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

APPLICATION OF TUMBLER OPERATING PARTNERS, LLC, FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO **Case Nos. 25462-25465**

APPLICATION OF TUMBLER OPERATING PARTNERS, LLC, FOR APPROVAL OF NON-STANDARD UNIT AND FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO **Case No .25466**

APPLICATION OF MARATHON OIL PERMIAN, LLC FOR COMPULSORY POOLING AND APPROVAL OF NON-STANDARD UNIT, LEA COUNTY, NEW MEXICO **Case No.25541, 25542**

TUMBLER OPERATING PARTNERS, LLC'S CLOSING STATEMENT

Tumbler Operating Partners, LLC ("TOP"), through undersigned counsel, submit this closing statement for the Division's consideration. For the reasons stated herein, the applications under Case Nos. 25462-25466 should be approved, TOP should be designated operator of the proposed spacing units and initial wells, and Marathon Oil Permian, LLC's ("Marathon") competing applications under Case Nos. 25541-25542 should be denied.

INTRODUCTION

TOP's plan to simultaneously co-develop the Third Bone Spring Sand ("3BSS") and Wolfcamp A ("WCA") in these competing pooling cases is the only proposal before the Division that will prevent waste. The zones must be developed together to maximize recovery and avoid potential parent-child depletion effects because no fracture barriers exist between the WCA and the 3BSS. To target only the WCA, as Marathon intends, will not effectively or efficiently drain available reserves. Returning to drill the 3BSS later, as Marathon suggests is possible, will be less effective due to potential parent-child depletion effects. The only outcome under Marathon's plan will be stranding reserves and causing waste. In contrast, TOP's proposal to co-develop both zones has been shown to be an effective method of developing the reservoir based on offsetting production, demonstrating substantial improved recovery of reserves compared to under-developing the WCA interval alone as Marathon proposes.

ARGUMENT

I. Relevant Factors Considered in Deciding Competing Compulsory Pooling Cases Favor TOP.

The Division is authorized to issue compulsory pooling orders that "protect correlative rights" and "prevent waste." NMSA 1978, § 70-2-17(C); *Marbob Energy Corp. v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, ¶ 2, 206 P.3d 135 (stating the Division has "two primary duties regarding the conservation of oil and gas: prevention of waste and protection of correlative

rights"). When evaluating competing compulsory pooling applications, the Division and New Mexico Oil Conservation Commission ("Commission") consider several factors in furtherance of these duties. See Order No. R-21420-A, ¶ 9. The Division may consider the following factors in its evaluation: (a) comparison of geologic evidence, proposed well location and efficient recovery of oil and gas reserves; (b) comparison of risk associated with the parties' respective proposals; (c) whether a party engaged in "good faith" negotiations prior to the application to force pool; (d) ability of each party to prudently operate the property and, thereby, prevent waste; (e) comparison of the well cost estimates (AFEs) and other operational costs; (f) comparison of the mineral interest ownership controlled by each party at the time the application was heard; and (g) the ability of the applicants to timely locate well sites and to operate on the surface. *See* Div. Order No. R-20223, ¶ 28; *accord* Comm. Order No. R-10731-B. These factors are not equally weighted, "the most important consideration in awarding operations to competing interest owners is geologic evidence as it relates to well location and recovery of oil and gas and associated risk." *Id*.; *see also* Order No. R-10731-B, ¶ 23(f). When competing applicants propose development plans with similar recovery expectations, the Division gives dispositive weight to the remaining factors. *See* Order No. R-21800, ¶ 22 (holding that if there is evidence that one applicant's plan will result in greater recovery of oil and gas, the OCD need not "consider other factors including working interest control"). Here, Tumbler's development plan differs significantly from Marathon's. Five of the seven factors weigh in favor of TOP, and most critically because only TOP's plan satisfies the Division's duty to prevent waste, TOPs applications should be approved and Marathon's applications should be denied.

