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

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION DIVISION FOR THE PURPOSE OF CONSIDERING:

CASE NOS. 20865 & 20866

APPLICATIONS OF MARATHON OIL PERMIAN LLC FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO

MARATHON OIL PERMIAN LLC'S MEMORANDUM OF POINTS AND AUTHORITIES, PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. INTRODUCTION

Marathon Oil Permian LLC ("Marathon") respectfully submits this post-hearing submission, pursuant to the Hearing Officer's order at the November 14-15 hearing (the "Hearing"). Part II contains Marathon's Memorandum of Points and Authorities, which demonstrate that the Oil Conservation Division ("OCD" or "Division") is authorized to issue Marathon a compulsory pooling order in these two cases, notwithstanding BTA Oil Producers. LLC's ("BTA") Joint Operating Agreement ("JOA") covering only a portion of the acreage Marathon seeks to dedicate to its units. Part III contains Marathon's proposed Findings of Fact ("FOF"), together with citations to the evidentiary support for each proposed finding. Part IV contains Marathon's proposed Conclusions of Law ("COL"), together with cross-references to the relevant FOFs and/or citations to any evidentiary underpinnings for each conclusion.[1]

At the outset, it is important to be clear about what is **not** at issue in these cases. BTA does not challenge Marathon's development plan, Marathon's ability to timely locate the wells sites and

[1] Consistent with the Hearing Examiner's Order, the Memorandum of Points and Authorities portion of this submission is less than 15 pages. The body of this submission is 22 pages, but it includes the Memorandum of Points and Authorities *and* Marathon's Proposed Findings of Facts and Conclusions of Law.

operate on the surface, Marathon's expertise, or the amount of Marathon's ownership. Rather, BTA's sole assertion is the JOA bars OCD from approving pooling orders for spacing units. BTA's reliance on the JOA is contrary to law and facts. In these two cases, Marathon seeks to create two spacing units covering the N/2 of Section 12, Township 23 South, Range 28 East, and the N/2 of Section 7, Township 23 South, Range 29 East, Eddy County, New Mexico (the "Valkyrie N/2 Units), and seeks to pool uncommitted working interest owners in those units. In case number 20865, Marathon is proposing a Bone Spring unit, which will be dedicated to the Valkyrie 12 SB Federal Com 13 H well. The Bone Spring unit will cover the S/2 N/2 of Section 12, Township 23 South, Range 28 East, and the S/2 N/2 of Section 7, Township 23 South, Range 29 East, and will be approximately 320 acres. In case number 20866, Marathon is proposing a Wolfcamp unit, which will be dedicated to 6 wells—3 wells will target the Upper Wolfcamp formation and 3 wells will target the Lower Wolfcamp formation.[2] The Wolfcamp spacing unit will cover the N/2 of Section 12, Township 23 South, Range 28 East, and the N/2 of Section 7, Township 23 South, Range 29 East, and will be approximately 640 acres.

Case numbers 20865 and 20866 are integral components of Marathon's overall plan to develop Sections 7 and 12. Marathon submitted applications for three companion cases, for the S/2 of those sections, which were uncontested.[3] Viewed as a whole, Marathon's spacing units will cover the entire 1280 acres of Sections 7 and 12, and will develop the Bone Spring, Upper Wolfcamp, and Lower Wolfcamp formations.

Marathon's expert witnesses testified at the Hearing and submitted evidence and exhibits. The expert testimony and evidence establishes that a compulsory pooling order is appropriate in

[2] The six wells are: Valkyrie 12 WXY Federal Com 1H, Valkyrie 12 WA Federal Com 3H, Valkyrie 12 WXY Federal Com 5H, Valkyrie 12 WD Federal Com 2H, Valkyrie 12 WD Federal Com 4H, Valkyrie 12 WD Federal Com 6H wells.

[3] Case Numbers 20864, 20867, and 20869 (8 wells).

these two cases, to pool uncommitted working interest owners into the spacing units and designating Marathon as the operator of those units. BTA did not refute Marathon's expert testimony. Rather, BTA appears to take the position that the existence of the JOA divests the Division of its "paramount" duty and authority to prevent waste under the Oil and Gas Act, NMSA 1978, § 70-2-1, *et seq.*; *see also Cont'l Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, ¶ 11, 70 N.M. 310, 373 P.2d 809. BTA is incorrect. For the reasons that follow, Marathon requests that the Division grants its applications and adopt its p Findings of Fact and Conclusions of Law.

II. MARATHON'S MEMORANDUM OF POINTS AND AUTHORITIES

As discussed at the Hearing, this is not a conflict between competing proposals. Rather, the only proposals before the Division in these two cases are Marathon's.[4] BTA, however, asserts that the Division should not consider Marathon's pooling applications because BTA has a JOA that covers some, but not all, of the acreage that Marathon seeks to dedicate to its Valkyrie N/2 Units. BTA's assertion is not supported by either OCD precedent or the facts. Division precedent makes clear that the fact that the JOA covers some of the acreage Marathon seeks to dedicate to its units does not prohibit the Division from granting Marathon's pooling orders. *See* Order R-14140. Additionally, BTA's JOA does not divest OCD of its statutorily mandated duty and authority to issue pooling orders to prevent waste and protect correlative rights. As Marathon established, Marathon's development plan furthers the Oil and Gas Act's purposes of preventing waste and protecting correlative rights, while BTA's limited plans under its JOA do not. Compulsory pooling is appropriate here and Marathon is entitled to operate the Valkyrie N/2 Units.

