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

APPLICATIONS OF MARATHON OIL PERMIAN LLC FOR COMPULSORY POOLING AND APPROVAL OF NON-STANDARD SPACING UNITS, LEA COUNTY, NEW MEXICO. **CASE NOS. 25541 – 25542**

APPLICATION OF TUMBLER OPERATING PARTNERS, LLC FOR APPROVAL OF NON-STANDARD UNIT AND FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO. **CASE NO. 25466**

APPLICATIONS OF TUMBLER OPERATING PARTNERS, LLC, FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO. **CASE NOS. 25462 – 25465**

MARATHON OIL PERMIAN LLC'S OBJECTIONS TO TUMBLER OPERATING PARTNERS, LLC'S TESTIMONY AND EXHIBITS

In accordance with the Pre-Hearing Order, Marathon Oil Permian LLC ("Marathon") submits the following objections to Tumbler Operating Partners, LLC's ("Tumbler") testimony and exhibits.

INTRODUCTION

In these cases, Marathon seeks to pool the Bone Spring and Wolfcamp formations underlying Sections 24, 25, and irregular Section 36, Township 26 South, Range 34 East, Lea County, New Mexico. Marathon is a wholly owned subsidiary of ConocoPhillips Company ("ConocoPhillips") and will operate the proposed spacing unit and wells included in these applications. Marathon's proposal fully develops two formations underlying three sections of land and is the best plan to prevent waste and protect correlative rights, including Marathon's ownership of 43.43% of the working interest in its proposed spacing units. Marathon also has support from additional working interest owners, bringing the total working interest support for Marathon's plan to 51.92%. Marathon has obtained permits for these wells, has surface infrastructure in this area,

and is prepared to proceed with its development plan. Marathon's well costs are also lower than Tumbler's, and Marathon's plan reduces surface and environmental waste.

Tumbler opposes Marathon's applications and has filed competing applications even though Tumbler only holds approximately 9% of the working interest in its proposed units and does not operate a single well in New Mexico. Tumbler has raised concerns regarding delay, but its proposed development plan would only exacerbate delay because it has not obtained permits for its proposed wells or even surveyed its well locations. Tumbler's well costs are higher than Marathon's, and Tumbler's development plan exacerbates surface and environmental waste. Tumbler's proposal would result in waste, would violate correlative rights, and should be rejected.

Likely recognizing the weakness of its position, Tumbler attempts to obfuscate the issues by introducing into evidence information that is wholly irrelevant and unhelpful to the trier of fact, including misstatements and unfounded speculation regarding layoffs and Wall Street. These portions of Tumbler's testimony and exhibits have no bearing on the pooling of Tumbler's interest or the competing development plans. This proposed evidence lacks factual support, is irrelevant, is unfairly prejudicial, will confuse the issues before the Division, and will result in a waste of time and the presentation of unreliable evidence. *See* 19.15.4.17 NMAC ("The rules of evidence applicable in a trial before a court without a jury shall not control, but division examiners and the commission may use such rules as guidance in conducting adjudicatory hearings."); Rule 11-403 (relevant evidence may be excluded if "its probative value is substantially outweighed by the danger of unfair prejudice, confusions of the issues…or by consideration of undue delay, waste of time or needless presentation of cumulative evidence.").

Further, much of the information is outside the scope of the expertise of Tumbler's witnesses. Rule 11–702 NMRA provides that expert testimony may only be admitted "[i]f scientific, technical or other specialized knowledge will assist the trier of fact to understand the

evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise." Rule 11–702 therefore predicates the admissibility of expert testimony on the satisfaction of three requirements: (1) that the expert be qualified; (2) that the testimony be of assistance to the trier of fact; and (3) that the expert's testimony be about scientific, technical, or other specialized knowledge with a reliable basis. *State v. Downey*, 2008-NMSC-061, ¶ 25; *State v. Alberico,* 1993-NMSC-047. As discussed below, Tumbler's land and engineering experts offer testimony outside the scope of their expertise that is not based on any scientific, technical, or specialized knowledge and is ultimately of no assistance to the trier of fact. Accordingly, it should be excluded.

Finally, Tumbler submitted amended exhibits at 5 pm on September 12, 2005, when the Prehearing Order required the parties to submit exhibits by 9 a.m. on September 10th. Tumbler failed to seek leave to submit amended exhibits and failed to provide any justification for its untimely filing. As a result, Tumbler's amended exhibits should be stricken.

