

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

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

**Case No. 25151**

**V-F PETROLEUM INC.'S 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 ("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.

**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, by 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 Exhibit 2). 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 Divisions 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 (10<sup>th</sup> 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 (10<sup>th</sup> 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.

#### **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 June 27, 2025:

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/s/ Darin C. Savage

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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 McCCLURE:

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 McCCLURE:

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**



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**GERASIMOS RAZATOS**  
**DIRECTOR (Acting)**  
**GR/dm**

**Date:** 6/18/2025