[4] Novo Oil & Gas Northern Delaware, LLC ("Novo") submitted applications to develop the N/2 of Sections 8 and 9, Township 23 South, Range 29 East, Eddy County. *See* Case Numbers 20916 and 20917. BTA opposes those cases as well, again based on BTA's JOA. Marathon supports Novo's development plan in these two cases because those plans will efficiently develop the acreage at issue.

A. Background

Marathon acquired its interest in Section 12 in April 2019, Trans. Vol. II, p. 47, lines 1-4, and began working toward developing Section 12 along with Section 7. Marathon intends to fully develop Sections 12 and 7, and has proposed to do so in five companion cases. Marathon is proposing five spacing units, which, together, cover 1280 acres. In its five cases, Marathon is proposing a total of 15 wells, targeting the Bone Spring, the Upper Wolfcamp, and the Lower Wolfcamp. Trans. Vol. I, p. 16, lines 16-19. Marathon intends to target the Upper Wolfcamp wells first, as those wells have the most prospectively and are the least gassy. Trans. Vol. II, pp. 40-42, lines 19-4. Marathon is proposing 2-mile laterals. Trans. Vol. II, p. 36, lines 1-7. Marathon has third party contracts in place for oil, gas, and water takeaway. Trans. Vol. I, pp. 42-43, lines 13-1.

On July 12, 2019, only four months after acquiring its interests in Section 12, Marathon sent proposal letters. Marathon Hearing Exh. 10, pp. 25-28. The proposal letters include all 15 wells, but also allow for separate election into each well. *Id.* The proposal letters also identify the proposed surface hole location, bottom hole location, TVD, the non-consent penalty, and the amounts Marathon will seek for drilling and producing. *Id.* Marathon included "Authorizations for Expenditures" with its proposal letters. Marathon Hearing Exh. 11. Marathon testified that the estimated costs for drilling, equipping, and completing the wells are reasonable, which BTA did not refute. Trans. Vol. I, p. 41, lines 6-14. Marathon made good faith efforts to negotiate with BTA, including offering BTA a trade, but BTA rejected that offer and did not propose a counter offer. *See* Trans Vol. 1, p. 38, lines 8-23; Trans Vol. II, pp. 65-66.

Marathon also received letters of support for its proposal. Chevron U.S.A., Inc. ("Chevron"), the mineral leaseholder in the N/12 of Section 12, supports Marathon being designated as operator of the Valkyrie N/2 Units and supports Marathon's planned development.

Chevron also authorized Marathon to represent Chevron's interests in these cases. *See* Marathon Hearing Exh. 2. Occidental Petroleum LTD ("OXY"), the leaseholder in the N/2 of Section 7 (which is the acreage subject to the BTA JOA), also provided *Marathon* a letter of support, supporting the designation of Marathon as the operator of the Valkyrie N/2 Units, supporting Marathon's development proposal, and authorizing Marathon the right to represent OXY's interests in these two cases. *See* Marathon Hearing Exh. 3-A. Marathon is in discussions with Chevron and OXY to acquire their interests in the N/2 of Sections 12 and 7 respectively. With those interests, Marathon controls a majority of the ownership interests in the proposed unit: 57.46% of the S/2 N/2 with respect to the Bone Spring formation and 60.59% of the N/2 with respect to the Wolfcamp formation. *See* Marathon Hearing Exh. 8, pp. 21and 23. Novo also provided a letter of support for Marathon, in support of Marathon's development plan. *See* Marathon Hearing Exh. 3; Trans. Vol. I, p. 20, lines 12-23.

Mr. Moore, Marathon's reservoir engineer, testified that Marathon has had "extensive experience" with drilling and completing wells in this area of Eddy County. *See* Trans. Vol. II, p. 16-21. Based on that experience, Marathon determined that a well density of six wells per section for Upper and Lower Wolfcamp formation is appropriate, and four wells per section in the Second Bone Spring is appropriate. *Id.*

The JOA upon which BTA relies was executed in January 1, 1987. BTA Hearing Exh. 2. It covers only the N/2 of Section 7 and the NW/4 of Section 8. Despite having acquired this acreage in November of 2018, Trans. Vol. II, p. 68, lines 8-9, BTA has not proposed wells for the Bone Spring or Upper Wolfcamp, but has only proposed four wells,[5] and only in the lower Wolfcamp.

[5] At the hearing, BTA's witnesses could not confirm whether BTA had, in fact, proposed four wells, or only three, given typographical errors in the letter BTA sent to OXY.

