

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

**APPLICATION OF POWDERHORN OPERATING, LLC**  
**FOR COMPULSORY POOLING,**  
**EDDY COUNTY, NEW MEXICO.**

**CASE NO. 26206**  
**(De Novo from Case No. 25610)**  
**ORDER NO. R-24349**

**POWDERHORN OPERATING, LLC'S RESPONSE IN OPPOSITION TO MARATHON**  
**OIL PERMIAN LLC'S MOTION TO STAY ORDER NO. R-24349**

Powderhorn Operating, LLC (“Powderhorn” or “PH”), by and through its undersigned counsel, respectfully submits this Response in Opposition to the Motion to Stay Order No. R-24349 (the “Motion”) filed by Marathon Oil Permian LLC (“Marathon” or “MRO”), a wholly owned subsidiary of ConocoPhillips Company (“COP”).

The Motion should be denied. After a two-day contested hearing, the Division weighed seven factors and found that six favored Powderhorn’s development plan, with the seventh being neutral.<sup>1</sup> Marathon, the lone dissenting owner among the many working-interest parties in the 959.6-acre Super Hornet Unit, now asks the Commission to suspend that order while it pursues de novo review. A stay, however, is an extraordinary remedy. The burden rests entirely on the movant, and the four-factor test is conjunctive; a movant’s failure on any single factor is fatal to the motion. *Tenneco*, 1986-NMCA-033, ¶ 11. Marathon fails on all four. It also fails the threshold requirement of the controlling regulatory rule, which obligates a movant to attach a proposed stay order; Marathon attached none. And because Commission review is a hearing de novo—a new hearing on the merits, not an appeal—the likelihood-of-success factor asks whether Marathon would prevail at that new hearing. It will not: Marathon dismissed its only competing application and

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<sup>1</sup>The Division, via Order No. R-24349, found that the Geologic Evidence, Risk and Development, Negotiations, Comparison of Cost, Working Interest, and the Surface factors all favor Powderhorn, while finding the Prudent Operatorship neutral.

seeks no affirmative relief, leaving no rival development plan for the Commission to adopt, and it offers no new evidence to disturb the six findings that favor Powderhorn. Indeed, Marathon's position inverts the test: the only party facing concrete, non-recoverable harm in this case is Powderhorn, whose term assignment expires March 1, 2027, whose expected rig is anticipated to arrive Q3 2026, and who has already expended millions of dollars acquiring its assets and now stands exposed to substantial third party midstream commitments – commitments which build-out is now underway that a stay would strand.

Marathon has no live compulsory pooling application for its acreage and no Division- or Commission-enforceable competing development plan. It has stated an intention to develop an approximate one-third portion of the Super Hornet Unit under a 1976 Joint Operating Agreement, yet has taken no step to do so other than obtain APDs in the days before the contested hearing in Case No. 25610.

Marathon theorizes that its appointment as operator under a Joint Operating Agreement executed in 1976—(a) that was not designed for horizontal development, (b) under which a single vertical well was drilled more than fifty years ago, and (c) by an operator several corporate transactions removed from Marathon—entitles it to veto a modern, unitized, Division-approved development supported by every other interest owner. The Division considered and rejected that theory as recently as last year, in the Fiero order. *See* Order No. R-23869 (July 3, 2025). The objector's de novo challenge to that order was dismissed, and Fiero stands as the Division's most recent word on the question. *See* Order No. R-24200 (Feb. 2, 2026). If that theory were now accepted, every dormant legacy agreement in the portfolio of the largest operators in this State would become a perpetual trump card against efficient development. That is not the protection of correlative rights. It is its defeat.

### **BACKGROUND**

1. On May 1, 2026, following a contested hearing held March 10 and 11, 2026, the Division issued Order No. R-24349 (the "Order") in Case No. 25610, creating a 959.6-acre standard horizontal spacing unit (the "Super Hornet Unit") in the Wolfcamp formation, Eddy County, New Mexico, pooling the uncommitted interests therein, and designating Powderhorn as

operator. The Order directs Powderhorn to commence drilling within one year, i.e., by May 1, 2027.

