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

JOINT MOTION FOR STAY OF PROCEEDINGS

V-F Petroleum Inc. ("V-F"), and Carolyn Beall ("Beall"), by and through their undersigned attorneys, submits to the Oil Conservation Division ("Division" or "OCD") this Joint Motion to Stay Proceeding of the above-referenced cases on the grounds that V-F and Beall have both submitted to the Oil Conservation Commission ("Commission" or "OCC") separate Applications for Hearing *De Novo* requesting the Commission to review *de novo* (1) the propriety of the Hearing Examiner's denial of V-F's Motion to Dismiss filed January 22, 2025; (2) the propriety of the Division's conducting a hearing on January 28, 2025 despite lack of proper notice; and (3) the propriety of conducting any hearings before the Division related to the January 28, 2025, hearing,

including but not limited to the supplemental hearing currently set for February 27, 2025, or other proceedings on the cases referenced above until proper notice pursuant to the Oil and Gas Act ("OGA"), its statutes and rules has been provided.

V-F and Beal respectfully request the Division to stay the Division proceedings for the above-referenced cases until the Commission can evaluate the Division's decision on January 28, 2025, to deny V-F's Motion that, if granted, would have allowed for the satisfaction of the OGA's notice requirements prior to the contested hearing. A copy of the Application for Hearing *De Novo* and Motion for Stay of Proceedings filed by V-F with the Commission is attached hereto as Exhibit 1, and the Application for Hearing *De Novo* filed by Beall is attached hereto as Exhibit 2.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 25th of February 2025, the foregoing pleading was electronically filed by email with the New Mexico Oil Conservation Division Clerk and served on all parties of record through counsel, as follows:

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

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION DIVISION FOR THE PURPOSE OF CONSIDERING:

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

APPLICATION FOR HEARING *DE NOVO* AND MOTION FOR STAY OF PROCEEDINGS

V-F Petroleum, Inc., ("V-F"), by and through its undersigned attorneys, submits to the Oil Conservation Commission ("Commission" or "OCC") pursuant to 19.15.4.23 NMAC and to the Oil Conservation Division ("Division" or "OCD") pursuant to NMSA 1978, § 70-2-13 this Application for Hearing *De Novo* and Motion for Stay of Proceedings ("Application") on the grounds that four (4) of the pooling applications in these consolidated proceedings, specifically

EXHIBIT 1

those assigned the Case Nos. 25145–25148, were not given timely notice prior to the hearing conducted on January 28, 2025 ("Hearing"). New Mexico law holds that notice of administrative proceedings must be made in compliance with state law as a necessary precondition to an administrative body exercising its authority to take action on an application and that, without such timely notice, any proceedings on the application that follow are invalid or void.

Prior to the Hearing, Read & Stevens Inc., along with its designated operator, Permian Resources, LLC (collectively "Permian"), sought to remedy the issue of defective notice by asking V-F to join in a motion to postpone the Hearing on all the above-captioned cases ("Subject Cases") to allow for proper notice of the applications in Case Nos. 25145–25148. V-F agreed, and the parties filed their Joint Motion to Amend Pre-Hearing Order ("Joint Motion") on January 16, 2025. A day later, however, the Hearing Examiner denied the Joint Motion on the grounds that, notwithstanding the notice deficiencies, good cause did not exist to reschedule the contested Hearing and ordered the record to remain open after the Hearing to allow for anyone who did not receive notice or exercise their right to be heard to lodge their objections at a later date after the conclusion of the Hearing.

In response to what it considered a violation of the OGA and Division statewide rules requiring timely notice prior to the Hearing, V-F filed its Motion to Dismiss Read & Stevens' Case Nos. 25145 – 25148 and Requests in the Alternative ("Motion to Dismiss") on January 22, 2025, a week before the Hearing. In response, on the day of the Hearing, the Hearing Examiner verbally denied V-F's Motion to Dismiss and again insisted that, despite the notice defect, the proceedings will continue and the record will be kept open as a "workaround" any violations of due process. New Mexico law is clear, however, that a failure to provide notice in compliance with an administrative body's authorizing statute and implementing regulations invalidates all proceedings

that follow and cannot be cured by a subsequent act of the administrative body, no matter how creative.

On this basis, V-F respectfully requests the Commission to review *de novo* (1) the propriety of the Hearing Examiner's denial of the Motion to Dismiss; (2) the propriety of the Division's conducting a hearing on January 28, 2025 despite lack of timely notice; and (3) the propriety of conducting any hearings before the Division related to the January 28, 2025, Hearing, including but not limited to the supplemental hearing currently set for February 27, 2025, or other proceedings on these Subject Cases until proper notice is given. As relief, V-F requests that Case Nos. 25145–25148 be refiled, proper notice on the applications be provided, and the Subject Cases be reheard at a contested hearing. V-F further moves to stay all proceedings on the Subject Cases pending resolution of the issues in this Application.[1]

I. Relevant Background and Procedural History.

1. On October 11, 2024, Permian submitted pooling applications in Case Nos. 24941 and 24942 for the Bone Spring underlying the S/2N/2 and the S/2 of Sections 14 and 15, Township 18 South, Range 31 East, NMPM, Eddy County, New Mexico ("Subject Lands"). On November 19, 2025, V-F submitted competing applications in Case Nos. 24994, 24995 and 25116 for the Bone Spring underlying the same lands. V-F also submitted applications in Case Nos. 25115 and 25117 for the Third Bone Spring zones, which at the time of submission, did not compete with Read & Stevens' applications. The Division consolidated Cases Nos. 24941, 24942, 24994, 24995

[1] A stay of all cases in these consolidated proceedings, including those not affected by the defective notice, is necessary because all the applications taken together reflect competing development plans for the Subject Lands that should be evaluated simultaneously to determine which is the best development plan for the protection of correlative rights and the prevention of waste.

and 25116 by Amended Pre-hearing Order dated December 18, 2024, and set a contested hearing date for January 28, 2025, a move up from the original hearing date set for March 4, 2025.

