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

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION COMMISSION 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

Commission Case No. 25238

V-F PETROLEUM INC.'S MOTION AND APPLICATION FOR RECONSIDERATION OF THE COMMISSION'S DECISION TO DENY REVIEW IN CASE NO. 25238

V-F Petroleum, Inc. ("V-F"), files this Motion and Application for Reconsideration with the Oil Conservation Commission ("Commission") regarding the Order Denying V-F Petroleum, Inc. and Carolyn Beall's Application for *De Novo* Hearing as Premature, ("OCC's Denial"), issued by the Acting Chairman of the Commission on April 3, 2025, in Case No. 25238. This Motion is

brought under NMSA 1978 § 70-2-25 and 19.15.4.25 NMAC, which expressly authorize reconsideration, and under the Commission's concurrent jurisdiction pursuant to NMSA §§ 70-2-6(B) and 70-2-11(B). These provisions do not merely permit reconsideration—they compel Commission intervention when a Division proceeding violates the Oil and Gas Act ("OGA"), NMSA § 70-2-1, *et seq.,* and harms a party's substantial rights.

In these cases, the Commission's oversight function is essential. The Division Examiner, confronted with undisputed notice deficiencies, implemented an unauthorized procedural workaround with no basis in law. This denied V-F and others their statutory rights and due process, undermining the legitimacy of the proceedings.

Under the Collateral Order Doctrine adopted by the New Mexico Supreme Court in *Carrillo v. Rostro,* 1992-NMSC-054, ¶¶ 14-18, 114 N.M. 607, 845 P.2d 130, interlocutory rulings like this are immediately reviewable. The denial of proper notice conclusively determined a disputed question, addressed an issue wholly separate from the merits, and would be unreviewable after final judgment. V-F therefore respectfully urges the Commission to reconsider its denial and assert jurisdiction to correct this substantial procedural defect.

I. Relevant Procedural History and Statutory Noncompliance

1. On October 11, 2024, Read and Stevens, Inc., with Permian Resources Operating, LLC (collectively "Permian") filed pooling applications in Case Nos. 24941 and 24942 for the Bone Spring formation 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, 2024, V-F submitted competing applications in Case Nos. 24994, 24995, and 25116 for the same formation and Subject Lands. V-F also filed applications in Case Nos. 25115 and 25117 for the Third Bone Spring zones, which at the time were not in direct competition with any of Permian's

applications. The Oil Conservation Division ("Division") consolidated Cases Nos. 24941, 24942, 24994, 24995, and 25116 by Amended Pre-hearing Order issued December 18, 2024, and advanced the hearing date from March 4, 2025, to January 28, 2025.

2. On January 14, 2025—just fourteen (14) days before the scheduled hearing -- Permian filed four (4) additional compulsory pooling applications in Case Nos. 25145 through 25148. These applications directly overlapped and conflicted with V-F's applications in Case Nos. 24115 and 25117 and further encroached on the Third Bone Spring zones already at issue in Case Nos. 24994 and 24995. The timing of Permian's filings made it impossible for statutory and regulatory notice requirements to be satisfied prior to the January 28, 2025, hearing.

3. Permian acknowledged its inability to meet the twenty (20)-day notice requirement and approached V-F to request a joint continuance. To avoid violating statutory and regulatory notice obligations, Permian proposed consolidating its recently filed applications (Case Nos. 25145-25148) with the existing Subject Cases and rescheduling the hearing to a later date. V-F agreed, and on January 16, 2025, the parties jointly submitted a motion seeking consolidation and a continuance. The Motion stated, "[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." *See* Joint Motion, attached as Exhibit A.

4. On January 17, 2025, the Hearing Examiner denied the Joint Motion, concluding—without explanation—that good cause did not exist to reschedule the hearing. He then ordered Case Nos. 25145–25148 consolidated with the other Subject Cases for hearing on January 28, 2025, despite the known and undisputed notice deficiencies. *See* Order Granting and Denying In-Part Joint Motion to Amend Pre-Hearing Order, attached as Exhibit B. Rather than grant additional time to satisfy the statutory notice obligations, the Examiner crafted an arbitrary workaround: he

would allow the hearing to proceed as scheduled, and keep the record open afterward to accept objections from parties who had not received notice in time. This "solution" is found nowhere in the OGA or the Division's rules. It was, in substance, an unauthorized modification of a mandatory statutory requirement—and one that stripped affected parties of their rights under 19.15.4.12(B) NMAC and 19.15.4.9(B) NMAC, as well as NMSA 1978 §§ 70-2-7 and 70-2-23. *See id.; see also* Transcript ("Tr.")(DD 1-28-25), 16: 21 to 17: 2, attached hereto as Exhibit F.

5. The Hearing Examiner's refusal to continue the hearing guaranteed that statutory notice requirements could not be met. In a last-ditch effort to comply, Permian mailed notices, and the Division posted public notice for Case Nos. 25145-25148 on January 24, 2025—just four (4) days before the January 28 hearing. These notices fell short of the required twenty (20) day notice required by 19.14.4.12(B) NMAC as well as any notion of reasonable notice allowed for exigent circumstances under NMSA § 70-2-23. The Division's decision to move forward under these conditions rendered the hearing fundamentally flawed, placing operators, working interest owners, and the public in the position of defending their rights in proceedings conducted in open violation of mandatory law.

