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

APPLICATION OF CHEVRON U.S.A. INC. TO REOPEN CASE NO. 24185 (ORDER NO. R-23684 (E.G.L. RESOURCES, INC.) AND CASE NO. 24886 (ORDER NO. R-23685 PBEX, LLC) TO REQUIRE SUBMISSION OF PROPER STATEMENTS OF WELL COSTS BY OPERATOR AND RECOGNIZE THE CONSENTING STATUS OF CHEVRON. **CASE NO. 25878**

PBEX, LLC AND E.G.L. RESOURCES, INC'S PRE-HEARING STATEMENT

In accordance with the Pre-Hearing Order issued by the Oil Conservation Division ("Division") on March 10, 2026, PBEX, LLC and E.G.L. Resources, Inc. (collectively, "PBEX") submit their Pre-Hearing Statement.

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STATEMENT OF THE CASE

I. Introduction

Despite its informed and unconditional election to participate in the wells at issue in this case, Chevron U.S.A. Inc. ("Chevron") asks the Division to reopen two final, binding pooling orders, Order Nos. R-23684 and R-23685 (the "Pooling Order(s)"), in an effort to undo Chevron's failure to pay its share of the estimated well costs under those orders. Although Chevron presents its claims under the guise of seeking to enforce the Pooling Orders, in reality Chevron seeks to repudiate its own election letter because it failed to perform.

The issue before the Division is narrow and dispositive: may Chevron accept a well proposal without objection, fail to perform under that election, and then litigate alleged defects in the proposal after the fact? Under settled New Mexico law, the answer is no.

Chevron's application has no factual or legal basis. PBEX fully complied with the Pooling Orders, Division regulations, and industry standards. Chevron received detailed post-order well proposals, requested and received additional information, made an informed and unconditional election to participate, and then failed to pay its share of estimated well costs as required by the Pooling Orders. Under the express terms of the Pooling Orders, Chevron is unquestionably a non-consenting pooled working interest. Chevron's attempt to repudiate its own election letter and relitigate its status months later to remedy its missed payment would upend the Division's pooling process and should be summarily rejected.

II. Background

On February 19, 2025, the Division issued Order Nos. R-23684 and R-23685 approving the compulsory pooling and development of the North Bond and South Bond horizontal spacing units in the Bone Spring formation in Lea County, New Mexico (the "Bond Units").[1] The Pooling Orders established the spacing units, approved the wells and producing formation, and imposed clear, enforceable post-order requirements governing estimated well costs, elections, and payment deadlines.

Chevron was aware of the Bond Wells long before pooling occurred. PBEX provided Chevron with voluntary well proposals, proposed Joint Operating Agreements ("JOAs"), and communitization agreements, and repeatedly attempted to reach an agreement with Chevron prior to pooling. Chevron chose not to participate voluntarily and did not appear at the pooling hearings.

After issuance of the Pooling Orders, on August 7, 2025, PBEX transmitted a detailed post-order well proposal and Authorizations for Expenditures ("AFEs") to Chevron under Paragraph 24 of the Pooling Orders. The well proposal and AFEs identified the specific location and depth of each well. PBEX also went beyond the requirements of the Pooling Orders by responding to Chevron's title inquiries and providing diagrams identifying the precise depths and locations of the proposed wells.

[1] Order No. R-23684 approved a 640-acre, standard horizontal spacing unit within the Bone Spring formation comprised of the S/2 of Sections 33 and 34, Township 18 South, Range 32 East in Lea County and dedicated the unit to the Bond 33-34 Fed Com 104H; Bond 33-34 Fed Com 105H; Bond 33-34 Fed Com 106H; Bond 33-34 Fed Com 207H; Bond 33-34 Fed Com 209H; and the Bond 33-34 Fed Com 211H wells (collectively, the "South Bond Wells"). Order No. R-23685 approved an 800-acre, standard horizontal spacing unit within the Bone Spring formation comprised of the NE/4 of Section 32 and the N/2 of Sections 33 and 34, Township 18 South, Range 32 East in Lea County and dedicated the unit to the Bond 32-34 Fed Com 101H; Bond 32-34 Fed Com 102H; Bond 32-34 Fed Com 103H; Bond 32-34 Fed Com 201H; Bond 32-34 Fed Com 203H; and the Bond 32-34 Fed Com 205H wells (collectively, the "North Bond Wells"). The South Bond Wells and the North Bond Wells are referenced collectively as "the Bond Wells."