A. TOP's simultaneous development of the 3BSS and the WCA, and TOP's prudent well spacing will avoid permanently stranding reserves in the 3BSS and avoid waste.

TOP proposes to simultaneously co-develop the 3BSS and WCA targets in order to recover the greatest amount of hydrocarbons and mitigate parent-child well interference due to a lack of a fracture barrier between the 3BSS and WCA targets and thereby prevent waste. Marathon acknowledges the lack of a fracture barrier between the two zones and development of the 3BSS after the WCA has been developed creates a risk of parent-child well interference and the causation of preventable waste. Despite this, Marathon does not intend to develop the 3BSS at this time.

1. Simultaneous co-development will prevent permanently stranding reserves in the 3BSS and avoid waste.

TOP will simultaneously co-develop the 3BSS with the WCA and space the wellbores appropriately to mitigate the potential for parent/child interference due to the absence of meaningful fracture stimulation barriers in the rock. *See* 9/16/25 TR at 232:23-233:9; *see also* TOP Second Revised Exs., Ex. B at 3, ¶ 11 (pdf 179) (Oct. 10, 2025) (hereinafter TOP Ex.). TOP submitted geological and engineering analyses in support of its proposals. TOP prepared detailed subsurface structure maps with the type log of an existing well within the proposed development area, illustrating each productive interval that TOP targets. *See* TOP Exs. B-2.a-B-2.g (pdf 189-195). TOP also submitted a W-E cross section of five wells drilled within one mile of the proposed development, illustrating continuity in the target intervals. TOP Exs. B at 2, ¶ 7, B-3 (pdf 178, 196). Finally, TOP conducted several engineering analyses of offsetting analogs to create type curves and determine the optimum spacing and development sequence to efficiently maximize hydrocarbon recovery. *See* TOP Exs. D-10 (pdf 231), D-11 (pdf 232-238), D-12 (pdf 239-241), D-13 (pdf 242), and D-14 (pdf 243).

Marathon's drilling plan will preclude efficient recovery in the 3BSS and thereby result in waste. Marathon does not propose to drill wells in the 3BSS. *See, e.g.*, TOP Ex. B-4 (pdf 197) (gunbarrel comparing TOP's proposal with Marathon's proposal; Case No. 25542, Marathon's

Notice of 2nd Amend. Ex. Packet, Ex. B-6 (pdf 159) (Oct. 24, 2025) (hereinafter "Marathon Exs.") As explained by TOP's geologist, however, Marathon's failure to co-develop the 3BSS with the WCA will harm future potential to develop the 3BSS due to the parent-child effect. 09/16/25 TR at 236:22-237:5. Indeed, Marathon admits that no frac barrier exists between the 3BSS and the WCA and that therefore preventable waste could occur if the 3BSS was not co-developed with the WCA. TR 09/17/25 at 628:17-19 (pdf 275) (Mr. Patrick, "I do not believe there is a prominent frac barrier between the Wolfcamp A and the Third Bone Spring Sand[.]"); *see id.* at 629:7-9, 628:17-629:9 (pdf 275-276) (Mr. Patrick, admitting that communication with previously drilled WCA wells might occur if the 3BSS is later developed).

2. Marathon's plan introduces additional waste by under-developing the Second Bone Spring Sand and WCA and drilling unnecessary wells in the 1BSS.