2. On January 14, 2025, Permian filed additional pooling applications in Case Nos. 25145–25148 which directly competed with V-F's applications in Case Nos. 25115 and 25117, as well as competing with the Third Bone Spring zones at issue in Case Nos. 24994 and 24995. Permian's new applications were filed just fourteen (14) days prior to the Hearing.

3. Given the late date that Permian filed its applications in Case Nos. 25145–25148, it was impossible for Permian to meet statutory and regulatory notice requirements prior to the Hearing. Consequently, Permian approached V-F to request its consent to a joint motion to consolidate all the Subject Cases and request a continuance on a date that would allow for proper notice under the Oil and Gas Act ("OGA") and related OCD rules. *See* Joint Motion, attached hereto as Exhibit A. V-F agreed to join the Joint Motion, which was submitted by the parties on January 16, 2025. The motion stated in pertinent part that "[t]he Parties seek a date in April to allow for the time requirements for notice to be met for the newly filed cases and to accommodate the Division's current availability for contested hearings."

4. On January 17, 2025, the Hearing Examiner issued an Order denying the Parties' request for continuance, finding that good cause did not exist to reschedule the contested hearing, and consolidated Case Nos. 25145–25148 with the other Subject Cases to have all eleven (11) cases heard in an accelerated manner on January 28, 2025. *See* Order Granting and Denying In-Part Joint Motion to Amend Pre-Hearing Order, attached hereto as Exhibit B. The Order explicitly acknowledges that there was a notice deficiency but instead of ordering what state law mandates, which is to allow for proper notice to be given, the Hearing Examiner created a procedure, nowhere

authorized in the OGA or OCD's rules, to keep the record open after the hearing to allow sufficient time to receive objections. *See id.*

5. The Hearing Examiner's accelerated schedule ensured that proper notice could not be given pursuant to applicable statutory and regulatory requirements. Thus, in a rush to haphazardly give some kind of notice, Permian sent its letter notice of the Hearing on January 24, 2025, only four days prior to its scheduled date, and the Division posted its public notice for Case Nos. 25145–25148 on January 24, 2025, only four days before the Hearing.

6. V-F submitted its Motion to Dismiss on January 22, 2025, in which it moved the OCD to dismiss Case Nos. 25145–25148 for lack of proper notice, or in the alternative to either dismiss all of the Subject Cases so that they could be refiled to satisfy notice requirements or to reconsider the Joint Motion for a Continuance. *See* Motion to Dismiss Read & Stevens' Case Nos. 25145 – 25148 and Requests in the Alternative, attached hereto as Exhibit C. Conversely, in an about-face orchestrated as an attempt to gain a tactical procedural advantage, Permian who had originally sought a joint continuance pursuant to the need to meet notice requirements under the OGA and OCD rules reversed its prior position, adopting the position in response to V-F's Motion to Dismiss that the Hearing could proceed despite the notice deficiencies.

7. Carolyn Beall ("Beall") an owner who received letter notice from Permian one day before the Hearing, entered an appearance in the Subject Cases on January 28, 2025, and objected to the matters set for hearing that day on the ground that she "did not receive proper notice as required by New Mexico Oil Conservation Division Rules or the New Mexico [OGA], NMSA 1978, Section 70-2-1, *et seq.*" *See* Exhibit D, attached hereto; *see also* Beall's Notice of Intervention in Case Nos. 25145-25146, attached hereto as Exhibit E.

8. On the morning of January 28, 2025, after calling the Subject Cases for hearing, the Hearing Examiner denied V-F's Motion to Dismiss and proceeded with the hearing on the Subject Cases despite that fact that notice requirements under the OGA and related OCD rules had not been met. *See* Hearing Tr. dated 1-28-25, 16: 24-25; 17: 1-2, attached hereto as Exhibit F.

9. On February 6, 2025, Ms. Beall filed a "Joinder with V-F Petroleum Inc.'s Motion to Dismiss Case Nos. 25145–25148 and Motion for Written Order with Findings and Conclusions of Law of Division's Decision to Deny V-F Petroleum Inc.'s Motion to Dismiss Case Nos. 25145–25148." *See* Exhibit G, attached hereto. On February 6, 2025, V-F filed a joinder to Ms. Beall's motion requesting a written order on the notice issue to preserve it for appeal. As of the filing of this Application, the Hearing Examiner has not issued a written order setting forth the OCD's grounds for denying a continuance.

II. Legal Arguments in Support of V-F's Application for a Hearing *De Novo.*

A. OCD's Decision to Deny V-F's Motion to Dismiss Constitutes an Order by the OCD Subject to *De Novo* Review by the OCC.

10. The New Mexico Legislature conferred upon the Division "jurisdiction and authority over all matters relating to the conservation of oil and gas" as well as "jurisdiction, authority and control of and over all persons, matters or things necessary or proper to enforce effectively the provisions of [the Oil and Gas Act]". NMSA 1978, § 70-2-6.A. Importantly, the New Mexico Legislature also saw fit to grant the Commission concurrent jurisdiction and authority with the OCD "to the extent necessary for the commission to perform its duties as required by law." NMSA 1978, § 70-2-6.B. Maintaining the integrity of the OCD hearings by enforcing statutory and regulatory requirements pursuant to review of the proceedings falls within the scope of the Commission's duties. Specifically with regard to *de novo* hearings, NMSA 1978, § 70-2-13 provides in pertinent part that "when *any matter or proceeding* is referred to an examiner and *a*

decision is rendered thereon, any party of record adversely affected *shall have the right to have the matter heard de novo* before the commission *upon application filed with the division* within thirty days from the time such decision is rendered." (emphasis added). The terms "matter or proceeding" are expansive in scope, and not limiting, therefore the clear language of the statute includes any decision in a proceeding that adversely affects a party and does not limit the *de novo* review to the final pooling order issued by the Division. *See* §70-2-6.B ("In addition, any hearing *on any matter* may be held before the commission if the division director, in his discretion, determines that that commission shall hear the matter.") (emphasis added).