6. V-F subsequently filed a Motion to Dismiss Case Nos. 25145-25148, asserting that the Division lacked jurisdiction to proceed in the absence of timely and lawful notice. In the alternative, V-F requested dismissal of all Subject Cases so they could be refiled in compliance with the applicable notice requirements, or that the Joint Motion for Continuance be reconsidered. *See* V-F's Motion to Dismiss and Requests in the Alternative, attached as Exhibit C. Despite having previously acknowledged the notice deficiencies and having jointly moved for a continuance, Permian reversed course and opposed V-F's motion. Rather than seek to remedy the procedural violations, Permian argued that the hearing could proceed notwithstanding the

defective notice. This shift was not based on any change in facts or compliance with notice obligations, but was instead a transparent attempt to gain procedural advantage by accelerating the hearing before affected parties could meaningfully review the applications or participate.

7. On the morning of the January 28, 2025 hearing, Carolyn Beall ("Ms. Beall"), a mineral interest owner who received notice only one day prior, entered an appearance and formally objected to the proceedings. Ms. Beall asserted that she "did not receive proper notice as required by New Mexico Oil Conservation Division Rules or the New Mexico [Oil and Gas Act], NMSA 1978, § 70-2-1, et seq." *See* Entry of Appearance and Notice of Objection, attached as Exhibit D; *see also* Beall's Notice of Intervention in Case Nos. 24145-25146, attached as Exhibit E. Her objection—based on the same statutory violations raised by V-F—further underscored the breakdown in due process and the prejudicial effect of proceeding in violation of mandatory notice requirements.

8. Despite Ms. Beall's objection and V-F's pending Motion to Dismiss, the Hearing Examiner proceeded with the hearing on January 28, 2025. He denied V-F's motion on the record and allowed testimony to begin, even though statutory and regulatory notice requirements had indisputably not been satisfied. *See* Tr. (DD 1-28-25) 16: 24-25; 17: 1-2, attached as Exhibit F.

9. Following the hearing, Ms. Beall filed a written "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," on February 6, 2025. *See* Exhibit G, attached hereto. V-F also joined the request, seeking a written order to preserve the notice issue for appellate review. Despite these formal requests, the Hearing Examiner declined to issue a written decision explaining the Division's authority for disregarding statutory notice requirements. This refusal to document the Division's rationale deprived the

parties of a meaningful opportunity to challenge the ruling and further compounded the procedural defect already embedded in the record.

10. In response to the Division's refusal to correct the procedural violations or issue a written order, V-F filed an Application for *De Novo* Hearing and Motion for Stay of Proceedings with the Commission. *See* V-F's Application to the OCC, attached as Exhibit H. In that filing, V-F identified the Division's denial of its Motion to Dismiss and its decision to proceed with the January 28 hearing—despite undisputed notice deficiencies—as adverse decisions that violated statutory rights and warranted Commission review. V-F specifically requested that the Commission exercise its concurrent jurisdiction to determine whether a Division hearing examiner may bypass the mandatory notice provisions of the OGA and related administrative rules. *See Id*. The purpose of V-F's application was not to reargue the merits of the pooling cases, but to protect the foundational right to due process that had been compromised before the merits could even be reached.

11. The Commission initially accepted jurisdiction over V-F's Application, assigned it Case No. 25238, scheduled a hearing to be held on April 17, 2025 (later moved to the OCC May 2025 docket to accommodate docket overflow). Permian, having received notice of the proceeding, entered an appearance on February 27, 2025, and became a party of record. Despite these procedural steps, and without affording the parties an opportunity to be heard, the Commission abruptly issued the OCC's Denial, concluding that V-F's request for a *de novo* hearing was "premature." *See* Order Denying Application for *De Novo* Hearing, attached as Exhibit I. The denial halted further Commission review and left unresolved the threshold legal question raised by V-F: whether the Division may lawfully conduct adjudicatory proceedings in direct violation of mandatory notice requirements.

12. V-F respectfully submits this Motion for Reconsideration to provide the Commission with a full and focused opportunity to address a threshold issue that was left unanswered by the OCC's denial: whether a Division hearing examiner may override mandatory statutory notice requirements and proceed with a contested hearing despite concededly defective notice. This is not a question that can wait until final judgment—it is a foundational due process concern that, if left unaddressed, threatens to invalidate any future order issued in the proceeding. Reconsideration is warranted not only to protect the rights of the parties, but also to preserve the legitimacy of the Commission's own appellate function, which is a continuance of the proceedings whose validity relies on proper notice at the Division-level, and the OCC's statutory duty to ensure fair and lawful process under the OGA.

