

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

**APPLICATION OF V-F PETROLEUM INC.
FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO**

Case No. 25151

**V-F PETROLEUM INC.'S UNOPPOSED AMENDED MOTION TO REOPEN
CASE NO. 25151 AND TO RECONSIDER ORDER NO. R-23838**

V-F Petroleum, Inc. ("V-F"), files this Motion to Reconsider Order No. R-23838, as amended ("Motion to Reconsider"), respectfully requesting that the Oil Conservation Division ("Division" or "OCD") review and accept the reasons provided herein explaining why V-F sincerely believed that it was accurately following and fulfilling the Technical Examiner's instructions for revising V-F exhibits and his request that V-F submit a revised hearing packet. V-F files this Motion to Reconsider, as amended, to include the positions of the parties of record. In support of its Motion to Reconsider, as amended, V-F states the following:

I. Relevant Procedural History

1. On April 10, 2025, the Division heard V-F's applications in Case No. 25151.
2. At the conclusion of the hearing, the Technical Examiner did not raise or express concern that V-F's application and development plan would violate correlative right or cause waste, which traditionally are the primary and substantive reasons for denying an application under the Oil and Gas Act ("OGA").
3. However, V-F does recognize and acknowledge that the Technical Examiner did provide V-F with certain requests as referenced in the Hearing Transcript ("Tr.") at 151 through 153, an excerpt of which is attached hereto as Exhibit 1. Specifically, the Technical Examiner asked

the V-F Landman if “V-F is asking to pool the entirety of the Bone Spring which includes the Avalon?” *See id.* at 151: 22-25.

4. The V-F Landman responded: “No. V-F is only wanting to pool the Bone Spring Formation only from the top of the first bone down to the base of the third bone.” *See id.* at 152: 3-7.

5. The Technical Examiner then proceeded to talk with counsel about updating what the Transcript references as the CPAC. *See id.* at 152: 10-12.

6. The Technical Examiner instructed: “Mr. Savage, with that in mind under that formation pool area Bone Spring Formation is fine for the formation name, but we are going to want that vertical extent corrected to be from the top of the first Bone Spring to either the base of the Bone Spring or the base of the [T]hird Bone spring.” Mr. Savage replied: “Yes, sir,” indicating his intent and willingness to satisfy the request and his respect for the Technical Examiner (*see id.* at 152: 25) and then made further effort to understand the request by stating, “...and to clarify that, we don’t need any of the specifications, the depth numerical specific cases on this, we are good with stating the Bone Spring and the way it was described top to the base; is that correct?” *See id.* at 153: 1-7.

7. The Technical Examiner responded: “Considering the typo that is in the landman’s statement, I mean, ideally we will include some sort of depth in there anyway, but especially considering that typo that is in there, yes, please amend it to include the appropriate depth.” *See id.* at 153: 9-15. It was the instruction to “include the appropriate depth” that caused V-F to believe, albeit mistakenly, that the revision of the vertical extent should be the revision of vertical extent in the Landman Statement and not in the Checklist where space is limited.

8. “Okay, yes, sir,” Mr. Savage responded. *See id.* at 153: 16. Next, the Technical Examiner requested one more thing -- that V-F provide higher resolution copies of the cross-

sections included in Exhibit B-2 and B-5 or clarify the API numbers on the Exhibits, to which Mr. Savage replied: "Yes, understood." *See id.* at 154: 4.

9. On April 16, 2025, V-F filed its Revised Hearing Packet, in a timely manner that met the prescribed deadline with a cover letter that described exactly what V-F revised in the belief that it satisfied to the best of its understanding the requests of the Technical Examiner. The cover letter stated that V-F updated its Exhibit A to accurately describe the vertical extent of the spacing unit being pooled in the Bone Spring formation. The revised description requested to pool all uncommitted mineral interests in the Bone Spring formation "from the top of the First Bone Spring, at approximate depth of 6,010' beneath the surface, to the base of the Third Bone Spring formation...." *See* Revised Landman Statement, at ¶ 5. By providing this revised description of the vertical extent of the spacing unit, V-F believed it was satisfying the Technical Examiner's request to provide the OCD with the proper vertical extent of the spacing unit in the Bone Spring formation.

10. In addition, V-F revised Exhibit B-2 and B-5, as requested, to provide a clearer resolution of the exhibits and labeling of API numbers and major text designations.

