

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

IN THE CONSIDERATION OF THE
FOLLOWING MATTER:

APPLICATION OF DEVON ENERGY
PRODUCTION COMPANY, L.P.
FOR A COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO

Case No. 25296
OCD Order No. R-24123
OCC Case No. 25876

**SUPPLEMENT TO DEVON'S PREHEARING STATEMENT FOR CLARIFICATION
OF PRIMARY ISSUES AND CONCERNS THAT WARRANT *DE NOVO* REVIEW**

Devon Energy Production Company, L.P. (“Devon”), through its undersigned attorneys, submits to the Oil Conservation Commission (“Commission” or “OCC”) the following Supplement to Its Prehearing Statement for Clarification of the Primary Issues and Concerns that Warrant *De Novo* Review (“Supplement”). A Prehearing Statement (“PHS”), such as the one filed in the present case, provides for a description of the content and procedural matters of a case for the Commission’s review. Devon respectfully submits that additional information identifying and clarifying the primary issues and concerns in the present case would benefit the proceedings and understanding of the case. In support of its efforts to identify and clarify such issues and concerns, Devon provides the following:

1. As shown in its Motion Requesting the Commission to Review the Application Filed in Case No. 25296 and Issue Pooling Orders Pursuant to its Concurrent Jurisdiction (“Motion”), dated January 9, 2026, Devon confirmed through clear evidence that it had followed current standard procedures for requesting pool names and pool codes from the Division prior to the hearing in Case No. 25296 held on May 8, 2025, before the Oil Conservation Division (“Division” or “OCD”), and based on its request, Devon received only two pool names and codes

for the Bone Spring formation, not three; thus, Devon was completely unaware of a third pool code asserted in the pooling order at the time of the hearing and during the subsequent seven months while Devon waited patiently for said order.

2. In Case No. 25296, Devon made good-faith efforts to obtain the correct pool names and codes prior to the hearing (*see* Devon's Motion, dated January 9, 2026, at Exhibit 7); and Devon did everything in its powers to inform the examiners of any existing and/or potential issues regarding the pool names and codes by seeking their advice and position on this matter prior to the hearing (*see id.* at Exhibits 1 & 2). Furthermore, Devon explained to the hearing examiner at the hearing itself that it had informed the Division by email and by its PHS of potential issues involving the pool names and had asked specifically for review of this matter (*see* Devon's Amended PHS in Case No. 25296; *see also* Devon's Motion, dated January 9, 2026, at Exhibit 2); and after a number of months had passed from the date of the hearing, Devon respectfully emailed the Division seeking any feedback on the status of the case and offering to address any questions and provide any additional information the Division might need or want to evaluate the application.

See Devon's Motion, dated January 9, 2026, at Exhibits 3 & 4.

3. It was only after Devon had sent a final email to the Division seven months after the hearing -- pleading with the Division that Devon, as a long-time responsible and prudent operator in New Mexico, deserved to be informed of any concern or unresolved issue in the case – that the Division issued Order No. R-24123 denying Devon's pooling application on the primary basis that there were three pools and codes in the Bone Spring formation, not just the two provided to Devon. *See* Devon's Motion, dated January 9, 2026, at Exhibit 4; *see also* Order No. R-24123 at ¶ 24. However, because Devon had not been provided or informed of the third pool and code either prior to the hearing or during discussions at the hearing, it was an impossibility for Devon

to have addressed and satisfied the basis of the denial; therefore, the OCD Director should not have received the recommendation that the application be denied.

4. Furthermore, the basis of Order No. R-24123 violates oil and gas caselaw as shown by the New Mexico Supreme Court in *Johnson v. New Mexico Oil Conservation Comm'n*, 1999-NMSC-021, 127 N.M. 120, 978 P.2d 327. In *Johnson*, the OCC had changed and expanded the scope of a pool underlying certain lands in which a party had a mineral interest. *See id.* at ¶ 13. The party was not aware of the changes to the pool, nor was the party informed that the pool affected the party's mineral interest as a result of the changes. *See id.* at ¶¶ 10, 13 & 15. The party was then subsequently pooled by the Division based on the new changes to the pool of which the party was unaware. *See id.* at ¶ 13. The party argued that the pooling order issued was not valid because it had not been informed that the pool, as altered, applied to their interests. *See id.* at ¶¶ 14-15. The *Johnson* Court agreed that on procedural grounds the orders of the Commission and Division were invalid because the party was not made aware through notice of the basis of the decisions -- that the pool applied to and impacted the party's lands after its expansion. *See id.* at ¶¶ 3 and 17-18.

5. The caselaw and principles established by the *Johnson* Court directly apply to the present case. Devon reached out to the Division in its effort to obtain correct pool information (the specific pool names and pool codes) that applied to its development plan. Devon received two pool names and codes for the Bone Spring formation but not the third pool and its code. After waiting a long seven months, the Division issued an order denying Devon's application on the basis of an additional pool name and code of which Devon was completely unaware, thereby creating an improper precondition to the hearing and OCD's review that was impossible for Devon to satisfy. *See id.* at ¶ 13 (the *Johnson* Court concluding that obtaining the correct pooling information from the OCC was essential to the validity of the subsequent pooling procedure). Thus, the Division

denied Devon's application based on a requirement that was not possible for Devon to address or rectify. Applying the caselaw of *Johnson* to the facts of the present case, it becomes readily apparent that there are clear legal grounds for the Commission to find that Order No. R-24123 is invalid pursuant to the rulings and standards of the *Johnson* Court.