II. The Commission Has a Statutory Obligation to Enforce the OGA and Prevent Procedural Violations.

A. The Commission's Concurrent Jurisdiction Authorizes it to Intervene when Substantial Rights Are at Risk.

13. The Commission's authority is not advisory—it is mandatory, and it is grounded in statute. As the New Mexico Supreme Court has made clear, "[t]he Oil Conservation Commission 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 (emphasis added). Among the powers the Legislature has granted is concurrent jurisdiction with the Division "to the extent necessary for the commission to perform its duties as required by law" *See* NMSA 1978, §70-2-11(B); *see also* § 70-2-6(B) (stating "any hearing on any matter may be held before the commission if the division director, in his [or her] discretion, determines that the commission shall hear the matter.") This includes the power to review procedural actions that impair parties' rights and to correct misapplications of the OGA, its implementing regulations, and fundamental

due process. Where, as here, a Division hearing examiner implements procedures that violate the OGA and strip parties of statutory notice, the Commission is obligated to exercise its oversight function and intervene.

14. New Mexico courts have repeatedly held that failure to provide proper notice in administrative proceedings is not a mere technical defect—it is a fatal one. A lack of statutory notice deprives the tribunal of jurisdiction and renders any resulting action invalid or void. *See Johnson v. N.M. Oil Conservation Comm'n,* 1999-NMSC-021, ¶ 31, 127 N.M. 120, 978 P.2d 327 (holding that an OCC order was void where statutory notice requirements under the OGA were not met); *Nesbit v. City of Albuquerque,* 1977-NMSC-107, ¶ 11, 91 N.M. 455, 575 P.2d 1340 (finding administrative action void where the city commission failed to provide adequate notice before a public hearing); *Martinez v. Maggiore,* 2003-NMCA-043, ¶ 13, 133 N.M. 472, 64 P.3d 499 (invalidating proceedings where notice failed to substantially comply with the requirements of the Solid Waste Act). These cases leave no doubt: when a statutory notice requirement is violated, any administrative proceeding that follows is legally defective. Here, the Division proceeded with a contested hearing despite concededly untimely notice—placing this matter squarely within the rule of *Johnson* and its progeny.

15. Therefore, the Commission not only possesses concurrent jurisdiction with the Division but also holds a statutory mandate to correct serious procedural violations that occur during Division hearings. This authority is grounded in the express powers enumerated under NMSA 1978, § 70-2-12(A)(2) and (5), which empower the Division—and by concurrent jurisdiction, the Commission—to "make investigations" and "hold hearings." V-F respectfully requests that the Commission exercise these powers by holding the hearing originally scheduled in Case No. 25238, in order to investigate and address the Division Examiner's decision to proceed

with Case Nos. 25145-25148 despite concededly defective notice. The Commission's jurisdiction exists not just to review final outcomes on the merits, but to ensure due process in the proceedings -- that adjudications comply with the law when substantial procedural rights protected by the OGA and its rules are violated.

16. Thus, any pooling order issued by the Division under these circumstances would not only be procedurally flawed, but legally void. More critically, the underlying notice defect does not stop at the Division level—it follows the record into the Commission's jurisdiction. If the Commission were to conduct a *de novo* hearing under NMSA 1978 § 70-2-13 based on a record tainted by defective notice, its own order could also be rendered invalid. Under the reasoning of the OCC's Denial, the Commission would have no mechanism to cure or even address that foundational error. The result is a procedural Catch-22: the right to challenge the lack of notice is denied now, and the defect itself may later be used to invalidate the Commission's own decision. The notice failure is not an isolated flaw—it is a jurisdictional flaw that, if unremedied, undermines the integrity and legality of the entire adjudicatory process extending from the OCD to the OCC.

17. By implementing an unauthorized "workaround" to the statutory notice requirements, the Division Examiner not only denied individual parties their right to be heard but also deprived the public at large of its legally protected opportunity to participate in the process. This failure makes the issue not merely a private procedural defect, but a matter of public concern. As the New Mexico Supreme Court recognized in *Continental Oil Co. v. Conservation Comm'n* "[w]here public interest is involved," the Commission is not only a proper party to an appeal—it is a necessary one. *See Continental Oil Co.,* 1962-NMSC-062, ¶¶ 23-2, 70 N.M. 310. 373 P.2d 809. In that case, the Court emphasized that the scope of review over Commission action must account for its function in safeguarding public resources. V-F respectfully submits that this

principle applies with equal force here. When a hearing examiner's actions affect not only private rights but the integrity of public oil and gas regulation, the Commission is both empowered and obligated to assert its jurisdiction—whether in court or in-house—to correct the violation and uphold the public interest.

B. Proper Notice is a Constitutional Prerequisite and a Statutory Mandate Essential to Preventing Waste and Protecting Correlative Rights Under the OGA.