11. After V-F met its submission deadline, the Division issued Order No. R-23838 on June 18, 2025. The Order stated that V-F "failed to submit a complete and accurate Application," and on the basis of this assertion, the Division dismissed the case and application.

II. V-F Sincerely and in Good Faith Believed it Was Fulfilling the Technical Examiner's Instructions When it Filed its Revised Exhibits.

12. V-F respectfully requests the Division to consider and take into account that V-F drafted the revision of its exhibits and submitted them on time without the benefit of a transcript for reference and clarification. Practitioners before the Division make good faith efforts to comply as precisely as possible with requests made by a technical examiner, but mistakes and misunderstandings can be made and one's memory and recall of what was exactly requested by a technical examiner in the midst of a live hearing can be inaccurate or misunderstood at times.

13. As shown in the written transcript issued April 24, 2025, the Technical Examiner stated that he needed to talk “about updating the CPAC.” *See* Tr. 152: 8-12. Nowhere in the Technical Examiner’s request or instructions did the Examiner use the term “Checklist” or “Compulsory Pooling Checklist,” nor was CPAC defined, and unfortunately, V-F did not catch the meaning of CPAC nor did it understand that the Technical Examiner was referring specifically to the Compulsory Pooling Checklist. This ambiguity is what led to V-F’s misunderstanding. Even after reviewing the written transcript, V-F must admit that it still does not know what CPAC stands for.

14. V-F assumed during the discussion with the Technical Examiner that the request involved revising the exhibits in general; therefore, when the Technical Examiner stated that “Bone Spring Formation is fine for the formation name” but the examiner wanted the vertical extent corrected, V-F made a sincere and good-faith assumption that it was fine to keep “Bone Spring Formation” in the Checklist as the formation name, but that V-F needed to revise the description of the vertical extent of the spacing unit which it assumed could be properly revised in the Landman Statement. *See id.* at 152: 16-24. In fact, V-F made the extra effort to clarify this assumption, but stating: “Yes, sir, and just to clarify that, we don’t need any of the specifications, the depth numerical specifications specific cases on this, we are good with stating the Bone Spring and the way it was described from the top to the base; is that correct?” *Id.* at 152: 25 – 153: 7.

15. When V-F asked if it was good to just state “the Bone Spring the way it was described,” V-F believed it was confirming that having the Bone Spring formation described “the way it was described” in the Checklist was sufficient and good. Then, when the Technical Examiner stated that considering that there was typo on the Landman’s description of the vertical extent of the Bone Spring formation to be pooled, and to “please amend it to include the appropriate depth,” V-F understood that request to mean that the vertical extent of the formation was to be

described in the Landman's Statement and not in the Checklist, since V-F did not hear mention of the Checklist and believed at the time that the Checklist was good with "stating the Bone Spring." *See id.* at 153: 8-15.

16. In compliance with V-F's understanding of the request, V-F revised the vertical extend of the formation to be pooled as follows: "V-F seeks an order pooling all uncommitted mineral interest in the Bone Spring formation in the Travis; Bonespring, Pool Code 97257, from the top of the First Bone Spring, at an approximate depth of 6,010' beneath the surface, to the base of the Third Bone Spring formation, which has an approximate depth of 8,380' beneath the surface, as shown in that certain Gr-Resistivity & Neutron-Density well log in the Samuel Burns 34 State #001 (API: 30-015- 30159), located 660' FNL and 1,980' FWL in Sec. 34, Township 18 South, Range 28 East, N.M.P.M., Eddy County, New Mexico, underlying a standard 400-acre, more or less, spacing and proration unit comprised of the N/2 NW/4 of Section 35, N/2 N/2 of Sections 34 and 33, all in Township 18 South, Range 28 East, NMPM, Eddy County, New Mexico."

17. V-F first discovered that its understanding of the Examiner's request did not match the OCD's understanding when V-F received Order No. R-23838 on June 18, 2025 (a copy of the Order is attached hereto as 32). Upon such discovery, V-F apologizes to the Division for any misunderstanding that occurred during its efforts to clarify the intent of the Technical Examiner's request and wishes to make it known to the Division that revising and timely submitting the exhibits was done in good faith on the basis of V-F's understanding at the time of their submission as described herein.

