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

APPLICATION OF POWDERHORN OPERATING, LLC FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO. **CASE NO. 25610**

POWDERHORN OPERATING, LLC'S RESPONSE IN OPPOSITION TO MARATHON'S MOTION TO EXCLUDE EVIDENCE

Powderhorn Operating, LLC ("Powderhorn") respectfully submits this Response in Opposition to Marathon Oil Permian, LLC's ("Marathon") Motion to Exclude Evidence (the "Motion"). Marathon seeks to exclude Powderhorn's Exhibit A-9 (regarding notice information for non-standard well locations), Exhibits A-18 and A-19, and paragraph 30 of Travis Macha's landman statement. For the reasons stated below, the Motion should be denied.

I.

BACKGROUND

1. Powderhorn's proposed development plan for the Super Hornet State Com wells involves 4 horizontal wells targeting the Wolfcamp XY and Wolfcamp B intervals in the Purple Sage Wolfcamp pool (Pool Code 98220). The proposed spacing unit encompasses the E/2 of Section 3 and all of Section 2, T24S–R26E, Eddy County, New Mexico.

2. The Purple Sage Wolfcamp pool has special pool rules requiring that the completed interval be located at least 330 feet from the exterior boundary of the applicable spacing unit. Powderhorn's proposed well plan, as do most in the Purple Sage Wolfcamp field, calls for first and last take points at 100 feet from the section lines, rather than the standard 330 feet. This is

strictly a heel/toe approval—a routine type of NSL request that is common in the Purple Sage Wolfcamp pool. The reduced setback adds approximately 460 feet of productive lateral to each Wolfcamp wellbore and a total of 1,840 feet of additional productive lateral across the four initial Wolfcamp A wells, thereby preventing waste, protecting correlative rights, and enhancing project economics. See Powderhorn Exhibit A-18.

3. Powderhorn first sent NSL notice and OCD applications to all internal and offset owners on August 28, 2025. See Exhibit A-18; Exhibit A-19 (sample notice packet and certified mailing log). Powderhorn subsequently sent updated notice to all affected persons on October 22, 2025, advising that the applications had been filed with the Division on or about that date and that objections must be filed within twenty (20) days of the Division's receipt of the applications. Marathon filed its objection on October 29, 2025, alongside Avant Operating II, LLC. No other party objected.

4. Marathon's Motion now seeks to exclude all evidence related to the NSL applications from this pooling proceeding, arguing that Powderhorn did not include NSL approval in its hearing application and that the administrative NSL applications were subsequently canceled.

II.

THE NSL EVIDENCE IS RELEVANT AND MATERIAL TO THE COMPULSORY POOLING DETERMINATION

5. The Division's consideration of a compulsory pooling application necessarily requires evaluation of the applicant's proposed development plan, including the wells to be drilled, their proposed locations, and the engineering rationale for those locations. The challenged exhibits provide exactly this information. Powderhorn Exhibit A-18 summarizes the NSL request, identifies the proposed first and last take points, explains the waste-prevention rationale, and identifies the offset operators. Powderhorn Exhibit A-19 provides the sample notice packet, the engineering statement from Powderhorn's reservoir engineer, and the certified mailing log demonstrating notice to all affected persons. Paragraph 30 of Mr. Macha's self-affirmed statement addresses the notice and status of the NSL applications.

6. While Powderhorn is asking the Division to adjudicate the NSL applications in this pooling proceeding in order to prevent another duplicative contested hearing on this matter, even if the Division prefers a second hearing to rule on this issue, the evidence is still relevant and admissible in this case. That is because the challenged evidence is also offered for a different purpose: to allow the Division to evaluate the completeness, reasonableness, and good faith of Powderhorn's proposed development plan. The Division would have a more difficult time meaningfully assessing whether pooling should be ordered, or on what terms, without understanding where Powderhorn proposes to complete its wells and why. Excluding this evidence would leave the Division with an incomplete picture of the proposed development.

7. 19.15.4.17.A NMAC grants the Division examiner broad discretion to admit relevant evidence, excluding only that which is "immaterial, repetitious or otherwise unreliable."

The challenged exhibits are material (they describe the proposed well plan and its engineering basis), not repetitious, and reliable (they are supported by certified mail records and an engineering statement). Marathon cites no authority for the proposition that well location evidence must be excluded from a pooling hearing because the applicant did not also request NSL approval in its hearing application.

III.

MARATHON HAS BEEN ON NOTICE OF THE PROPOSED NSLs SINCE AUGUST 2025, AND IS THE SOLE OBJECTING PARTY

8. Marathon has had actual knowledge of Powderhorn's proposed non-standard well locations since at least August 28, 2025, when Powderhorn sent the initial NSL notice to all affected persons, including ConocoPhillips Company, by certified mail. Marathon received updated notice on October 22, 2025, and filed its objection on October 29, 2025. Marathon cannot credibly claim surprise or prejudice from the inclusion of NSL evidence in this proceeding. It has known about the proposed locations for over six months and has had ample opportunity to evaluate them.

