the unique geology of the area. *See* Cimarex’s Closing Statement at pp. 21-26 & pp. 40-42.

² *See* full discussion in Cimarex Closing Statement at pp. 40-42 of the Division’s proper exercise of authority under NMSA 1978 § 70-2-11 (Division is empowered to do whatever may be reasonably necessary to carry out the purpose of the Oil and Gas Act) and examples of how and when the Division has exercised, and should exercise, this broad grant of authority.

33. The arguments and allegations that Permian Resources has embedded in its Motion to Stay BLM Approval have already been asserted by Permian Resources in its Closing Statement and review of the parties' Closing Statements provides a clear overview of the differences between the two development plans.

34. The *status quo*, about which Permian Resources purports to be concerned, is simply that the parties have concluded their contested hearing and have presented their development plans showing how each party has made preparations and laid groundwork for advancing their plans to the extent each party is capable. Cimarex had been working on its development plans long before the contested hearing, having applied to the BLM for drilling permits more than a year prior to the contested hearing and successfully completing the year-long process to obtain permits, a process that Permian Resources has apparently not yet started.

35. The *status quo* remains unchanged and does not require additional intervention as the parties wait for the Division's final decision. However, if the Division desires to have assurances in place, Cimarex respectfully proposes that a temporary condition of the type reflected in Exhibit B, attached hereto, be added to the BLM's approval of the permit.

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 March 8, 2024:

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RE: Case Nos. 23448-23455, 23594-23601, and 23508-23523

Mr. DeShazer:

Read & Stevens, Inc. ("**Read & Stevens**"), a wholly owned subsidiary of Permian Resources Operating, LLC ("**Permian Resources**"), and Cimarex Energy Co. ("**Cimarex**"), a wholly owned subsidiary of Coterra Energy Inc. ("**Coterra**") are parties to the Pending Cases (as defined herein) before the State of New Mexico Energy, Minerals and Natural Resources Department Oil Conversation Division (the "**Division**"). Read & Stevens, Permian Resources, Cimarex, and Coterra, together with their parent, subsidiary, and affiliated companies, as applicable, are each a "**Party**" and collectively the "**Parties**" to this agreement to waive all rights of appeal for the Pending Cases (the "**Agreement**") dated effective as of November 9, 2023 (the "**Effective Date**").

The Parties addressed certain rights, development plans, and obligations in Sections 4, 5, 8, and 9, located in Township 20 South, Range 34 East, Lea County, New Mexico (the "**Property**") to the Division in oral arguments and briefs submitted to the Division. As of the Effective Date, the following cases are pending before the Division (each a "**Pending Case**" and collectively the "**Pending Cases**"):

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

For good and valuable consideration as contained herein, the receipt and sufficiency of which are hereby acknowledged, and to amicably resolve the Pending Cases and effectuate the prompt and prudent development of the Property, the Parties agree to the terms and conditions set forth herein.

1. Representations and Warranties:

- a. The Parties warrant and represent that each of the signatories has the power and authority to enter into this Agreement on behalf of the respective Party and that this Agreement and all documents delivered pursuant to this Agreement are valid, binding, and enforceable. The Parties warrant and represent that no term of this Agreement is unconscionable.
- b. The Parties warrant and represent to the best of their knowledge that no approval of this Agreement or authorization or order of, notice to, or filing with any court, other governmental authority, person, or entity is required for the execution, delivery, and performance of this Agreement.



- c. The Parties warrant and represent that neither they, nor their affiliates or representatives (including but not limited to the counsel of record for the Pending Cases), have any non-public information or knowledge of how the Division will rule on the Pending Cases or have taken any action to unduly influence how the Division will rule on the Pending Cases.
- d. The Parties warrant and represent that they own the rights and claims released herein and that no part of the rights and claims released herein is owned by or has been assigned or transferred to any other person or entity. The Parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation, or warranty not contained in this Agreement or presented to the Division, or for the benefit of any person not a party to this Agreement. The Parties expressly warrant and represent that they have not been fraudulently induced into this Agreement. Each signatory to this Agreement has signed freely and voluntarily.
- e. The Parties have reviewed this Agreement, understand its contents and the legal effect of all provisions thereof, and had the opportunity to confer with counsel of their choosing in deciding whether to enter into this Agreement. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved using any presumption against any Party, whether under any rule of construction or otherwise. In the case of any ambiguity or uncertainty, this Agreement shall be construed according to the ordinary meaning of the words used to fairly accomplish the purposes and intentions of the Parties.

