

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

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

CASE NOS. 24941-24942

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

CASE NOS. 25145-25148

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

CASE NOS. 24994-24995 & 25116

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

CASE NOS. 25115 & 25117

CAROLYN BEALL’S CLOSING STATEMENT

Carolyn Beall (“Beall”) files this closing statement as a working interest owner in the Third Bone Spring formation whose interest has not been properly pooled. Beall objects to the applications filed by Read & Stevens, Inc. (Permian Resources Operating, LLC) (“Permian”) in Case Nos. 25145-25146 (“Subject Cases”) because her interests in the Third Bone Spring formation were excluded from the pooling proceedings. In support of her Intervention and Correlative Rights in the Third Bone Spring formation, Beall states the following:

A. Carolyn Beall’s Working Interest in the Third Bone Spring in Cases 25145-25146

Any Orders entered by the Division pooling only a portion of the Third Bone Spring formation would clearly violate the correlative rights of the parties excluded in the upper portion of the Third Bone Spring, including Beall. For this reason, Beall objects to Permian’s applications in the Subject Cases because Permian’s proposed development plan violates Beall’s correlative rights, and the Oil Conservation Division (“OCD”) has jurisdiction over this matter, pursuant to

the New Mexico Oil and Gas Act, NMA 1978, § 70-2-6, § 70-2-11. The Division should deny Permian's requested pooling applications in Case Nos. 25145-25146 because the proposed poolings violate Beall's correlative rights in the Third Bone Spring formation in the subject acreage. Beall owns approximately one percent in the spacing units proposed in the Subject Cases, with a working interest in the NE/4 NW/4, the S/2 NE/4, the NE/4 NE/4, the NW/4 NE/4, the SE/4 NW/4 of Section 14, Township 18 South, Range 31 East, N.M.P.M., in the upper part of the Third Bone Spring, to depths of 9290' in some portions and 9293' in other portions underlying the Subject Lands described in the Pooling Applications filed by Permian Resources Operating, LLC ("Permian"), and was provided notice in Case Nos. 25145-25146 ("Subject Cases"), as a vertical offset.

B. OCD Rules Require Notice to Pooled Parties and Pooling Notice Requirements May Not be Waived by the Hearing Examiner

The New Mexico Oil Conservation Division has broad authority under the New Mexico Oil and Gas Act, [Chapter 70, Article 2 NMSA 1978] ("Oil and Gas Act") to include "jurisdiction, authority and control of and over all persons, matters or things necessary or proper to enforce effectively the provisions of this act or any other law of this state relating to the conservation of oil or gas[.]" See NMSA 1978, § 70-2-1, *et seq.* The Oil and Gas Act gives the Commission and the Division the two major duties: the prevention of waste and the protection of correlative rights. NMSA 1978, § 70-2-11(A). Correlative rights are defined as

the opportunity afforded . . . to the owner of each property in a pool to produce without waste his just and equitable share of the oil . . . in the pool, being an amount, so far as can be practicably determined and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil . . . under the property bears to the total recoverable oil . . . in the pool and, for such purpose, to use his just and equitable share of the reservoir energy.

NMSA 1978, § 70-2-33(H). In addition to its ordinary meaning, waste is defined to include “the locating, spacing, drilling, equipping, operating or producing, of any well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil . . . ultimately recovered from any pool.” NMSA 1978, § 70-2-3(A). The duty to protect correlative rights and prevent waste imposes upon the Division the onus “to require wells to be drilled, operated and produced in such manner as to prevent injury to neighboring leases or properties.” NMSA 1978, § 70-2-12(B).

C. Pooling in New Mexico

In New Mexico, due to difficulties with lack of pooling clauses in existing leases, and the inability to reach agreements with all oil and gas interest owners, pooling is authorized only in limited circumstances. Pooling is an exercise of the police power of the state that is statutorily limited by the express delegation of specific powers and authority to the OCD to pool the oil and gas interests within designated units. Pooling is permitted, as a last resort, if an oil gas operator is unable to reach an agreement with a party, whose interest is proposed to be pooled. Pooled interests are afforded extra protections as recognized private property rights.

As discussed above, pooling applications, allowed only as provided in the Oil and Gas Act, implicate the police power of the OCD, that is limited to specific circumstances where appropriate procedures have been followed, given the significant impact to private property interests. *See Manning v. Energy, Minerals*, 2006-NMSC-27, ¶ 10, 140 N.M. 528, 144 P.3d 87 (“The Takings Clause is found in the Fifth Amendment to the United States Constitution and prevents the government from taking private property, overtly or through regulation, without justly compensating the lawful owner.”) (citing U.S. CONST. amend. V (“[P]rivate property [shall not] be taken for public use, without just compensation.”); *Pennsylvania Coal Co. v.*

Mahon, 260 U.S. 393, 415, 43 S.Ct. 158, 67 L.Ed. 322 (1922) (“while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking”).