Any other wells in any other formations are "to be determined." Trans. Vol. II, p. 69, line 7, 25. BTA could not provide any proposals to the Division as examples of its plans for the Bone Spring or Upper Wolfcamp, Trans. Vol. II, p. 69, lines 8-10, nor could it provide even a generalized time-frame for development of those two formations, Trans. Vol. II, p. 97, lines 5-14. It was, in fact, BTA's affirmative choice not to formally propose wells in either the Bone Spring or Upper Wolfcamp formations. Trans. Vol. II, pp. 108-109, lines 14-6. As a result, Marathon's proposals in the Bone Spring and Wolfcamp formations are not simply first in time, they are the only proposed development plans for those two formations in Sections 12 and Section 7.

BTA is proposing only 1.5-mile laterals, because the JOA covers the 1.5 acreage. Trans. Vol. II, p. 71, lines 19-20. BTA witnesses testified that BLM has put a hold on its approval of BTA's Development Plan. Trans. Vol. II, p. 94, lines 2-5. BTA acknowledges that the Lower Wolfcamp is gassier, but the BTA witness had to "punt" on the status of contract negotiations for gas takeaway. Trans. Vol. II, p. 96, lines 15-16 ("Lower Wolfcamp produces with a much higher GOR than the Upper Wolfcamp); *id.* p. 114, lines 12-14.

As is relevant here, the JOA contract area within the N/2 of Section 7 (320 acres) overlaps with Marathon's development plan covering the N/2 of Sections 7 and 12 (640 acres). BTA's contract area for the Lower Wolfcamp is, taking into account the NW/4 of Section 8, 480 acres, as opposed to Marathon's proposed Wolfcamp unit, which is 640 acres.

B. Division Precedent Makes Clear that the JOA Does Not Preclude the Division from Granting Marathon's Pooling Applications.

Under Division precedent, the fact that BTA has a JOA does not bar the Division from granting Marathon's pooling orders. The Oil and Gas Act specifically authorizes pooling when, as here "two or more separately owned tracts of land are embraced within a spacing or proration unit....[and] such owner or owners have not agreed to pool their interests, and where one such

separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply...." NMSA 1978, §70-2-17(C). Under these circumstances, "*the division*, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, *shall pool* all or any part of such lands or interests or both in the spacing or proration unit as a unit." *Id.* (emphasis added). Here, it is undisputed that Marathon proposes to create spacing units embracing two or more separately owned tracts of lands, Marathon has the right to drill and operate the wells it proposes to dedicate to the common source of supply, and the interest owners in those tracts have not agreed to pool their interests. Consistent with the Oil and Gas Act, then, the Division "*shall pool*" the interests in the units, including BTA's interests. NMSA 1978, § 70-2-17(C) (emphasis added).

Order Number R-14140, issued in Case No. 15433, establishes that lands subject to a JOA can be force pooled with lands outside of the JOA. In Case No. 15433, Matador Production Company ("Matador") filed a pooling application, which Nearburg Exploration Company and Nearburg Producing Company ("Nearburg") sought to dismiss based on an existing JOA. Order R-14140 at 3, ¶ 9. In that case, the JOA covered only a portion of the lands within the proposed spacing unit, which meant that there was no voluntary agreement with respect to all of the lands within the proposed spacing unit. *Id.* The Division denied Nearburg's motion to dismiss, concluding that because there was no voluntary pooling agreement, the JOA did not "preclude compulsory pooling" under Section 70-2-17(C). Order R-14140 at 5, ¶ 17. The Division then granted Matador's pooling application and designated Matador as the operator of the unit. *See also* Orders R-14523 and R-14524 (granting pooling applications notwithstanding the fact that a JOA covered a portion of the area sought to be pooled).

The same outcome is warranted here. The BTA JOA covers only 480 acres, whereas Marathon's proposed spacing units in the N/2 of Sections 7 and 12 cover 640 acres. As a result, there is no voluntary agreement with respect to the total acreage Marathon seeks to pool, bringing these cases squarely under the Division's jurisdiction and authority.[6] *See* NMSA 1978, § 70-2-17(C). As discussed in more detail below, granting Marathon's applications will prevent waste, protect correlative rights, and avoid the drilling of unnecessary wells.

At the Hearing, BTA's counsel attempted to distinguish Order R-14140, arguing that it "involved opposition to a pooling application by a non operating working interest owners subject to a JOA" and contending that, in that case, the "non-operator did not have any plans to propose a well within the JOA acreage." Trans. Vol. II, p. 58, lines 5-15. BTA's counsel further contended "[w]hether the JOA was an impediment to pooling simply wasn't a factor in that case." *Id.* BTA's counsel appears to have misread Order R-14140. Nearburg's dismissal motion rested entirely on the JOA, an argument which the Division considered and rejected as is evidenced by Order R-14140's discussion of Nearburg's motion in paragraphs 7-19. As discussed above, the Division denied Nearburg's motion to dismiss, because there was no voluntary pooling agreement as to the aggregate acreage proposed by Matador to be within the spacing unit. The Division concluded that the JOA did not "preclude compulsory pooling" under Section 70-2-17(C). Order R-14140 at 5, ¶ 17. Here too the JOA does not preclude compulsory pooling.

