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 CLOSING STATEMENT

In accordance with the Hearing Examiner's request at the September 16-17, and October 22, 2025 hearing in the above-captioned matter, Marathon Oil Permian LLC ("Marathon") submits the following closing statement.

I. INTRODUCTION

Marathon, a wholly-owned subsidiary of ConocoPhillips ("COPC"), 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, and will operate the proposed spacing units and wells included in these applications.

In evaluating competing development plans, the Division considers the following factors:

1. An evaluation of the mineral interest ownership held by each party at the time the application is heard.
2. A comparison of geologic evidence presented by each party as it relates to the proposed well location and the potential of each proposed prospect to efficiently recover the oil and gas reserves underlying the property.

3. A comparison of the risk associated with the parties' respective proposal for the exploration and development of the property.
4. A review of the negotiations between the competing parties prior to the applications to force pool to determine if there was a "good faith" effort.
5. A comparison of the ability of each party to prudently operate the property and, thereby, prevent waste.
6. A comparison of the differences in well cost estimates (AFEs) and other operational costs presented by each party for their respective proposals.
7. A comparison of the ability of the applicants to timely locate well sites and to operate on the surface (the "surface factor").

See, e.g., Order No. R-20223. The evidence adduced at hearing overwhelmingly favors Marathon on each of these factors. Marathon controls approximately 50% of the working interest in the acreage and will ensure the acreage is prudently developed, while Tumbler controls less than 10% and has comparatively little to lose from engaging in speculative development. And, while Tumbler's development plan includes more wells, the totality of evidence indicates Tumbler's plan is speculative and fraught with risk and instead supports Marathon as the more prudent operator to develop these targets. Marathon's development plan is thoughtful, less risky, and ensures best use of capital with data available at this time. Marathon's extensive experience, existing infrastructure, lower well costs, and alignment with the vast majority of working interest owners make it better positioned to prevent waste, protect correlative rights, and serve the public interest.

As demonstrated below, all of the factors considered by the Division weigh in favor of Marathon. Accordingly, Marathon's applications should be approved and Tumbler's applications should be denied. Marathon will ensure the acreage will be developed in the most cost-effective and expeditious manner, while preventing waste and protecting correlative rights.

II. ARGUMENT

A. Working Interest Control: Marathon should be awarded operatorship of the acreage at issue because it controls approximately 50% of the working interest while Tumbler controls less than 10%.

Commission and Division decisions are clear that working interest control is the most important factor in evaluating competing development plans. *See KCS Medallion Resources, Inc*., Commission Order R-10731-B, (Feb. 28, 1997), ¶ 24 ("In the absence of compelling factors such as geologic and prospect differences, ability to operate prudently, or any reason why one operator would economically recover more oil or gas by virtue of being awarded operations than the other, 'working interest control'…should be the controlling factor in awarding operations."). Tumbler concedes this factor weighs in favor of Marathon. 09/16/25 Tr. 173:6-12. And rightly so, as there is a massive disparity in working interests, with Marathon owning 43.4% and Tumbler owning less than 9%. 09/16/25 Tr. 171:10-18; Marathon Ex. A-8; Tumbler Exs. A-2 to A-3. There is no factual dispute about these percentages. 09/16/25 Tr. 171:10 – 173:12.

Additionally, Marathon has provided a letter of support from Walsh and Watts, which holds about five percent interest in the units. Marathon Ex. A-7. The Division considers letters of support in evaluating working interest ("WI") control, bringing Marathon's WI control to over 48%. *See Longfellow Energy, LP v. Spur Energy Partners*, Order R-21834 (Sep. 8, 2021), ¶¶ 24-25 (defining "working interest" to include the party's initial working interest ownership percentage and "credits" additional acreage held by other parties that reflect other party support or prior relationship with the applicant).

Working interest control is of primary importance because the party with more working interest will bear more of the costs, which ensures it has more skin in the game and will engage in cost-effective, prudent development rather than speculation. 09/16/25 Tr. 173:13 – 21; 09/17/25

Tr. 433:12-14, 497:6 – 498:3. Simply stated, it's easier to take risks when you're spending someone else's money. Tumbler may be willing to roll the dice on its 9%, but the Commission should not force 90% of the other working interest owners – *who do not support Tumbler's plan* – to roll it with them.

Based on the undisputed disparity in WI control alone, Marathon's applications should be granted. The other factors considered by the division cannot outweigh this massive disparity. As the owner of approximately 44% of the WI, Marathon has far more interest at stake than Tumbler, which ensures prudent and cost-effective development. 09/17/25 Tr. 497:6 – 498:3.