ARGUMENT

1. Portions of Tumbler's land and engineering testimony should be excluded because it is irrelevant, speculative, and outside the scope of the witnesses' expertise.

    a. *Exhibit A - Nicholas Weeks Land Testimony*

Tumbler's Landman, Nicholas Weeks, offers speculative opinions regarding Marathon's potential future actions with respect to the Goliath spacing unit. For example, Mr. Weeks' testimony (Exhibit A) at paragraph 28 makes the speculative and unsupported claim that Marathon's working interest in the Goliath development is insufficient for Marathon to place the project on its drill schedule or prioritize the project within its investment strategy. *See* Tumbler Exhibits at p. 53. However, this claim is not supported by a single citation or factual reference. As a result, it amounts to nothing but unfounded speculation and should be excluded. *See, e.g.,*

Christopherson v. St. Vincent Hospital, 2016-NMCA-097, ¶ 53, 384 P.3d 1098 (expert opinions that are conjectural and not tied to the facts of the case are inadmissible); *see also Williamson v. Metro. Prop. & Cas. Co.*, No. 1:15-CV-958 JCH/LF, 2017 WL 4355975, at *6 (D.N.M. Sept. 28, 2017) (limiting expert testimony where plaintiff failed to demonstrate that her expert's opinions were based on reliable facts and methodology); *United States v. Hill*, No. 12-CR-50-JHP, 2012 U.S. Dist. LEXIS 191361 (N.D. Okla. Dec. 28, 2012) ("To be reliable, the testimony 'must be based on scientific knowledge, which implies a grounding in the methods and procedures of science based on actual knowledge, not subjective belief or unsupported speculation."); *Ram v. N.M. Dep't of Environment*, No. CIV 05-1083 JB/WPL, 2006 WL 4079623 at *9 (D.N.M. Dec. 15, 2006) ("A showing that the knowledge offered is more than speculative belief or unsupported speculation demonstrates evidentiary reliability.").

b. *Exhibit D – Engineering Testimony of Chris Villarreal*

Mr. Villarreal's testimony (Exhibit D) and corresponding exhibits include speculative, unsubstantiated hearsay and lack factual support. Indeed, Mr. Villarreal relies on emojis[1] and soundbites and appears to lack any regard for the fact-finding obligation of the Division or the issues at hand. For example, Paragraph 7 of Mr. Villarreal's testimony (Tumbler Exhibits at 218-224) sets out various reasons he believes Marathon/ConocoPhillips will never drill the Goliath wells. This testimony amounts to pure speculation, is misleading, and is not helpful to the trier of fact or admissible. *See, e.g., Parkhill v. Alderman-Cave Milling & Grain Co. of N.M.*, 2010-NMCA-110, ¶ 12 ("the district court is required to act as a 'gatekeeper' to ensure that an expert's testimony rests on both a reliable foundation and is relevant to the task at hand so that speculative and unfounded opinions do not reach the jury").

[1] *See* Tumbler Exhibit D-7 (p. 231 of 324).

Mr. Villarreal also claims that Marathon's "43% working interest in Goliath falls well below the threshold of projects they typically pursue following pooling," but proffers no list of the projects he is referencing or any other data to support this proposition. *See* Tumbler's Exhibits at p. 216. He also provides a litany of quotations that he attributes to Marathon that lack citations, are taken out of context, and are so incomplete as to be deliberately misleading. For example, Mr. Villareal claims Marathon stated the Goliath wells "won't be developed" but omits "in 2025" from the quotation. *See* Tumbler's Exhibits at p. 218 and 229. This testimony is unhelpful to the trier of fact and is precisely the type of expert testimony that should be excluded. *See, e.g. Florence v. Valencia Country Detention Center*, No. 05-425 WJ/RHS, 2006 WL 8444074, at *4 (D.N.M. Jul. 24, 2006) (excluding expert opinion testimony where the expert's conclusions were not supported by underlying factual evidence and were, therefore, speculative and inadmissible).

Mr. Villarreal also seeks to offer unsupported speculation on how ConocoPhillips' planned workforce reorganization will impact the Goliath well development. *See* Tumbler Exhibits at p. 223. Aside from the fact that this opinion is in no way relevant to this proceeding and will not help the factfinder evaluate the Division's competing development plan factors, Mr. Villarreal provides no factual basis for his opinions, which are well outside the realm of his engineering expertise. Therefore, paragraph 7 of Mr. Villarreal's testimony should be stricken in its entirety. *State v. Torres*, 1999-NMSC-010, ¶ 37, 127 N.M. 20, 976 P.2d 20.