[6] The fact that Marathon may succeed to OXY's interest in the JOA does not impact this analysis, as demonstrated by Order No. 14140. In that case, Matador and Nearburg were parties to a JOA covering the N/2 of Section 32, but were not parties to a JOA governing the S/2. Even though Matador and Nearburg were parties to a JOA covering part of the spacing unit Matador sought to pool, OCD issued an order in Matador's favor to create the larger spacing unit.

C. Marathon's Proposal Will Prevent Waste, Protect Correlative Rights, and Avoid Drilling Unnecessary Wells.

Marathon's proposed development plan will prevent waste, protect correlative rights, and avoid drilling unnecessary wells. BTA's "development plan," however, will result in waste, could impair correlative rights, and could result in the drilling of unnecessary wells.

1. Marathon's development plan will prevent waste; BTA's will result in waste.

The Oil and Gas Act expressly prohibits waste. Section 70-2-2 states "[t]he production or handling of crude petroleum oil or natural gas of any type or in any form . . . in such manner or under such conditions or in such amounts as to constitute or result in waste is each hereby prohibited." Similarly, Section 70-2-11(A) provides: "The division is hereby empowered, and *it is its duty, to prevent waste* prohibited by this act and to protect correlative rights, as in this act provided." (Emphasis added.) As the New Mexico Supreme Court has recognized, "the basis of [the Division's] powers is founded on the duty to prevent waste and to protect correlative rights. *Actually, the prevention of waste is the paramount power*, inasmuch as this term is an integral part of the definition of correlative rights." *Cont'l Oil Co.*, 1962-NMSC-062, ¶ 11 (emphasis added).

Waste may occur underground by "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 or natural gas ultimately recovered from any pool[.]" NMSA 1978, § 70-2-3(A). "Surface waste", defined as "the unnecessary or excessive surface loss or destruction without beneficial use, however caused...resulting from the manner of spacing, equipping, operating or producing, well or wells," *id.* § 70-2-3(B), is also prohibited.

As demonstrated at the Hearing, which BTA did not refute, Marathon's development plan will prevent underground and surface waste. Marathon has a well-developed, ready to be-implemented, development plan. Marathon's development plan includes more wells, with better

spacing, in more pools, than BTA's limited "plan." Marathon is targeting the Upper Wolfcamp first, because it has the most prospectivity and is the least gassy. BTA only proposed three, maybe four wells, and is only targeting one formation, the Lower Wolfcamp, which is the gassier formation. Simply put, Marathon has a superior development plan that substantially differs from the plan proposed by BTA. In addition, Marathon is proposing 2-mile laterals, which will result in greater economic and engineering efficiencies, as well as fewer surface impacts. OCD has previously determined that longer laterals are more efficient, in part, because they produce from lands that would otherwise be required setbacks under the Division's rules, they require less surface disturbance, and less facilities. As the Division stated: "[W]ells drilled to increased lengths can have a production and economic advantage and thereby prevent waste and protect correlative rights." *See* Order R-20223, ¶ 40.

Marathon's 2-mile laterals will be more efficient both with respect to effectively targeting the oil reserves and with respect to surface impacts. As Mr. Moore, Marathon's expert reservoir engineer, testified, longer laterals eliminate setbacks, which in turn "correlate[s] to an increase in the ultimate recovery of that well." Trans. Vol. II, p. 40, lines 3-9. Mr. Price, BTA's witness, agreed that 2-mile laterals reduce the number of setbacks and that decreasing the number of setbacks also increases the potential for recovery. Trans. Vol. II, p. 72, lines 17-22. BTA's plan of 1.5-mile laterals may leave otherwise recoverable reserves in the ground due to setbacks required by the Division's rules. *See* Trans. Vol. II, p. 54, lines 1-19; *see also* Trans. Vol. II, p. 73, lines 7-14 (Mr. Price acknowledging that portions of Section 7 would not be recovered under BTA's plan but would be under Marathon's development plan). In addition, 2-mile laterals result in greater Estimated Ultimate Recovery ("EUR") of oil and gas from a reservoir. Mr. Moore prepared a slide demonstrating the difference between EURs with respect to 1.5 mile and 2 mile laterals. Marathon

Hearing Exh. 19. For a 2-mile lateral, the average EUR of oil is 97.9. For a 1.5 mile lateral, the average EUR is 86.4. Consequently, as Mr. Moore testified, longer laterals have higher EURs than shorter laterals. Trans. Vol. II, p. 38, lines 4-8; lines 19-23. *Accord* Order No. R-15759. BTA's planned 1.5-mile laterals will result in waste, contrary to the OCD's statutory mandate in the Oil and Gas Act.