But, as demonstrated below, the other factors weigh in Marathon's favor as well.

B. Prudent Operator: Marathon/COPC is a prudent operator and has a strong track record of drilling and operating wells in Lea County, while Tumbler has not drilled or operated a single well in New Mexico.

Marathon/COPC is clearly a prudent operator. Marathon and COPC have drilled 920 horizontal wells in Lea County, New Mexico alone and operate over 9,000 wells in NM. Marathon Ex. A; *see Ascent Energy, LLC*, Order R-14847 (Aug. 31, 2018), ¶ 29(c) (finding that while both operators are prudent operators, the evidence indicated that "Centennial has greater experience in drilling and completing horizontal wells in this area…and has already developed a completion plan for the wells it now proposes."). Of those wells, approximately 430 have been greater than two miles in length. Marathon Ex. A. Tumbler has not previously drilled, and does not operate, a single well in New Mexico (or Texas for that matter). 09/17/25 Tr. 423:2-9, 432:8-10. Tumbler is an investment company. 09/17/25 Tr. 422-423; Tumbler Ex. D. Marathon is an oil and gas operating company, not a hedge fund. Tumbler's lack of operational experience and infrastructure in New Mexico makes its ability to prudently operate and prevent waste uncertain and speculative. This factor also strongly favors Marathon.

C. Surface Factor: Marathon/COPC is prepared to operate on the surface and its plan will result in less surface, environmental, and economic waste.

Marathon has permits for its wells and has development in this area with oil, gas, and water takeaway already in place. 09/16/25 Tr. 282:24 – 283:6; 09/17/25 Tr. 482:3-18; Marathon Ex. A. Tumbler does not. 09/16/25 Tr. 280:24 – 281:1; *see, e.g., Longfellow Energy, LP v. Spur Energy Partners*, Order R-21834 (Sep. 8, 2021), ¶ 31 (holding the surface factor favors Longfellow because Longfellow "has surface facilities, including water storage and recycling facilities within the immediate area. Longfellow also has a proven record of avoiding flaring during operation."); *Matador Prod. Comp. v. Flat Creek Res., LLC*, Order R-21800 (Aug. 6, 2021), ¶ 19 ("Matador has extensive surface facilities…including pads and gathering lines" and Matador testified "it would not need to create significant additional disturbance or additional flaring….Flat Creek does not have similar existing facilities.").

Additionally, Marathon has surveyed its well locations and had its on-site with BLM. 09/16/25 Tr. 179:4-7; 09/17/25 Tr. 508:14 – 509:1. Tumbler has not. 09/17/25 Tr. 508:24-509:3. BLM permitting is currently around $12,000 per well with a six-month lag time. 09/16/25 Tr. 207:14-22; 09/17/25 Tr. 508:17-20. Marathon's infrastructure and in-place permitting will allow Marathon to timely drill and produce its wells. By contrast, Tumbler has no development in this area (or anywhere else) and has not begun the permitting process, which will further limit its ability to timely drill and produce its wells, since federal permits take on average six to nine months to obtain.

Lastly, Marathon proposes two well pads while Tumbler proposes four. Tr. 431:19-24; Marathon Rebuttal Ex. A-12. At hearing, Tumbler agreed that Marathon's development involves a 45% less surface impact than Tumber's. 09/16/25 Tr. 281:23 – 282:2. Accordingly, Marathon's

development involves significantly less surface impacts than Tumbler's development, which reduces surface, environmental, and economic waste. Marathon Exhibit A-12.

D. Costs: Marathon/COPC's well costs are significantly less than Tumbler's.

Marathon's AFEs are significantly less than Tumbler's due to Marathon's reduced surface facilities and lower costs due to economies of scale. 09/16/25 Tr. 284:7-14; 09/17/25 Tr. 500:25 – 501:3. Simply stated, an operator the size of COPC has leverage to negotiate favorable prices.

While Tumbler complains that Marathon's AFEs are too low, Marathon has far more experience preparing AFEs in Lea County than Tumbler. 09/17/25 Tr. 431:14-18; 432:15-23; 500:17 – 501:11. And, if the actual costs end up being higher than the AFEs, a pooled party could object. 09/16/25 Tr. 285:7-22; 09/17/25 Tr. 501:12-17. Thus, there is every incentive to be accurate. Tumbler's attempt to establish that Marathon omitted costs from its AFEs has no merit. *See* Marathon Supplemental Ex. A-14 & B-6. Accordingly, this factor also weighs in favor of Marathon.