Chevron expressly stated that it needed this information to make an informed election, acknowledged receipt of the information, and submitted an unconditional written election to participate in the Bond Wells on August 27, 2025. Chevron raised no objection, asserted no reservation of rights, and did not elect under protest. However, after electing, Chevron failed to pay its share of the estimated well costs within 30 days of its election as required by the Pooling Orders. Chevron was attempting to sell its acreage within the Bond Units at the time, and it was only after negotiations broke down that Chevron raised issues regarding its participation in the Bond Wells.

III. Argument

A. Chevron made an informed, unconditional election and failed to pay, and is therefore a non-consenting party as a matter of law.

It is undisputed that Chevron (1) received detailed post-order well proposals and AFEs; (2) requested and received updated working interest information; (3) executed an unconditional election to participate; and (4) failed to pay its share of estimated well costs by the deadline mandated in Paragraph 25 of the Pooling Orders. In fact, not only did Chevron fail to pay its share of the estimated well costs within 30 days of its election, it failed to do so *at all*.

Paragraph 24 of each Pooling Order requires an operator to "submit each owner of an uncommitted working interest in the pool ('Pooled Working Interest') an itemized schedule of estimated costs to drill, complete, and equip the well ('Estimated Well Costs.')." Additionally, Paragraph 25 states that:

> No later than thirty (30) days after Operator submits the Estimated Well Costs, the owner of a Pooled Working Interest shall elect whether to pay its share of the Estimated Well Costs or its share of the actual costs to drill, complete and equip the well ("Actual Well Costs") out of production from the well. An owner of a Pooled Working Interest who elects to pay its share of the Estimated Well Costs shall render payment to Operator no later than thirty (30) days after the expiration of the election period, and shall be liable

> for operating costs, but not risk charges, for the well. An owner of a Pooled Working Interest who fails to pay its share of the Estimated Well Costs or who elects to pay its share of the Actual Well Costs out of production from the well shall be considered to be a "Non-Consenting Pooled Working Interest."

The Pooling Orders expressly provide that a Pooled Working Interest owner who elects to participate but does not timely pay is deemed a "Non-Consenting Pooled Working Interest." Chevron's status follows directly from the plain language of the Pooling Orders and requires no further factual inquiry.

B. Chevron waived the arguments raised in its application.

The central premise of Chevron's application is that the August 7 Well Proposal was somehow defective in ways Chevron never identified during the election period. Chevron's application rests on objections it never preserved.

Under New Mexico law, a party that intentionally relinquishes a known right, whether expressly or through conduct, waives the ability to later "reopen" litigation over that right. The waiver doctrine reflects a basic principle of transactional fairness: a party cannot accept a proposal, wait until the consequences become unfavorable, and then repudiate it based on objections it could have raised at the outset. That is exactly what happened here.

On August 7, 2025, Chevron received a well proposal from PBEX identifying the locations, depths, and estimated costs of the Bond Wells proposed under the Pooling Orders. The proposal required Chevron to make an election: participate in the Bond Wells and assume its share of well costs, or decline participation and accept non-consenting treatment under the Pooling Orders. If Chevron believed the proposal was defective, it could have raised that objection before making its election or reserved its position. It did not.

After reviewing the proposal, requesting and receiving additional information, and evaluating its options, Chevron made an unqualified election to participate. Chevron did not condition its acceptance. It did not elect non-consent. It did not seek additional time to respond. It did not reserve its rights. Nor did it seek clarification or relief from the Division at that time. Instead, Chevron accepted the proposal and proceeded as though it were valid.