6. Moreover, even if the precedent of *Johnson v. the OCC* were not present in New Mexico caselaw, the judgment of an administrative tribunal should be able to ascertain -- based on established principles of fundamental fairness, due process, and common judiciousness -- that an application should not be denied on the basis of a requirement of which the applicant was not unaware and over which it had no control. Such a ruling would require an applicant to have satisfied an impossibility, which is contrary to proper notions of fundamental fairness and due process. When a system of adjudication penalizes an applicant on the basis of factors beyond the applicant's control, the only means by which the system can remediate such unfairness is if parties and practitioners are willing to voice and identify such problems and exercise available procedural rights, such as requesting appellate oversight, that provide an appropriate forum for input and intervention.

7. As Supreme Court Justice William J. Brennan stated: "Lawyer's, before any other group, must continue to point out how the system is really working – how it actually affects people." William J. Brennan, Jr., 43 U. Miami L. Rev. 981, 986 (1989). Such judicious insight speaks to the source of professionalism and duty that motivates certain lawyers practicing before the Division to express, in appropriate and respectful terms, their frustration and dissatisfaction with recent rulings related to the assignment of pool names and codes and the handling of such cases which directly and negatively affect people in the industry, their work, and their costly investments of resources and time. For example, one experienced practitioner recently expressed that currently applicants are frustrated with rulings that require them to make amendments to

applications and often have to come back to have additional hearings after they made efforts to reach out to the OCD to obtain correct pool information that turns out to be erroneous after submitting applications and exhibits in reliance on the information. *See Transcript Cases 25584 et al.* (Dec. 18, 2025) at 377 through 418; *see also* Devon's Motion, dated January 9, 2026, at ¶ 8. Said practitioner further stated that the amount of time that has been eaten by such rulings is substantial and that it is absolutely "mind-boggling" that parties have to repeat hearings under such conditions. *See id.* Such feedback to the Division and Commission should be commended and encouraged because an attorney has a duty to be candid and truthful to the judicial agencies. *See NMRA 16-303.*

8. The hearing examiner responded to the practitioner's input by stating that new OCD policy will allow submitters to submit an application without selecting a pool code. *See Tr. Cases 25584 et al.* (Dec. 18, 2025) at 377 through 418; *see also* Devon's Motion, dated January 9, 2026, at ¶ 8. Thus, pursuant to the OCD's newly stated policy, it would be reasonable and sound for the Commission not to require Devon to revise its application, which correctly and properly identifies both the formation and acreage to be pooled, and not to impose on Devon the unnecessary burden of filing two new applications that would put the party and OCD through additional, unnecessary hearings which would include the burden of sending out and posting new notice. Devon respectfully submits that the better option would be for the Commission to acknowledge that OCD Order No. R-24123 is flawed pursuant to principles of fundamental fairness and the legal precedent established by *Johnson v. the OCC*, 1999-NMSC-021, 127 N.M. 120, 978 P.2d 327, and its enactment would result in the waste of administrative resources and time.

9. Furthermore, the exercise of an applicant's procedural right to have a *de novo* review of the OCD's rulings and orders should also be appreciated when it identifies problematic issues and legal matters that are critical for the Commission to address formally. Section 70-2-13,

which provides for a hearing *de novo*, combined with Sections 70-2-6 and -11, which grant the Commission concurrent jurisdiction with the Division as well as plenary discretion to hear and issue orders on any matter that the Division hears, handles, or rules on, establish procedural checks and balances that are essential and necessary for ensuring fundamental fairness and due process.

10. Accordingly, under the New Mexico Oil and Gas Act (“OGA”), it is imperative that the Commission fulfill its institutional role of building and providing a coherent body of administrative precedent – one that interprets and applies the OGA in coordination and consistently with governing caselaw and necessary principles of jurisprudence that must be accurately incorporated into administrative rulings and orders and not ignored, neglected, or misapplied. Ongoing precedent set by the OCC is essential for guiding future Division proceedings and informing hearing examiners and practitioners of proper procedural and legal standards that must be respected. It is only through the accountability provided by the Commission’s oversight that existing problems will be identified and addressed, thereby maintaining and/or repairing judicial integrity for the benefit and improvement of both the Division and Commission.

11. Respectfully, the applicant seeks a judicious and fair decision in this matter before the OCC that will address and account for (1) the good-faith efforts Devon made both prior to the hearing and at the hearing to address the issues; (2) the fact that Devon raised the issues at the hearing but was not provided the kind of substantive discussion that would have addressed the issues it had raised; (3) the fact that despite its good faith efforts to obtain correct pool information, such information was not forthcoming and therefore Devon was unaware of the third pool (the basis of the OCD’s denial) that introduced post-hearing a requirement that was impossible for Devon to have satisfied; (4) the recognition that issuing an order based on such inherent impossibility transgresses the principles of established caselaw and notions of fundamental fairness and due process; and (5) due consideration that Devon had to wait a long and extended

seven months – likely longer if it had not taken the initiative to have reached out to the OCD – for the Division to articulate the very issues that Devon had raised and requested resolution prior to the hearing.

12. For the reasons stated herein, Devon submits to the Commission's wisdom, its sense of fundamental fairness, technical expertise, and judiciousness, as it respectfully requests the OCC (1) to review and address the problems and issues associated with Order No. R-24123 as identified herein; and (2) to review Devon's application, which provides the necessary geological formation and acreage as foundation for proper review, in conjunction with Devon's testimony and exhibits and to issue a pooling order based on the merits of the proposed development plan so that correlative rights will be protected and waste, including the waste of additional administrative resources, will be prevented.

Respectfully submitted,

ABADIE & SCHILL, PC

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed with the New Mexico Oil Conservation Division and was served on counsel of record via electronic mail on February 9, 2026.

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