9. Of the seventeen parties who received notice of the NSL applications, only two parties objected, and only Marathon maintains its objection today. No other working interest owner in the spacing unit objects. Neither of the two offset operators whose correlative rights are most directly implicated by the proposed 100-foot setback objected: Permian Resources Operating, LLC, which operates the W/2 of Section 3 immediately to the west (toward which the first take points encroach), did not object, and Coterra Energy Operating Co., which operates Section 1 to the east (toward which the last take points encroach), did not object. The Bureau of Land Management and the New Mexico State Land Office, both of which received notice, did not object.

10. Marathon's position as the sole objector to the NSL applications mirrors its position as the sole holdout in the compulsory pooling case. The Division is entitled to consider this pattern in evaluating whether Marathon's procedural objections reflect genuine concerns about the proposed well locations or are instead part of a broader effort to oppose Powderhorn's development of the subject acreage.

IV.

EFFICIENCY AND CONSERVATION OF RESOURCES FAVOR RESOLVING THE NSL QUESTION IN THIS PROCEEDING

11. Powderhorn respectfully submits that the Division's interests, the parties' interests, and the public interest in the efficient administration of the Division's regulatory process all favor resolving the NSL question in connection with this proceeding, rather than requiring a separate contested hearing. All affected persons have received notice of the proposed non-standard locations. All parties to this proceeding are aware of the proposed well plan. The engineering rationale has been presented. The only party objecting to the NSLs is the same party opposing the pooling application and is already present in this proceeding. There is no party who would be prejudiced by the Division's consideration of the NSL question here, and no party who lacks notice.

12. By contrast, requiring Powderhorn to re-file the NSL applications, re-notice all seventeen affected persons, and potentially proceed through a separate contested hearing would impose unnecessary costs on Powderhorn, Marathon, and the Division alike. Marathon will be a party to any future NSL proceeding. Likely the same counsel, and certainly the same parties and substantially the same evidence will be involved. The Division's examiner will need to evaluate

the same well locations in the same spacing unit in the same pool. Conducting two hearings where one would suffice would be less efficient.

13. The Division has broad authority to manage its proceedings in a manner that serves the regulatory objectives of waste prevention and protection of correlative rights. See NMSA 1978, § 70-2-12 (granting the Division authority to make such orders as may be necessary to prevent waste and protect correlative rights). Powderhorn recognizes that the Division has discretion over docket management and procedural treatment of the NSL applications. However, Powderhorn respectfully asks the Division to consider whether the interests of all parties—and the Division's own resources—are better served by addressing the NSL question in connection with this proceeding, where all parties are present and all relevant evidence is before the Division, rather than requiring a duplicative proceeding.

14. Powderhorn acknowledges that its hearing application did not formally request NSL approval and that its hearing letter stated the NSLs would be pursued through the administrative process. If the Division concludes that the appropriate course is for Powderhorn to pursue the NSLs through a separate process, Powderhorn is prepared to do so. But even in that event, the evidence in Powderhorn Exhibits A-18 and A-19 and paragraph 30 of Mr. Macha's statement should not be excluded from this pooling proceeding. The Division needs this evidence to evaluate the merits of the pooling application, regardless of whether it adjudicates the NSL applications in this proceeding or separately.

V.

MARATHON'S MOTION SERVES ONLY TO OPPOSE

15. Marathon's Motion, if granted, would strip the Division of relevant well location evidence while forcing Powderhorn to initiate a separate proceeding that will involve the same parties, the same evidence, and the same issues. Marathon will predictably object to any re-filed NSL applications, and the parties will return to this same posture—with the only difference being the additional time and expense consumed. This outcome does not serve the Division's regulatory objectives.

16. Marathon's reliance on the XTO/Apache precedent (Application File, Action ID: 187587; Division Case No. 23425) does not support its position. That matter addressed the procedural question of how an operator should proceed when an administrative NSL application is rejected following an unresolved objection. It did not address whether well location evidence is admissible in a separate compulsory pooling proceeding, and it certainly did not hold that the Division must exclude such evidence. The XTO precedent[1] concerns the procedural vehicle for adjudicating NSLs; it says nothing about the evidentiary question Marathon raises here.

[1] *Which is persuasive and not binding authority.*

CONCLUSION

For the foregoing reasons, Powderhorn respectfully requests that the Division deny Marathon's Motion to Exclude Evidence. The challenged exhibits and testimony are relevant and material to the compulsory pooling determination. Marathon has been on notice of the proposed non-standard locations since August 2025 and is the sole objecting party among seventeen noticed persons. The interests of all parties and the Division's own resources favor resolving the NSL question in this proceeding rather than requiring a separate contested hearing involving the same parties, the same evidence, and the same issues. In the alternative, even if the Division determines that the NSL applications should be pursued separately, the evidence in Exhibits A-18 and A-19 and paragraph 30 of Mr. Macha's statement should be admitted as relevant and material to the pooling determination.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2026, I served a copy of the foregoing document to the following counsel of record via Electronic Mail:

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