11. OCD rules provide additional clarity regarding when and how a party can apply to the OCC for a de novo hearing. 19.15.4.23 NMAC states that "[w]hen the division enters an order pursuant to a hearing that a division examiner held, a party of record whom the order adversely affects has the right to have the matter heard de novo before the commission, provided that within 30 days from the date the division issues the order the party files a written application for de novo hearing with the commission clerk." If an application is filed, "the Commission chairman shall set the matter for hearing before the Commission." *Id.*

12. This Application satisfies the statutory and regulatory requirements for a *de novo* hearing. The Hearing Examiner "entered an order pursuant to a hearing" when on the record he verbally denied V-F's Motion to Dismiss at the January 28, 2025, hearing. *See* Exhibit F (Hearing Tr. dated 1-28-25, 16: 24-25; 17: 1-2). The Application is timely, having been filed well within 30 days after the Hearing Examiner entered his order. Finally, and critically, the Hearing Examiner's order adversely affects V-F (as well as parties who did not receive notice of the proceedings prior to the hearing) because V-F has been forced to participate in proceedings that are invalid as a matter of state law. V-F and parties will suffer additional harm every day that it

must expend considerable time and resources to participate in proceedings the taint of which cannot be undone.

13. The Hearing Examiner's order also raises genuine concerns about OCD's "effective enforcement of the provisions of [the Oil and Gas Act]". The Division's ability to enforce the OGA's provisions are significantly thwarted, and its time and resources wasted, if proceedings are allowed to continue despite being invalid, with the very real prospect that after all is said and done, the administrative process will have to start over anew as a matter of law.

14. Based on the foregoing, the Commission has jurisdiction to hear this matter pursuant to NMSA 1978, § 70-2-6 and § 70-2-13.

B. Division's Decision to Bypass the Notice Requirements Mandated by the Provisions of the OGA and its Implementing Rules is Arbitrary and Capricious and Sets a Dangerous Precedent that Directly Undermines the Integrity of the Division's Adjudicatory Function.

15. The Division's statewide rules contain various provisions that ensure OCD hearings are conducted in a way to protect the procedural due process rights of affected persons. Rule 19.15.4.9B NMAC requires the Division to provide public notice at least 20 days prior to a scheduled hearing. Rule 19.15.4.12B NMAC provides that an applicant must send letter notice to owners at least 20 days prior to the hearing. And Rule 19.15.4.8B NMAC requires an applicant for adjudicatory hearings to file written applications with the division clerk at least 30 days before the application's scheduled hearing date in order to allow sufficient time for the 20-day prior notice required under 19.15.4.9B NMAC and 19.15.4.12B NMAC.

16. None of these rules were satisfied in the present matter. Permian's pooling applications in Case Nos. 25145–25148, having been filed only fourteen days prior to the hearing date, violated the Division's 30-day rule. As for notice, the Hearing Examiner's ruling to continue apace made it impossible for both the OCD and the applicant to meet their 20-day notice

requirements prior to the scheduled Hearing.[2] Because of this, a host of affected parties did not receive timely notice prior to the hearing.

17. A long line of New Mexico cases establishes the entrenched principle that a lack of statutory notice of an administrative hearing constitutes a fatal defect rendering any subsequent action taken by the administrative body invalid or void. *See Johnson v. New Mexico Oil Conservation Commission,* 1999-NMSC-021 at ¶ 31 (holding that an OCC order concerning the spacing requirements for deep wildcat gas wells in the San Juan Basin was void because the applicant and the OCC failed to comply with the notice requirements of the OGA and its implementing regulations); *Nesbit v. City of Albuquerque,* 1977-NMSC-107, ¶ 11, 575 P.2d 1340, 1344, (holding that the Albuquerque City Commission's denial of a requested change to a development plan without providing adequate notice to the public prior to the Commission's hearing was void); *Martinez v. Maggiore*, 2003-NMCA-043, ¶ 13, 64 P.3d 499, 503 (holding that the notice of a hearing on a modification to a permit to operate a landfill failed to substantially comply with the requirements of the Solid Waste Act and, thus, the administrative proceedings conducted subsequent to the defective notice were invalid). This case is no different. Notice was not given in accordance with 19.15.4.9B NMAC and 19.15.4.12B NMAC. Accordingly, like the proceedings in the above-cited cases, all proceedings in the present matter conducted after the defective notice are also invalid.

18. The Hearing Examiner's workaround does not remedy the defective notice. The Court in *Nesbit* clarified that no subsequent act of an administrative body can resuscitate a void

[2] The OGA contemplates that reasonable notice of a hearing need not be given in cases of emergency. NMSA 1978, § 70-2-23. The Hearing Examiner, however, did not base his decision to deny V-F's Motion Dismiss on exigent circumstances, nor did Permian allege that an emergency existed.

proceeding. 1977-NMSC-107 at ¶ 11. The Hearing Examiner's workaround was purportedly fabricated "to cure notice deficiencies" which would allow those affected parties who did not receive notice of the hearing to lodge their objections after the fact. This purported "curative" is nowhere authorized under the OGA or the OCD's implementing regulations and is prohibited under the foregoing case law. Moreover, the workaround deprives parties who did not receive notice of the Hearing of certain fundamental due process rights, most importantly of which is the ability to cross examine the witnesses who testified at the Hearing. No mechanism to allow for objections after the fact can remedy this deprivation.

19. The Hearing Examiner's determination that "no good cause existed" to reschedule the hearing was arbitrary and capricious and an abuse of discretion. *See Atlixco Coalition v. Maggiore*, 1998-NMCA-134, ¶ 24 965 P.2d 3780 (holding that "an agency's actions is arbitrary and capricious if it provides no rational connections between facts found and choices made, or entirely omits consideration of relevant factors or important aspects of the problem at hand.") One can think of no better cause to reschedule a hearing than defective notice, as the failure to rectify it prior to hearing renders everything that follows invalid. As the New Mexico Supreme Court pronounced in *Jaycox v. Ekeson*, defective notice alone is sufficient cause to grant a continuation. 1993-NMSC-036, ¶¶ 9-10, 117 P.3d 939 (holding that a party's failure to receive timely notice as required by the statute was, in and of itself, sufficient cause for the arbitrator to grant a continuation of the hearing and, the arbitrator's failure to do so, constituted an abuse of discretion). While not clear, perhaps the Hearing Examiner believed that good cause did not exist based upon the belief that a workaround was an ample cure to the defective notice. New Mexico case law, however, clearly holds to the contrary. Moreover, as a matter of important public policy, the workaround is a dangerous precedent to set as it could be used in other cases to bypass notice requirements and

accelerate the hearing of cases anytime the OCD decides it is convenient and expedient to do so, putting the decisions it makes as a result of the accelerated processes in legal jeopardy. *See* Hearing Tr. dated 1-28-25, 19: 23-25; 20: 3-10. The OCD does not have the authority to ignore the notice statutes of the OGA and OCC's rules, in this case or any other case before it, for the sole purpose of maintaining a tidy docket.

