

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

**APPLICATIONS OF CIMAREX ENERGY CO.
FOR A HORIZONTAL SPACING UNIT
AND COMPULSORY POOLING, LEA COUNTY, NEW MEXICO**

Case Nos. 23448 – 23455

**APPLICATIONS OF CIMAREX ENERGY CO.
FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO**

Case Nos. 23594 – 23601

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

Case Nos. 23508 – 23523

MOTION TO CONTINUE HEARING

Cimarex Energy Co., (“Cimarex”), through its undersigned attorneys, files this Motion to continue the hearing scheduled for Thursday, July 20, 2023, and instead hold a status conference to consider a number of unresolved procedural and substantive issues and to set appropriate dates for a pre-hearing conference and final hearing on the merits. In support of its Motion, Cimarex submits the following:

1. There are three reasons why the Oil Conservation Division (the “Division”) should continue the hearing, each of which standing alone provide sufficient basis for a continuance.
2. First, the Division will have to wade through 32 cases that involve significant novel technical and legal issues as illustrated by the fact that the Read & Stevens, Inc.’s (“Read & Stevens”) hearing packet consists of 484 pages while Cimarex’s three hearing packets organized by related cases and formations consists of 683 pages. In addition, Cimarex is filing objections

to approximately 7 Exhibits, including both testimony and slides, as well as submitting approximately 5 rebuttal exhibits.

3. Thus, additional time would allow the parties adequate preparation to present their respective cases in a more streamlined manner and to conduct efficient cross-examination of the opposing party's witnesses.

4. Second, among the technical and legal issues the Division must address is whether it should consider the unique geological feature found in the subject lands – the lack of a baffle between the 3rd Bone Spring and the Upper Wolfcamp that will inevitably lead to drainage regardless of whether the Division approves Cimarex's development plan or the co-development plan proposed by Read & Stevens. Thus, the Division should be fully informed of all the major issues and details prior to the hearing that will form the prerequisites for determining how to best protect correlative rights and prevent drainage and damage to the reservoir.

5. There are at least three options for addressing the effects of this geological feature:

Option/Question 1:

Whether the pooling and drilling of only the Bone Spring, in particular the 3rd Bone Spring Sand, is the best Option based on the fact that there is no baffle between the 3rd Bone Spring Sand and the Upper Wolfcamp. The Division has previously pooled the Bone Spring in other units in the surrounding area where there is no baffle and, by doing so, implicitly defined all production from the pooled Bone Spring unit to properly account for the Bone Spring rights without addressing any consideration of the Wolfcamp rights. Does this policy still apply in the present cases, and consequently, is the pooling and development of only the Bone Spring in accordance with past and existing practice and policy sufficient to protect existing correlative rights, especially considering that the pooling and drilling of the Upper Wolfcamp does not result in any addition to the EUR and production.

Option/Question 2:

Because there is no baffle between the 3rd Bone Spring Sand and the Upper Wolfcamp, meaning that drilling and producing the 3rd Bone Spring Sand will likely result in some drainage from the Upper Wolfcamp, an Operator should propose a formula of allocation between the 3rd Bone Spring and the Upper Wolfcamp to

protect correlative right based on the best estimate of what percentage would be produced from the 3rd Bone Spring, which appears to contribute approximately 74% of the production and what percentage would be produced from the Upper Wolf Camp, which appears to contribute approximately 26%. In this situation, should the Division impose a vertical setback to protect the correlative rights of the Upper Wolfcamp?

Option/Question 3:

Whether to drill the Upper Wolfcamp wells, at extra cost and expense, based solely on the convention of designating a division between 3rd Bone Spring Sand and Upper Wolfcamp, when such designated division does not accurately reflect the actual location, dynamics, and geology of the primary reservoir, and when the additional Upper Wolfcamp wells do not add to the EUR. The complexities of the geology should be thoroughly reviewed.

6. Given the large number of cases and therefore the length of time -- likely several days if not more -- to cover all the exhibits, data, and novel issues involved with these cases, including their unique geology, Cimarex respectfully submits that it would be more efficient and the best procedural path, allowing the Division to better organize and digest these cases, if the Division granted a Pre-hearing conference pursuant to NMAC 19.15.4.16(B). At the Pre-hearing Conference, the parties could present their arguments to inform the Division of the significance and consequences of each option above described. As a result of such a conference, the Division will have a better understanding of what options are available and will be able to choose the best option after considering the evidence presented at the final hearing on the merits. The Division could also make specific determinations and rulings at the Pre-hearing conference that will expedite and facilitate the final hearing, such as a review and consideration of Cimarex's "Motion for and Order to Prohibit the Drilling of Wells in the Upper Wolfcamp in Order to Protect Correlative Rights and Optimize Production of the Subject Lands," a motion previously submitted but which remains outstanding.