III. V-F Respects the Division's Plenary Discretion to Reconsider Order No. R-23838.

18. V-F respectfully submits that review of the transcript confirms that there is no evidence of any intentional disregard of the Technical Examiner's requests or any disrespect or any intentional disrespect or neglect of the requests. In fact, the transcript demonstrates that V-F made

a good faith attempt to fully understand the scope and details of the requests to the best of its ability at the time. Certainly, there is no evidence of any direct challenge to the requests or any indication that V-F planned to refuse or intentionally fail to fulfill the Technical Examiner's requests.

19. Order No. R-23838 concluded that that Applicant failed to submit a complete and accurate Application because it did not include description of the vertical extent of the Bone Spring formation in the Checklist -- where V-F listed the "Bone Spring formation," the Technical Examiner wanted to see the "Bone Spring formation, from the top of the First Bone Spring to the base of the Third Bone Spring." As described herein, V-F assumed that the Technical Examiner wanted V-F to revise the vertical extent of the Bone Spring formation in the Landman Statement and did so in what it believed to be satisfaction of the Examiner's request. Now that V-F has had the opportunity to review the explanation in Order No. R-23838 and review the transcript, V-F has come to understand the actual intent of what the Technical Examiner requested. V-F apologizes for the misunderstanding and is prepared to make any necessary corrections in the reopened case if the OCD should grant such opportunity.

20. The Order did not include what would traditionally be considered substantive reasons under the OGA for the dismissal of the application, such as V-F's development plan would harm correlative rights or cause waste. V-F respectfully submits that its plan does protect correlative rights and prevents waste, and should the Division return the application to "under advisement" status, V-F is confident its plan would meet the statutory requirements for approval under the OGA. Thus, in support of its Motion to Reconsider, V-F offers case law that supports the reopening and reconsideration of an administrative order if the basis of the denial is a procedural error rather than a substantive failure of evidence or failure to meet the statutory requirements for granting an application. *See, e.g., Taylor for Peck v. Heckler*, 738 F.2d 1112, 1115 (10th Cir. 1984) (holding that an ALJ's denial of an application should not be based on a

procedural matter such as res judicata, rather the decision should be made in the traditional manner “by determining whether the findings are supported by substantial evidence and by determining whether the decision was in accord with applicable law and regulations.”) (citing *Tillary v. Schweiker*, 713 F.2d 601, 603 (10th Cir. 1983) (emphasis added).

21. On the basis of *Taylor*, V-F respectfully requests that the Division review the merits of its Motion to Reconsider, and if the Division finds that its request has merit, V-F asks the Division to reopen Case No. 25151 and return V-F’s application to the status of “under advisement” subject to any necessary corrections. V-F respectfully submits that taking its application under advisement would be the best and most efficient use of Division’s administrative resources and its time and energies to complete the adjudicative process for the present case.

22. Admittedly, V-F was very surprised by the harshness of Order No. R-23838 as it had never received or experienced a denial and dismissal of an application taken under advisement on the basis of a minor procedural misunderstanding or oversight. In the past, when a minor procedural misunderstanding or unintentional oversight arose, the technical examiners would usually reach out to counsel and point out what the examiner was expecting and ask if the applicant would make a correction or adjustment; and of course, once aware of the misunderstanding and oversight, the applicant would promptly address the matter and that would take care of the misunderstanding without wasting resources of the Division and/or the applicant with unnecessary re-hearings and re-submissions of applications. In past years, counsel for the applicant has received these types of comments from technical examiners, and such positive feedback from the technical examiners has informed and deepened counsel’s understanding of the Division and proper practice before it. V-F respectfully submits that this kind of transparent interaction between the technical examiners and the applicants should be encouraged when opportunity is available, and it is appropriate to do so, as it benefits both the Division and its practitioner’s and promotes an

atmosphere of good will and efficiency instead of an atmosphere shaped by the threat of punishment and reprimand for minor oversights, resulting in additional administrative burdens that could easily be avoided.

23. The parties of record to this Case No. 25151 did not object to V-F's application being taken under advisement for approval at the hearing, and they have been informed about this Motion. Apache Corporation and Fasken Oil & Ranch do not object to the Motion. Permian Resources Operating, LLC, takes no position on the Motion and thus has expressed no opposition, and Marathon Oil Permian, LLC, COG Operating LLC, and Concho Oil & Gas LLC have expressed no opposition. Since no parties oppose the motion, V-F has provided a proposed order attached hereto as Exhibit 3, as required by NMSA 1-007.1.B.