Pooling in New Mexico is governed by Section 70-2-17, by the Division’s regulations implementing the same, and by order to force pool any uncommitted interest owners. Section 70-2-17(C) of the Oil and Gas Act requires the Division, or the Commission, to ensure that all compulsory pooling orders “are just and reasonable,” and that a party who is force pooled has “the opportunity to recover or receive without unnecessary expense his just and fair share of the oil or gas.” NMSA 1978, § 70-2-17.

D. Pooling Notice Requirements

Notice is a fundamental right that may not be waived by division hearing examiner on a case by case basis. The Oil and Gas Act, in Section 70-2-17(C), requires notice to a party to be pooled, as follows: “C. ...All orders effecting such pooling shall be made after notice and hearing, and shall be upon such terms and conditions as are just and reasonable and will afford to the owner or owners of each tract or interest in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil or gas, or both.” Additionally, Section 70-2-23 requires notice, and the opportunity to be heard, prior to the issuance of any order.

Pooling without due process results in a regulatory taking that is prohibited by the Takings Clause of the Constitution that “ensure[s] the protection of private property from an overreaching government.” *Manning*, 2006-NMSC-27, ¶ 11 (recognizing, “For over a century, the Fifth Amendment has been made applicable to the states through the Fourteenth Amendment's guarantee of due process.”) (internal citations omitted). “In regard to the Takings Clause, the state must provide a reasonable, certain and adequate provision for obtaining

compensation, both when property is physically taken as well as when a regulation greatly reduces the economic viability of the property.” *Manning*, 2006-NMSC-27, ¶ 11 (internal citations and quotations omitted)). “[A]n agency’s action is arbitrary and capricious if it provides no rational connections between facts found and choices made, or entirely omits consideration of relevant factors or important aspects of the problem at hand.” *Atlixco Coalition v. Maggiore*, 1998-NMCA-134, 125 N.M. 786, 965 P.2d 370, 377 (citing *Motor Vehicle Mfrs.. Ass’n.*, 463 U.S. 29, 43) (stating that “one of the purposes of requiring a statement of reasons is to allow for meaningful judicial review...”). *See also Fasken v. Oil Conservation Comm’n*, 1975-NMSC-009, 87 N.M. 292, 532 P.2d 588, 590 (citing *Continental Oil Co. v. Oil Conservation Comm’n*, 1962-NMSC-062, 70 N.M. 310, 373 P.2d 809); *Gila Resources Information Project v. N.M. Water Control Com’n*, 2005-NMCA-139, 138 N.M. 625, 124 P.3d 1164, 1172; *Akel v. N.M. Human Servs. Dep’t*, 1987-NMCA-154, 106 N.M. 741, 749 P.2d 1120, 1122; *Viking Petroleum, Inc. v. Oil Conservation Comm’n*, 1983-NMSC-091, 100 N.M. 451, 672 P.2d 280, 282 (findings by expert administrative commission must disclose the reasoning on which its order is based).

Beall did not receive proper nor sufficient notice for Case No. 25145 nor Case No. 25146 prior to the hearing that began on January 28, 2025. The notice of hearing letter she received from Permian’s counsel dated January 24, 2025, was sent only 4 days before the hearing date, and Beall did not receive it until January 27, 2028, the day before the hearing date. Furthermore, the OCD did not post public notice of the cases 0until January 24, 2025, only four days before the scheduled hearing. As a result, Beall did not have sufficient time to review or prepare for the hearing on January 28, 2025, and is currently reviewing her interests and the status of her correlative rights and interests under Permian’s proposed development plan. Permian’s landman’s statement goes on to reflect that Permian would leave it to the Division’s discretion in perfecting notice upon

interest owners related to another depth severance, but not to Ms. Beall. See Permian's Exhibit C, Self-Affirmed Statement of Travis Macha, ¶ 8. The same courtesy should have been provided to Ms. Beall; however, it was not. Beall owns a severed mineral interest in the upper part of the Third Bone Spring, from the top of the Third Bone Spring, at approximately 9,140', to a depth of 9,290' in some portions and to a depth of 9,293' in other portions of the subject lands, all within the Third Bone Spring. *See Beall's Notice of Ownership Interest and Objection to Case Nos. 25145-25146* (filed Feb. 6, 2025) reflecting Beall's ownership in the Third Bone Spring, (1) Assignment of Operating Rights, filed in Book 71, Page 382, (dtd June 19, 1990); (2) Assignment of Operating Rights, Book 113, Page 701 (dtd. Jan. 20, 1992); (3) Assignment and Bill of Sale, (dtd Aug. 1, 1995), Book 225, Page 980, all in the Clerk's Office of Eddy County, New Mexico.