TOP's engineering and geologic analysis of the Second Bone Spring Sand ("2BSS") and WCA indicate that four wells per section and five wells per section, respectively, is the most effective plan to maximize the recovery of hydrocarbons in these two targets. TOP Exs. D at 2, ¶ 5(A), D-11.f and D-12.c (pdf 214, 237, 241). Marathon's proposes to drill only four wells per section of the WCA and only three wells in the 2BSS. Marathon's Notices of Second Amended Exhibit Packets, Exs. B-5 (pdf 151 & 159). Marathon decreases recovery in the WCA through its ultra-wide 1,320' spacing, yielding only ~10% uplift in EURs per well. TOP Exs. D-10, D-11.f and D-12.c (pdf 214, 231, 237, 241). In contrast, TOP's proposed 880' spacing unlocks ~34% more recovery. Id. TOP Exs. D at 2, ¶ 5(A), D-10 D-11.f and D-12.c (pdf 214, 231, 237, 241). Marathon's three wells per section underdevelopment of the 2BSS will not recover any additional reserves per well than TOP's proposed four wells per section plan, creating further waste. TOP Exs. D-10, D-11.c and D-12.b (pdf 231, 234, 240).

Finally, Marathon's proposed six wells in the First Bone Spring Sand ("1BSS") are too dense because the 1BSS is a more sandy interval with higher permeabilities. 9/16/25 TR at 236:22-237:10.

B. Geologic Evidence:

Tumbler's proposed development of the Avalon and 3BSC are supported by its geological and engineering analysis as detailed above.

Marathon has offered inconsistent and unsupported subjective opinions in an effort to distinguish its proposed lack of development in the Avalon and 3BSC. Marathon attempted to justify its failure to propose development of the omitted targets by focusing on purported variability within the proposed units. Marathon's geologist, Mr. Patrick, testified that the Avalon, 3BSS, and the 3BSC are considered "high risk at this point." *See, e.g.*, 9/17/25 TR at 600:3-9 (pdf 248). At the time of this testimony on September 17, 2025, however, Mr. Patrick had no data to support this opinion and could not identify the parameters he used to conclude that the intervals were high risk. *See, e.g.*, *id.* at 603:10-24 (pdf 251). Mr. Patrick was given the opportunity to provide the parameters and screening that went into developing his opinion regarding high risk. *See id.* at 629:10-632:16 (pdf 277-278). However, after submitting additional exhibits and sitting for cross-examination, Mr. Patrick still could not identify the quantitative ranges that he used to distinguish between variability that was "high risk" and variability that was acceptable in intervals that Marathon targets. 10/22/2025 pt 2 at 49:00-49:49. Because Mr. Patrick could not give a satisfactory explanation as to how he arrived at this opinions, those opinions are not competent evidence and should be disregarded. Rule 11-705 NMRA (requiring an expert to disclose facts or data supporting his opinion on cross-examination); *see, e.g.*, *Four Hills Country Club v. Bernalillo County Prop. Tax Protest Bd.*, 1979-NMCA-141, ¶ 11, 94 N.M. 709 ("The rule is . . . experts must

satisfactorily explain the steps followed in reaching a conclusion and without such an explanation the opinion is not competent evidence."). For these reasons, this factor also weighs in favor of TOP.

C. Comparison of Risk

Both Marathon and TOP proposed risk penalties of 200%. With respect to the risk penalty, there is no difference between the proposed developments.

D. **Good faith effort to negotiate prior to filing applications**

COP's lack of a good faith effort to negotiate is evident in the chronologies of contacts submitted by the parties, Exs. A-5; and the emails in Revised Supplemental Exhibit D-16 (filed October 21, 2025). As requested by the technical examiner, 09/17/25 TR at 306:14-16; TOP identifies in bullet points below the evidence showing that Marathon, now ConocoPhillips, failed to negotiate in good faith because (1) it repeatedly refused to respond to TOP's efforts to initiate a discussion about a possible resolution, and (2) instead, at all times, Marathon's position was that it would drill this acreage as it proposed, when it was ready, and would not entertain the possibility of TOP drilling. Indeed, Marathon admits that the only attempts it made to engage Tumber in trade discussions consisted of two emails. 09/17/25 TR at 548:15-25 (pdf 196). Review of the communications between TOP and COP make it clear that COP did not negotiate in good faith. Its applications should therefore be denied. R-10731-B at 9, ¶ g) ("If the force pooling party does not negotiate in good faith, the application is denied . . . .").

