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

APPLICATION OF READ & STEVENS, INC.
FOR APPROVAL OF AN OVERLAPPING
HORIZONTAL WELL SPACING UNIT AND
COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO.

CASE NO. 25145

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

CASE NOS. 25146-25148

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

RESPONSE IN OPPOSITION TO JOINT MOTION FOR STAY OF PROCEEDINGS

Read & Stevens, Inc. and Permian Resources Operating, LLC (collectively "Permian"), hereby submits this response to V-F Petroleum Inc.'s ("V-F Petroleum") and Carolyn Beall's ("Beall") joint motion for stay of proceedings. V-F Petroleum and Ms. Beall's joint motion should be denied because (1) there is no legal or procedural basis for a stay, (2) a final order has not been

issued by the Division and their *de novo* applications are premature, and (3) Permian's notice in Case Nos. 25145-25148 has been perfected and, therefore, there is no notice issue as claimed.

BACKGROUND

1. In August 2024, Permian sent out well proposals for the Second Bone Spring in the N/2 N/2 of Section 14, the S/2 N/2 of Sections 14 and 15, and the S/2 of Sections 14 and 15, Township 18 South, Range 31 East.

2. On October 11, 2024, Permian filed compulsory pooling applications for the same: Case No. 24939 – N/2 N/2 of Section 14; Case No. 24941 – S/2 N/2 of Sections 14 and 15; and Case No. 24942 – S/2 of Sections 14 and 15.

3. On December 12, 2024, the Division issued an order in Case No. 24939, in which Ms. Beall was noticed and pooled.

4. On October 20, 2024, V-F Petroleum filed an entry of appearance and objection to Permian Case Nos. 24941 & 24942.

5. In early November 2024, Permian notified V-F Petroleum that it had only received well proposals for the Second and Third Bone Spring in the S/2 N/2 of Sections 15 and 16, Township 18 South, Range 31 East. On November 25, 2024, Permian informed V-F Petroleum that it still had not received proposals for the N/2 N/2 or S/2 of Sections 15 and 16.

6. On November 11, 2024, the Division issued a Prehearing Order for Permian's Case Nos. 24941 & 24942, setting a contested hearing for January 14, 2025.

7. On December 2, 2024, V-F Petroleum filed compulsory pooling applications for the entire Bone Spring in the S/2 S/2 of Sections 15 and 16 (Case No. 24994) and the N/2 S/2 of Sections 15 and 16 (Case No. 24995).

8. On December 13, 2024, V-F Petroleum filed compulsory pooling applications for the Second Bone Spring in the S/2 N/2 of Sections 15 and 16 (Case No. 25116), and for the Third Bone Spring in the N/2 N/2 of Sections 15 and 16 (Case No. 25115) and the S/2 N/2 of Sections 15 and 16 (Case No. 25117).

9. On December 15, 2024, V-F Petroleum sent a copy of its proposals from 2023 to Permian for the S/2 of Sections 15 and 16; however, V-F Petroleum still had not sent Permian proposals for the N/2 N/2 of Sections 15 and 16.

10. On December 18, 2024, the Division issued an Amended Prehearing Order, adding V-F Petroleum's Case Nos. 24994, 24995, and 25116 to the contested hearing and changing the contested hearing date to January 28, 2025.

11. Around the holidays, Permian became aware of V-F Petroleum's Third Bone Spring applications after review of the Division's docket (Case Nos. 25115 and 25117). At this point in time, Permian still had not received proposals from V-F Petroleum for the N/2 N/2 of Sections 15 and 16. Also, at this time, in response to V-F Petroleum's filed applications, Permian prepared and mailed out supplemental proposals to include the Third Bone Spring as part of its proposed development and restated their Second Bone Spring proposals to non-ops.

12. On December 31, 2024, Permian entered an appearance and objection to V-F Petroleum's Case Nos. 25115 and 25117.

13. On January 8, 2025, Permian entered an appearance and objection to V-F Petroleum's Case Nos. 24994, 24995, and 25116.

14. On January 14, 2025, Permian filed compulsory pooling applications targeting the Third Bone Spring in the N/2 N/2 of Sections 14 and 15 (Case No. 25145), S/2 N/2 of Sections 14

and 15 (Case No. 25146), N/2 S/2 of Sections 14 and 15 (Case No. 25147), and S/2 S/2 of Sections 14 and 15 (Case No. 25148).

15. On January 16, 2025, V-F Petroleum sent an email to Permian with its proposal for the N/2 N/2 of Sections 15 and 16.

16. On January 17, 2025, Permian and V-F Petroleum filed a joint motion to add Permian's Case Nos. 25145-25148 to the Amended Prehearing Order and requested to continue the contested hearing to April. The same day, the Division issued its decision granting the addition of Permian's cases to the contested hearing but denying changing the contest hearing date.

