

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

**APPLICATIONS OF FRANKLIN MOUNTAIN
ENERGY 3, LLC FOR COMPULSORY POOLING,
AND, TO THE EXTENT NECESSARY, APPROVAL OF AN
OVERLAPPING SPACING UNIT,
LEA COUNTY, NEW MEXICO**

CASE NOS. 24457, 24459, 24479

**APPLICATIONS OF FRANKLIN MOUNTAIN
ENERGY 3, LLC FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO**

CASE NOS. 24898-24901

**APPLICATIONS OF MRC PERMIAN
COMPANY FOR APPROVAL OF AN
OVERLAPPING HORIZONTAL WELL
SPACING UNIT AND COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO**

CASE NOS. 24778-24783

**APPLICATIONS OF MRC PERMIAN COMPANY
FOR APPROVAL COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO**

CASE NOS. 24784-24786

**FRANKLIN MOUNTAIN ENERGY 3, LLC'S BRIEF REGARDING
SCOPE OF MRC PERMIAN COMPANY'S APPLICATIONS
IN CASE NOS. 24778-24782**

Pursuant to the Hearing Examiner's direction at the November 20, 2024 contested hearing in the above captioned cases,¹ Franklin Mountain Energy 3, LLC ("FME3") hereby submits this brief regarding the scope of MRC Permian Company's ("MRC") Bone Spring applications, in Case Nos. 24778-24782, for its Airstrip State Com Bone Spring wells ("Airstrip Bone Spring Applications"). As demonstrated herein, MRC's Airstrip Bone Spring Applications purport to develop the entire "Bone Spring" formation and seek to pool uncommitted interest owners into "Bone Spring" units even though MRC cannot fully develop the "Bone Spring formation" across

¹ This brief only addresses the scope of MRC's Airstrip Bone Spring Applications as ordered by the Hearing Examiner. FME3 will be submitting a second brief on December 16 demonstrating additional reasons why MRC's applications in all of the above captioned MRC cases must be denied.

the units because of existing MRC operated wells and MRC acknowledged depletion. Under different circumstances, MRC's Airstrip Bone Spring Applications may not be objectionable—for example if MRC could drill infill wells at a later date, or if MRC were not seeking to cobble together “Bone Spring” units when MRC has, itself, already depleted the First and Third Bone Spring in Section 31, and when MRC could fully develop Section 31 using infill wells, which would allow FME3 to develop Sections 30, 19, and 18 on a three-mile basis.² Under the circumstances presented in these cases, MRC's Airstrip Bone Spring Applications are misleadingly overbroad because they purport to develop the entire Bone Spring formation, significant intervals of which are depleted from prior development by MRC, and should be denied.

ARGUMENT

MRC filed five Airstrip Bone Spring Applications, each of which purports to pool the “Bone Spring formation.”³ It is undisputed, however, that MRC cannot develop every bench of the “Bone Spring formation” in each application due to the existence of MRC operated wells or MRC acknowledged depletion. As a result, MRC's Airstrip Bone Spring Applications intentionally excluded certain Bone Spring benches (the “Excluded Benches”) from development, while at the same time requesting that the Division issue pooling orders covering the entire “Bone

² It is not unusual for an operator to propose wells targeting a specific bench within the Bone Spring, such as Second Bone Spring wells, while seeking an order pooling the entire Bone Spring, so that infill wells can be drilled at a later date. For example, as FME3's witnesses testified at the hearing, the existence of Second Bone Spring wells in Section 19 is not an obstacle to FME3 drilling upper Second Bone Spring wells. Here, however, MRC's ability to drill infill wells in the Excluded Benches does not appear to be an option because of the existing MRC wells and the existing depletion.

³ MRC's landman, Mr. Isaac Evans, incorrectly testified that he thought the MRC Airstrip Bone Spring Applications included both U-turn and two-mile wells, covering the Bone Spring formation across Sections 30 and 31. See Hearing Transcript, P. 308 lines 12-25 and p. 309, lines 1-13 (“But, yeah, it's my understanding that [the First Bone, Third Bone, and Second Bone] are in the same applications or would cover the same acreage.”).

Spring” formation, meaning MRC improperly seeks to pool uncommitted interest owners into “Bone Spring” units.

The Division’s rules governing adjudications require that an application contain “the name or general description of the common source or sources of supply⁴ of or the area the order sought affects.” Rule 19.15.4.8(A)(3) NMAC. An application must also state “briefly, the general nature of the order sought.” Rule 19.15.4.8(A)(4) NMAC. The rules regarding the adjudicatory hearing notice require that the notice provide “a reasonable identification of the adjudication’s subject matter that alerts persons who may be affected if the division grants the application.” Rule 19.15.4.9(A)(6) NMAC. Generally speaking, then, an application need only identify the pool or formation sought to be pooled. Here, though, MRC’s Airstrip Bone Spring development plans specifically and intentionally exclude Bone Spring benches, and thus the Airstrip Bone Spring Applications fail to properly identify the benches actually being pooled in each application.