18. 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 reaffirmed that "[t]the fundamental requisite of due process of law is the opportunity to be heard," 2017-NMSC-004, ¶ 25, 388 P.3d 240, 248 (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)). The Court further cited the *Restatement (Second) on Judgments* § 65 (Am. L. Inst. 1982), which provides that "[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 to the party.") *Id.* This principle applies with equal force to administrative proceedings. As the New Mexico Supreme Court explained in *Santa Fe Exploration Co. v. Oil Conservation Comm'n,* 1992-NMSC-044, P 14 N.M. 103, 835 P.2d, 819 that *"*procedural due process requires that before being deprived of life, liberty, or property, a person or entity be given notice of the possible deprivation and an opportunity to defend." (citations omitted) The Court further emphasized that these "principles are applicable to administrative proceedings…where the administrative agency adjudicates or makes binding rules that affect the legal rights of individuals or entities." *Id*. Without timely and sufficient notice, an adjudicatory body lacks the jurisdiction to proceed, and any resulting order is subject to collateral attack. The Division's failure to provide

such notice here is not a harmless procedural misstep—it is a due process violation that renders its authority to act legally defective.

19. While the Court in *T.H. McElvain* upheld notice by publication under the specific facts of that case, it drew a clear constitutional line: constructive service by publication satisfies due process" if and only if the names and addresses of the defendants to be served are not 'reasonably ascertainable." *See* 2017-NMSC-004, ¶ 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)). In doing so, the Court reaffirmed that due process requires more than mere formalities; it requires actual notice where parties' identities are known or readily discoverable.

20. In the present cases, the names and addresses of the affected interest owners were not only reasonably ascertainable—they were actually known. As such, the Division is constitutionally and statutorily obligated to ensure that timely notice is provided. Last-minute public postings by the OCD and last-minute letters by applicants are not sufficient substitutes. The OGA codifies this obligation, requiring that if the 20-day notice requirement cannot be met then at least "reasonable notice" be provided before any hearing from which an order will issue. *See* NMSA 1978, § 70-2-23. The statute further defines reasonable notice as "*no less than ten days, except in an emergency." Id.* (emphasis added). The OCD met neither the 20-day notice requirements nor reasonable notice under § 70-2-23. No such emergency existed here, and the Division's failure to comply with this mandate violated both statutory requirements and basic constitutional due process. The transgression of notice was based on the hearing examiner's baseless and unreasonable demand that the continuance be denied.

21. Extending the timeline for satisfying notice until after a hearing has concluded is constitutionally inadequate. While courts have recognized that in limited circumstances—

particularly when liberty or property are at immediate risk—"a meaningful post-deprivation hearing is adequate," those cases apply only when "the state must act quickly." *Clark v. City of Draper*, 168 F.3d 1185, 1189 (10th Cir. 1999). No such urgency existed here. There was no emergency, no operational deadline, and no statutory mandate requiring the Division to proceed under defective notice. The Hearing Examiner had no legal justification for denying the Joint Motion to Continue, which, if granted, would have provided ample time to comply with both the OGA and due process; thus, the Hearing Examiner's action was arbitrary and capricious. *See Santa Fe Exploration Co.,* 1992-NMSC-044, ¶ 38 (stating that "arbitrary and capricious action by an administrative agency consists of a ruling or conduct which when viewed in light of the whole record, is unreasonable or does not have a rational basis….") (citations omitted). As a result, affected owners in Case Nos. 25145-25148 were denied their constitutionally protected right to timely notice, as codified in NMSA 1978 §§ 70-2-23 and 70-2-7.

C. The Commission Has Authority to Review Interlocutory Decisions That Harm Substantial Rights During Division Proceedings.

22. The New Mexico Supreme Court has held that interlocutory review is appropriate where a lower tribunal makes a ruling that conclusively determines a substantial right during the pendency of a proceeding—so long as the right is collateral to the merits and would otherwise evade review. In *Carrillo v. Rostro*, the Court recognized a "small class" of cases in which a procedural ruling, although not a final judgment, effectively determines a claim too important to be denied review and too separate from the merits to await final adjudication. *See Carrillo v. Rostro,* 1992-NMSC-054. P 15, 845 P.2d 130 (citing *Cohen v. Beneficial Indus. Loan Corp.,* 337 U.S. 541 (1949)). The Court concluded that such decisions are immediately appealable because they constitute a final disposition of a claimed right that is not an ingredient of the cause of action and "does not require consideration with it." *Id.* This doctrine—the Collateral Order Doctrine—

squarely applies here, where the Division Examiner's refusal to enforce statutory notice rights has deprived parties of due process and threatens to nullify any resulting order.

23. Through its decision in *Carrillo*, the New Mexico Supreme Court formally adopted the Collateral Order Doctrine as part of the state's appellate framework. The Doctrine authorizes immediate review of interlocutory decisions when those decisions conclusively determine a disputed issue, resolve a right that is collateral to the merits, and would otherwise evade review. *See, e.g. Carillo*, 1992-NMSC-054. ¶¶ 14-18. In doing so, the Court recognized that appellate bodies must retain the ability to correct procedural rulings that inflict irreparable harm before final judgment is entered.

