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

APPLICATIONS OF PERMIAN RESOURCES OPERATING, LLC FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO. **CASE NOS. 25283, 25284**

PERMIAN RESOURCES OPERATING, LLC'S RESPONSE TO MRC'S POST-HEARING BRIEF

Permian Resources Operating, LLC ("PR") submits the following Response to MRC's Post-Hearing Brief as requested during the May 27, 2025 hearing.

INTRODUCTION

MRC argues that PR's applications should be denied on two grounds, neither of which has merit: (1) a 1964 Joint Operating Agreement ("JOA") precludes pooling unless the Division finds the modification is necessary to prevent waste; and (2) MRC controls the SE/4 of Section 8 under the JOA. MRC's argument fails because it misstates the applicable statute, relies on inapplicable Division precedent, and ignores that JOAs do not preclude pooling, particularly when the proposed horizontal spacing unit only partially overlaps a vertical JOA contract area. Further, MRC entirely fails to address the competing development plans, while PR has established that the Division's factors that apply to the evaluation of competing development plans weigh in PR's favor. For these reasons, PR's applications should be granted.

ARGUMENT

1. MRC's JOA does not defeat PR's applications.

MRC argues that PR cannot pool acreage within the JOA because MRC controls 100% of the working interest in the SE/4 of Section 8.[1] As discussed in PR's Closing Brief, the Division

[1] MRC's brief discusses the elements of novation, a legal term that describes the process by which the rights and obligations of a party to a contract are transferred to another. *See* MRC Post-Hearing Brief at 2. No party is arguing that novation applies here and MRC's discussion of the concept is irrelevant.

rejected this exact argument in Order No. R-14140. Division precedent has distinguished between vertical and horizontal well JOAs and held that parties to a vertical well JOA have not committed their interest to a proposed horizontal spacing unit that only partially overlaps a vertical JOA contract area. *See* Order No. R-14140. Further, MRC presented contradictory evidence that it intends to disregard its own JOA by developing lands outside of the JOA acreage, which renders its 100% JOA control argument invalid as it would no longer have 100% control under the JOA.

The Division Orders cited by MRC similarly fail to support its position. Order No. R-8013 found that "because of lack of evidence to the contrary, the JOA was a current binding operating agreement for the subject proration unit…obviating the need for" compulsory pooling. *Id*. at ¶ 12. Order No. R-9841 found that an agreement existed between the parties for the proposed spacing unit, so pooling was not necessary. *Id*. at 2. These orders are readily distinguishable because they involved vertical well development. Further, there is no agreement in place between MRC and PR for the Fiero spacing unit. MRC's JOA does not preclude PR from pooling the entirety of the S/2 of Sections 7 and 8.

2. PR's Fiero Development will prevent waste and protect correlative rights.

MRC claims that the Division must honor the JOA development plan unless PR proves it will result in waste, but that is not the applicable standard. MRC relies on a cherry-picked excerpt of Section 70-2-17(E) and on *Sims v. Mechem*, 1963-NMSC-103. Regarding Section 70-2-17(E), MRC omits critical language from the statute:

> Whenever it appears that the owners in any pool have agreed upon a plan for the spacing of wells, or upon a plan or method of distribution of any allowable fixed by the division for the pool, or upon any other plan for the development or operation of such pool, ***which plan, in the judgment of the division, has the effect of preventing waste as prohibited by this act*** and is fair to the royalty owners in such pool, then such plan shall be adopted by the division with respect to such pool; however, the division, upon hearing and after notice, may subsequently modify any such plan to the extent necessary to prevent waste as prohibited by this act.

(emphasis added). Thus, *MRC* bears the initial burden of proving its plan prevents waste. It has not done so, and as PR has demonstrated, MRC's hypothetical development causes waste.

Mechem also fails to support MRC's position. In that case, the court held "that any agreement between owners and leaseholders may be modified by the commission. But the statutory authority of the commission to pool property or modify existing agreements…must be predicated on the prevention of waste. *Id*. at ¶¶ 12-13. PR has established that its Fiero development plan will prevent waste, in addition to satisfying the other factors the Division considers when evaluating competing development plans. *See* PR Closing Brief at 3-5.

"Waste" includes operations that "tend to reduce the total quantity of crude petroleum oil…ultimately recovered from any pool." NMSA 1978, § 70-2-3(A). If PR is unable to produce its wells as proposed, its leases will terminate and it will be unable to develop the acreage, which would eliminate the total quantity of oil recovered from the pool underlying the S/2 of Sections 7 and 8, thus resulting in waste.

PR also established that MRC's hypothetical development plans would strand BLM acreage in the S/2 SE/4 & NE/4 SE/4 of Section 9. MRC argues the Division should ignore this fact because PR's development plan also does not include this acreage, but PR only plans to develop the S/2 of Sections 7 and 8. MRC's development plans include acreage in Section 9 offsetting the S/2 SE/4 & NE/4 SE/4 of Section 9, which would be stranded by its proposal. MRC admitted that a prudent operator would not propose a development plan that would result in waste by stranding federal lands.

PR has presented a real development plan that it is ready to implement, while MRC has only presented hypothetical development options that would strand acreage and are based on a superseded JOA. As a result, the Division should grant PR's compulsory pooling applications.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2025, I caused a true and correct copy of the foregoing Motion for Continuance to be served upon the following counsel of record:

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