This brief focuses on MRC’s applications in Case Nos. 24778 and 24781, which exemplify the issues with MRC’s Airstrip Bone Spring Applications, although every Airstrip Bone Spring Application suffers from the same or similar defects.⁵ MRC’s application in Case No. 24778 demonstrates the improper scope of MRC’s proposed U-turn units, because MRC is excluding the Second Bone Spring from all of its U-turn units. In its application in Case No. 24778, available [here](#), MRC seeks an order from the Division pooling all uncommitted interests in a “horizontal well spacing unit in the *Bone Spring formation* comprised of the W2 equivalent of irregular Section 30, Township 18 South, Range 35 East, NMPM, Lea County, New Mexico.” (emphasis added).

⁴ Common source of supply is synonymous with pool, which is defined as “an underground reservoir containing a common accumulation of oil or gas. Each zone of a general structure, which zone is completely separated from other ones in the structure, is covered by the word pool....” Rule 19.15.2.P(5) NMAC.

⁵ FME3 has prepared a chart identifying each Airstrip Bone Spring Application and the Excluded Benches, attached as Attachment A.

Despite seeking approval of a W/2 Section 30 “Bone Spring” unit, MRC is not proposing to develop any Second Bone Spring wells in this unit. Instead, MRC proposes to dedicate this W/2 Section 30 unit to only First Bone Spring and Third Bone Spring U-turn wells, the Airstrip State Com 110H and 130H wells. *See* MRC Proposal Letter, MRC Exhibit A-5; *see also* MRC Application Case No. 24778; MRC Exhibit B-6. Instead, MRC is proposing Second Bone Spring wells in entirely separate, two-mile unit applications. As MRC’s Exhibit B-6 makes clear, MRC is unable to develop the First and Third Bone Spring on a two-mile basis due to existing First and Third Bone Spring wells in Section 31. *See* MRC Exhibit B-6 (identifying existing First and Third Bone Spring wells in the W/2W/2 of Section 31 and proposed two-mile Second Bone Spring wells). In sum, although MRC’s application in Case No. 24778 seeks an order from the Division pooling the entire “Bone Spring formation” across the W/2 of Section 30, MRC is not proposing any Second Bone Spring wells in the W/2 of Section 30 and is, instead, proposing those wells under entirely separate applications.

MRC’s application in Case No. 24781, available [here](#), demonstrates the over breadth of MRC’s Airstrip Bone Spring Applications seeking orders for its two-mile Second Bone Spring wells. In that case, MRC seeks an order from the Division pooling uncommitted interest owners in a two-mile “Bone Spring” unit comprised of the E/2W/2 of Sections 30 and 31. MRC proposes to dedicate this two-mile E/2W/2 unit to only a Second Bone Spring two-mile well. *See* MRC Proposal Letter, MRC Exhibit A-5. Significantly, however, MRC cannot develop the Third Bone Spring on a two-mile basis because of an existing Third Bone Spring well in the E/2W/2 of Section 31. *See* MRC Exhibit B-6. With respect to the First Bone Spring, there is no existing First Bone Spring well in the E/2W/2 of Section 31—instead, at the hearing, MRC acknowledged that the First Bone Spring has been depleted by MRC’s existing well in the W/2W/2 of Section 31. *See*

November 20, 2024 Hearing Transcript, p. 274, lines 15-24 (MRC Witness Tanner Schulz) (“I think there’s also an argument to be made that the two wells—the two First Bone Spring wells in Section 31 have a large drainage radius where they have, you know, drained where there’s a depletion risk.”). Thus, MRC cannot or is not proposing to drill a two-mile First or Third Bone Spring wells in the E/2W/2 of Sections 30 and 31, even though MRC’s application in Case No. 24781 seeks to pool the “Bone Spring formation” on a two-mile basis across Sections 30 and 31.

As these examples makes clear, MRC’s Airstrip Bone Spring Applications are overly broad because MRC cannot develop the entire “Bone Spring formation” as proposed in those cases. In a sense, the existing MRC operated wells and existing depletion act as a sort of depth severance, precluding development in the Excluded Benches. As a result, MRC’s applications which purport to seek to pool the “Bone Spring formation” should be denied because it is undisputed that MRC cannot develop the “Bone Spring formation” as indicated in MRC’s applications due to existing wells. Given the circumstances presented in these cases, where MRC has previously developed and depleted the First and Third Bone Spring in Section 31, when combined with the impacts of MRC’s piecemeal Airstrip development plan, which FME3 will demonstrate in its Closing Brief submitted on December 16, 2024, MRC’s Airstrip Bone Spring Applications should be denied.