BTA's development plan may result in the "parent-child" effect, which could result in a reduction of recoverable minerals. If, for example, BTA were to drill wells within the contract area, and if Marathon were to later drill wells outside the contract area, but targeting the same zones as the earlier BTA wells, the wells Marathon would drill would experience depletion. Trans. Vol. II, p. 35, lines 1-15; Trans. Vol. II, p. 52, lines 1-5 (parent-child effect results in depletion and reduction in ultimate recovery). Marathon has taken the "parent-child" effect into account in its development plan, by co-developing its wells, *i.e.*, drilling all wells in one zone at or near the same time. *Id.* lines 16-25. Marathon's proposal minimizes surface impacts and surface waste. 2-mile laterals reduce surface impacts because fewer surface facilities are needed to complete a series of 2-mile laterals as opposed to 1.5 mile laterals covering the same acreage, a fact these cases demonstrate. *Id.* p. 36, lines 12-18. If BTA is correct that the JOA overrides OCD's statutory authority, to cover the same amount of acreage that Marathon and Novo are proposing to cover, the operators would have to drill 1-mile laterals (Marathon), 1.5-mile laterals (BTA), and 1.5-mile laterals (Novo), resulting in three areas of impacts, rather than two. *Id.* p. 42, lines 7-10.

Because BTA is only currently proposing Lower Wolfcamp wells, its surface facilities may have to be "right sized" in the future if BTA drills Upper Wolfcamp or Bone Spring wells. Conversely, Marathon is proactively planning its facilities to enable it to target all formations, which will mean fewer surface impacts. Trans. Vol. II, p. 36, lines 12-18. BTA will have to come

back and right size its facilities if it decides to drill the Bone Spring or Upper Wolfcamp formation, which would lead to more surface impacts. *Id.* p. 99, lines 15-20 (BTA would have to "add equipment if the rates are beyond what the current capacity is"); *id.*, p. 42, lines 19-25. BTA's assertion that the JOA controls is contrary to the Oil and Gas Act's prohibition on surface waste.

The unrefuted evidence presented at the Hearing demonstrates that Marathon is able to drill wells more efficiently and cost-effectively than BTA. *See* Trans. Vol. II, p. 43, lines 20-21. For example, based on publicly available information, Marathon averages about 1200 feet per day when drilling, whereas BTA averages less than 800 feet per day. *Id.* In fact, based on drilling completion information, BTA's "drilling performance is one of the least efficient in Eddy County." *Id.* p. 44, lines 14-15. The fact that Marathon has a higher per day drilling rate means that drilling rigs are in the field for a shorter amount of time, resulting in cost savings and shorter time-periods of surface impacts. *Id.*, lines 7-11. Additionally, again based on public data, Marathon spud 156 wells in New Mexico since May 30, 2017, whereas BTA only spud 34 wells in that same period. *Id.* lines 17-20. Marathon has third party contracts in place for pipelines, produced water disposal, and gas takeaway. Marathon's development plan and its experience in this area demonstrate that Marathon is in the best position to timely locate wells on this acreage and operate on the surface. BTA is not and its reliance on the JOA to impede timely, efficient development should be rejected.

Simply put, Marathon's development plan will prevent waste, both surface and underground. In contrast, BTA's development will create it. The Division should grant Marathon's pooling applications pursuant to the Division's mandate to prevent waste in the Oil and Gas Act.

2. Marathon's development plan will protect correlative rights.

Marathon's development plan will protect correlative rights, while BTA's proposal will impair them. "Correlative rights" is defined as

> the opportunity afforded, as far as it is practicable to do so, to the owner of each property in a pool to produce without waste the owner's just and equitable share of the oil or gas in the pool, being an amount, so far as can be practically determined, and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas under the property bears to the total recoverable oil or gas in the pool, and for the purpose to use the owner's just and equitable share of the reservoir energy.

NMSA 1978, § 70-2-33(H).

Marathon demonstrated that its development plan will protect correlative rights. If BTA is pooled, BTA will be entitled to its just and equitable share of production from the wells. BTA's counter argument appears to be that BTA will be deprived of the opportunity to operate BTA wells within the JOA contract area and that BTA's acreage in the NW/4 of Section will be "stranded."[7] Trans. Vol. II, p. 72, lines 7-8. First, the ability to operate wells is not a correlative right and is not a right protected by the Oil and Gas Act. Second, BTA's argument that its acreage will be stranded ignores Novo's proposal to pool and efficiently develop the very acreage BTA contends will be stranded. The Division should reject BTA's invitation to look at Marathon's cases in isolation.

Additionally, Marathon's 2-mile laterals will recover more reserves from BTA's acreage, which will protect BTA's correlative rights. *Accord* Order No. R-14524. BTA's 1.5-mile laterals may strand minerals in Section 7, leaving otherwise recoverable reserves in the ground due to setbacks, which not only will result in waste as discussed above, but will also impair BTA's correlative rights. Finally, BTA cannot advance its correlative rights as a reason to not grant

[7] Mr. Price testified that Marathon's development plan will "strand" BTA from being the operator. Trans. Vol. II, line 24. The Oil and Gas Act does not contemplate "stranded" operatorship as a protectable right.

Marathon's compulsory pooling applications because BTA's proposal will, as discussed above, result in waste.