17. On January 21, 2025, V-F Petroleum entered an appearance and objection to Permian's Case Nos. 24145-24148.

18. On January 22, 2024, V-F Petroleum filed a motion to dismiss Permian's Case Nos. 25145-25148 and additional requests in the alternative.[1]

19. On January 27, 2025, counsel for Ms. Beall entered an appearance and objection in Permian's Case Nos. 25145-25148.[2]

20. At the January 28, 2025, contested hearing the Division Hearing Examiner denied V-F Petroleum's motion to dismiss Permian's Case Nos. 25145-25148 and allowed the contested hearing to move forward. Additionally, the Division Hearing Examiner left the record open for notice to be perfected and for the contested hearing to reconvene and conclude at the February 13, 2025 hearing.[3]

[1] Ms. Beall subsequently joined V-F Petroleum's motion to dismiss.

[2] On February 6, 2025, Ms. Beall filed a notice of intervention in Permian's Case Nos. 25145 & 25146 and withdrew her entry of appearance and objection to Permian's Case Nos. 25147 & 25148.

[3] The continuation contested hearing was subsequently changed to the February 27, 2025 docket.

21. On February 6, 2025, V-F Petroleum filed a motion for written order with findings and conclusions of law of the Division's decision to deny its motion to dismiss Case Nos. 25145-25148. The same day, Ms. Beall made a number of different filings including a motion to join both V-F Petroleum's motion to dismiss Permian's Case Nos. 25145-25148 and motion for a written order.

22. On February 25, 2025, V-F Petroleum and Ms. Beall filed a joint motion for a stay in the proceedings and individually filed *de novo* applications with the Commission (V-F Petroleum – Case No. 25238 and Ms. Beall – Case No. 25239).

ARGUMENT

I. The Joint Motion Fails to Meet the Stringent Requirements Demonstrating a Stay is Necessary and Does Not Meet the Procedural Requirements for Issuance of a Stay.

V-F Petroleum and Ms. Beall have made no evidentiary showing that a stay is necessary and therefore fails to meet the threshold standard required for the Division to grant a stay.

Under the Division's regulations, a party seeking a stay is required to demonstrate "the stay is necessary to prevent waste, protect correlative rights, protect public health or the environment or prevent gross negative consequences to an affected party." 19.15.4.23.B NMAC (emphasis added). In addition, under Division precedent, parties seeking a stay must show "they are likely to prevail on the merits" and that the party requesting a stay will be irreparably harmed unless a stay is granted. *See* Order No. R-14300-A ¶ 5 (quoting and adopting the standard for an administrative stay in *Tenneco Oil Co. v. N.M. Water Quality Control Comm'n*, 1986-NMCA-033, ¶ 10).

A "showing" under a motion for stay requires some proffer of evidence. *See id.* ¶ 7; *see also* Black's Law Dictionary (8th Ed.) ("Showing, n. The act or an instance of establishing through evidence and argument; proof <a prima facie showing>." (emphasis added)). "Mere allegations of

irreparable harm are not, of course, sufficient. A showing of irreparable harm is a threshold requirement in any attempt by applicants to obtain a stay." *Tenneco Oil Co. v. N.M. Water Quality Control Comm'n*, 1986-NMCA-033, ¶ 12, 736 P.2d 986 (emphasis added). As noted in *Tenneco Oil*, the applicant for a stay must make a showing as to each of the elements necessary for a stay. *Id.* V-F Petroleum and Ms. Beall have not made the required showing for even one element.

In their joint motion, V-F Petroleum and Ms. Beall make no showing that they will likely prevail on the merits, nor do the parties cite to any harm that would occur if the cases moved forward as planned at the February 27, 2025 hearing. Rather the joint motion is a recitation of grievances over a procedural decision made by the Division Hearing Examiner that the parties disagree with. Similarly, the *de novo* applications filed by the parties goes into further detail about their umbrage.

Additionally, the regulation governing issuance of stays requires that an applicant "shall attach a proposed stay order to the motion." NMAC 19.15.4.23.B. The joint motion has not met this mandatory procedural requirement, thereby subjecting the motion to an immediate denial.

II. A Stay Is Not Warranted Because V-F Petroleum and Ms. Beall's *De Novo* Applications are Premature and Should Be Denied.

V-F Petroleum and Ms. Beall confuse the Division and Commission procedures for hearing and their filings ask for something other than a *de novo* hearing.