To the extent MRC may argue that FME3 should have raised this argument in its pre-hearing statement, that argument is misplaced. *See* Hearing Transcript, p. 343 at 17-18 (“There was nothing in their pre-hearing statement about that.”). First, the rule governing prehearing statements does not require an operator opposing another operator’s applications to delineate each basis for opposition. *See* Rule 19.15.4.13.B(2) NMAC (a party opposing another party’s application shall include a “statement of the extent to which the party supports or opposes the issuance of the order the applicant seeks and the reasons for such support or opposition.”). Second,

if MRC is correct, then MRC is precluded from raising any arguments not raised in MRC's pre-hearing statement, which would include any arguments regarding the term assignment issue that MRC raised at the hearing but is not discussed in MRC's pre-hearing statement.

CONCLUSION

Because MRC's Airstrip Bone Spring Applications seek to pool the entire "Bone Spring formation," but MRC cannot develop the entire Bone Spring formation in any of the Airstrip Bone Spring Applications, MRC's Airstrip Bone Spring Applications should be denied, especially when combined with the other deficiencies in MRC's development plans, which FME3 will demonstrate in its Closing Brief. Alternatively, MRC should be required to amend its compulsory pooling checklists to specifically identify the Bone Spring benches each application actually is capable of developing in the cell labeled "Pooling this vertical extent" to ensure that, if the Division grants MRC's applications, the orders correctly identify the vertical extent capable of being developed in each case.

Respectfully submitted,

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By: /s/ Deana M. Bennett

Deana M. Bennett
Earl E. DeBrine
Yarithza Peña
Post Office Box 2168
500 Fourth Street NW, Suite 1000
Albuquerque, New Mexico 87103-2168
Telephone: 505.848.1800
Deana.Bennett@modrall.com
eed@modrall.com
yarithza.pena@modrall.com

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 December 9, 2024.

Michael H. Feldewert

Adam G. Rankin

Paula M. Vance

P.O. Box 2208

Santa Fe, NM 87504-2208

(505) 988-4421

mfeldewert@hollandhart.com

agrarkin@hollandhart.com

pmvance@hollandhart.com

Attorneys for MRC Permian Company

Case No.	Proposed Unit	Formation Sought to Be Pooled	Bench for proposed wells	Excluded Benches
24778	W/2 Section 30 (U-turn wells)	"Bone Spring"	First and Third Bone Spring	W/2 Second Bone Spring —MRC seeks separate Second Bone Spring units for the W/2W/2 and E/2W/2 of Sections 30 & 31 in Case Nos. 24780 and 24781 as shown on MRC Exhibit B-6.
24779	E/2 Section 30 (U-turn well)	"Bone Spring"	First Bone Spring	W/2E/2 Second Bone Spring—MRC seeks separate Second Bone Spring unit for W/2E/2 of Section 30 & 31 in Case No. 24782 as shown on MRC Exhibit B-6. E/2E/2 Second Bone Spring—Existing Second Bone Spring well in the E/2E/2 of Section 30 as shown on MRC Exhibit B-6. E/2 Third Bone Spring—Existing Third Bone Spring well in the W/2E/2 of Section 30 as shown on MRC Exhibit B-6. No proposed E/2E/2 Third Bone Spring unit in Section 30 as shown on Exhibit B-6.
24780	W/2W/2 Sections 30 and 31	"Bone Spring"	Second Bone Spring	W/2W/2 First Bone Spring—Existing First Bone Spring well in the W/2W/2 of Section 31 as shown on MRC Exhibit B-6 and proposed First Bone Spring W/2 U-turn well in Section 30 in Case No. 24778. W/2W/2 Third Bone Spring—Existing Third Bone Spring well in the W/2W/2 of Section 31 as shown on MRC Exhibit B-6 and proposed Third Bone Spring W/2 U-turn well in Section 30 in Case No. 24778.
24781	E/2W/2 Sections 30 and 31	"Bone Spring"	Second Bone Spring	E/2W/2 First Bone Spring—No First Bone Spring well proposed in E/2W/2 of Section 31 as shown on MRC Exhibit B-6. Proposed First Bone Spring W/2 U-turn well in Section 30 in Case No. 24778. E/2W/2 Third Bone Spring—Existing Third Bone Spring well in the E/2W/2 of Section 31 as shown on MRC Exhibit B-6. Proposed Third Bone Spring W/2 U-turn well in Section 30 in Case No. 24778.
24782	W/2E/2 Sections 30 and 31	"Bone Spring"	Second Bone Spring	W/2E/2 First Bone Spring—No First Bone Spring well proposed in W/2E/2 of Section 31 as shown on MRC Exhibit B-6. Proposed First Bone Spring E/2 U-turn well in Section 30 in Case No. 24779. W/2E/2 Third Bone Spring—Existing Third Bone Spring well in the W/2E/2 of Section 31 and existing Third Bone Spring well in the W/2E/2 of Section 30 as shown on MRC Exhibit B-6.