

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

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

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

**Case Nos. 21273 and 21274
(Division Case Nos. 20865
and 20866)**

**MARATHON OIL PERMIAN LLC'S STATEMENT REGARDING
BTA OIL PRODUCER'S PROPOSED FORM OF ORDER**

Marathon Oil Permian LLC ("Marathon") provides this statement with respect to BTA Oil Producer's ("BTA") proposed form of order. The proposed form of order submitted by BTA incorporates many, but not all, of Marathon's suggestions, which Marathon appreciates. Nevertheless, Marathon disagrees with the proposed form of order and reserves its right to challenge the Commission order as provided in NMSA 1978, §§ 70-2-25; 70-2-26; and Rule 19.15.4.25 NMAC. Marathon provides a competing form of order as Exhibit A.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on counsel of record by electronic mail on September 15, 2020:

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Order No. _____

ORDER OF THE COMMISSION

THIS MATTER comes before the New Mexico Oil Conservation Commission (“Commission”) on Marathon Oil Permian, LLC’s (“Marathon”) *Applications for Compulsory Pooling* (“Applications”). The Commission, having considered the Applications at a hearing held on August 13-14 and 20, 2020 and being fully advised of the premises, enters the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. In Case No. 21273, Marathon requests an order pooling all uncommitted mineral interests within a Bone Spring horizontal spacing unit underlying the S/2 N/2 of Section 12, Township 23 South, Range 28 East and Section 7, Township 23 South, Range 29 East in Eddy County. Marathon proposes to dedicate the 320-acre horizontal spacing unit to the Valkyrie 12 SB Federal Com 13H well.

2. In Case No. 21274, Marathon requests an order pooling all uncommitted mineral interests within a Wolfcamp horizontal spacing unit underlying the N/2 of Section 12, Township 23 South, Range 28 East and Section 7, Township 23 South, Range 29 East in Eddy County. Marathon proposes to dedicate the 640-acre horizontal spacing unit to the Valkyrie 12 WXY Federal Com 1H, Valkyrie WA Federal Com 3H, Valkyrie 12 WXY Federal Com 5H, Valkyrie 12 WD Federal Com 2H, Valkyrie 12 WD Federal Com 4H, and Valkyrie 12 WD Federal Com 6H wells.

3. Marathon’s Applications were heard by the Oil Conservation Division (“Division”) on November 14, 2019, and the Division issued Order No. R-21251 granting Marathon’s Applications on April 13, 2020.

4. BTA Oil Producers, LLC (“BTA”) was a party to the Division hearing and opposed Marathon’s Applications. As a party adversely affected by Order No. R-21251, BTA timely filed Applications for *De Novo* Hearing with the Commission on April 24, 2020.

5. In accordance with NMSA 1978, Section 70-2-13 and 19.15.4.23(A) NMAC, the Commission held a *de novo* hearing on Marathon’s Applications on August 13-14 and 20, 2020. The Applications were consolidated for hearing.

6. Marathon and BTA participated in the *de novo* hearing. No other parties entered an appearance.

7. The Oil and Gas Act, NMSA 1978 §§ 70-2-1 *et seq.* (“the Act”), prohibits the waste of oil and gas and delegates to the Commission authority to prevent waste and protect correlative rights.

8. Section 70-2-17(C) of the Act provides that the Division shall pool lands in a spacing unit when the owners cannot reach voluntary agreement to avoid the drilling of unnecessary wells, or protect correlative rights, or prevent waste.

9. In support of its Applications, Marathon presented the testimony of Chase Rice (Landman), Matt Baker (Geologist), and Yuri Rodionov (Engineer).