20. The Division's denial of a continuance in this case is not an isolated event and appears to be part of an ongoing practice of categorically denying requests for continuances even when the request is unopposed or all parties agree to it. Examples of this rigid practice can found in Case Nos. 24798, 24800, 24803-24804, 25079-25080, 25086-25090, and 25101 and Case Nos. 24977-24978. *See, e.g.* Unopposed Motion to Continue January 28, 2025, Special Hearing, attached hereto as Exhibit H.

21. Unless there are serious extenuating circumstances to be considered in a specific set of cases, the granting of unopposed or jointly agreed-to continuances should be viewed favorably, as they have been in past OCD practices, and not rejected as a matter of administrative policy, particularly when the reason for the continuance is to remedy notice. Continuances are a vital tool in pooling cases to effectively promote the stated purposes of the OGA, the protection of correlative rights and the prevention of waste. Oil and Gas companies face major responsibilities, liabilities and risks when putting together a development plan that will impact hundreds if not thousands of acres, and there are many moving parts to the options that competing companies must negotiate before the companies arrive at a development plan that will optimize production, prevent waste and satisfy the owners that their correlative rights are protected. If the OCD curtails or short-circuits the initial development process in its first phase under the OGA by unreasonably denying a continuance that otherwise would have provided the parties the necessary time to fully develop

their development plans, the OCD could very likely demand a contested hearing be held well before the development plans are fully ripe for optimal production, prevention of waste and protection of correlative rights. In such cases, the denial of the continuance would undermine the purpose of the OGA.

III. Conclusion

V-F respectfully requests that the Commission grant this Application for Hearing *De Novo* pursuant to NMSA 1978, § 70-2-13 (1992) and Motion for Stay of Proceedings pending a final decision on the Application. V-F further requests that Case Nos. 25145–25148 be refiled so that proper notice can be provided and that the Subject Cases be reheard at a contested hearing.

Respectfully Submitted,

ABADIE & SCHILL, PC

/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 February 24, 2025:

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CASE NOS. 25115 & 25117

JOINT MOTION TO AMEND PRE-HEARING ORDER

Read and Stevens, Inc. and Permian Resources Operating, LLC (collectively "Permian") and V-F Petroleum Inc. ("V-F Petroleum") ("Parties") jointly move to amend the Amended Pre-Hearing Order dated December 18, 2024 ("PHO") because additional competing applications have been filed by the Parties, and therefore, the PHO as currently issued accounts for only a portion of the competing lands. The Parties respectfully request that the Division grant this Motion ("Motion") to amend the PHO to add the newly filed competing applications and further request a new contested hearing date in April to allow sufficient time for notice requirements to be met and

EXHIBIT
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accommodate the Division's current availability for contested hearings. In support of this Motion, the Parties state:

1. On October 11, 2024, Permian submitted pooling applications under Case Nos. 24941-24942 seeking to pool the First and Second Bone Spring underlying the S/2 N/2 and S/2 of Sections 14 and 15, Township 18 South, and Range 31 East, NMPM, Eddy County ("Permian's Cases under the PHO").

2. On December 2, 2024, V-F Petroleum submitted pooling applications in Case Nos. 24994-24995, seeking to pool the entire Bone Spring underlying the N/2 S/2 of Sections 15 and 16, and the S/2 S/2 of Sections 15 and 16, and on December 13, 2024, submitted an application in Case No. 25116, seeking to pool the First and Second Bone Spring underlying the S/2 N/2 of Sections 15 and 16, all in Township 18 South, Range 31 East, Eddy County ("V-F Petroleum's Cases under the PHO").

3. V-F Petroleum's Case Nos. 24994-24995 and 25116 compete with Permian's Case Nos. 24941-24942 in the overlapping acreage of Section 15, and the Division issued a Prehearing Order dated November 26, 2024 to include Permian's Cases under the PHO, which was later amended on December 18, 2024, to add V-F Petroleum's Cases under the PHO, and a contested hearing date was set for January 28, 2025.

4. On December 13, 2025, V-F Petroleum submitted pooling applications in Case Nos. 25115 and 25117 seeking to pool the Third Bone Spring underlying the N/2 N/2 of Sections 15 and 16 and the Third Bone Spring underlying the S/2 N/2 of Sections 15 and 16, all in Township 18 South, Range 31 East, Eddy County. These two cases did not seek to pool mineral interests that overlap or compete with Permian's Cases under the PHO, and therefore, were not included in the PHO as first amended.

5. On January 14, 2025, Permian submitted pooling applications in Case Nos. 25145-25148. Permian's Case No. 25145, seeking to pool the Third Bone Spring in the N/2 N/2 of Sections 14 and 15, competes with V-F Petroleum's Case No. 25115; Permian's Case No. 25146, seeking to pool the Third Bone Spring in the S/2 N/2 of Sections 14 and 15, competes with V-F Petroleum's Case No. 25117; and Permian's Case Nos. 25147 and 25148, seeking to pool the Third Bone Spring underlying the S/2 of Sections 14 and 15, competes with V-F Petroleum's Case Nos. 24994-24995.

6. Thus, the contested lands have expanded with the filing of the additional cases to include the N/2 N/2, S/2 N/2, and S/2 of Sections 14, 15, and 16, along with the additional Bone Spring zones, in Township 18 South, Range 31 East ("Subject Lands"), with Section 15 being the focus of the overlapping competing development plans.