Prior to the Marathon/COP merger, TOP spent almost a year conferring with Marathon, ultimately reaching the point where TOP had submitted its executed elections to participate in Marathon's proposed wells and drafted a side agreement to address its concerns about Marathon's proposed JOA. *See* Revised Supplemental Exhibit D-16 at pdf pages 7, 13, 27, 29, 56, 53, 46-52.

Yet Marathon intentionally allowed its extended pooling orders to expire. As is evident from the following emails, Marathon failed to negotiate in good faith.

- *Id.* at pdf 41 (Jan. 14, 2025) (TOP emails COP "to understand COP's outlook for the unit," offering "to put together a deal" and proposing call to discuss).
- *Id.* at pdf 61 (Jan. 23, 2025) (COP informing TOP that COP does not intend to develop this unit in 2025 but, nonetheless, is "not interested in divesting this position or any interest here").
- *Id.* at 76-77 (Mar. 9, 2025) (TOP expressing disappointment that wells are not part of 2025 drill schedule, offering "to pick[] up a rig to COP specs and working through arrangements so that wells are drilled to COP standards, with COP oversight and involvement," and proposing a call to discuss)
- *Id.* at 74-75 (Mar. 19, 2025) (COP, "Rig availability isn't an issue for this project, we intend to drill these wells ourselves and won't be needing external assistance.").
- *Id*. at 72 (Mar. 27, 2025) (TOP asking, "When and how should we expect the current permits be drilled?"; offering again to discuss "ideas regarding trades and avenues to increase COP's Goliath interests").
- *Id.* (Apr. 3, 2025, 2:09 PM) (COP asks TOP for "any tracts in mind for trade").
- *Id.* at 82 (Apr. 3, 2025, 2:38 PM) (TOP stating that it would "be interested in COP non-op positions that are heavy on PDP, DUCs, & permits in the state line area," with a preference for certain operators, and that "[w]ithout knowing full breadth of the COP non-op position, [TOP is] initially thinking Paduca, Big Sink, and Fuller; asking whether COP has "other options").
- *Id.* at 81 (Apr. 9, 2025) (COP: "[M]y team and I don't have the time to go through our various portfolio [sic] to put a trade schedule together for your consideration. If [TOP] wants to pitch a trade deal please send in an offer with the specifics to the interests. In all candor, our non-op budget is considerable and

we value our near-term non-op positions with good operators such as the ones you listed, which is to say a trade would have to be rather attractive to consider.").

This factor therefore weighs in favor of TOP.

E. Ability to prudently operate and prevent waste:

TOP's team has extensive experience in the Permian Basin, enabling it to prudently operate the proposed wells. *See* TOP Ex. D at 4, ¶ 7 (pdf 217) (detailing the experience of TOP's witnesses in New Mexico operations, including work at Matador). Although TOP does not challenge COP's ability to drill wells, COP's failure to propose sufficient development of the subject acreage, as well as COP's decision to allow previously issued force pooling orders to expire, indicate that COP is not prepared to prudently operate this acreage. *See id.* at 7, ¶¶ I-J; *see also* TOP Ex. D-6 (pdf 228). This factor likewise weighs in favor of TOP.

F. Comparison of costs:

TOP's AFEs reflect costs that are fair, reasonable, and comparable to costs to drill similar wells in Lea County. TOP Exs. A at 8, ¶ 17, A-4 (pdf 8, 135-165). COP's AFEs, on the other hand, have undergone five different revisions and the reliability of COP's AFEs is therefore questionable at best. *See* 10/1/25 TR at 387:9-23; TOP Ex. D-7. In fact, COP's AFEs are approximately $5,000,000 less per well than the gross AFEs estimated by Marathon in April 2024. *See* Email, Samuel Cox to Chris Villareal (Apr. 16, 2024) in Revised Supp. Ex. D-16 at pdf 23-24. TOP's AFEs, however, align with data for other wells drilled in the area. TOP Exs. D at 4, ¶ G, D-7 (pdf 216, 229). Finally, "differences in AFE's [sic] . . . and other operational criteria are not significant factors in awarding operations and have only minor significance in evaluating an operator's ability to prudently operate the property." R-10731-b at 9, ¶ (j). Furthermore, when Marathon's expert was asked about the fairness, reasonability and comparability of costs in their AFEs, they weren't able to offer an opinion one way or another. 09/17/25 TR at 522:1-530:25