2. The Division evaluated the seven factors applied to competing development plans and found that six weighed in Powderhorn's favor: geologic evidence, risk and development, good-faith negotiations, comparative cost (Powderhorn's cost per completed foot is approximately one-third lower), working-interest support, and the surface factor, while the seventh, prudent operatorship, was neutral. *See* Order, Findings of Fact ("FOF") ¶¶ 13–33.
3. Marathon objected below on the basis of a Joint Operating Agreement dated January 1, 1976 (the "1976 JOA") covering only the 320.32-acre north-half equivalent of irregular Section 2 (the "Campana" area), approximately 33% of the Super Hornet Unit. Only one well has ever been drilled under the 1976 JOA: the State K 4401 #001, a Morrow gas well spud 52 years ago in 1974 by Jake L. Hamon, an operator several predecessors removed from Marathon, which did not assume operatorship until 2017, some 43 years after it was drilled. *See* Order, FOF ¶ 8. No Wolfcamp development of any kind has occurred under the 1976 JOA in the ensuing five decades, and Marathon, which has owned its interest for nine (9) years, took no step toward developing this acreage until after Powderhorn filed its application. *See* Order, FOF ¶¶ 17–18.
4. Marathon's litigation conduct below is also relevant to the present Motion. Marathon filed its own competing pooling application (Case No. 25973) on February 3, 2026, then voluntarily dismissed it on February 25, 2026. *See* Order, FOF ¶ 6. It proposed 1.5-mile wells in December 2025, rescinded them on February 20, 2026, the same day it terminated negotiations with Powderhorn, and substituted a 1-mile plan on March 2, 2026, eight days before the hearing. Its four APDs were submitted February 23, 2026, and approved two days after filing, approximately two weeks before the hearing, and as the Division found carry no obligation to drill and "may have only been for the purpose of the March 10, 2026 contested hearing." *See* Order, FOF ¶¶ 6, 17; PH Exhibit A-14.
5. On May 27, 2026, Marathon filed an Application for Hearing De Novo, and on June 3, 2026 filed the present Motion, seeking to stay the Order in its entirety. Powderhorn opposes the request to suspend the Order while Commission review proceeds.

6. The filing of a de novo application does not itself stay the Order; Order No. R-24349 remains in full force and effect unless and until stayed by the Commission or superseded by a final Commission order. Notwithstanding that, on June 10, 2026, Marathon responded to Powderhorn's well proposals issued pursuant to the Order by declaring that it "does not believe it is in a position at this time to make an election," purporting to reserve all rights. *See* Exhibit A (self-affirmed statement of Travis Macha, VP Land, Powderhorn) ¶ 10. Marathon has not contacted Powderhorn to discuss resolution at any time since the hearing. Marathon thus seeks from the Commission a stay it has, in practice, already attempted to grant itself. The Commission's recent practice underscores that neither a de novo application nor an accompanying stay request suspends a Division order by operation of filing. *See* Order No. R-24186, OCC Case Nos. 25694–25696 (Jan. 15, 2026).
7. Since the Order issued, Powderhorn has reached agreement with, or acquired the interests of, every working-interest party in the unit other than Marathon—transactions involving seven counterparties—such that Powderhorn owns or controls one hundred percent of the working interest in the Super Hornet Unit outside of Marathon's 16.8 percent. *See* PH Ex. A (Macha) ¶ 9.

### **LEGAL STANDARD**

Two standards govern this Motion, and Marathon satisfies neither. The controlling standard is regulatory: under 19.15.4.23(B) NMAC, a Division order may be stayed only where the stay is "necessary to prevent waste, protect correlative rights, protect public health or the environment or prevent gross negative consequences to an affected party." A stay here would accomplish the opposite of each criterion—idling a Division-approved unit, inviting waste by a) delaying development, b) risking the stranding of the NE/4 of Section 3, and c) impairing the correlative rights of the owners the Order protects, who hold every interest in the unit other than Marathon's.