7. Therefore, to avoid having an incomplete hearing for only a portion of the contested lands, the Parties request that the current PHO be further amended to include Permian's Case Nos. 25145-25148 and V-F Petroleum's Case Nos. 25115 and 25117 so that the Division can efficiently evaluate and adjudicate the entirety of the competing development plans without duplication of hearings.

8. To facilitate setting a new contested hearing date, the Parties further request a status conference be set on the January 23, 2025, docket. The Parties seek a date in April to allow for the time requirements for notice to be met for the newly filed cases and to accommodate the Division's current availability for contested hearings. If granted, Permian and V-F Petroleum will file continuances to the January 23, 2025, docket for each of their respective cases.

WHEREFORE, the Parties respectfully request that the Division amend the current PHO as described herein and set the cases for a status conference for the January 23, 2025, docket. A proposed word version of an order granting this motion will be sent to the Division via email.

Respectfully submitted,

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EDDY COUNTY, NEW MEXICO

CASE NOS. 25117 & 25117
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ORDER GRANTING AND DENYING IN-PART
JOINT MOTION TO AMEND PRE-HEARING ORDER

This matter comes before the Oil Conservation Division on a Joint Motion to Amend Pre-Hearing Order filed on January 16, 2025 by Read and Stevens, Inc. and Permian Resources Operating, LLC (collectively "Permian") and V-F Petroleum Inc. ("V-F"). Having considered the request, and being fully appraised in the matter, I FIND AND CONDLUDE AS FOLLOWS:

1. On December 16, 2024, V-F filed an Amended Motion (Opposed in-part) asking the Division to amend the November 26, 2024 Pre-Hearing Order to include V-F Cases 24994, 24995 and

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25116, and to reset the January 14, 2025 contested hearing, asserting it would suffer unfair prejudice because a key witness was unavailable.

2. The Amended Motion, in Paragraph 6, observes "Read and Stevens objected to moving the contested hearing date, claiming it would prejudice Permian Resources by further delaying these matters and thereby opposed this part of the motion."
3. The Division issued the Amended Pre-Hearing Order on December 18, 2024 setting the contested hearing on January 28, 2025 when all Parties' witnesses were available.
4. The Parties now assert in their Joint Motion to Amend the December 18, 2024 Pre-Hearing Order that additional Cases should be heard at the January 28, 2025 contested hearing, to wit: V-F's Case Nos. 25115 and 25117 and Permian's Case Nos. 25145-25148 filed on December 13, 2024 and January 14, 2025 respectively.

IT IS HEREBY ORDERED that good cause exists to grant the Joint Motion in-part by adding Case Nos. 25115, 25117, and 25145-48 to the January 28, 2025 contested hearing.

IT IS FURTHER ORDERED that good cause does not exist to reschedule the contested hearing. To cure any notice deficiency that may arise from Permian's late filing of Case No. 25145-25148, the hearing record will remain open for a sufficient time to receive objections.

IT IS SO ORDERED

Gregory Chakalian
Digitally signed by Gregory Chakalian
Date: 2025.01.17 11:04:05 -07'00'

GREGORY CHAKALIAN
HEARING EXAMINER

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.

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("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)
>
> *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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Attorneys for V-F Petroleum, Inc.

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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Darin C. Savage

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,
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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**

ENTRY OF APPEARANCE AND
NOTICE OF OBJECTION TO CASE NOS. 25145-25148

Carolyn Beall, through undersigned counsel, hereby appears in Case Nos. 25145-25148, and objects to the matters proceeding to hearing on January 28, 2025. Carolyn Beall is an interested party, as a working interest owner, in Case Nos. 25145-25148 and did not receive proper notice as required by New Mexico Oil Conservation Division Rules or the New Mexico Oil and Gas Act, NMSA 1978, Section 70-2-1, *et seq*.

Respectfully submitted,

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Attorney for Carolyn Beall

EXHIBIT D

CERTIFICATE OF SERVICE

I certify that on this 27th of January 2025, the foregoing pleading was electronically filed by email with the New Mexico Oil Conservation Division Clerk and served on all parties of record through counsel, as follows:

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/s/ Kaitlyn A. Luck

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

APPLICATIONS OF READ & STEVENS, INC.
FOR COMPULSORY POOLING,
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FOR COMPULSORY POOLING,
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APPLICATIONS OF V-F PETROLEUM INC.
FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO **CASE NOS. 25115 & 25117**

NOTICE OF INTERVENTION IN CASE NOS. 25145-25146

Carolyn Beall ("Beall"), by and through undersigned counsel, submits this *Notice of Intervention* with the New Mexico Oil Conservation Division ("Division" or "OCD") in Case Nos. 25145 and 25146 that has been consolidated with the remaining above-referenced for a contested hearing that began on January 28, 2025, and will continue on February 27, 2025.

In support of her intervention, Beall states as follows:

1. Beall did not receive proper nor sufficient notice for Case No. 25145 nor Case No. 25146 prior to the hearing that began on January 28, 2025. The notice of hearing letter she received from Permian's counsel dated January 24, 2025, was sent only 4 days before the hearing date, and Beall did not receive it until January 27, 2028, the day before the hearing date.

2. As a result, Beall did not have sufficient time to review or prepare for the hearing on January 28, 2025, and is currently reviewing her interests and the status of her correlative rights and interests under Permian's proposed development plan.

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3. Beall owns working interest in the upper part of the Third Bone Spring, from the top of the Third Bone Spring formation to a depth of 9,290 feet, as reflected in her *Notice of Ownership Interest and Objection to Case Nos. 25145 and 25146*, filed on February 6, 2025.

4. Permian's Pooling Application in the Subject Case states that Permian proposes to create a spacing unit in "a portion of the Bone Spring formation, from the top of the Third Bone Spring formation to the base of the Bone Spring formation, underlying the [Subject Lands], and "pooling all uncommitted interests in this acreage." S*ee,* Permian's Pooling Application for Case No. 25145; Permian's Compulsory Pooling Checklists for Case No. 25145 (filed Jan. 27, 2025).