3. Marathon's development plan avoids drilling unnecessary wells.

Marathon and Novo have proposed development plans to efficiently develop Section 12, Township 23 South, Range 28 East, and Sections 7, 8, and 9, Township 23 South, Range 29 East. Marathon's and Novo's plans include 2-mile laterals covering those sections, for a total of 4 miles, targeting three formations. BTA's proposal carves out 1.5 miles from the 4 miles total covered under Marathon's and Novo's proposals, leaving 1 mile undeveloped in Section 12, Township 23 South, Range 28 East and 1.5 miles undeveloped in Sections 8 and 9, Township 23 South, Range 29 East. *See* Trans. Vol. II, p. 53, lines 5-7 (Examiner Murphy noting that "the best you could do out of another scenario would be two 1.5 mile laterals and a 1 mile lateral[.]"). In order to develop those areas, additional wells would have to be drilled, with additional surface impacts. If such wells were to be drilled, for example in Section 12, the wells would be limited to 1 mile, as Examiner Murphy noted at the Hearing. Trans. Vol II, p. 56, lines 5-8. 1-mile lateral wells would be less efficient than Marathon's proposed 2-mile lateral development plan, due to additional setbacks potentially reducing the amount of recoverable reserves, and other lost efficiencies.

In sum, Marathon established at the Hearing that creation of the Valkyrie N/2 Units and pooling the various interests in those units is warranted to prevent waste, protect correlative rights, and avoid the drilling of unnecessary wells. BTA's only response is that it has a JOA covering part, but not all, of the acreage Marathon seeks to dedicate to its Units. BTA's position appears to be that the JOA trumps OCD's authority and mandate under the Oil and Gas Act. In Order 14140, OCD rejected a similar argument. BTA has not and cannot demonstrate any reason for OCD to depart from OCD's precedent. Marathon's pooling applications should be granted.

III. PROPOSED FINDINGS OF FACT

A. Marathon's evidence:

1. The Bone Spring, Upper Wolfcamp, and Lower Wolfcamp formations in this area are suitable for development by horizontal drilling. Marathon Exhibits 5 and 6; Trans. Vol. I, p. 27, lines 5-16; pp. 26-29, lines 1-11.[8]

2. The proposed orientation of the horizontal wells from east to west is appropriate. Marathon Exhibits 5 and 6; Trans. Vol. I, p. 16, lines 12-15; Trans. Vol. II, p. 12, lines 19-25; p.13, line 1.

3. All proposed quarter-quarter sections within the Bone Spring Formation and all quarter sections within the Upper and Lower Wolfcamp Formations are expected to be productive, so that formation of the Units, as proposed, will not impair correlative rights. Marathon Exhibits 5 and 6; Trans. Vol. II, p. 17, lines 1-12; p. 21, lines 6-12; p. 24, lines 20-25; p. 25, line 1.

4. Notice was provided for compulsory pooling within the Units to all interest owners subject to pooling proceedings. Marathon Exhibits 10 and 12; Trans. Vol. I, pp. 44-45, lines 21-8.

5. Marathon has a working interest in the proposed Units. Marathon Exhibit 8; Trans. Vol. I, p. 32, lines 10-19; p. 22, lines 21-22.

6. OXY, Chevron, and Novo all support Marathon's development plan. Marathon Exhibits 2, 3, and 3A; Trans. Vol. I, p. 17, lines 20-23; p. 22, lines 4-14.

7. OXY and Chevron authorized Marathon to represent their interests at the Hearing. With those interests, Marathon controls a majority of the ownership interests in the proposed unit:

[8] Marathon provides only those Findings of Fact and Conclusions of Law relevant to this post-closing submission—Marathon has not herein duplicated the findings of fact and conclusions of law customarily found in Division orders.

57.46% of the S/2 N/2 with respect to the Bone Spring formation and 60.59% of the N/2 with respect to the Wolfcamp formation. *See* Marathon Hearing Exhibit 8, pp. 21and 23.

8. Marathon has made a good faith effort to obtain the voluntary joinders of interest owners in the proposed Valkyrie N/2 Units. Trans. Vol. I, p. 38, lines 8-23.

9. Marathon's entire Valkyrie development plan includes wells in the N/2 and the S/2 of Section 12, Township 23 South, Range 28 East, Eddy County, NM, and of Section 7, Township 23 South, Range 29 East, Eddy County, NM. Marathon Exhibit 1; Trans. Vol. I, p. 15, lines 14-18; Trans. Vol. II, p. 10, lines 21-23.

10. Marathon's entire Valkyrie development plans cover 1280 acres. Trans. Vol. I, p. 15, lines 2-9.

11. Marathon's Valkyrie N/2 Units cover 640 acres. Trans. Vol. I, pp. 30-31, lines 22-3.

12. Marathon is proposing 2-mile laterals. Marathon Exhibits 7 and 10; Trans. Vol. II, p. 36, lines 1-7.

13. 2-mile laterals are more efficient and prevent waste due to eliminating setbacks. Trans. Vol. II, p. 40, lines 10-18.

14. The avoidance of setbacks results in the recovery of more reserves. Trans. Vol. I, pp. 54-55, lines 21-3.

15. 2-mile laterals result in a higher EUR, and protect correlative rights. Trans. Vol. II, pp. 38-40, lines 15-4.