The New Mexico Oil and Gas Act ("Act") states that "[][w]hen 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 any such decision is rendered." NMSA 1978, § 70-2-13. The Act further gives the Division authority to promulgate administrative rules, including rules related to procedures in hearings and orders. NMSA 1978, § 70-2-7. As such, the Division

rules for *de novo* applications allow a party that is adversely affected by an order to file a *de novo* application within 30 days "pursuant to a hearing that a division examiner held." 19.15.4.23.A NMAC. That being said, the contested hearing has not concluded, and the Division has not issued a final order, which means there is nothing to appeal to the Commission as of yet; thus, negating the basis for the stay requested. *See* Division Order R-22869 (Denying Empire's motion to stay because a final order had not been entered by the Division).

A final agency decision is a "ruling that as a practical matter resolves all issues arising from a dispute." *Zuni Indian Tribe v. McKinley Cty. Bd. of Cty. Comm'rs*, ¶ 16, 2013-NMCA-041. In *Zuni*, the Court said that as a general rule an "order or judgment is not considered final unless all issues of law and fact have been determined." *Id*. (emphasis added). Although the ruling in *Zuni* relates to an agency decision appealed to the district court, the principal is the same and in harmony with Division precedence cited above and is applicable here. These matters have not been fully resolved at the Division level and should be allowed to do so. Once an order is issued, any of the parties may then file a *de novo* application, accordingly—just not before a final order is entered.

Regardless of procedure, what V-F Petroleum and Ms. Beall are asking for is not a *de novo* hearing. Based on a review of V-F Petroleum and Ms. Beall's *de novo* applications and joint motion to stay, it is clear the parties are conflating a request for an interlocutory review of a procedural decision made by the Division Hearing Examiner with an appealable final Division order. The two are not the same.

Bottom line, V-F Petroleum and Ms. Beall's *de novo* applications are premature and not ripe to be heard by the Commission. Meaning there is no reason to stay these contested matters, and, ultimately, the *de novo* applications should be denied because that's not what is actually being requested by the parties.

III. Permian Perfected Notice in Case Nos. 25145-25148 and Neither V-F Petroleum Nor Ms. Beall Have Provided Evidence of Harm Due to the Division Hearing Examiner's Procedural Decision.

V-F Petroleum and Ms. Beall's notice argument is a red herring. As illustrated by the background section above, Permian has been at the mercy of V-F Petroleum's disjointed filings and lack of transparency from the beginning. Even after numerous requests for proposals and attempts to coordinate, V-F Petroleum conveniently avoided providing necessary information to Permian, which left Permian in the position of having to react late in the proceedings. Now V-F Petroleum (and Ms. Beall) wants to punish Permian for the mess it made, even though the issue it continues to raise has been resolved.

Permian does not deny that its notice for Case Nos. 25145-25148 was not perfected at the January 28, 2025 contested hearing; however, the Division Hearing Examiner, at his discretion, constructed a solution to allow the cases to move forward and avoid delay.[4] The Division Hearing Examiner let the matters proceed on January 28, 2025, while leaving the record open to perfect notice and for the cases to be reconvened at a later date to finish the contested hearing.

To date, no final order has been issued in Case Nos. 25145-15148 and, per the Act, the Division completed reasonable notice. *See* NMSA 1978, §70-2-23. Plus, at this point, Permian's notice in Case Nos. 25145-15148 has been perfected. *See* 19.15.4.9 and 19.15.4.12 NMAC; *see also*, Permian Revised Hearing Packet – Permian Exhibit F and Exhibit G. Yet, even with an additional thirty days between hearing dates, rather than focusing on addressing the contested hearing factors[5] to win on the merits, V-F Petroleum and Ms. Beall have continued to make

[4] Leaving the record open to perfect notice is a standard Division practice used by parties and counsel (including counsel for V-F Petroleum and Ms. Beall), that avoids delays and unnecessary administrative burdens for applicants and the Division.

[5] *See* Division Orders R-20368 and R-21416.

arguments about notice, without identifying a single harm caused to either party or a valid reason to delay the cases any further.

CONCLUSION

V-F Petroleum and Ms. Beall have the right to file a *de novo* application—after a final order has been issued by the Division. Any issues that may have existed regarding notice have been resolved and are not a basis for filing *de novo* applications or, more importantly, staying the proceedings while the maters are still pending before the Division. As has been the case throughout these matters, this is just another attempt to delay and confuse by V-F Petroleum and Ms. Beall.

For the reasons stated above, Permian respectfully requests that the Division deny the joint motion to stay and allow the contested hearing to move forward at the February 27, 2025 hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2025, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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