IV. Conclusion:

For the reasons stated above, V-F respectfully requests that the Division grant its Motion to Reconsider.

Respectfully Submitted,

ABADIE & SCHILL, PC

/s/ Darin C. Savage

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed with the New Mexico Oil Conservation Division and was served on counsel of record via electronic mail on July 2, 2025:

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/s/ Darin C. Savage

Darin C. Savage

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

TRANSCRIPT OF VIRTUAL PROCEEDINGS
April 10, 2025

HEARD BEFORE:

HEARING EXAMINER GREGORY CHAKALIAN

TECHNICAL HEARING EXAMINER DEAN McCLURE

REPORTED BY:

VERITEXT LEGAL SOLUTIONS, LLC

500 4th Street, Northwest, Suite 105

Albuquerque, New Mexico 87102

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MR. SAVAGE: I am texting
Mr. Shaw right now to make sure he is
on.

HEARING EXAMINER CHAKALIAN: He
is on.

Okay, Mr. Shaw, I remind you
you are still under oath.

MR. SHAW: Yes, sir.

TECHNICAL EXAMINER MCCLURE:
Mr. Shaw, did you hear the testimony
just now from Mr. Burke?

MR. SHAW: I sure did, yes,
sir.

TECHNICAL EXAMINER MCCLURE: Do
you, hearing that he stated that he
believes the Avalon sand, or, excuse
me, the Avalon does occur in this
unit, did you hear the same thing I
did?

MR. SHAW: I sure did.

TECHNICAL EXAMINER MCCLURE:
With that understanding do you
believe V-F is asking to pool the
entirety of the Bone Spring which

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includes the Avalon?

MR. SHAW: No. V-F is only wanting to pool the Bone Spring Formation only from the top of the first bone down to the base of the third bone.

TECHNICAL EXAMINER McCLURE:
Okay, thank you, Mr. Shaw. I have no further questions, but I do need to talk, Mr. Savage, about updating the CPAC.

Mr. Examiner.

HEARING EXAMINER CHAKALIAN:
Please go ahead.

TECHNICAL EXAMINER McCLURE:
Mr. Savage, with that in mind under that formation pool area Bone Spring Formation is fine for the formation name, but we are going to want that vertical extent corrected to be from the top of the first Bone Spring to either the base of the Bone Spring or the base of the third Bone Spring.

MR. SAVAGE: Yes, sir, and to

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2 clarify that, we don't need any of
3 the specifications, the depth
4 numerical specific cases on this, we
5 are good with stating the Bone Spring
6 and the way it was described from the
7 top to the base; is that correct?

8 TECHNICAL EXAMINER McCLURE:

9 Considering the typo that is in the
10 landman's statement, I mean, ideally
11 we will include some sort of depth in
12 there anyway, but especially
13 considering that typo that is in
14 there, yes, please amend it to
15 include the appropriate depth.

16 MR. SAVAGE: Okay, yes, sir.

17 TECHNICAL EXAMINER McCLURE:

18 Let me look back at my notes.

19 One other thing I want to
20 request from you, Mr. Savage, on the
21 cross sections that is included in
22 Exhibit B-2 and B-5, if we can either
23 provide higher resolution copies of
24 those or at the very least like
25 depicted above it what the API

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

**IN THE MATTER OF APPLICATION FOR
COMPULSORY POOLING SUBMITTED BY
V-F PETROLEUM, INC.**

**CASE NO. 25151
ORDER NO. R-23838**

ORDER

The Director of the New Mexico Oil Conservation Division (“OCD”), having heard this matter through a Hearing Examiner on April 10, 2025, and after considering the testimony, evidence, and recommendation of the Hearing Examiner, issues the following Order.