E. Risk: Tumbler's development is far riskier than Marathon's.

Tumbler's proposed development is riskier than Marathon's. Marathon has federal APDs and surveys while Tumbler does not. 09/17/25 Tr. 502:6-8. Tumbler proposes more wells, but its production analysis is severely flawed because it relies on a limited number of wells within a 15-mile radius and has not adjusted its estimates to account for risk due to variation in geology over the 15-mile span. 09/17/25 Tr. 425:20-24; 427:6-10; 590:13-20; 606:6-18. Additionally, Tumbler proposes to develop risky intervals within the Avalon and Third Bone Spring without current supporting production data. 09/17/25 Tr. 600:3-9. Tumbler also lacks experience in the area and, unlike Marathon, does not have existing development in this area with oil, gas, and water takeaway in place. 09/17/25 Tr. 423:2-9, 432:8-10; 09/16/25 Tr. 282:24 – 283:6; 09/17/25 Tr. 482:3-18; Marathon Ex. A. On the other hand, Marathon is a far more experienced operator in Southeastern

New Mexico. 09/17/25 Tr. 423:2-9, 432:8-10; Marathon Ex. A. Marathon's development plan, including well spacing, is based on its extensive experience in the area and considers factors like H2S in the Avalon and water cut. 09/17/25 Tr. 591:4-6. Timing is also on Marathon's side.

While Tumbler facially makes claims of delay, it acknowledged at hearing that COPC acquired Marathon in November 2024 and conceded that COPC acted as a prudent operator in thoroughly evaluating Marathon's development plans before proceeding further. 09/16/25 Tr. 176:11-16. Marathon's own witness reaffirmed that any claimed delay was explained by COPC's acquisition and its necessary re-evaluation of existing development plans as a prudent operator. 09/17/25 Tr. 505:6 – 506:18; 600:23-602:5. Proceeding with the Goliath development is a priority for Marathon and it has confirmed that it will drill the Goliath wells within the timeframes provided under the pooling orders. 09/17/25 Tr. 507:20-22; 564:15 – 565:1; Marathon Ex. A-9. Unlike Tumbler, Marathon has permits for all 17 of its proposed wells and is ready to proceed upon issuance of a pooling order. 09/16/25 Tr. 177:4-12. By contrast, Tumbler does not have permits and would have to commence the approximately six-month federal APD process after the Division issues an order. 09/16/25 Tr. 177:16 – 178:4; 09/17/25 Tr. 501:6-24. For these reasons, this factor weighs in favor of Marathon.

F. Geology: Marathon proposes to develop proven intervals and appropriately accounts for geological risk, while Tumbler proposes to develop unproven intervals in this area and ignores geological risk.

Marathon's proposed units and spacing comports with its extensive experience and established practice in this area. When parties disagree regarding geological matters and well location, "the most important consideration in awarding operations to competing interest owners is geologic evidence as it relates to well location and recovery of oil and gas and associated risk." Order No. R-10731-B. Here, this factor weighs in favor of Marathon.

Following Marathon's acquisition by COPC, Goliath was viewed as a new project—the re-evaluation of this project included a geological overview of the different formations in geologically similar areas, which was then used to evaluate risk. 09/17/25 Tr. 600:14 – 601:18; 603:10-17. Tumbler seeks to develop intervals with high variability and uncertainty, including the upper Avalon and Third Bone Spring. Tumbler's analysis is severely flawed because it relied on production from wells within a 15-mile radius while conceding that geology can vary greatly over that distance. 09/17/25 Tr. 425:20-24; 427:6-10; 590:13-20. Marathon does not consider the upper Avalon, Third Bone Spring Carbonate, or Third Bone Spring Sand proven reservoirs at this time. Should they become proven, Marathon can subsequently develop them. 09/17/25 Tr. 591:7-23; 592:7 – 593:17; 593:18 – 594:24. In Marathon's analysis, parent-child effects would not impact these targets due to separation. 09/17/25 Tr. 593:9-12. Marathon appropriately incorporated geological risk into its evaluation of target zones, and based on the high variability and uncertainty it identified, views the chance of economic success from wells targeting these zones as low at this time. 09/17/25 Tr. 594:25 – 595:21; 597:6-25; 600:3-9.

More specifically, Marathon's geologist, Tyler Patrick, testified that in the Avalon, the geology and wells are highly variable within about a five-mile radius. 10/22/25 Tr. 1:44:00 – 1:44:35; Marathon Supp Exh. B-5. Additionally, in the Third Bone Spring Carbonate and Third Bone Spring Sand, there is insufficient production from wells targeting the specific stratigraphic target interval within a five-mile radius leading to a high degree of uncertainty (i.e. high risk). 10/22/25 Tr. 1:43:15 – 1:43:59; Marathon Supp Exh. B-5. By contrast, Tumbler did not do any similar geological risk analysis and simply relied on *all wells within the formation up to 15 miles away*. 09/17/25 TR. 423:16 – 429:4. However, the parties all agreed geology varies over that distance. 09/17/25 Tr. 423:10-15; 10/22/25 Tr. 1:42:45 – 1:42:49. Here, Marathon's appropriate

consideration of geological risk compared to Tumbler's lack of meaningful geological analysis pushes this factor in favor of Marathon.