2. **Waiver of Right to Seek *De Novo* Hearing and Release of Claims.** The Parties are aware that NMSA 1978, Section 70-2-13 gives any party of record adversely affected the right to seek review of a decision issued by the Division for the Pending Cases (each an “**Order**” and collectively the “**Orders**”) by filing an application for *de novo* hearing before the New Mexico Oil Conservation Commission and there are inherent rights provided by the constitutions of the State of New Mexico and the United States of America to afford due process to protect property and contractual rights inherent to the Property and disputed in the Pending Cases. ***The Parties knowingly, voluntarily, and expressly agree to waive (i) the right to seek review of any finding, ruling, or any such portion of the Orders issued by the Division for the Pending Cases, including by filing an application for de novo hearing; and (ii) the right to bring any related or associated regulatory proceedings, suit, civil action, complaint, arbitration or administrative action arising out of or relating to the underlying facts of the Pending Cases or pertaining to the Property.***

The Parties agree to take no action to attempt to revive, reinstate, or otherwise re-file the Pending Cases, or to file or assert any other civil or administrative actions, claims, or suits challenging the Orders.

The Parties agree and acknowledge that as consideration for this Agreement, any party of record adversely affected by a decision issued by the Division for the Pending Cases will not file an application for pooling, or any other application, with the Division for the Property. This Agreement shall also be construed to constitute a release of any present or future right that the adversely affected Party may have to contest any and all applications filed with the Division for the Property by the successful Party to the Pending Cases, as well as the right to appeal any finding, ruling, or any such portion of any future Orders issued by the Division for the Property.

The Parties expressly agree and understand that the waivers and releases set forth herein shall be construed as broad and general releases such that, upon execution of this Agreement and the issuance of the Orders by the Division for the Pending Cases, the Orders shall be binding and no

Party may initiate any regulatory proceedings, suit, civil action, compliant, arbitration or administrative action or has any recourse against the other Parties as it relates to the Orders. This Agreement does not, however, preclude a Party from filing motions with the Division to seek clarification of any provision of the Orders, if deemed necessary. This Agreement is limited to the Pending Cases and the associated Orders. Nothing herein will be construed as waiving or releasing either Party's claims not directly related to the Pending Cases or the associated Orders.

This Agreement may be pleaded as a full and complete defense to any action, suit, or other proceeding that may be instituted by any Party concerning the Orders.

3. **Bifurcated Development.** This Agreement in its entirety shall be null and void should the Orders bifurcate the development of the Property between Read & Stevens and Cimarex by geologic formations. An example of bifurcated development would result if the Orders provided Cimarex the right to drill and develop the Bone Spring Formation (as defined in the Pending Cases) and Read & Stevens the right to drill and develop the Wolfcamp Formation (as defined in the Pending Cases). The terms of this Agreement effectuate the prompt and prudent development of the Property, and Orders bifurcating the development of the Property are contrary to the intent of this Agreement, the plans of the Parties, and do not effectuate the prompt and prudent development of the Property. For the avoidance of doubt, the Parties agree this is the only scenario where this Agreement in its entirety shall be null and void. In the event the Agreement is nullified and voided pursuant to this Section, then it may not be pleaded for any purpose in any future action, suit, or other proceeding.
4. **Governing Law; Venue.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas, without reference to the choice of law, or conflicts of law principles, which would apply the laws of another jurisdiction. Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered by any court having jurisdiction thereof.
5. **Confidentiality.** The Parties agree they shall not, in any manner whatsoever, publish, disseminate, or communicate this Agreement or the terms of this Agreement other than to such persons or entities as might be reasonably necessary as follows: (i) as required to comply with an order or subpoena issued by any agency, board, court, commission, or instrumentality of the State of New Mexico, State of Texas, or the United States of America; (ii) to comply with legal requirements to which the Parties may be subject; (iii) to aid or assist tax professionals, accountants, attorneys, auditors, or (iv) to any prospective buyer of any Parties' interest in the Property after such prospective buyer signs an agreement agreeing to keep the terms of this Agreement confidential.
6. **Attorney Fees.** All attorneys' fees and costs incurred by the Parties relating to the Pending Cases and this Agreement shall be borne by the Party incurring the same.
7. **Enforceability.** If any provision of this Agreement is, or may be held by a court of competent jurisdiction, arbitration panel, or regulatory agency to be, invalid, void, or unenforceable, the remaining provisions shall nevertheless survive and continue in full force and effect without being impaired or invalidated in any way. The court, arbitration panel, or regulatory agency invalidating a provision shall give the provision the greatest effect allowed by law to effectuate its original intent. If such effectuation is not possible, the court should then delete only that portion of the provision as required and in such a manner as to best effectuate the provision's original intent. This

Agreement shall continue perpetually and shall be binding upon and inure to the benefit of the Parties and their heirs, devisees, representatives, successors, and assigns.