It is undisputed that Chevron then failed to pay its share of Estimated Well Costs. Under the Orders, that failure rendered Chevron a Non-Consenting Working-Interest Owner, subject to the Oil and Gas Act's risk-penalty framework. Chevron did not attempt to explain or remedy its nonpayment. PBEX proceeded accordingly.

New Mexico courts define waiver as "the intentional relinquishment or abandonment of a known right." *J.R. Hale Cont. Co., Inc. v. United N.M. Bank at Albuquerque*, 1990-NMSC-089, ¶ 11, 110 N.M. 712. A party can waive a contractual term or condition expressly or impliedly, through "representations that fall short of an express declaration of waiver, or from [the party's] conduct." *Id.*[2] As relevant here, waiver prevents a party from treating a proposal as effective, electing under it without objection, and then challenging its validity only after the election becomes unfavorable. *See, e.g., Chavarria v. Fleetwood Retail Corp.*, 2006-NMSC-046, ¶¶ 40–41, 140 N.M. 478 (holding that plaintiffs waived objection to enforcement of a promissory note based on Fleetwood's failure to produce the original where plaintiffs had admitted that Fleetwood owned the note, used a copy of the note as an exhibit, and waited until the close of evidence to object).

[2] *See also Cowan v. Chalamidas*, 98 N.M. 14, 644 P.2d 528 (1982) ("When a contract payee accepts late [rental] payments without objection as to their timeliness, he impliedly leads the payor to believe that late payments are acceptable."); *Easterling v. Peterson*, 107 N.M. 123, 753 P.2d 902 (1988) (rental payments); *Giannini v. Wilson*, 43 N.M. 460, 95 P.2d 209 (1939) (installment sales contract).

Here, Chevron treated the August 7 Well Proposal as effective. It asked questions, evaluated its options, and elected to participate under the proposal as presented. It did not object, elect non-consent, or reserve rights. Only after Chevron failed to pay its share of estimated costs – and became non-consenting by operation of the Pooling Orders – did Chevron argue that the proposal was defective. Like the plaintiffs in *Chavarria,* Chevron waived its right to challenge the proposal after the fact.[3]

The compulsory-pooling statute reinforces the election framework that gives rise to Chevron's waiver. Section 70-2-17(C) requires pooling orders to make "definite provision" for owners who elect not to pay their share of costs in advance. For those owners, the statute authorizes reimbursement out of production, including a risk charge of up to 200% of the non-consenting owner's share of drilling and completion costs. *Id.* Thus, the statute gives working-interest owners a choice: pay up front and participate, or decline to pay and accept non-consenting treatment. It does not create a third option of electing to participate, failing to pay, and then reopening the election months later based on objections the owner never raised.

The Division applied that same finality principle in Case No. 16265 (Re-Opened). There, OXY USA WTP, LLC and Canaan Resources Drilling Company, LLC sought to reopen a Division order to "clarify" their rights, as pooled working-interest owners, to pay estimated well costs up front rather than have the operator recover those costs out of production. But OXY and Canaan had missed the deadline to pay estimated well costs. The Division rejected their effort and dismissed the application to reopen. *See* Order R-20779 (Aug. 22, 2019).

[3] Chevron's conduct also supports waiver by estoppel because its unqualified election gave PBEX every reason to treat the August 7 Well Proposal as accepted. *See J.R. Hale*, 1990-NMSC-089, ¶ 12.

Similarly, in Case Nos. 25868 and 25807-25809, the Division rejected XTO Holdings, LLC's ("XTO") attempt to reopen pooling orders issued to Riley Permian Operating Company, LLC ("Riley") because XTO had elected to participate in the wells at issue. *See* Case Nos. 25868 and 25807-25809, Order Denying XTO's Applications to Reopen Riley Case Nos. 25047-25049 (Feb. 25, 2026). In doing so, the Division found in part that XTO had waived its ability to reopen the applications by electing to participate in the wells and specifically noted that "XTO is a sophisticated party with a dedicated 'Operated By Others' (OBO) division responsible for monitoring pooling proceedings." *Id.* Chevron is a similar, sophisticated party that has a dedicated OBO division.