5. Permian's Landman Exhibit indicates that Permian will be pooling and drilling the interval of the Third Bone Spring from a depth of 9,397 feet to the base of the Third Bone Spring, approximately the lower third of Third Bone Spring. *See* Permian's Compulsory Pooling Checklist for Case No. 25145 (filed Jan. 27, 2025); Permian's Exhibit C, Self-Affirmed Statement of Travis Macha, ¶ 7.

6. Permian's expert witnesses in geology and engineering acknowledge that since there is no geological barrier between the severed intervals, Permian's proposed well in the lower part of the Third Bone Spring will produce the upper part of the Third Bone Spring; therefore, Permian's proposed well in the Third Bone Spring will produce Beall's interests without payment or compensation.

7. Because Permian will be taking production from Beall's interests, Beall opposes Permian's application.

8. Permian sent a notice letter to Beall on January 24, 2025, which she received on January 27, 2025, one day before the hearing. Beall made an entry of appearance in the

contested cases based on the notice Permian provided.

9. However, Permian's notice was not timely, and Beall did not have sufficient time to evaluate the status of her interest in relation to Permian's proposed spacing unit and interval in the Third Bone Spring to be pooled. Upon review of Beall's interests and correlative rights, an intervention may be more appropriate as the basis for Beall's appearance in the cases rather than an entry of appearance, and therefore, Beall submits this notice of intervention as a precaution should Beall's entry of appearance based on Permian's notice letter not be sufficient.

10. Under the Division's Pre-hearing Order, Pre-hearing Statements were due on the morning of January 21, 2025. Beall did not receive notice until January 27, 2025, and therefore, she was not able to meet the deadline for an intervention. *See* 19.15.4.11 NMAC.

11. Since notice did not allow her time to meet the deadline, Beall respectfully submits that this notice of intervention is timely given the continued hearing to February 27, 2025. *See* 19.15.4.11(B) NMAC (permitting later intervention where intervenor's participation will contribute substantially to the protection of correlative rights).

12. Because Permian's proposed well in the lower part of the Third Bone Spring will produce Beall's interests without payment, and because Permian does not provide an allocation formula for the oil and gas it will be producing from the Third Bone Spring, Beall's correlative rights in the upper part of the Third Bone Spring will not be protected.

13. Thus, the Division should allow Beall's intervention to protect her correlative rights because her interests will be produced by Permian's well below the severance.

14. Beall has standing to intervene because Beall was provided notice as a vertical offset to these cases.

15. If Permian's development plan is approved, Beall's interests will be produced

without Beall receiving her just and equitable share of production, which is a violation of her correlative rights; thus, she will suffer an injury in fact.

16. For the foregoing reasons, Beall respectfully requests that the Division accept her *Notice of Intervention* for Case No. 25145 and 25146.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 6th of February 2025, the foregoing pleading was electronically filed by email with the New Mexico Oil Conservation Division Clerk and served on all parties of record through counsel, as follows:

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STATE OF NEW MEXICO

ENERGY, MINERALS, AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION DIVISION FOR THE PURPOSE OF CONSIDERING:

Case Nos. 24941, 24942, 24994, 24995, 25115, 25116, 25117, 25145, 25146, 25147, 25148.

HEARING

DATE: Tuesday, January 28, 2025

TIME: 8:59 a.m.

BEFORE: Hearing Examiner Gregory A. Chakalian

LOCATION: Energy, Minerals, and Natural Resources Department
Pecos Hall, Wendell Chino Building
220 South Saint Francis Drive
Santa Fe, NM 87505

REPORTED BY: James Cogswell

JOB NO.: 7011524

EXHIBIT F

P R O C E E D I N G S

THE HEARING EXAMINER: It is approximately 9 a.m. on the 28th of January. We are here for a contested hearing. This is a special hearing of the Oil Conservation Division. My name is Gregory Chakalian; I'm the hearing examiner.

With me as technical examiner today is Mr. Dean McClure. Mr. James Cogswell is recording this and will be the verbatim transcriber.

I hear an echo. If you --

THE REPORTER: We're working on it.

THE HEARING EXAMINER: Thank you very much, but I'm going to keep talking even though there's an echo.

All right. So I'm going to call the cases now that are set for the contested hearing. Not in any particular order, these are case numbers. 24941, 24942, 24994, 24995, 25115, 25116, 25117, 25145, 46, 47, 48. We also have two -- no, we don't have that one. Okay. Those are the cases.

I'd like to deal first with the motion to dismiss case numbers 25145 through 25148. This motion was filed on behalf of V-F Petroleum. It was obviously opposed by Permian. I made a decision, after reading the briefs and reviewing the cases, to

deny the motion based on a workaround that I have developed with my technical examiner.

And what we're going to do is this. The reason that the motion, just for the record, was filed was that it was filed only two weeks ago, and that does not give the proper notice to parties. Under the rules it requires a 20-day notice period for applications that are filed to be heard before the OCD, both from the OCD's perspective of providing notice and of the company itself, this being Permian Resources Operating.

What we're going to do here to basically cure this notice problem is, after the hearing is over either today or tomorrow, we are going to leave the record open. We are going to come back on the record on February 13, which is when these four cases are noticed. We will see what happens on February 13. If there are no objections or no requests for additional admission of evidence, then we will close the record at that time having allowed a sufficient notice period.

Mr. Savage, do you understand?

MR. SAVAGE: So if I understand this right, so you're denying the motion because you have a built-in workaround, which was expressed in the

amended prehearing orders, and that is to keep the record open to allow folks who did not have the right to be heard at the actual hearing and did not receive notice prior to the hearing to able to enter an appearance after the fact, after the hearing is over, and express any objections they may have. If I may clarify, if --

THE HEARING EXAMINER: Before you continue, Mr. Savage, you characterized it in a way that I would push back on. I didn't say that the record would be -- after the hearing. The hearing is going to continue. The hearing is still open. So if anyone objects, if anyone wants to submit new evidence, the record is still open and they have a possibility to do that either on February 13th or, if they need more time, then they can argue for more time and we'll see how that goes. So I wouldn't characterize it the way you did.

MR. SAVAGE: Yes, sir.