The Motion also fails a threshold procedural requirement of the same rule. Subsection 19.15.4.23(B) directs that a party requesting a stay "shall attach a proposed stay order to the motion." Marathon attached none. That omission is an additional and independent ground for denial.

The four-factor test supplies the standard for staying an administrative order, and Marathon fails under it as well. A movant must demonstrate: (1) a likelihood of success on the merits; (2) that it will suffer irreparable harm absent a stay; (3) that the non-moving party will not be harmed by a stay; and (4) that no harm will ensue to the public interest. *Tenneco Oil Co. v. N.M. Water Quality Control Comm'n*, 1986-NMCA-033, ¶ 10, 105 N.M. 708, 736 P.2d 986, as adopted by the Commission in Order No. R-14300-A, ¶ 5 (“*Tenneco Test*”). These four elements of the *Tenneco Test* are conjunctive; the movant’s failure on any one is dispositive, and a stay pending de novo review is the exception, not the rule. *Tenneco*, 1986-NMCA-033, ¶¶ 7, 11–12.

Because Commission review is a hearing de novo and not an appeal, NMSA 1978, § 70-2-13; 19.15.4.23(A) NMAC, the first factor turns on whether Marathon is likely to obtain relief at a new hearing on the merits, not on whether it can disturb the Division’s findings. Marathon cannot make that showing. It dismissed its only competing application, Case No. 25973, and seeks no affirmative relief, so even on a fresh record there is no competing development plan for the Commission to adopt.

## ARGUMENT

### I. MARATHON HAS NOT SHOWN THAT IT WILL SUCCEED AT A HEARING DE NOVO AND IS NOT LIKELY TO SUCCEED ON THE MERITS.

Marathon’s entire merits case is that the Division applied the “wrong legal standard” by assessing working-interest support across the full 959.6-acre unit rather than confining the inquiry to the overlapping contested acreage. The argument is contrary to recent Division precedent and fails at every level.

#### *A. Working interest was one of seven factors—six of which favored Powderhorn—and Marathon offers nothing new to win them at a de novo hearing.*

As a threshold matter, the seven factors are considerations the Division and Commission “may consider,” not mandatory elements that bind the analysis. See Order Nos. R-22204, ¶ 12; R-21416-A, ¶ 9. Marathon’s contention that the Division applied the “wrong legal standard” recasts a discretionary, multi-factor inquiry as a fixed legal test it is not.

Marathon's premise that working interest must be measured only in the overlapping acreage is also wrong as a matter of law. The Division applied that factor here exactly as it did in Order No. R-23869 (the Fiero case), where it measured ownership across the proposed spacing unit and granted pooling over a legacy-JOA objection by a party that, like Marathon, filed no competing application and claimed control of the overlapping acreage. There, the objector held approximately 7.2% of the proposed unit and owned nothing in three-quarters of it, while the applicant held the majority 56.2% interest—and other interest owners had signed superseding JOAs with the applicant. *See* Order No. R-23869, FOF ¶¶ 7, 27–29. The same dynamic is present here: every working-interest owner other than Marathon has joined Powderhorn's superseding Super Hornet JOA or otherwise committed to its development.

A partially overlapping JOA does not preclude pooling in the first place. Absent an agreement on how production is to be divided between the lands within and without the contract area, the JOA is not an agreement to pool and does not bar compulsory pooling under NMSA 1978, § 70-2-17(C). *See* Order No. R-14140, ¶¶ 14, 17.

Marathon has not shown it will, or even that it is likely to, succeed at a de novo hearing. Working interest was one factor of seven, and six favored Powderhorn. To prevail, Marathon would have to win before the Commission on geology, risk and incentive to develop, good-faith negotiations, cost efficiency, and the surface factor—findings the Motion does not meaningfully engage. The Division also rejected the evidentiary centerpiece of Marathon's case, finding the "Potato Baby" parent-child pilot data "skewed and invalid" because the test unit was compromised by a 2012-vintage well. *See* Order, FOF ¶¶ 14–15. The Motion offers no new evidence on any of this. Marathon must show it is likely to prevail against every one of these findings before the Commission, not merely that it disagrees.