The same finality principles apply here. In August 2025, Chevron had ample opportunity to preserve its position if it believed the August 7 Well Proposal departed from the Pooling Orders. Chevron could have objected to the proposal before electing, requested clarification, sought relief from the Division, elected non-consent, or made a conditional election. Chevron did none of those things. Chevron does not identify any new information or change in law that prevented it from raising its objections during the election period set forth under the Pooling Orders.

And Chevron is not an unsophisticated party caught unaware. It is a sophisticated working-interest owner that was more than capable of making an informed election. Moreover, Chevron knows how to submit an election under protest. On March 20, 2026, PBEX proposed the Bond 32-34 303H Fed Com to the working interest owners, including Chevron. *See* Exhibit A-10 to Self-Affirmed Statement of Ruth Pelzel. On April 17, 2026, Chevron submitted an election under protest. *See* Exhibit A-11 to Self-Affirmed Statement of Ruth Pelzel. Chevron did not do so with respect to the August 7, 2025 post-order well proposal.

For these reasons, the Division should hold Chevron to the election it made and reject its attempt to raise alleged defects in the August 7 Well Proposal.

C. Even in the absence of waiver, PBEX had no duty to reopen the Pooling Orders to update title information as Chevron claims.

Although Chevron's waiver is clear from the facts and governing law, Chevron's quibbles with communications and documentation from PBEX fail to support its effort to undo the Pooling Orders to excuse its failure to pay.

Chevron's claim that PBEX was required to reopen the Pooling Orders to update title information is contrary to Division regulations and longstanding practice. Pooling applications are based on title information known or of record at the time of filing. Division rules state that for pooling applications, 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***." NMAC 19.15.4.12(A)(1)(a) (emphasis added).

Minor post-order adjustments are routine, anticipated, and addressed through the estimated-versus-actual cost process included in the Pooling Orders. It is only when final title information identifies additional interests that an operator seeks to reopen a pooling order. There is otherwise no statutory or regulatory requirement that an applicant return to the Division to reopen an application to update title records. And, given that operators routinely proceed to pooling prior to the issuance of final title opinions, any such requirement would vastly increase the number of applications filed with the Division, burden operators, and confuse interest owners. Here, PBEX provided Chevron with updated working interest information before the election deadline. Chevron elected to participate and cannot now claim prejudice.

D. Contrary to Chevron's claims, minor adjustments in well depths or locations do not require amended pooling orders.

Again, Chevron's efforts to undo the Pooling Orders rest on mere technicalities that do not support its position and are not otherwise required by law. Here, PBEX's engineering testimony will confirm that any adjustments to well depths or locations were immaterial. The wells remained within the approved spacing units, produced the same tracts, and targeted the same formation authorized by the Pooling Orders.

Chevron's position would require operators to reopen pooling orders for routine operational adjustments, a result that would cripple development and overwhelm the Division. Moreover, as discussed above, Chevron elected to participate in the Bond Wells *as they were proposed and have now been drilled*. Having ratified the well locations and depths, Chevron cannot now attempt to challenge them.

E. The post-order well proposals were properly submitted, and operatorship was not defective.

Chevron's claim that the post-order well proposal was improperly submitted by PBEX Operations, LLC ("PBEX Operations"), a "stranger to the order," is factually and legally incorrect. In Case Nos. 24185 and 24886, PBEX and E.G.L. provided testimony explaining that E.G.L. is an affiliate of PBEX. PBEX Operations, a wholly-owned subsidiary of PBEX, is the current operating entity for PBEX, and operations previously handled by E.G.L. are now handled by PBEX Operations. PBEX Operations and E.G.L. were both designated as applicants and/or operators in the Division's case files and are affiliated entities under common control. Chevron knew who the operator was, executed election letters and AFEs identifying that operator, and never objected until after it failed to pay. Its objection has no merit.