24. The present cases squarely qualify under that doctrine. V-F, as a working interest owner, was entitled to receive timely and proper notice of Permian's four new pooling applications in Case Nos. 25145-25148. Instead, the Division ordered those applications be consolidated with existing cases and set for a contested hearing on an accelerated schedule, giving V-F and others no meaningful opportunity to review the filings and prepare their case. The Examiner's refusal to continue the hearing forced V-F's legal and technical teams to operate under extreme time constraints, impairing V-F's ability to present its best case in chief. Such conditions can now re-occur -- causing hardship and prejudice especially to smaller operators with more limited staff support --- by the precedent that allows a hearing examiner to decide to bypass statutory requirements for notice and accelerate hearings on a "case-by-case" basis. *See* Tr. (DD 1-28-2025) 20: 3-10. This is precisely the type of substantial and independent right that *Carrillo* and *Cohen* protect—one that will be lost if review is deferred until final judgment.

25. The Division's decision to bypass statutory and regulatory notice requirements irreparably harmed the integrity of the proceedings. V-F and other affected parties have a right to

a lawful adjudication—one whose rulings and outcomes can be relied upon. Instead, the Hearing Examiner's procedural shortcut has created legal uncertainty that could haunt the resulting order for years, if not decades. Any working interest owner who did not receive proper notice of the January 28, 2025, hearing retains a constitutional basis to challenge the validity of the order at any time. *See, e.g., U.S. v. Rodriguez-Aguirre*, 264 F.3d 1195, 1200 (10th Cir. 2001) (in administrative forfeiture cases, a cause of action alleging unconstitutional lack of notice accrues when the claimant learns, or should have learned, of the deprivation). Under New Mexico law, an order affecting property rights that is issued without proper notice is invalid and void. *See* Paragraph 14, *supra.*

26. When the Hearing Examiner denied V-F's Motion to Continue to allow for proper notice, he issued a final determination on a discrete and legally protected right: V-F's right to timely notice under the OGA. That decision was not procedural housekeeping—it was a conclusive ruling on a claimed statutory and constitutional right. As such, it is ripe for review under the Collateral Order Doctrine. In *Carrillo,* the New Mexico Supreme Court held that interlocutory decisions are reviewable when the rights at issue "would be irretrievably lost in the absence of appeal." *See Carillo* 1992-NMSC-054, ¶¶ 14-18. To qualify for immediate review, the decision must: (1) "conclusively determine the disputed question;" (2) "resolve an important issue completely separate from the merits of the action;" and (3) "be effectively unreviewable on appeal from a final judgement." *Id.*

27. The Hearing Examiner's decision in this case satisfies all three prongs. First, it conclusively determined the question of whether V-F and other parties were entitled to a continuance based on defective notice. Second, the issue of statutory notice is wholly independent from the merits of the pooling applications and development plans. And third, under the OCC's

interpretation of § 70-2-13—as reflected in its denial of V-F's Application for *De Novo* Review—the decision is effectively unreviewable after a final order is issued. If the Commission does not intervene now, the right to notice will be permanently lost, and the parties will have no meaningful recourse to challenge a jurisdictionally void proceeding.

D. While the Commission May Rely on § 70-2-13 for Review, its Stronger Basis for Intervention Lies in its Concurrent Jurisdiction Under §§ 70-2-6 and 70-2-11.

28. Although § 70-2-13 provides a mechanism for Commission review of Division decisions, its language supports a bifurcated structure that aligns with the *Carrillo* Court's reasoning: certain interlocutory rulings—such as those denying procedural rights during the hearing process—are sufficiently final to warrant immediate review. In this case, the Hearing Examiner's refusal to continue the matter for proper notice constituted a final disposition on V-F's right to statutory and constitutional notice. That ruling falls outside the merits of the pooling dispute and fits squarely within the Collateral Order Doctrine.

29. Section 70-2-13 supports this reading. The final two sentences of the statute distinguish between decisions rendered after a full hearing on the merits and rulings made during the course of a proceeding. The statute provides:

> "The director of the division shall base the decision rendered in any matter or proceeding heard by an examiner upon the transcript of testimony and record made by or under the supervision of the examiner in connection with such proceeding, and such decision shall have the same force and effect as if the hearing had been conducted before the director of the division." *See* § 70-2-13 (emphasis added).

The language of the first sentence suggests that an adverse decision rendered mid-hearing could—and in appropriate cases should—be reviewed by the Commission, especially when that decision affects the integrity of the proceeding itself.

30. However, the language in the final sentence of § 70-2-13 is sufficiently broad, and non-preclusive, to encompass both final decisions on the merits and interlocutory decisions that constitute a final disposition on a discrete "matter" within the proceeding. This broader statutory scope is reflected in the following sentence:

> "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 matter heard de novo before the commission upon application filed with the division within thirty days from the time any such decision is rendered." *See Id.*

31. Accordingly, § 70-2-13 may serve as a valid basis for the Commission to review certain interlocutory decisions under the Collateral Order Doctrine. However, the Commission must take care in interpreting the statute's reference to "a decision" that "adversely affects" a party. Because the statute mandates that the Commission "shall" hear the matter upon application, a broad or unqualified interpretation of "adverse decision" could risk opening the floodgates to appeals of routine or procedural rulings—thereby disrupting the orderly progress of Division proceedings. To avoid this result, the Commission should adopt a reasonable and judicially grounded interpretation when applying the Collateral Order Doctrine: that only those adverse decisions which fall into the "small class" identified in *Carrillo*—those that finally determine a substantial right, separate from the merits, and that are effectively unreviewable later—are eligible for review under § 70-2-13. *See Carrillo v. Rostro,* 1992-NMSC-054, ¶ 16; *see also* Paragraph 33, *infra* (discussing why floodgate concerns are overstated under a properly limited application of the Collateral Order Doctrine).