***B. Marathon's own precedent cuts against it.***

Marathon relies on Order No. R-21416-A, where the Commission denied Marathon's own attempt to pool BTA Oil Producers' JOA acreage. But the facts that decided that case are either absent here or cut against Marathon.

There, BTA owned 82 percent of the working interest in its JOA acreage. Marathon owns far less—by its own account just 55.5 percent of its claimed Campana area (the balance of which controlled by Powderhorn), well short of the dominance that drove R-21416-A. And even that figure is overstated: Marathon’s claim to “control 100%” of the Campana area rests on counting interests committed to the 1976 JOA that Marathon does not own, including interests owned by or committed by superseding JOA to Powderhorn itself.<sup>2</sup> The hearing record established that Powderhorn holds or has commitments covering 100 percent of the acreage outside of Marathon’s ownership in the north-half acreage subject to that agreement. *See* PH Exhibit A, ¶ 9. Marathon cannot manufacture “100% control” by appropriating its adversary’s acres to its own column.

The decisive facts in R-21416-A run the other way here. The Commission denied Marathon there because its plan would have stranded the objector’s acreage, because the objector was the ready and actively drilling operator while Marathon had suspended drilling and released its rigs, and because the objector’s interest in the contested acreage exceeded Marathon’s interest in its own proposed units. *See* Order No. R-21416-A, ¶¶ 15, 46, 49–54, 75. Here the roles are reversed: Powderhorn’s plan develops the full unit and strands nothing, Powderhorn is the party ready to develop, and Powderhorn’s aligned support dwarfs Marathon’s 16.8 percent of the unit.

Under Orders R-22204 and R-22205, the partial-overlap inquiry favors the plan that avoids stranding acreage and best lets each party develop its own acreage—both of which favor Powderhorn, because Marathon’s one-mile plan would strand the NE/4 of Section 3, in which Marathon owns nothing, while Powderhorn’s plan develops the full unit including the S/2 of section 2 that would face (or cause) parent-child effects if developed independently from the N/2 of section 2. The overlapping-acreage orders Marathon invokes do not change the analysis.<sup>3</sup>

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<sup>2</sup>Superseding horizontal joint operating agreements are a routine industry instrument for adapting legacy vertical-well JOAs to modern horizontal development, and the ConocoPhillips corporate family executes them as a matter of course; Marathon’s own landman confirmed as much at the hearing. *See* Tr. 3/11/26, 448:7–16. The Division has already declined to credit the contrary position in Order No. R-23869, granting pooling over a legacy-JOA holder’s claim of 100% overlap control in part because other owners had executed superseding JOAs with the applicant. *See* Order No. R-23869, FOF ¶¶ 27–28.

<sup>3</sup> To the extent Marathon reads R-22204, R-22205, R-21834, R-21800, and R-21826 to make working-interest percentage the test, those orders made control decisive only where a party dominated its own proposed unit (96.09 percent in one, at least 62.5 percent in another), and several were two-sided contests between live competing applications. Marathon, which dismissed its only application and holds 16.8

***C. A half-century-dormant, thrice-inherited JOA is not a development plan, and it cannot defeat compulsory pooling.***

The Division has already settled that legacy operating agreements do not immunize acreage from compulsory pooling where pooling is necessary to prevent waste and protect correlative rights. *See* NMOCD Order Nos. R-14140, R-23869. The 1976 JOA produced exactly one vertical well, fifty-two years ago, drilled by an operator from whom Marathon is removed by multiple corporate successions; Marathon did not become operator under it until 2017, and in the nine years since it conducted no Wolfcamp development until Powderhorn appeared.

Marathon's conduct below confirms that the 1976 JOA functions as a litigation shield, not a development vehicle. As the Division found, its no-obligation APDs may have been obtained only for purposes of the hearing, and its one-mile plan contradicts its own public strategy of two-mile-plus laterals. *See* Order, FOF ¶¶ 6, 17; PH Exhibits A-13, A-14. Even at the hearing, Marathon's development amounted to no more than a stated intention, with no rig, no drill-schedule slot, and no allocated drilling capital. *See* Tr. 3/11/26, 415:5-8, 445:11-18. The Division saw this for what it was. The Commission will too.