F. PBEX had no obligation to continue negotiations with Chevron after the Pooling Orders were issued.

Although Chevron has claimed that PBEX had an ongoing obligation to negotiate after the Pooling Orders were issued, no such obligation exists. A pooling applicant must try to reach voluntary agreement with interest owners *before* filing a pooling application because pooling is only allowed if a voluntary agreement is not reached. *See* NMSA 1978, 70-2-17(C). To this end, the Division has held that good faith negotiation requires an operator to send a well proposal and AFEs 30 days prior to filing a pooling application and provide a JOA on request. *See, e.g., Cimarex Energy Co.,* Order No. R-13165, ¶ 5(a) (Sept. 3, 2009). Neither the Oil and Gas Act, Division regulations, nor Division decisions require operators to negotiate with pooled working interests after a pooling order has been issued.

Rather, post-order requirements are governed by Paragraphs 24 and 25 of the Pooling Orders. As explained above, those provisions require the operator to send Pooled Working Interests the Estimated Well Costs and allow them 30 days to elect to participate in the wells. Pooled Working Interests who elect to participate then have 30 days to pay their share of the estimated well costs.

Here, PBEX complied with those requirements, and Chevron timely elected to participate in the Bond Wells. However, following the election, Chevron did not pay its share of the Estimated Well Costs. As a result, under the plain language of each of the Pooling Orders, Chevron is deemed a Non-Consenting Pooled Working Interest.

G. Chevron's application is an improper attempt to undo a final election and threatens regulatory finality.

Chevron's application is not about pooling order compliance; it is about avoiding the consequences of a missed payment deadline. Allowing Chevron to proceed would undermine the

finality of pooling elections and invite strategic gamesmanship. Parties could accept proposals, wait to see how events unfold, and then retroactively challenge the same transactions they elected to join. That result would destabilize the Division's pooling regime, multiply disputes, and undermine the finality that pooling orders and elections require.

Accepting Chevron's position would also result in negative financial implications for operators. The 200% risk penalty established by the Division's pooling orders compensates operators for having to initially bear the costs associated with development. Allowing pooled parties like Chevron to reopen pooling orders to repudiate their elections would effectively require operators to carry all other working interest owners to the point of production, at which time the working interest owner would decide whether or not to pay its share of the well costs. In that instance, the non-operating party is receiving a free carry and the entire financial burden is borne by the operator. That in turn costs the operator additional capital while the non-operating party can invest its funds elsewhere until they deploy it and begin receiving returns in the way of production. This result would discourage development, make it too costly for small operators to participate in the forced pooling process, and ultimately stifle competition, which in turn also stifles technological and other improvements that result from robust competition.

IV. Conclusion

PBEX complied fully with the Pooling Orders, Division regulations, and industry standards. Chevron made an informed and unconditional election, failed to pay timely, and is a non-consenting pooled working interest as a matter of law. Chevron's application seeks an unwarranted do-over and should be denied.

PROPOSED EVIDENCE

In accordance with the Pre-Hearing Order, PBEX is filing its direct testimony and exhibits contemporaneously with this Pre-Hearing Statement.

Witness	Occupation	Estimated Time	Exhibits
Ruth Pelzel	Land Expert	60-minutes	10
Ashely Roush	Land Expert	45-minutes	2
Brianna Aylesworth	Reservoir Engineer	45-minutes	1
Keith B. Hall	Policy Expert	30-minutes	1

PROCEDURAL MATTERS

This case has been set for a contested hearing. PBEX reserves the right to present rebuttal testimony and exhibits at hearing.

Respectfully submitted,

HARDY MCLEAN LLC

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon the following counsel of record by electronic mail on May 7, 2026.

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QUESTIONS

Action 582705

QUESTIONS

Operator: PBEX Operations, LLC 223 West Wall Street Midland, TX 79701	OGRID: 332544
	Action Number: 582705
	Action Type: [HEAR] Prehearing Statement (PREHEARING)

QUESTIONS

Testimony

Please assist us by provide the following information about your testimony.

Number of witnesses	*Not answered.*
Testimony time (in minutes)	*Not answered.*