16. 2-mile laterals result in less surface disturbance than shorter laterals. Trans. Vol. II, pp. 50-51, lines 18-1.

17. Although appropriate under certain circumstances, such as when geology dictates, 1.5 mile laterals are less efficient, may result in waste, and may result in drilling of unnecessary wells. Trans. Vol. II, pp. 38-40, lines 15-4.

18. Marathon's Valkyrie N/2 Units will avoid drilling unnecessary wells. Trans. Vol. II, p. 47, lines 1-15.

19. Marathon's development plan covers three different formations; Bone Spring, Upper, and Lower Wolfcamp. Marathon Exhibit 1; Trans. Vol. II, pp. 10-11, lines 15-13.

20. Marathon's development plan includes six wells per section in both the Upper and Lower Wolfcamp Formations as well as four wells per section in the Second Bone Spring Formation. Trans. Vol. II, p. 33, lines 13-21.

21. Marathon intends to drill Upper Wolfcamp Formation first because it is less gassy than the Lower Wolfcamp. Trans. Vol. II, p. 41, lines 12-19.

22. The "parent-child" effect occurs because wells drilled in a zone first cause depletion or reduction of recoverable reserves from later drilled wells. Trans. Vol. II, pp. 34-35, lines 23-7.

23. Marathon intends to co-develop its wells to avoid the "parent-child" effect. Trans. Vol. II, p. 35, lines 8-25.

24. If BTA were to proceed with its development plan, doing so could result in the parent-child effect. Trans. Vol. II, p. 35, lines 8-15.

25. Marathon has completed wells in this area recently. Trans. Vol. I, p. 54, lines 10-15.

26. Marathon has extensive experience in this area. Trans. Vol. II, pp. 33-34, lines 22-2; p. 44, lines 3-20.

27. Marathon averages 1200 feet per day when drilling and has spud 156 wells in New Mexico since May 30, 2017. Trans. Vol. II, p. 44, lines 14-15, 17-20.

28. The N/2 of Section 7, Township 23 South, Range 29 East, Eddy County, NM, and the NW/4 of Section 8, Township 23 South, Range 29 East, Eddy County, NM, are subject to an existing Joint Operating Agreement, to which Marathon is not subject. BTA Exhibit 1; Trans. Vol. II, p. 61, lines 10-14.

29. The JOA covers 480 acres. Trans. Vol. I, p. 71, lines 21-24.

30. The JOA contract area does not cover the N/2 of Section 12, Township 23 South, Range 28 East; the S/2 of Section 12, Township 23 South, Range 28 East; or the S/2 of Section 7, Township 23 South, Range 29 East. BTA Exhibit 1; Trans. Vol. I, p. 22, lines 21-22.

31. No agreement exists to combine the N/2 of Section 12, Township 23 South, Range 28 East with the N/2 of Section 7, Township 23 South, Range 29 East to form a unit. Marathon Exhibit 6; Trans. Vol. II, p. 110, lines 17-24.

32. Marathon has third party agreements in place to effect location and operation of the proposed wells. Trans. Vol. I, pp. 42-43, lines 13-1.

33. Marathon is a capable, efficient, effective operator. Trans. Vol. II, p. 44, lines 3-20.

34. If BTA's JOA controls, to fully develop Section 12, Township 23 South, Range 28 East, Section 7, Township 23 South, Range 29 East, and Section 8, Township 23 South, Range 29 East, the laterals would be limited as follows: 1-mile (Marathon); 1.5 mile (BTA), and 1.5-mile (Novo) resulting in additional wells having to be drilled to cover the same amount of acreage. Trans. Vol II, pp. 55-56, lines 21-8.

B. BTA's evidence:

1. An existing JOA, executed on January 1, 1987, exists for the N/2 of Section 7, Township 23 South, Range 29 East, Eddy County, NM. BTA Exhibits 1 and 2; Trans. Vol. I, p. 22, lines 21-22.

2. The JOA covers only 480 acres. Trans. Vol. I, p. 71, lines 21-24.

3. BTA has 73% interest in the JOA. Trans. Vol. II, p. 61, lines 17-20.

4. OXY has 27% interest in the JOA. Trans. Vol. II, p. 61, lines 17-20.

5. In July 2019, BTA proposed three to four wells, which represent the entirety of its current development plan. BTA Exhibits 1 and 2; Trans. Vol. II, p. 33, lines 7-12.

6. BTA has only proposed wells in the Lower Wolfcamp, which is gassier than the Upper Wolfcamp. BTA Exhibit 1; Trans. Vol. II, p. 33, lines 7-12; Trans. Vol. II, p. 41, lines 23-25 and p. 42, lines 1-4.

35. BTA's development plan appears to include four wells for the Lower Wolfcamp Formation only. BTA Exhibits 1 and 2.

1. BTA has not proposed Upper Wolfcamp or Bone Spring wells. Those wells are only "conceptual" and their timing is "to be determined." Trans. Vol. II, pp. 68-69, lines 12-25.