**II. THE RULE MARATHON SEEKS WOULD CONVERT EVERY DORMANT LEGACY JOA IN THIS STATE INTO A PERPETUAL VETO OVER EFFICIENT DEVELOPMENT: THE TRUE THREAT TO CORRELATIVE RIGHTS.**

The stakes of Marathon's theory extend far beyond Sections 2 and 3. By its own sworn hearing testimony, the COP corporate family is the most extensive operator in New Mexico, operating together approximately 2,400 wells. *See* MRO Exhibit A, ¶ 20. COP publicly reports holding approximately 782,000 net unconventional acres in the Delaware Basin, a position assembled through serial acquisitions of Concho Resources, Shell, and Marathon Oil itself, each carrying innumerable legacy contracts of the same vintage and character as the 1976 JOA. *See* <https://www.conocophillips.com/operations/lower48/> (last visited June 19, 2026).

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percent of the unit, approaches neither condition. *See* Order Nos. R-22204, ¶ 22; R-22205, ¶¶ 22, 24-25; R-21834, ¶ 26; R-21800, ¶¶ 20-22; R-21826, ¶¶ 19, 21.

On Marathon's theory, any one of those inherited JOA instruments—however dormant, however antiquated, however small the covered tract—would entitle COP to dictate the geometry of development across whatever modern, capital-efficient unit it happens to touch, and to do so without ever drilling a well. A 320-acre vertical-well agreement from 1976 would control the development of a 960-acre horizontal unit in 2026. Multiplied across COP's portfolio, the rule Marathon proposes would hand the State's largest operator a standing veto over the logical and efficient development of the Northern Delaware Basin by any other party.

The Commission need not adopt any categorical rule in either direction to deny this Motion, and it should not. A legacy operating agreement is neither a per se bar to pooling nor a per se license to defer development; each case turns on its facts. On the facts here, Marathon loses, because it has shown only a dormant fifty-year-old instrument. That is the narrow and sufficient ground for denial. The broader danger simply illustrates why Marathon's rule is wrong.

That outcome is the inverse of what the Oil and Gas Act commands. Correlative rights belong to every owner in a common source of supply, not exclusively to the largest. NMSA 1978, § 70-2-17 exists precisely so that a single owner cannot, by withholding consent, strand its neighbors' reserves or force inefficient, duplicative wells. Indeed, prior to the hearing Marathon sent proposals under the 1976 JOA carrying an obligation to spud within 60 days, and it neither spudded nor performed any work—demonstrating it is not interested in abiding by the very agreement it now wields. The Commission should decline Marathon's invitation to suspend a valid order in service of that theory.

### **III. MARATHON WILL NOT SUFFER IRREPARABLE HARM ABSENT A STAY.**

*First*, reservoir and economic effects are exactly what the Order's pooling mechanics protect against. Marathon may elect to participate or be carried subject to the risk charge; either way, its just and equitable share is secured by NMSA 1978, § 70-2-17 and the Order's election, cost-allocation, accounting, and audit provisions. Order ¶¶ 56–67. Harm remediable through money and a statutory accounting framework is not irreparable. And Marathon's parent-child degradation theory—the only asserted physical harm—was rejected on the evidence. Order, FOF ¶¶ 14–15.

**Second**, the asserted “loss of operational control” is a commercial preference, not a protected right. Compulsory pooling by definition designates one operator over the objection of others; if displacement of a would-be operator were irreparable harm, every pooling order would be presumptively stayed pending appeal. That is not the law.

**Third**, the 1976 JOA is not “destroyed.” Marathon retains its ownership, election rights, revenue share, and contractual remedies; it simply does not get to operate a unit in which it holds a one-sixth minority interest. Superseding horizontal JOAs are an industry standard, and Marathon’s own landman confirmed at hearing that ConocoPhillips itself executes them. *See* Tr. 3/11/26, 448:7–16. Marathon has had the option of executing a superseding JOA here and declined it. A self-inflicted commercial consequence caused by its own business decisions and negotiation strategies is not a harm the Commission can credit.