10. Marathon appeared through counsel and presented testimony and exhibits as follows:

- a. Marathon’s proposals in the N/2 half of Sections 12 and 7 are part of a larger development plan which also covers the S/2 of Sections 12 and 7.
- b. Marathon acquired its interest in the N/2 of Section 12 on May 1, 2019 and submitted its well proposals for the Valkyrie wells that are the subject of its Applications on July 12, 2019.
- c. Marathon proposes to complete one Second Bone Spring well in the S/2 N/2 of Sections 12 and 7 and six Wolfcamp wells in the N/2 of Sections 12 and 7, Township 23 South, Range 28 East and Township 23 South, Range 29 East. The proposed wells are 2-mile laterals.
- d. Marathon does not propose to complete any Second Bone Spring wells in the N/2 N/2 of Sections 12 and 7 due to potential anti-collision issues created by existing horizontal laterals, in which the un-stimulated portion of the laterals penetrates the second Bone Springs in that penetrates the N/2N/2 of Section 12.
- e. Marathon holds 37.8% of the working interest in its proposed Bone Spring horizontal spacing unit and 18.9% of the working interest in its proposed Wolfcamp horizontal spacing unit. Marathon received support letters from both Oxy Y-1 Company (“OXY”) and Chevron U.S.A. Inc. (“Chevron”) which not

only supported Marathon as operator of the N/2 units and Marathon's development plan, but also allowed Marathon to represent OXY and Chevron's interests. With OXY's and Chevron's interests, Marathon's interests in the Bone Spring unit is approximately 55% and in the Wolfcamp unit is approximately 58%.

- f. Marathon also received a support letter from NOVO Oil and Gas Northern Delaware, LLC ("NOVO"). NOVO filed compulsory pooling applications for spacing units covering the N/2 of Sections 8 and 9 Township 23 South, Range 29 East.
- g. Marathon and NOVO's applications, together, cover all of BTA's JOA acreage. If granted, Marathon's Applications would not strand 80 acres of BTA's Ochoa Acreage in the S/2 NW/4 of Section 8 because NOVO's development plan would access that acreage.
- h. Marathon has contracts for the takeaway of gas, produced water, and oil in place.
- i. BLM approved Marathon's Development Area on April 16, 2020.
- j. Marathon presented evidence and testimony that its proposal would eliminate internal setbacks. Marathon's evidence demonstrated that the setbacks would account for 120 acres within the Wolfcamp formation/targets. Marathon calculated 134,282 BOE in the first year would be recoverable from the acreage underlying the setbacks, and that drilling through the setbacks would efficiently access those reserves.
- k. Marathon presented evidence and testimony that BTA's development plan could result in the parent-child effect because drilling the N/2 wells at a different time than the S/2 wells could negatively impact the wells developed later in time.
- l. Marathon presented evidence and testimony that codeveloping the N/2 and S/2 wells together as Marathon proposed would reduce the parent-child effect.
- m. Marathon presented testimony regarding surface waste, because BTA's development plans would require Marathon, BTA, and NOVO to each have surface facilities.
- n. Marathon presented testimony and evidence that Marathon's development plan would require fewer wells than BTA's because Marathon's development plan would require 8 wells, whereas BTA's development plan would result in 15 wells, because Marathon would have to drill 7 1-mile wells in the N/2 of Section 12, in addition to the 8 wells BTA proposes to drill in its Ochoa Acreage.

- o. Marathon initiated reduced activity across all of the basins, in which it operates including the Northern Delaware Basin of New Mexico, in order to fulfill its obligations as a safe and prudent operator, as well as make sound investment decisions.
- p. There is no engineering or geological reason that Marathon cannot complete 1-mile laterals in its acreage in Section 12.

11. In opposition to Marathon's Applications, BTA presented the testimony of Willis Price (Landman), Britton McQuien (Petroleum Engineer), and Nick Eaton (Petroleum Engineer).

12. BTA appeared through counsel and presented testimony and exhibits as follows:

- a. Pursuant to a Joint Operating Agreement ("JOA"), BTA is the operator of 474.11 acres comprising the N/2 of Section 7 and the NW/4 of Section 8, Township 23 South, Range 29 East (the "Ochoa Acreage"). The BTA Ochoa Acreage includes some, but not all, of the acreage Marathon seeks to pool in the Applications.
- b. BTA acquired its interest under the JOA and became the operator of the Ochoa Acreage on November 1, 2018.
- c. BTA owns 82% of the working interest in the Ochoa Acreage. OXY is the other party to the JOA and owns 18% of the working interest in the Ochoa Acreage. OXY ratified the JOA and BTA as operator of the Ochoa Acreage effective on November 1, 2018.
- d. BTA acquired its operating rights under the JOA to allow it to control costs and implement its development plan.
- e. BTA proposes to complete four 1.5-mile horizontal wells in the Lower Wolfcamp formation in the Ochoa Acreage and testified that it has plans to complete four additional 1.5-mile horizontal wells in the Ochoa Acreage: two wells in the Second Bone Spring and two wells in the Wolfcamp XY Sand, although it has not proposed those wells to OXY.
- f. On May 16, 2019, BTA had its onsite meeting with the BLM for the four wells that BTA proposes to complete in the Lower Wolfcamp formation: the Ochoa 8703 Fed 1H, 2H, 3H, and 4H wells. The BLM has approved BTA's well sites for the four Lower Wolfcamp Ochoa Wells.
- g. On June 26, 2019, BTA submitted Applications for Permits to Drill ("APD") for the four Lower Wolfcamp Ochoa Wells to the BLM.
- h. The BLM has not approved BTA's APDs or Development Area.