THE HEARING EXAMINER: But go ahead.

MR. SAVAGE: So if I understand this, so if somebody does have an objection after the event of the initial hearing, then would you repeat the hearing? Would the hearing have to be repeated?

THE HEARING EXAMINER: Would it be

repeated? No, but it would be continued.

MR. SAVAGE: Okay.

THE HEARING EXAMINER: There's a difference between repeated and continued. I mean, all the record is there for their review and they can submit evidence to, you know, support their position if it's different from one of the parties here, by all means.

MR. SAVAGE: Yes, sir. If I may ask for another clarification. So now under the rules, based on this precedent, the definition of 20 days prior to hearing, 10 days prior to hearing, is hearing being defined now as not the actual initial event in which the parties appear to be heard, but it will include and be extended to include any time period in which the record is left open?

THE HEARING EXAMINER: My decision is based on the facts of this case, so I'm limiting this decision and it's precedential weight to this case. This case is a little different. It's been ongoing now for months and months, and Permian filed some competing applications, you know, so that the notice would not be sufficient. So in this case, this is how we're going to deal with it. I'll deal with other cases as they come up. So I'm not saying that this is

how we're going to do it as a Division from here on in.

MR. SAVAGE: Okay. Yes, sir. But any time a party files a late application, this opens the door for fast-tracking it by bypassing the specified notice. Is that correct? Would that be --

THE HEARING EXAMINER: I'm not going to agree or disagree with your characterization. Like I said, we'll deal with this as a case-by-case basis from here on in.

MR. SAVAGE: Yes. Thank you. Thank you, sir. I appreciate that clarification.

THE HEARING EXAMINER: So is there any comment on the motion?

MS. VANCE: The only thing that I would like to offer, and it may be helpful --

THE HEARING EXAMINER: Maybe we should have entries of appearance before we go any further.

MS. VANCE: Yeah.

THE HEARING EXAMINER: So let's do entries of appearance. Let's start with V-F Petroleum.

MR. SAVAGE: Yes, sir. Darin Savage with Abadie & Schill appearing on behalf of V-F Petroleum.

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**

CARLOYN BEALL'S JOINDER WITH V-F PETROLEUM INC.'S MOTION TO DISMISS CASE NOS. 25145-25148 AND MOTION FOR WRITTEN ORDER WITH FINDINGS AND CONCLUSIONS OF LAW OF DIVISION'S DECISION TO DENY V-F PETROLEUM INC.'S MOTION TO DISMISS CASE NOS. 25145-25148

Carloyn Beall, by and through undersigned counsel, hereby requests the Oil Conservation Division ("Division" or "OCD"), to issue a written order providing the legal basis for denying the *Motion to Dismiss Read & Stevens' Cases Nos. 25145-25148 and Requests in the Alternative* ("V-F's Motion"), filed by V-F Petroleum Inc. ("V-F") on January 22, 2025, a denial that resulted in the acceleration of the contested hearing date for Case Nos. 25145-24148 which was held on January 28, 2025, pursuant to a Special Hearings docket. In support of this Motion for a Written Division Order, Beall states, as follows:

1. Read & Stevens, Inc. ("Permian") filed the pooling applications in Case Nos. 25145-25148 (the "Cases") with the Division on January 14, 2025.

EXHIBIT G

2. Upon filing the Applications for Pooling, Permian was required to provide notice to all parties pursuant to the New Mexico Oil and Gas Act, NMSA 1978, Section 70-2-1, *et seq.*

3. Specifically, NMSA 1978, Section 70-2-23 requires notice, and the opportunity to be heard, prior to the issuance of any order:

> 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*.

NMSA 1978, §70-2-23.

4. Moreover, Division Rules require that an applicant, such as Permian, comply with the Division Rules for pooling prior to the issuance of a force pooling order. *See* 19.15.4.9 NMAC; *see also* NMSA 1978, § 70-2-17. Importantly, Division Rules 19.15.4.8 and 19.15.4.9 NMAC require certain information in a pooling application, in notice of a pooling hearing, and in an uncontested pooling hearing. OCD Rule 19.15.4.12 NMAC specifically requires:

A. Applications for the following adjudicatory hearings before the division or commission, in addition to that 19.15.14.9 NMAC requires, as follows:

(1) Compulsory pooling and statutory unitization.

> **(a)** ***The applicant shall give notice to each owner of an interest in the mineral estate of any portion of the lands the applicant proposes to be pooled or unitized whose interest is evidenced by a written conveyance document either of record or known to the applicant at the time the applicant filed the application and whose interest has not been voluntarily committed to the area proposed to be pooled or unitized*** (other than a royalty interest subject to a pooling or unitization clause).

5. On January 22, 2025, V-F filed the Motion the Cases because of constitutional defects in notice and violation of OCD rules and statutes.

6. Beall, as noted in her ***Notice of Ownership Interest in Case Nos. 25145 and 25146***, filed on February 6, 2025, owns an interest in the Third Bone Spring portion of the Bone Spring formation proposed to be pooled by Permian in the spacing units in the Subject Cases, and she did not receive proper notice as required by Division Rules prior to the hearing on January 28, 2025.

7. For these reasons, Beall joins with V-F's Motion because she did not receive proper nor sufficient notice for the Subject Cases prior to the expedited consolidated hearing on January 28, 2025 ("January 28 Hearing").

8. Beall did not receive Permian's January 24, 2025, notice letter until January 27, 2028, the day before the January 28 Hearing.

9. As a result, Beall did not have sufficient time to review or prepare for January 28 Hearing and is currently reviewing her interests and the status of her correlative rights and interests under Permian's proposed development plan.

10. At the January 28 Hearing, Beall made an entry of appearance and objection to the case going forward because of material defects in notice.

11. At the January 28 Hearing, the Hearing Examiner of the Division verbally denied the Motion prior to the hearing and proceeded with the special hearing despite lack of proper notice.

12. At the January 28, 2025 Contested Hearing, the Division allowed Permian to proceed with the contested hearing even though proper notice was not provided to Beall, pursuant to the Division rules, New Mexico statutes, and case law.