FINDINGS OF FACT

1. V-F Petroleum, Inc. (“Applicant”) submitted an application to compulsory pool the uncommitted oil and gas interests within the spacing unit described in the application (“Application”).
2. The vertical extent to which Applicant is seeking to compulsory pool was unclear in the Application. The application and compulsory pooling application checklist states that Applicant is seeking to compulsory pool the Bone Spring formation. The landman’s statement states that Applicant is seeking to compulsory pool within the Bone Spring formation from the top of the First Bone Spring horizon to the base of the Third Bone Spring horizon and includes an approximate depth of 3,632’ to 8,380’. An approximate depth of 3,632’ to 8,380’ includes several formations above the Bone Spring formation.
3. At hearing Applicant clarified that it seeks to compulsory pool within the Bone Spring formation from the top of the First Bone Spring horizon to the base of the Third Bone Spring horizon (TR pg 152).
4. Applicant was afforded the opportunity to amend the Application to correct its requested vertical extent to match its testimony at hearing (TR pg 152).
5. Applicant submitted an amended exhibit packet on April 16, 2025, but failed to correct the discrepancies. The compulsory pooling application checklist indicates that Applicant is seeking to compulsory pool the entire Bone Spring formation. The landman’s statement indicates that Applicant is seeking to compulsory pool within the Bone Spring formation from the top of the First Bone Spring horizon to the base of the Third Bone Spring horizon.
6. The Bone Spring formation includes from top to bottom: the Avalon horizon, the First Bone Spring horizon, the Second Bone Spring horizon, and the Third Bone Spring

horizon.

CONCLUSIONS OF LAW

7. OCD provided Applicant the opportunity and sufficient time to amend the Application to correct the discrepancies after the hearing and before taking the case under advisement.
8. Applicant failed to submit a complete and accurate Application.

ORDER

Because Applicant failed to submit a complete and accurate Application, it is hereby **ORDERED** that Case 25151 is dismissed, without prejudice.

**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**



GERASIMOS RAZATOS
DIRECTOR (Acting)
GR/dm

Date: 6/18/2025

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

**APPLICATION OF V-F PETROLEUM INC.
FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO**

Case No. 25151

**[PROPOSED] ORDER ON UNOPPOSED AMENDED MOTION TO REOPEN
CASE NO. 25151 AND TO RECONSIDER ORDER NO. R-23838**

This matter came before the Oil Conservation Division on V-F Petroleum, Inc.'s ("V-F") Unopposed Amended Motion to Reopen Case No. 25151 and to Reconsider Order No. R-23838 ("Motion to Reconsider").

After having reviewed V-F's Motion to Reconsider and noting that the parties of record did not object to V-F's application being taken under advisement at the hearing and do not oppose the Motion to Reconsider, the Division finds that granting V-F's Motion, and returning V-F's application in Case No. 25151 to "under advisement" status is a good and efficient use of administrative resources and judgement that will avoid further burden on the Division in this matter.

The Division also finds merit in the legal authority provided by V-F and adheres to the policy promoted by the Tenth Circuit Court in *Taylor for Peck v. Heckler*, 738 F.2d 1112, 1115 (10th Cir. 1984) that the approval or denial of an administrative application, to the extent possible, should be made on the basis of whether findings are supported by substantial evidence and by determining whether the decision was in accord with applicable law and regulation, as opposed to on the sole basis of minor procedural oversights resulting from harmless, unintentional misunderstandings that can be easily and quickly corrected. Thus, in support of this policy, the Division encourages its technical examiners to contact the applicant if they identify a minor oversight or discrepancy in the application that can be easily addressed, providing that the applicant has timely met deadlines and otherwise is in good standing before the Division. The Division finds that such positive interactions between examiners and practitioners benefits both the Division and its practitioners and promotes administrative efficiency and good will.

However, procedural deficiencies are not to be ignored by the examiners, and if the deficiencies represent a clear and intentional disregard for proper procedure without justification or are clearly egregious in nature, then the Division will not tolerate such procedural transgressions and will use the full scope of its authority, best judgement and discretion to address and rectify such matters.

For the reasons stated herein, the Division finds that V-F's Motion to Reconsider is well taken and it is hereby granted. Case No. 25151 is reopened and V-F's application is returned to "under advisement" status during which the technical examiner will review the application on its substantive merits pursuant to the provisions of the Oil and Gas Act.

**EXHIBIT
3**

IT IS THEREFORE ORDERED

Done at Santa Fe, New Mexico, on this ____ day of July, 2025

**ALBERT C.S. CHANG
DIVISION DIRECTOR
NEW MEXICO OIL CONSERVATION DIVISION**