#### **IV. A STAY WOULD INFLICT CONCRETE, NON-RECOVERABLE HARM ON POWDERHORN AND THE SUPPORTING OWNERS.**

The balance of harms is not close. Marathon’s asserted injuries are economic and fully protected by the Order’s accounting machinery; Powderhorn’s are concrete, already accruing, and incapable of recovery if a stay later proves unwarranted. That asymmetry—one party fully made whole, the other with no avenue of recovery—decides the second and third *Tenneco* factors and supplies the “gross negative consequences to an affected party” that, under 19.15.4.23(B) NMAC, counsel against a stay.

**The rig commitment.** Powderhorn has multiple rig options ready to secure for September 2026, consistent with the anticipated spud date presented at hearing. *See* PH Exhibit A (Macha) ¶ 6; PH Exhibit A-2. For an independent operator of Powderhorn’s size, a contracted rig slot is a hard commitment, not a fungible convenience available on demand as it might be to a company of COP’s scale. The sole reason one of the three options has not been executed is the request for stay. No small Operator can commercially function under uncertainty Marathon proposes to inflict. An indefinite stay forfeits the slot and unwinds the crew scheduling, water, takeaway, and surface arrangements built around it, losses that cannot be recovered after the fact. *See* PH Exhibit A (Macha) ¶ 7.

**Committed third-party midstream obligations.** In reliance on the Order, Powderhorn has noticed its midstream providers, who have commenced progress to build-out of the gathering and related infrastructure required to bring the unit online. Those agreements impose firm performance obligations. If a stay prevents Powderhorn from timely spudding and performing, Powderhorn faces deficiency and related exposure of approximately \$2.75 million—triggered even if Powderhorn drills only a portion of the unit or only some wells—on top of the millions already expended acquiring its position and conducting development work to date.

None of these amounts is recoverable: there is no bond, no damages remedy against Marathon, and no statutory cost-recovery mechanism that would make Powderhorn whole for losses caused by a stay. Economic harm that cannot be recovered is, in this posture, irreparable, and it is precisely the “gross negative consequence” the regulatory standard addresses. *See* PH Exhibit A (Macha) ¶ 8. Marathon, by contrast, has held its position for nine years without drilling and has taken no step toward the Campana wells since the hearing, including declining even to make the elections the Order requires. The pendency of its stay request has itself injected uncertainty into the operational commitments—including rig scheduling—Powderhorn must finalize to perform under the Order and its midstream agreements; a formal stay would make timely performance impossible and trigger the exposure above. An intention the proponent has not acted on is not a harm the equities can weigh against Powderhorn’s concrete, accruing losses. *See* PH Exhibit A (Macha) ¶¶ 10–11.

Powderhorn’s term assignment, which the Division already credited as evidence of Powderhorn’s risk and incentive to develop, expires by its own terms on March 1, 2027. *See* PH Exhibit A-12; Order, FOF ¶ 16. Powderhorn does not rest its harm on that private instrument; it notes the deadline because the Division has already credited it as evidence of risk and incentive to develop.

Nor can Marathon answer that Powderhorn should simply drill the S/2, where every owner is committed. *See* PH Exhibit A (Macha) ¶ 9. The Division approved a single 959.6-acre unit precisely to avoid the piecemeal, parent-child degradation it found had compromised Marathon’s own pilot data. *See* Order, FOF ¶¶ 14–15. Developing only the S/2 would strand the N/2 and the NE/4 of Section 3, the very waste the Order prevents.

**The extension mechanism is no answer.** Marathon argues any delay is curable through the Order's extension provision. Order ¶ 53. But an extension is automatic only absent protest; a protest forces a hearing, and Marathon, which has opposed Powderhorn at every turn and declines even to make well elections, can be expected to protest. More fundamentally, extending the Division's drilling deadline does nothing to relieve Powderhorn of its firm third-party midstream obligations or to recover its sunk costs. Marathon's proposed cure does not reach the principal harm.