32. Therefore, while both § 70-2-13 (governing *de novo* review) and §§ 70-2-6 and 70-2-11 (establishing the Commission's concurrent jurisdiction) authorize the Commission to hear interlocutory appeals under the Collateral Order Doctrine, the most appropriate and effective course of action is for the Commission to act under the power of its concurrent jurisdiction. Doing

so allows the Commission to directly intervene during Division proceedings and review procedural rulings that deny or impair substantial rights—without awaiting final adjudication. This type of review is consistent with *Carrillo,* in which the Court explained that appellate bodies may exercise "superintending control" over interlocutory issues where necessary to protect independent rights. *Carrillo v. Rostro*, 1992-NMSC-054, ¶ 30, 114 N.M. 607, 845 P.2d 130. The Commission's concurrent jurisdiction is the cleanest and most tailored statutory vehicle for fulfilling that obligation.

E. The Commission Should Adopt a Policy of Reviewing Procedural Rulings that Satisfy the Collateral Order Doctrine to Protect Substantial Rights Under the OGA.

33. A common concern with permitting appellate review of interlocutory decisions is the potential for abuse—that it might open the floodgates to appeals every time a hearing examiner issues a ruling unfavorable to a party. The *Carrillo* court directly addressed this risk, acknowledging that if applied too broadly, the Collateral Order Doctrine could be misused to disrupt proceedings. *See Id.* However, the Court ultimately deemed those concerns unwarranted. The Doctrine, it explained, is strictly limited to a "small class" of cases where the issue meets all three prongs of the test: conclusive determination, separability from the merits, and irreparable harm absent immediate review. Moreover, procedural safeguards can be implemented to ensure that only justified motions are heard—for example, by requiring that the movant clearly articulate how the right at issue satisfies the *Carrillo* standard and submit a concise showing of prejudice or deprivation resulting from the ruling.

34. To ensure that interlocutory review remains appropriately limited under *Carrillo,* the Commission may adopt clear safeguards—starting with whether the adverse decision in question would be appealable from a final order on the merits. In the present cases, the Hearing

Examiner's decision to bypass statutory notice requirements is entirely separate from the substantive merits of the competing development plans. Under the OCC's current interpretation of § 70-2-13, the Commission only conducts a hearing after the Division has issued a final decision on the merits—thereby excluding review of underlying procedural violations. But where, as here, an adverse procedural ruling irreparably harms a party's rights and taints the fairness of the proceeding itself, a hearing before the OCC focused on that specific issue is the only meaningful remedy. The Commission must retain the ability to hear such claims when the requirements of the Collateral Order Doctrine are met.

35. Further, under *Carrillo,* only decisions affecting a "substantial right" qualify for interlocutory review. The New Mexico Supreme Court has identified such rights to include constitutionally protected "fundamental rights," issues involving "the public interest," and orders that are "erroneous, arbitrary, and tyrannical." *See Id*. at 31. The right to proper notice—particularly where it implicates forced pooling affecting property rights—is plainly a fundamental right that affects both private interests and the public at large. In the present cases, the Division failed to provide notice in compliance with applicable rules resulting in real prejudice to parties and undermining the transparency of the regulatory process. By limiting review under the Collateral Order Doctrine to decisions affecting such rights, the Commission ensures that only the most serious and justified claims are heard—fully consistent with both *Carrillo* and the Commission's mandate under the OGA.

36. Finally, under *Carrillo*, the appellate body has discretion to review an adverse interlocutory decision made by a Division examiner prior to a final order on the merits—so long as the Collateral Order Doctrine's criteria are satisfied. To preserve the integrity of proceedings and avoid overreach, the Commission could adopt three key safeguards when considering such

motions: (1) whether the adverse ruling could not be adequately reviewed after final judgment and would not otherwise fall within the OCC's *de novo* review of the merits; (2) whether the right denied rises to the level of a fundamental or substantial right protected by the OGA—such as due process or statutory notice; and (3) whether the Commission, in its exclusive discretion, deems the issue appropriate for immediate review under the narrow "small class" defined by *Carrillo. See* § 70-2-6 ("any hearing on any matter may be held before the commission if the division director, in his [or her] discretion, determines that the commission shall hear the matter.")

37. By implementing these narrow and well-defined criteria, the Commission would ensure that any interlocutory appeals from hearing examiner's rulings are confined to a very limited and exceptional category of cases. This approach directly addresses concerns about judicial efficiency and procedural disruption. It protects the Commission's ability to uphold due process and statutory rights without compromising the orderly function of Division's adjudications or encouraging a flood of appeals.