2. In order to right size its facility to drill into other formations, BTA would have to bring additional equipment to the site. Trans. Vol. II, p. 99, lines 15-20.

3. BTA is proposing only 1.5-mile laterals. Trans. Vol. II, p. 71, lines 18-19.

4. Unless BTA were to seek to pool parties in Section 12, Township 23 South, Range 28 East, BTA lacks the authority to drill 2-mile laterals. Trans. Vol. II, p. 71, lines 18-19.

5. BTA does not have BLM approval. Trans. Vol. II, pp. 93-94, lines 25-5.

6. BTA's surface facilities and surface hole locations would be on Section 12, Township 23 South, Range 28 East, outside of the JOA, which could potentially impact correlative rights and result in waste. Trans. Vol. II, pp. 70-71, lines 20-3.

7. BTA was unable to testify as to third-party contracts with respect to gas takeaway even though BTA is proposing to target the gassier Lower Wolfcamp first. Trans. Vol. II, p. 114, lines 12-14.

IV. PROPOSED CONCLUSIONS OF LAW

1. The Oil and Gas Act authorizes pooling when "two or more separately owned tracts of land are embraced within a spacing or proration unit . . . [and] such owner or owners have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply...." NMSA 1978, §70-2-17(C).

2. The Oil and Gas Act further mandates that this Division prevent both underground and surface waste. NMSA 1978, § 70-2-11(A); *Cont'l Oil Co.*, 1962-NMSC-062, ¶ 11.

3. Waste may occur underground by "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 or natural gas ultimately recovered from any pool[.]" NMSA 1978, § 70-2-3(A).

4. Surface waste is "the unnecessary or excessive surface loss or destruction without beneficial use, however caused . . . resulting from the manner of spacing, equipping, operating or producing, well or wells, or incident to or resulting from the use of inefficient storage." NMSA 1978, § 70-2-3(B).

5. Marathon has a comprehensive development plan covering all of Section 12, Township 23 South, Range 28 East and Section 7, Township 23 South, Range 29 East. FOF A-5; A-9.

6. Marathon's completed wells will be outside the JOA contract area and inside a portion of the JOA contract area. FOF A-7; A-8.

7. There is no agreement as between BTA and Marathon with respect to production either within or outside the JOA contract area. FOF A-5; A-6; A-13.

8. Pursuant to this Division's holding in R-14140, the fact that BTA's JOA covers a portion of the acreage that Marathon seeks to dedicate to its Valkyrie N/2 Units does not preclude the Division from granting Marathon's pooling orders.

9. Marathon's development plan will prevent waste, protect correlative rights, and avoid drilling unnecessary wells, in contrast to BTA's development plan, which will not. FOF A-3; B-12.

10. Marathon's development plan includes 2-mile laterals, which the Division has previously found to be more efficient than 1-mile laterals. *See* R-20223 at 6 (finding longer laterals more efficient than shorter laterals). The same logic applies as between 2-mile laterals and 1.5-mile laterals. FOF A-14; A-15; A-16; B-8; B-9.

11. 2-mile laterals are warranted here because they are technically feasible, will prevent waste, protect correlative rights, and avoid the drilling of unnecessary wells. The Division is mindful, however, that the length of laterals may be influenced by a range of factors, including geology. FOF A-14; A-15; A-16.

12. Marathon's development plan will avoid the parent-child effect. FOF A-22.

13. BTA's plan could result in the parent-child effect. FOF A-21; A-22; A-23.

14. Marathon's development plans will result in fewer surface impacts. FOF A-15.

15. Marathon's development plan will result in greater EUR than BTA's because Marathon proposes 2-mile laterals, which increase EUR by eliminating setbacks and by increasing efficiency. FOF A-11; A-12; A-13; A-14; A-15; A-16.

16. Marathon's development plan will not impair BTA's correlative rights. FOF A-3.

17. The ability to operate a well is not a "correlative right" or other right protected by the Oil and Gas Act. *See* NMSA 1978, §§ 70 -2-1 to -38.

18. Because Marathon's development plan covers more acreage, includes more wells, targets more formations, and utilizes greater laterals than does BTA's, the implementation of BTA's JOA to the exclusion of Marathon's proposed Units will "reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from any pool," in contravention of the Oil and Gas Act, NMSA 1978, § 70-2-3(A). *See* FOF A-9; A-10; A-11; A-12; A-14; A-15; A-16; A-17; A-19; A-20; B-8; B-9; B-10; B-12,

19. The proposed Valkyrie N/2 Units are approved in order to enable Marathon to drill its proposed Valkyrie N/2 wells, which will efficiently produce the reserves underlying the Units, thereby preventing waste, protecting correlative rights, and avoiding the drilling of unnecessary wells. FOF A-3.

V. CONCLUSION

For the foregoing reasons, and for reasons demonstrated at the Hearing and in the Hearing record, Marathon requests that its proposed Findings of Fact and Conclusions of Law be adopted, and that Marathon's compulsory pooling applications in these cases be granted, and that Marathon be designated operator of the wells.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 21st day of January, 2020 by e-mail:

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