**Marathon's own authority confirms the result.** Marathon cites Commission Order No. R-23089-B as exemplary of stays granted "under similar circumstances without pending lease deadlines." Motion at 2 (emphasis added). The qualifier decides this case. Here there are pending, non-recoverable third-party commitments and time-sensitive development obligations—the antithesis of the no-deadline posture Marathon's own authority describes. By the very distinction Marathon draws, a stay is inappropriate.

**Harm to every other owner.** A stay would also suspend development for the owners of the overwhelming balance of the unit's interest, being now every party other than Marathon (inclusive of royalty interest owners), and could leave the NE/4 of Section 3 stranded in the interim, to the detriment of its owners and the State Land Office. Marathon's framing of the equities as a two-party dispute ignores everyone else the Order protects.

#### **V. THE PUBLIC INTEREST WEIGHS DECISIVELY AGAINST A STAY.**

The twin statutory purposes—preventing waste and protecting the correlative rights of all owners—are served by allowing the Division-approved plan to proceed on schedule. The public interest is not served by suspending a reasoned, evidence-based order at the request of a single holdout so that acreage may sit idle, committed midstream build-out may be stranded, and the NE/4 of Section 3 may remain undeveloped, while the holdout's preferred outcome—no development by anyone but itself, on a timetable it has never once met in five decades—is preserved by default. Nor is the integrity of the Division's process advanced by rewarding Marathon's refusal to make the elections the Order requires while its appeal pend— a unilateral

self-stay the rules nowhere permit. The Oil and Gas Act is best served by denying the stay and resolving the merits on the record.

**CONCLUSION**

Marathon has not carried its burden on any of the four stay factors, and it has not satisfied the controlling regulatory standard or even its threshold requirement to attach a proposed stay order. Powderhorn respectfully requests that the Commission **DENY** Marathon's Motion to Stay Order No. R-24349 in its entirety.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 22, 2026, I served a copy of the foregoing document to the following counsel of record via Electronic Mail:

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**SELF-AFFIRMED STATEMENT OF TRAVIS MACHA IN SUPPORT OF**  
**POWDERHORN'S RESPONSE IN OPPOSITION TO MOTION TO STAY**

I, Travis Macha, being duly sworn on oath, state the following:

1. I am over the age of 18, and I have personal knowledge of the matters stated herein.
2. I am employed as the Vice President of Land (Landman) for Powderhorn Energy Partners, and its subsidiaries, including but not limited to Powderhorn Operating, LLC and Powderhorn Assets, LLC (collectively "Powderhorn" or "PH"). My work includes the Permian Basin and Eddy County, and I am familiar with the subject matter, the lands involved, and the proceedings in Case No. 25610 and this de novo proceeding, Case No. 26206.
3. I testified as an expert petroleum landman before the Oil Conservation Division (the "Division") in the contested hearing in Case No. 25610 held March 10 and 11, 2026. My credentials were made a matter of record and I was qualified as an expert by the Division. I submitted a written Self-Affirmed Statement dated March 3, 2026 in that proceeding, and this statement supplements and updates that testimony with facts that have developed since the hearing and the issuance of Order No. R-24349.
4. I make this statement in support of Powderhorn's Response in Opposition to the Motion to Stay Order No. R-24349 filed by Marathon Oil Permian LLC ("Marathon" or "MRO"), now a wholly owned subsidiary of ConocoPhillips Company (referred to together as

15

Powderhorn Reply Brief to MRO Motion to Stay, Case No. 26206

“COP”). Except where I state that a matter is based on company business records or information provided to me, the facts set out below are within my personal knowledge.