7. Third, in support of their four cases seeking to co-develop the Wolfcamp Formation

(Case Nos. 23520-23) with the 3rd Bone Spring Sand, Read & Stevens relies on non-public production data for its Batman wells for the first forty (40) days of production. *See* Read & Stevens Exhibit F (Self-Affirmed Statement of John Fechtel, Reservoir Engineer) and Exhibits F-4 and F-8. Notwithstanding the fact that the first forty days of production from a horizontal well is an insufficient basis on which to project long term success of these wells and the co-development plan that Reid & Stevens is proposing herein, Cimarex cannot effectively cross-examine Mr. Fechtel and test the *bona fides* and reliability of this short-term production history because this production data is non-public. For example, without knowing the tubing pressure, choke settings, and Hz setting, which Read & Stevens failed to provide, Cimarex cannot prepare a well-informed challenge to the production data set forth in Exhibits F-4 and F-8. Thus, it is necessary, and Cimarex is entitled, to undertake discovery regarding non-public production data that Read & Stevens is relying upon to support its plan to co-develop the Upper Wolfcamp with the 3rd Bone Spring.

8. The difficulty and inability of the Applicants being able to provide the parties and the Division all the necessary data for proper evaluation of the competing development plans in a timely manner prior to the date of the hearing is clearly illustrated by the Applicants' inability to meet the deadlines prescribed in the Pre-hearing Order. Cimarex, for example, in its effort to meet the 5 p.m., July 13, 2023, submission deadline for the exhibits as specified in the Pre-hearing Order was not able to submit its completed hearing packet until 6:11 p.m. on the day it was due, and Read & Stevens failed to submit a completed hearing packet on the day it was due, finally submitting its completed hearing packet the next day, July 14, 2023, at 12:17 p.m. Such lack of timeliness demonstrates just what kind of behemoth of data and information the parties and the Division are required to review, manage, and digest in these cases.

9. And today, July 17, 2023, four days after the completed hearing packets were due, and just two days before the hearing, Cimarex has been informed that Read & Stevens' hearing packet is still not complete as it includes wrong exhibits and/or data for its exhibits covering the Verna Ray wells, for which Read & Stevens will be submitting updated and revised data and/or exhibits sometime on July 18, 2023, depriving Cimarex and other parties of a complete and accurate review of the wells and exhibits until the last day or so before the hearing under rushed conditions.

10. Cimarex is tolerant of missed deadlines and incomplete exhibits and is willing to work with parties to ensure items are in order and complete in order to have a proper hearing on the merits, but Cimarex respectfully submits that the difficulties and failures the Applicants have had in these 32 cases to provide the parties and Division with a proper review, and the inability of the parties to obtain a proper and timely review due to these difficulties and failures, demonstrates clearly that this hearing has been rushed and that the large amounts of information and data, and the number of resolved issues, fully warrant and require a continuance.

11. Finally, and perhaps most importantly, the Division will likely encounter in future cases the novel issues presented in these 32 cases which concern unaccounted for communication between formations that have no baffle, unauthorized vertical drainage and capture of product owned in adjacent formations in violation of correlative rights, the need for a vertical setback, and likely damage to the reservoir and overall production. Being informed of these matters during a pre-hearing conference would benefit the Division, and what further necessitates additional consideration pursuant to a pre-hearing conference in these particular matters is the differences in costs that are at stake between the two competing development plans. Read & Stevens proposes a plan that costs \$130 million more than Cimarex's plan for developing the Bone Spring formation,

and if that does not create serious sticker shock, Read & Stevens plan costs an additional \$95 million for drilling the Upper Wolfcamp, which as shown by Cimarex would not add anything to the EUR and production. Such astronomical costs create a huge and unjustified amount of financial waste and enormous burden on the working interest owners, and Cimarex submits that the Division should proceed cautiously and with the benefit of being fully informed prior to making a ruling involving such financial magnitude.

12. Thus, for the reasons set forth above, Cimarex requests that the Division continue the hearing of the above-referenced cases scheduled for July 20, 2023, and instead hold a status conference during which time Cimarex requests that dates be set for a pre-hearing conference and for the final hearing on the merits.

Respectfully submitted,

ABADIE& SCHILL, PC

/s/ Darin C. Savage

Darin C. Savage

Andrew D. Schill
William E. Zimsky
214 McKenzie Street
Santa Fe, New Mexico 87501
Telephone: 970.385.4401
Facsimile: 970.385.4901
darin@abadieschill.com
andrew@abadieschill.com
bill@abadieschill.com

Attorneys for Cimarex Energy Co.

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 17, 2023:

Michael H. Feldewert – mfeldewert@hollandhart.com
Adam G. Rankin – agrankin@hollandhart.com
Julia Broggi – jbroggi@hollandhart.com
Paula M. Vance – pmvance@hollandhart.com

*Attorneys for Read & Stevens, Inc.;
and Permian Resources Operating, LLC*

Blake C. Jones – blake.jones@steptoe-johnson.com

Attorney for Northern Oil and Gas, Inc.

Sealy Cavin, Jr. – scavin@cilawnm.com
Scott S. Morgan – smorgan@cilawnm.com
Brandon D. Hajny – bhajny@cilawnm.com

Attorneys for Sandstone Properties, LLC

/s/ Darin C. Savage

Darin C. Savage