38. One would reasonably expect that the Commission—serving as the appellate body under the OGA—would want to implement the Collateral Order Doctrine, which is uniquely suited to its statutory role and concurrent jurisdiction. Under New Mexico law, the doctrine was developed precisely to allow appellate bodies to intervene in cases like this one, where a procedural ruling—such as bypassing statutory notice—results in irreparable harm. By adopting and applying the Collateral Order Doctrine in this narrow and targeted way, the Commission can play a constructive role in supporting Division hearing examiners, providing timely clarification on legal standards, and maintaining the procedural integrity of the administrative process.

39. When a hearing examiner is persuaded by one of two competing arguments and issues a ruling that causes proceedings to veer off course—particularly one that harms a substantial

right—the Commission's ability to intervene under its concurrent jurisdiction becomes essential. Exercising its review authority in such moments not only protects parties from ongoing harm but also allows the Commission to issue clarifying guidance that may prevent recurrence in future cases. Over time, the Commission could use the Collateral Order Doctrine as a limited but powerful tool—reserved for the "small class" of serious procedural errors that threaten fairness and legitimacy—thereby reinforcing the rule of law at the Division.

40. Absent a mechanism for midstream review, the hearing examiner becomes, in effect, the final authority over all procedural matters—even those that harm substantial rights. In the present cases, the Hearing Examiner, ruled that he will decide on a "case-by-case" basis whether to bypass statutory requirements for notice and accelerate the hearing of cases, thereby granting himself arbitrary and capricious power without accountability. *See* Tr. (DD 1-28-2025) 20: 3-10, attached hereto as Exhibit F; *see also See Santa Fe Exploration Co.,* 1992-NMSC-044, ¶ 38 (defining arbitrary and capricious action by an administrative agency). If the Commission restricts its appellate function to final decisions on the merits of competing development plans, then serious errors committed earlier in the process—such as a denial of the statutory right to notice—will escape meaningful review. Even if the Commission's final decision is appealed to district court, that court would review only the Commission's resolution of the merits—not the hearing examiner's underlying procedural ruling. This structural gap allows substantial rights to be violated with impunity and denies both parties and the public the due process the OGA was designed to protect.

41. If the Commission declines to adopt and exercise the Collateral Order Doctrine in appropriate circumstances, the only remaining avenue for redress would require parties to bypass the Commission entirely and seek extraordinary relief through a petition for writ of mandamus in

district court. *See* Mandamus, NMSA 1978 § 44-2-1, *et seq*. Such a harsh measure not only would delay resolution but also deprive the Commission of the opportunity to evaluate and correct procedural violations on its own terms. It undermines the Commission's institutional role in shaping a coherent body of administrative precedent—one that interprets and applies the OGA and its implementing rules. Ongoing precedent set by the OCC is essential for guiding future Division proceedings and informing hearing examiners and practitioners of proper procedural standards.

42. When V-F's application was accepted by the Commission, case numbers were assigned and parties formally entered appearances. At that point, it was reasonable to expect the Commission to convene and hear arguments—specifically on the limited question of whether the Commission should intervene in ongoing proceedings to address a procedural ruling that denied a substantial right. When the OCC assigned this matter to Case No. 25238, an opportunity manifested for parties to be heard, for objections to be raised, and for the Commission to weigh the merits of its own jurisdiction for addressing the issue presented. That opportunity was lost when the Commission denied the applications without a hearing, foregoing its chance to clarify its role and develop precedent in a contested and legally significant matter.

F. The Commission Can Responsibly Incorporate the Collateral Order Doctrine Within Its Jurisdictional Limits by Defining a Narrow Class of Reviewable Adverse Decisions.

43. While the Collateral Order Doctrine articulated in *Carrillo* was developed in the context of courts of law with broad constitutional authority to adjudicate a wide range of legal claims, the OCC exercises jurisdiction conferred by statute and must act within the limits of the OGA. As such, any adoption of the Collateral Order Doctrine must be tailored to the Commission's unique role as an administrative appellate body with concurrent but limited jurisdiction over Division proceedings.

44. Nonetheless, *Carrillo* offers a valuable framework that can guide the Commission's use of its supervisory authority under §§ 70-2-6 and 70-2-11. The Commission may responsibly apply the Doctrine by clearly defining a "small class" of interlocutory procedural rulings, consistent with the OGA, that it will agree to review—those that satisfy all three prongs of the *Carrillo* test and that involve the denial of a fundamental or statutory right, affect public interest, or result in a proceeding that is jurisdictionally defective, to the extent permitted by the OGA.

45. Under this approach, the Commission would not be opening the door to routine mid-hearing appeals of evidentiary rulings or case management decisions. Rather, it would be exercising discretion only in those rare circumstances where:

- A procedural ruling conclusively determines a disputed right;
- The issue is wholly separate from the merits; and
- The harm cannot be remedied through post-final-order appeal.