5. Order No. R-24349, issued May 1, 2026, designated Powderhorn as operator of the 959.6-acre Super Hornet Unit in the Wolfcamp formation, Purple Sage; Wolfcamp (Gas) Pool (Code 98220), Eddy County, New Mexico, pooled the uncommitted interests, and directed Powderhorn to commence drilling within one year. Powderhorn’s development plan is to drill four (4) approximately 1.5-mile Wolfcamp laterals as initial wells, with subsequent infill, developing the full unit.
6. **Rig commitment.** Powderhorn has three (3) options available for imminent execution for a drilling rig anticipated to arrive in September 2026, consistent with the anticipated spud date presented at the hearing. For an independent operator of Powderhorn’s size, a contracted rig slot is a firm, scheduled commitment and is not a fungible resource available on demand, as it might be for an operator of COP’s scale. The sole reason one of the three options has not been executed is uncertainty created from MRO’s motion to stay.
7. If an indefinite stay forces forfeiture of a Q3 2026 rig slot, Powderhorn would lose not only that slot but also the crew scheduling, water, takeaway, and surface arrangements built around it. These are real, out-of-pocket losses that cannot be recovered after the fact.
8. **Midstream commitments.** In reliance on Order No. R-24349, Powderhorn has entered into and noticed third-party midstream commitments to support development of the unit, and progress towards full build-out of the associated infrastructure has begun. If a stay prevents Powderhorn from timely commencing and performing the operations the Order authorizes, these commitments expose Powderhorn to material deficiency and related charges equating to a total of approximately \$2.75 million dollars. Those amounts would not be recoverable from any party in this proceeding, and no later order could restore them.
9. **Post-order consolidation of working interest.** Since Order No. R-24349 issued, Powderhorn has continued to consolidate support in the Super Hornet Unit. Powderhorn has now reached agreement with, or acquired the interests of, every working-interest party in the unit other than Marathon, in transactions ultimately involving seven counterparties.

As a result, Powderhorn owns or controls one hundred percent (100%) of the working interest in the Super Hornet Unit other than Marathon's interest. Transactions since the hearing include the closing of three (3) trades with Avant on April 17<sup>th</sup>, Permian Resources on May 1<sup>st</sup>, and Kaiser Francis on June 5<sup>th</sup>. Powderhorn has acquired 100% of these owners' working interest via these transactions. However, in part, included in these transactions was the reservation of overriding royalty interest which was value consideration of these owners to see timely development of the Super Hornet Unit therefore all royalty owners remain at risk.

10. **Marathon's post-order conduct.** After Order No. R-24349 issued, Powderhorn issued well proposals to Marathon pursuant to the Order. By letter dated June 10, 2026, Marathon declined to make the elections the Order requires, stating that it "does not believe it is in a position at this time to make an election" and purporting to reserve all rights and granting itself the authority to do so. Marathon has not contacted Powderhorn to discuss resolution at any time since the hearing. At the hearing, Marathon represented that it was ready to develop the north half of Section 2 and was only waiting to slot the wells into its program. Since the March 2026 hearing, Marathon has taken no step to advance that development of which I am aware.
11. **Balance of harms.** The harms a stay would cause fall on Powderhorn and the other owners in the unit, not on Marathon. In reliance on the Order, Powderhorn has committed to non-recoverable, third-party midstream obligations, and an indefinite stay would strand those commitments and the development built around them. Marathon, by contrast, has held its interest in this acreage for approximately nine years and has drilled nothing under the 1976 Joint Operating Agreement on which it relies, the sole well under that agreement having been drilled more than fifty years ago. A stay would impose concrete, non-recoverable harm on Powderhorn and on every other owner in the unit, while sparing Marathon nothing it is presently doing.
12. The exhibits referenced in Powderhorn's Response that were prepared by me or under my supervision, or that were compiled from company business records, are true and accurate to the best of my knowledge.

13. I understand this Self-Affirmed Statement will be used as written testimony in the subject case. I affirm that my testimony above is true and correct and is made under penalty of perjury under the laws of the State of New Mexico. My testimony is made as of the date next to my signature below.



\_\_\_\_\_  
Travis Macha

6/22/2026  
Date

Self-Affirmed Statement of Petroleum Landman, Travis Macha (Case No. 26206)