- i. According to BTA's evaluation, BTA's Ogden wells have produced more barrels of oil per foot than Marathon's similar developments near the Valkyrie proposed spacing units.
- j. BTA has spudded 28 wells in New Mexico in 2020, has two active rigs available, and is continuing to drill and complete wells in New Mexico.
- k. BTA is ready, willing, and able to drill and complete the four Lower Wolfcamp Ochoa Wells once these cases are resolved and if BLM approves BTA's development plan and APDs.
- l. BTA's contracts for the takeaway of gas, produced water, and oil are ready for execution.
- m. BTA witness Nick Eaton testified that its Ochoa Acreage was currently being affected by a lower Wolfcamp well NOVO drilled to the north of BTA's Ochoa Acreage.
- n. BTA witness Britton McQuien testified that he did not agree with Marathon's conclusions regarding the parent-child effect with respect to certain BTA wells.
- o. BTA witness Britton McQuien testified that, in his opinion, BTA would access the reserves under the setbacks over the life of the wells.
- p. BTA testified that Marathon's evidence regarding lateral efficiencies appeared to be based on a limited set of Marathon wells.
- q. BTA testified that, if Marathon's Applications were granted, BTA would still have to drill a Second Bone Spring well, which would mean additional surface facilities.
- r. BTA testified that, if Marathon's applications were granted, BTA's position is that 80 acres of the Ochoa Acreage would be stranded.

13. In evaluating competing pooling applications, the Commission may consider:

- a. 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.
- b. A comparison of the risk associated with the parties' respective proposal for the exploration and development of the property.
- c. 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.

- d. A comparison of the ability of each party to prudently operate the property and, thereby, prevent waste.
- e. A comparison of the differences in well cost estimates (AFEs) and other operational costs presented by each party for their respective proposals.
- f. An evaluation of the mineral interest ownership held by each party at the time the application was heard.
- g. A comparison of the ability of the applicants to timely locate well sites and to operate on the surface (the "surface factor").¹

CONCLUSIONS OF LAW

Considering the factors outlined above and the testimony provide, the Commission concludes as follows:

- 1. The Commission has jurisdiction over the Parties and the subject matter of this case.
- 2. Proper public notices of the Applications and the Commission's hearing were given.
- 3. BTA's proposed development plan presents the best opportunity to minimize waste.
- 4. BTA's proposal presents the best opportunity for each party to develop its own acreage.
- 5. BTA's interest in the JOA acreage is higher than Marathon's interests in its proposed units.
- 6. The evidence and testimony regarding the efficiencies of 2-mile laterals was either insufficient or contradictory.
- 7. The evidence and testimony regarding the parent-child effect was either insufficient or contradictory.
- 8. The evidence and testimony regarding the differences in well spacing was either insufficient or contradictory.
- 9. There was insufficient evidence to quantify surface waste.
- 10. The evidence regarding good faith negotiations; capability as an operator; and costs was not significantly different and did not weigh in favor of either Marathon or BTA.

¹ See, e.g., Order No. R-20223. Although BTA has not filed a competing pooling application because it does not need to do so since its acreage is subject to a joint operating agreement, the Commission evaluated BTA's development plan and considered these factors with respect to Marathon's and BTA's proposals.

ORDER

1. Marathon's Applications are denied.
2. The Commission retains jurisdiction of this matter for the entry of such orders as may be deemed necessary.

DONE at Santa Fe, New Mexico on the ____ day of _____, 2020.

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**

Adrienne Sandoval, Chair

Dr. Thomas Engler, Member

Jordan Kessler, Member