E. Permian's Cases Affecting Beall's Correlative Rights

Under Case No. 25145, Permian seeks an order approving a overlapping horizontal well spacing unit in a portion of the Bone Spring formation, from the top of the Third Bone Spring formation to the base of the Bone Spring formation, underlying the N/2 N/2 of Sections 14 and 15, and initially dedicate the unit to the proposed Slim Jim 14-15 Fed Com 131H well. This proposed spacing unit overlaps with V-F Petroleum's Case No. 25115.

Under Case No. 25146, Permian seeks to pool all uncommitted interests in a portion of the Bone Spring formation, from the top of the Third Bone Spring formation to the base of the Bone Spring formation, underlying the S/2 N/2 of Sections 14 and 15, and initially dedicate the unit to the proposed Slim Jim 14-15 Fed Com 132H well. This proposed spacing unit overlaps with V-F Petroleum's Case No. 25117.

Although Permian submitted Pooling Applications in the Subject Cases representing that it would be pooling from the top of the Third Bone Spring to its base, at the hearing itself Permian

changes its plan and contradicts its pooling applications by revealing its actual intent to pool only the lower part of the Third Bone Spring, an interval from approximately 9,397' to the base of the Third Bone Spring and is proposing to drill and produce only this lower interval. *See* Permian's Compulsory Pooling Checklists for Case Nos. 25145-25148 (filed Jan. 27, 2025); Permian's Exhibit C, Self-Affirmed Statement of Travis Macha, ¶ 7. Specifically, his affidavit states,

7. For the cases involving pooling the Third Bone Spring formation, Permian seeks to pool only a portion of the Bone Spring formation, from 9,397' where an ownership soeverance exists in the SE/4 SW/4 of Section 14 to the base of the Bone Spring formation, measured to the stratigraphic equivalent of the base of the Bone Spring formation, as seen at 8,913 feet measured depth beneath the surface, as shown in that certain Dual Lateralog, Micro Laterlog, Gamma Ray well log in the Tamano 15 Fed Com #2 (API # 30-015-033398), located in Section 15, Township 18 South, Range 31 East, Eddy County, New Mexico.

This material change from Permian's representation in its applications to the contradictory representations in its exhibits that reveal Permian's actual intent to pool only the lower part of the Third Bone Spring creates a false representation and fatal flaw in Permian's development plan and applications' that should disqualify Permian's development plan from the Division's approval.

Furthermore, at the January 28, 2025 Contested Hearing, the geologist for Permian stated that there were no geological barriers between the severed intervals in the Third Bone Spring. Permian's geologist, who testified at the February 27, 2025 Continued Contested Hearing, indicated that there is only about a hundred feet of the Third Bone Spring being excluded from the proposed pooling; there is no possible way to drill and frac a horizontal well in the upper portion of the Third Bone Spring that is remaining outside these proposed poolings. Permian's Landman testified at the continuation of the Contested Hearing on February 28 that Beall should be able to drill a well within the remaining portion of the Third Bone Spring. However, Permian's Geologist testified that there is only 100 feet of the Third Bone Spring above the

portion requested to be pooled in these cases. Thereby, essentially depriving Ms. Beall of her ability to develop that acreage, as it is likely, as Permian's expert witnesses in geology and engineering acknowledge that since there is no geological barrier between the severed intervals, Permian's proposed well in the lower part of the Third Bone Spring will produce the upper part of the Third Bone Spring; therefore, Permian's proposed well in the Third Bone Spring will produce Beall's interests, an unconstitutional taking without payment or compensation. If the Division approves Permian's plan, it will be using its police powers to instigate an unauthorized taking.