i. Exhibit D-3

Exhibit D-3 is titled "COP's record suggests MRO's low ownership percentage won't meet COP's development threshold under orders." Mr. Villarreal shows what he believes to be ConocoPhillips/Marathon's "Zone of Apathy" for drilling wells based on overall percentage of ownership in the spacing unit. As discussed above, in the absence of references or citations to data, these unsubstantiated claims should be excluded. Exhibit D-3 also contains numerous hearsay

statements that lack any factual support, presumably meant to support his claim that ConocoPhillips/Marathon does not actually want to develop the Goliath wells. Exhibit D-3 does not help the trier of fact and is irrelevant to the analysis of Tumbler and Marathon's competing development plans. Exhibit D-3 should be excluded.

ii. Exhibit D-4

Exhibit D-4 discusses Tumbler's critiques of ConocoPhillips' executives and what Tumbler believes to be ConocoPhillips' corporate priorities and philosophies. A petroleum engineer, who is not employed by ConocoPhillips, lacks factual knowledge regarding these matters and is unqualified to opine on them. In addition to being unreliable hearsay and outside of the realm of Mr. Villarreal's expertise, Exhibit D-4 borders on slander and fails to assist the Division with the task at hand – evaluating Tumbler and Marathon's competing development plans. Therefore, Exhibit D-4 should be excluded. *See Parkhill*, 2010-NMCA-110, ¶ 36 (holding that expert testimony is only admissible under Rule 11-702 if it will assist the trier of fact and "is sufficiently tied to the facts of the case that it will aid…in resolving a factual dispute").

iii. Exhibit D-5

Mr. Villarreal's Exhibit D-5 is a compilation of e-mail excerpts between Tumbler and Marathon, presented with misleading, false subject lines. The purported goal of this exhibit is to support Mr. Villarreal's claim that ConocoPhillips/Marathon has "repeatedly deferred, declined, and avoided engagement" with Tumbler because it does not actually want to drill the Goliath wells. *See* Tumbler Exhibits at p. 233. Tumbler conspicuously fails to provide the actual e-mail messages, presumably because the full communications do not support Mr. Villarreal's position. These incomplete, out of context, misleading hearsay excerpts should be excluded.

iv. Exhibit D-9

Tumbler's Exhibit D-9 is entitled "COP's consultant driven corporate reorg, centralization pivot, and headcount reduction may challenge future ops." *See* Tumbler Exhibits at p. 237. Again, this is an example of Mr. Villarreal speculating on subjects that lack a factual basis and are outside the scope of his expertise. Mr. Villarreal appears to be requesting to be qualified as an expert engineer before the Division. *See* Exhibit D at paragraph 2, Exhibit D-1. Despite being an engineer, Mr. Villarreal purports to offer expert opinion on matters concerning ConocoPhillips/Marathon's corporate strategy, capital allocations, layoffs, and Wall Street. *See* Tumbler Exhibit at 237. Beyond being completely unrelated to the competing development plans that are currently before the Division, Mr. Villarreal lacks the expertise to opine on these issues, and his musings are irrelevant to the pooling of Tumbler's interest or the competing development plans. Courts regularly exclude proffered expert testimony if the subject of the testimony is outside the witness's area of expertise, and the Division should do the same here. *See, e.g., Bank of New York v. Romero,* 2011-NMCA-110, ¶¶ 22-24, 266 P.3d 638 (district court properly excluded testimony of loan officer when he was unqualified to opine regarding the legality of a loan); *see also Endicott v. Choctaw Cnty. City of Hugo Hosp. Auth*, No. 21-CV-319-RAW, 2025 WL 1506180, at *3 (E.D. Okla. May 27, 2025) (granting motion to exclude conclusion made by expert that is outside the purview of his expertise).

2. Tumbler's C-102s should be stricken.

Tumbler's Exhibit A-1 includes the C-102s for its proposed David wells. Marathon objects to the admission of Tumbler's C-102s as exhibits in this proceeding because they are not signed and stamped by a certified surveyor as required by the OCD.

3. Tumbler's untimely amended exhibits should be excluded.

Tumbler submitted amended exhibits at 5 pm on September 12, 2005, when the Prehearing Order required the parties to submit exhibits by 9 a.m. on September 10th. Tumbler failed to seek leave to submit amended exhibits and failed to provide any justification for its untimely filing. As a result, Tumbler's amended exhibits should be excluded.

CONCLUSION

For the foregoing reasons, Marathon respectfully requests that the Commission exclude the portions of Tumbler's land and engineering exhibits identified above, exclude Tumbler's C-102s (Exhibit A-1), exclude Tumbler's belated amended exhibits, and grant any such further relief as deemed appropriate.

Respectfully submitted,

/s/ Dana S. Hardy

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading was sent to the following counsel of record on this 14th day of September, 2025.

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