13. Given the substantive nature of the legal issues involved and the necessity of preserving the notice issues for appeal, Beall requests that the OCD provide the reasoning and rational for its denial of the Motion, pursuant to the case law cited therein.[1]

14. Beall owns a severed mineral interest in the upper part of the Third Bone Spring, from the top of the Third Bone Spring, at approximately 9,140', to a depth of 9,290' within the Third Bone Spring. *See* ***Exhibit A*** to

15. Permian is pooling only the lower part of the Third Bone Spring, an interval from approximately 9,397' to the base of the Third Bone Spring and is proposing to drill and produce only this lower interval. *See* Permian's Compulsory Pooling Checklist for Case No. 25145 (filed Jan. 27, 2025); Permian's Exhibit C, Self-Affirmed Statement of Travis Macha, ¶ 7.

16. Due to the fact that Beall only owns in the upper part of the Third Bone Spring, she is not listed as an owner in the interval of the Third Bone Spring that Permian is pooling and drilling.

17. At the January 28 Hearing in Case Nos. 25145-25148, the geologist for Permian stated that there were no geological barriers between the severed intervals in the Third Bone Spring. As such, Permian's well in the lower Third Bone Spring appears to be producing from

[1] "[A]n agency's action is arbitrary and capricious if it provides no rational connections between facts found and choices made, or entirely omits consideration of relevant factors or important aspects of the problem at hand." *Atlixco Coalition v. Maggiore*, 1998-NMCA-134, 125 N.M. 786, 965 P.2d 370, 377 (citing *Motor Vehicle Mfrs.. Ass'n*., 463 U.S. 29, 43) (stating that "one of the purposes of requiring a statement of reasons is to allow for meaningful judicial review…"). *See Fasken v. Oil Conservation Comm'n*, 1975-NMSC-009, 87 N.M. 292, 532 P.2d 588, 590 (citing *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809); *See* also *Gila Resources Information Project v. N.M. Water Control Com'n*, 2005-NMCA-139, 138 N.M. 625, 124 P.3d 1164, 1172; *Akel v. N.M. Human Servs. Dep't*, 1987-NMCA-154, 106 N.M. 741, 749 P.2d 1120, 1122, stating that for adequate appellate review "the hearing officer's decision [must] adequately reflect the basis for [the] determination and the reasoning used in arriving at such determination"). *See also Viking Petroleum, Inc. v. Oil Conservation Comm'n*, 1983-NMSC-091, 100 N.M. 451, 672 P.2d 280, 282 (findings by expert administrative commission must disclose the reasoning on which its order is based).

the upper interval of the Third Spring, impacting Beall's correlative rights. *See* NMSA 1978, § 70-2-17.

18. Permian's ownership exhibit fails to include Beall's ownership in the Third Bone Spring, and impacts Beall's correlative rights, taking production from her without allocating her just and equitable share. *See* NMSA 1978, Section 70-2-17; *see also* Section 70-2-33(H) (correlative rights means the opportunity for an owner to produce its just and equitable share of oil and gas).

19. The denial of V-F's Motion was issued as a final verbal order on January 28, 2025, and a party of record has thirty (30) days to exercise its right to appeal a final order.

20. For these reasons, Beall respectfully requests, as follows:

a. that the Division enter a written order into the record that provides the justification and basis for bypassing the requirement to have notice provided twenty (20) days prior to the pooling proceedings;

b. that the Division either timely deny Beall's request herein or provide a written order in a timely manner that would allow a party to exercise its right of appeal within the prescribed 30 days, which right would expire in the present matter on February 27, 2025, 30 days from January 28, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 6th of February 2025, the foregoing pleading was electronically filed by email with the New Mexico Oil Conservation Division Clerk and served on all parties of record through counsel, as follows:

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

APPLICATION OF FASKEN OIL AND RANCH, LTD.
TO EXTEND THE DRILLING DEADLINE
UNDER ORDER NOS. R-21922 AND R-21922-B
LEA COUNTY, NEW MEXICO **CASE NO. 24977**

APPLICATION OF FASKEN OIL AND RANCH, LTD.
TO EXTEND THE DRILLING DEADLINE
UNDER ORDER NOS. R-21923 AND R-21923-B
LEA COUNTY, NEW MEXICO **CASE NO. 24978**

UNOPPOSED MOTION TO CONTINUE JANUARY 28, 2025 SPECIAL HEARING

Chief Capital (O&G) II LLC, and WR Non-Op LLC ("Chief and Waterloo"), by and through undersigned counsel, move the Oil Conservation Division ("Division") for a continuance of these cases. Fasken Oil and Ranch, Ltd., applicant in these cases, does not oppose the continuance request. Following the December 19, 2024 Status Conference in these cases, the Hearing Examiner issued a pre-hearing order setting these matters for special hearing on the January 28, 2025 Division Docket. The parties require additional time to determine whether an agreement may be reached. For this reason, the parties request the Division place the cases on the March 13, 2025 Division Docket, or at the Division's first-available docket after that day.

Respectfully,

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Attorney for Chief Capital (O&G) II LLC, & WR Non-Op LLC

EXHIBIT H

CERTIFICATE OF SERVICE

I certify that on this 21st of January 2025, the foregoing pleading was electronically filed by email with the New Mexico Oil Conservation Division Clerk and served on all parties of record through counsel as follows:

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

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**

APPLICATION FOR DE NOVO HEARING ON CASE NOS. 25145-25146

Carolyn Beall, through undersigned counsel, hereby applies for a hearing de novo before the full Commission, pursuant to NMSA 1978, Section 70-2-13, as a party adversely affected by the Hearing Examiner's decision regarding notice at the Special Hearing on January 28, 2025 in Case Nos. 25145-25146. Beall hereby requests the Division stay these cases, pending a decision on the merits in the de novo proceeding, which should be consolidated with Case Nos. 25145-25148, pursuant to Rule 19.15.4.23 NMAC. Beall also hereby joins with the *Application for Hearing De Novo and Motion for Stay of Proceedings* filed by V-F Petroleum, Inc. with the Commission on February 24, 2025.

EXHIBIT 2

Respectfully submitted,

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