F. Allocation or Pooling the Entire Third Bone Spring Formation is Required to Protect Beall's Correlative Rights

As provided above, Permian's well in the lower Third Bone Spring appears to be producing from the upper interval of the Third Spring, impacting Beall's correlative rights. *See* NMSA 1978, § 70-2-17. Permian should be required to pool the entire Third Bone Spring and not be allowed to pool only a portion to the exclusion of interests above the depth severance including Beall in the Third Bone Spring. There is no geologic justification for pooling only a portion of the Third Bone Spring to the exclusion of a portion that cannot be developed once drained by development proposed herein, and for that reason, Beall requests the requested poolings in the Subject Cases be denied. Specifically, the Oil and Gas Act requires allocation of production to the owners of pooled units. NMSA 1978, § 70-2-12(B)(7). The Act requires:

All operations for the pooled oil or gas, or both, which are conducted on any portion of the unit shall be deemed for all purposes to have been conducted upon each tract within the unit by the owner or owners of such tract. For the purpose of determining the portions of production owned by the persons owning interests in the pooled oil or gas, or both, such **production shall be allocated to the respective tracts within the unit in the proportion that the number of surface acres included within each tract bears to the number of surface acres included in the entire unit. The portion of the production allocated to the owner or owners of each tract or interest included in a well spacing or**

proration unit formed by a pooling order shall, when produced, be considered as if produced from the separately owned tract or interest by a well drilled thereon.

NMSA 1978, § 70-2-17(C) (emphasis added). This means that the Division must allocate production. Without allocation or an accounting, the proposed poolings would violate correlative rights and are prohibited under the Oil and Gas Act (the “Act”). *See* NMSA 1978 § 70-2-33(H) (stating that correlative rights mean the opportunity afforded to the owner of each property in a pool to produce without waste the owner’s just and equitable share of the oil and gas in the pool).

As proposed by Permian’s land witness, drilling a well or wells above and below a depth severance is not a proper method for allocating production in a pool where there are no barriers between the severed depths of the pool. The only proper method of protecting correlative rights in a situation of open communication between the formations of the pool, as exists in the present cases, is through an allocation formula thus necessitating: (1) the submission of new pooling applications after the an appropriate allocation formula is created taking into account owners above the depth severance in the Third Bone Spring; and (2) providing notice of the allocation formula to the owners in the upper Third Bone Spring. Since the Third Bone Spring should be produced by one well or one set of wells pursuant to an allocation formula, the Division should have the opportunity to evaluate how the depth severance a hundred feet from the top of the Third Bone Spring impacts the proportions and quantities of working interest along with the other factors the Division uses to compare competing applications.

Without appropriate allocation, Beall’s interest will be adversely affected if the proposed pooling is approved. The Division is charged with the protection of correlative rights and Permian’s development plan seeks to impact Beall’s rights without acknowledging her interests within the Third Bone Spring formation. In its applications in Case No. 25145 and 25146, Permian does not provide an allocation formula yet proposes to drill the lower Third Bone Spring below

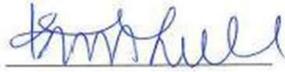
the severance which will produce both intervals above and below the severance. If it were not for the depth severance, Permian would be seeking to pool the entire Third Bone Spring formation, in a manner that appropriately pools the formation, consistent with geologic interpretation as a single source of production, rather than excluding any portion of the Third Bone Spring formation. When a depth severance creates non-uniform ownership within the Third Bone Spring, an accounting of the production from the proposed well must be maintained to protect correlative rights.

Pooling only a portion of the Third Bone Spring formation should not be permitted where there is no barrier to drainage and there has been no allocation formula proposed. If pooling is allowed, with a portion of the Third Bone Spring is being excluded that is unlikely to be drilled by another operator, and will likely be drained by Permian's development, allocation of production between these two units is appropriate. Due to the fact there is open communication within the Third Bone Spring, the only way to account for this difference of ownership is to have an allocation formula that allocates the interests in each interval so that correlative rights are protected. To ensure that every real property interest owner's correlative rights are protected the Division may create an Allocation Formula provided in Beall's Exhibits filed on February 29, 2025.

G. Conclusion

At the Hearings on January 28 and February 27, 2025, Beall appeared by and through counsel and presented evidence of her ownership in the Third Bone Spring and her requested allocation from the pooled and produced Third Bone Spring units in these cases. The proposed poolings would undoubtedly violate Beall's correlative rights as a working interest owner in the Third Bone Spring that is being excluded from pooling without proper allocation of her interests. For the foregoing reasons, the pooling applications in Case Nos. 25145 and 25146 should be denied.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Kaitlyn Luck", is positioned above a horizontal line.

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CERTIFICATE OF SERVICE

I certify that on March 21, 2025, the foregoing pleading was electronically filed by email with the New Mexico Oil Conservation Division Clerk and served on all parties of record through counsel, as follows:

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