8. **Entire Agreement.** This Agreement represents the entire agreement of the Parties and sets forth the exclusive rights and obligations between the Parties with respect to the subject matter of this Agreement and supersedes all prior written or oral agreements or understandings. The terms of this Agreement are contractual and not mere recitals.
9. **Amendments.** No amendments, changes or modifications to this Agreement shall be valid except if the same are in writing, expressly identified therein as an amendment to this Agreement, and signed by a duly authorized representative of each of the Parties hereto.
10. **Implementation.** The Parties agree to sign any documents and undertake any actions that in the future are reasonably necessary to implement this Agreement.
11. **Notice.** All Notices under this Agreement shall be deemed given (i) when delivered personally by hand (with written confirmation of receipt), or (ii) when delivered by electronic mail (with written confirmation of receipt) to the following addresses set forth for the applicable Party (or to such other address as a Party may have specified by notice given to the other Party pursuant to this provision):

Permian Resources Operating, LLC

Attn: John Bell
300 N. Marienfeld St, Ste 1000
Midland, Texas 79701
Email: john.bell@permianres.com

Coterra Energy Inc.

Attn: Michael DeShazer
Three Memorial Plaza
840 Gesner Rd, Ste 1400
Houston, Texas 77024
Email: michael.deshazer@coterra.com

12. **Counterparts; Authorized Individuals.** This Agreement may be executed in one or more counterparts and in the event this Agreement is circulated and executed by electronic means or facsimile transmission, the signatures of the Parties shall be considered as original and self-proving for all purposes under the applicable law. The individuals executing this Agreement represent and warrant that they are authorized to execute this Agreement on behalf of the Party for whom they sign as of the Effective Date, and each Party's parent, subsidiary, and affiliated companies.

If the terms of this Agreement are acceptable to Cimarex and Coterra, please promptly sign and return it to Permian Resources. If a fully signed counterpart of this Agreement is not received by Permian Resources as of 5:00 P.M. CST on November 13, 2023, this Agreement shall be deemed withdrawn and shall automatically terminate. Further, if the Division issues the Orders before a fully signed counterpart of this Agreement is received by Permian Resources, this Agreement shall be deemed withdrawn and shall automatically terminate. If you have any questions, please feel free to contact me at 432-695-4222 or via email at james.walter@permianres.com.

Sincerely,

Permian Resources Operating, LLC

on behalf of itself and all subsidiaries and affiliates

Name: James Walter

Title: Co-CEO

Read & Stevens, Inc.

on behalf of itself and all subsidiaries and affiliates

Name: James Walter

Title: Co-CEO

Accepted this __ day of November 2023:

Coterra Energy Inc.

on behalf of itself and all subsidiaries and affiliates

Name: _____

Title: _____

Cimarex Energy, Co.

on behalf of itself and all subsidiaries and affiliates

Name: _____

Title: _____

District I
1625 N. French Dr., Hobbs, NM 88240
Phone:(575) 393-6161 Fax:(575) 393-0720
District II
811 S. First St., Artesia, NM 88210
Phone:(575) 748-1283 Fax:(575) 748-9720
District III
1000 Rio Brazos Rd., Aztec, NM 87410
Phone:(505) 334-6178 Fax:(505) 334-6170
District IV
1220 S. St Francis Dr., Santa Fe, NM 87505
Phone:(505) 476-3470 Fax:(505) 476-3462

State of New Mexico
Energy, Minerals and Natural Resources
Oil Conservation Division
1220 S. St Francis Dr.
Santa Fe, NM 87505

CONDITIONS

Action 308796

CONDITIONS

Operator: CIMAREX ENERGY CO. 6001 Deauville Blvd Midland, TX 79706	OGRID:
	215099
	Action Number:
	308796
Action Type:	
[C-101] BLM - Federal/Indian Land Lease (Form 3160-3)	

CONDITIONS

Created By	Condition	Condition Date
pkautz	Will require a File As Drilled C-102 and a Directional Survey with the C-104	2/6/2024
pkautz	Once the well is spud, to prevent ground water contamination through whole or partial conduits from the surface, the operator shall drill without interruption through the fresh water zone or zones and shall immediately set in cement the water protection string	2/6/2024
pkautz	Oil base muds are not to be used until fresh water zones are cased and cemented providing isolation from the oil or diesel. This includes synthetic oils. Oil based mud, drilling fluids and solids must be contained in a steel closed loop system	2/6/2024
pkautz	Cement is required to circulate on both surface and intermediate1 strings of casing	2/6/2024
pkautz	If cement does not circulate on any string, a CBL is required for that string of casing	2/6/2024

Proposed Temporary Condition:

The Operator identified herein shall not exercise its right to drill under the APD until (1) the Division issues an order granting operatorship consistent with the APD, and (2) all appellate rights under both NMSA 1978 Section 70-2-13 and Section 70-2-25, pertaining to the order issued, have been exhausted or expired.