New Mexico courts have long affirmed that the Commission's adjudicatory authority must rest on a foundation of lawful and procedurally sound action. In the *Santa Fe Exploration* case, the Supreme Court upheld the Commission's decision precisely because it had provided proper notice, a fair hearing, proper evidence, and adhered to statutory limits. *See e.g., Santa Fe Exploration Co.,* 1992-NMSC-044, ¶¶ 33-37. The court's analysis reinforces the principle that the Commission's legitimacy depends on its commitment to due process. Recognizing a narrow class of reviewable interlocutory decisions—particularly those implicating procedural violations that threaten to taint an entire proceeding—is not an expansion of jurisdiction, but a fulfillment of the Commission's duty under the OGA. This limited construction preserves the Commission's statutory role, avoids disruption of Division proceedings, and ensures that the OCC retains the authority to intervene when procedural errors threaten the fairness, legality, or finality of its adjudicatory process.

G. Parties Continue to Incur Ongoing Harm and Expense Litigating Within a Proceeding That is Legally Void Due to Defective Notice.

46. V-F and other affected parties continue to suffer harm each day they are required to expend significant time, money, and resources participating in a proceeding that has been compromised from the outset. The lack of proper notice has infected the process beyond repair. If the Division ultimately issues an order granting operatorship based on applications that were not lawfully noticed that order will be invalid and void—yet the burden and cost of challenging it will fall on the parties forced to navigate a system that currently is incomplete. Worse still, the procedural defect undermines confidence in the very mechanism intended to correct such errors: the review process under § 70-2-13 or the OCC's intervention pursuant to its concurrent jurisdiction under §§ 70-2-6 and 70-2-11. Without timely Commission intervention, the parties' ability to obtain relief through the standard appellate pathway is itself in doubt.

47. **Conclusion**: For the reasons set forth above, V-F respectfully requests that the Commission reconsider its denial and grant a hearing to address the Division Examiner's improper refusal to continue the January 28, 2025, proceedings. Permian has been informed of this motion and has stated its opposition. V-F maintains that the violation of statutory and constitutional notice requirements was not a harmless error—it was a jurisdictional failure that threatens the validity of any resulting order, denies parties their fundamental rights, and undermines public trust in the adjudicatory process. The Commission has the authority, obligation, and the legal tools—through its concurrent jurisdiction and New Mexico's Collateral Order Doctrine—to intervene, correct the course of proceedings, and ensure that the rule of law under the OGA is preserved. Reconsideration

is not only appropriate—it is necessary to uphold the Commission's duty to protect due process, prevent waste, and maintain the integrity of state's oil and gas regulatory framework.

Respectfully Submitted,

ABADIE & SCHILL, PC

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed with the New Mexico Oil Conservation Commission and was served on counsel of record, or on the party of record, if no counsel was provided, via electronic mail on April 21, 2025:

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/s/ Darin C. Savage

_____
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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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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 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

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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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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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CASE NOS. 24994-24995 & 25116

APPLICATIONS OF V-F PETROLEUM INC.
FOR COMPULSORY POOLING,
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,
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CASE NOS. 24941-24942

APPLICATIONS OF READ & STEVENS, INC.
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CASE NOS. 25145-25148

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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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Attorneys for Read & Stevens, Inc.

/s/ Darin C. Savage

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,
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**

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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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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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**

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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**

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.

EXHIBIT E

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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Attorney for Carolyn Beall

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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/s/ Kaitlyn A. Luck

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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Attorney for Carolyn Beall

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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/s/ Kaitlyn A. Luck

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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/s/ Kaitlyn A. Luck

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

APPLICATIONS OF READ & STEVENS, INC. FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO	**OCD CASE NOS. 24941-24942**
APPLICATIONS OF READ & STEVENS, INC. FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO	**OCD CASE NOS. 25145-25148**
APPLICATIONS OF V - F PETROLEUM INC. FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO	**OCD CASE NOS. 24994-24995 & 25116**
APPLICATIONS OF V - F PETROLEUM INC. FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO	**OCD CASE NOS. 25115 & 25117**
	OCC CASE NOS. 25238 & 25239

ORDER DENYING V - F PETROLEUM INC. and CAROLYN BEALL'S APPLICATION FOR DE NOVO HEARING as PREMATURE

This matter is before the Commission on **OCC CASE NOS. 25238** and **25239** on V - F PETROLEUM INC. and CAROLYN BEALL's APPLICATION FOR DE NOVO HEARING. Having considered the request, and being fully appraised in the matter,
IT IS HEREBY ORDERED as follows:

1. On February 24, 2025, V - F PETROLEUM INC. filed its Application for De Novo hearing.
2. On February 26, 2025, CAROLYN BEALL filed its Application for De Novo hearing.
3. NMSA 1978, Section 70-2-13 states: "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 any such decision is rendered."
4. 19.15.4.23A NMAC states: "When 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... file[s] a written application for de novo hearing with the commission clerk."
5. The above listed cases are still pending before the Division's Hearing Examiner.

EXHIBIT I

6. A hearing has not been "held" to its completion in front of the Division's Hearing Examiner and therefore a "decision" has not been rendered in these cases.
7. No right to interlocutory appeal exists in the applicable statutes and rules.
8. Good cause does not exist to grant the Applications and both Applications therefore are DENIED as premature.

IT IS SO ORDERED.

DATED: 4/3/2025

Gerasimos Razatos, Acting Chairman
New Mexico Oil Conservation Commission