The evidence adduced at hearing demonstrates that Marathon's development plan best protects correlative rights and appropriately accounts for geological risk.

G. Good Faith Negotiations: Marathon/COPC negotiated with Tumbler in good faith.

The Division's requirement on good faith negotiation requires an operator to send a well proposal 30 days prior to pooling and provide a JOA on request to give a WI owner the opportunity to join. *Cimarex Energy Co.*, Order No. 13165 (Sept. 15, 2009), ¶ 5(a). The Division does not inject itself into private negotiations or review individual exchanges to evaluate good faith negotiation. There is good reason for this, as that type of evaluation would require the Division to evaluate dollar amounts and acreage trades to determine if they are reasonable, greatly expanding the scope of its review, invading confidential New Mexico Rule of Evidence 11-408 settlement discussions, and expanding the length and complexity of hearings. In addition, there is no requirement, in the Oil and Gas Act, Division regulations, or Division decisions, that an operator must propose an acreage trade to meet the good faith negotiation requirement. An operator may not wish to trade out of any acreage and cannot be required to do so. Tumbler's argument misunderstands the role of the Division and the threshold requirements of good faith negotiation, which involve good, timely communication to give the working interest party time to decide whether to join the operation.

Under the Division's long-standing definition of good faith negotiations, there is no doubt that Marathon met that standard with respect to Tumbler. Marathon sent well proposals more than 30 days prior to pooling, and Marathon and Tumbler engaged in discussions for months. 09/17/25 Tr. 447:8 – 448:3; Marathon Ex. A-11. Marathon met with Tumbler in person, spoke with Tumbler,

and exchanged pages upon pages of emails. 09/17/25 Tr. 447:8 – 448:3; Tumbler's Revised Supplement Ex. D-16. Indeed, by Tumbler's own admission, the parties had approximately 70 back and forth communications since February 2024. 09/16/25 Tr. 200:21-25; 09/17/25 Tr. 447:14-18.

To the extent the Division decides to engage in an analysis of back-and-forth negotiations (which it should not), Tumbler's claims that Marathon did not respond to a trade proposal lack merit. Tumbler sent an email expressing interest in *three large non-COPC operated oil fields*. 09/17/25 Tr. 448:13 – 449:1. Tumbler did not provide legal descriptions for acreage it wanted or legal descriptions for acreage it wanted to trade. 09/17/25 Tr. 450:22 – 453:11; 512:1 – 513:19; Marathon Cross Ex. 1. COPC asked Tumbler to propose a specific trade if it wished to do so. Marathon Ex. A-11. Tumbler never did. *Id.* As Mr. Miller testified, a typical trade proposal would include specific acreage. 09/17/25 Tr. 512:19-21. Tumbler has its own land department but wanted COPC to do the work for it and now complains that COPC did not do so. 09/17/25 Tr. 453:1-24; *see also* Marathon Cross Ex. 1. As Mr. Miller informed Tumbler, COPC highly values its non-operated positions. *Id.* Contrary to Tumbler's argument, good faith negotiation has never meant that a party must comply with the other party's demands.

Tumbler's claim that COPC did not negotiate in good faith has no merit. If any party did not negotiate in good faith it is Tumbler, as demonstrated by the fact that it has been unable to obtain sign-on from 90% of the WI owners.

III. CONCLUSION

For the foregoing reasons, and as demonstrated by the evidence submitted at hearing, all the factors considered by the Division in evaluating competing development plans weigh in favor of Marathon. Indeed, based on the undisputed massive disparity in working interest control alone, Marathon's applications should be granted. By contrast, 90% of the WIs do not support Tumbler's

plan, which is risky and uncertain. Moreover, Tumbler lacks permits, infrastructure, experience, and operational history within New Mexico, and its wells are more costly. It has also failed to mitigate the identified geologic risks. Allowing Tumbler to gamble with 90% of the WI's funds will not prevent waste or protect correlative rights.

Marathon is ready, willing, and able to proceed with its development and should be permitted to do so. Its development plan best prevents waste and protects correlative rights. As demonstrated at hearing and above, Tumbler's plans do neither and should be rejected.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading was sent to the following counsel of record on this 5th day of November, 2025.

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