(pdf 170-9). Yet in written testimony, Mr. Miller offered an opinion that the well costs in the AFEs were fair, reasonable and comparable for wells of this type in this area. See MRO Exhibits at page 8, ¶ 41

Lastly, at $12,000/month drilling and $1,200/month producing, Marathon's overhead rates are 20% higher than the drilling and producing overhead rates proposed by Marathon. *See* Case No. 25541, MRO Ex-A at 8, ¶ 42 (pdf 16); *see also* TOP Exs, Ex-A at 8, ¶ 23 (pdf 50).

G. Mineral interest ownership

TOP controls approximately 12% working interest Marathon claims to control approximately 52% working interest in the proposed developments. However, COP provided no letter of support from Cimarex and no party to be pooled has signed COP's operating agreement. 09/17/25 TR at 569:10-569:20 (pdf 217); *see* Case No. Marathon Exs, Ex-A-5 (pdf 96). Importantly, contrary to Marathon's representation, see Marathon Consol. PHS at 5 (citing Order Nos. R-20223 and R-10731-B), this difference is not dispositive because working interest control is not of primary importance. Rather, "the most important consideration in awarding operations to competing interest owners is geologic evidence as it relates to well location and recovery of oil and gas and associated risk." R-10731-B at 9, ¶ (f) (Feb. 28, 1997). Working interest control is the controlling factor in awarding operations only "[i]n the absence of compelling factors such as geologic and prospect differences, ability to operate prudently, or any reason why one operator would economically recover more oil or gas by virtue of being awarded operations that then the other." R-10731-B at 10, ¶ 24; accord R-21826 at 3, ¶ 11. As explained above, the geologic evidence weighs in favor of TOP. Thus, this factor is inconsequential.

H. Ability to timely locate well sites and operate on the surface

No weight should be given to the fact that Marathon filed its APDs first. Div. Order No. R-12343-B at 16, ¶ H ("An application for a permit to drill serves different objectives than an application for compulsory pooling and the two proceedings should not be confused." (relying on Comm'n Order No. R-11700-B, finding 33)). As the Division explained, "The mere fact that an applicant obtained an APD first which has not been revoked does not necessarily guarantee that the applicant should be designated the operator of the wells and of the units under compulsory pooling procedures." *Id.* at 17 (quoting Order No. R-12451, finding (17)(a)). If this were the rule, potential operators would be encouraged to strategically file APDs, in an effort to block other potential operators, and the first party to file an APD would wrongfully dictate the configuration of the spacing unit. *Id.* (citing Order No. R-12451, finding (17)(a)). Notably, Marathon has been sitting on its hands with approved APDs for almost two years. *See* No. 25541, Marathon Ex. A-9 (pdf 104).

With respect to surface, TOP will use two common facilities for the proposed wells, which will result in less impact to the surface. TOP Ex. A at 7, ¶ 12 (pdf 48). TOP's proposed development will result in a total surface disturbance of only 37.84 acres while drilling almost twice the number of wells as Marathon. TOP Ex. C at 2 (pdf 2). Moreover, TOP will be implementing enhanced safeguards to reduce both operational and environmental risk by, among other things, using lined containment, berm switches, stainless piping, and pump seal leak detection. *Id.* at 2-3.

In sum, in light of COP's failure to timely pursue drilling this acreage, this factor weighs in favor of TOP.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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