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

APPLICATION OF LONGFELLOW ENERGY, LP FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO **Case No. 21651**

APPLICATION OF SPUR ENERGY PARTNERS, LLC FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO **Case No. 21733**

APPLICANT LONGFELLOW ENERGY, LP'S MOTION FOR LEAVE TO FILE RESPONSE TO SPUR ENERGY PARTNERS, LLC'S CLOSING ARGUMENT REGARDING EVALUATION OF THE PARTIES' RESPECTIVE MINERAL INTEREST OWNERSHIP AT THE TIME OF THE APPLICATION

Applicant Longfellow Energy, LP ("Longfellow") hereby moves for leave to file a response to the legal arguments detailed by Spur Energy Partners, LLC's ("Spur") in its closing statement, filed July 23, 2021. Longfellow seeks to file a response in the form attached hereto as Exhibit A.

Spur opposes allowing Longfellow an opportunity to respond and thus opposes the instant motion. Undersigned counsel reached out to counsel for ConocoPhillips at approximately 12 noon today, but has not yet been informed of Conoco's position. Longfellow therefore presumes that Conoco opposes.

For all of the reasons stated herein, this motion should be granted. In support, Longfellow states as follows:

1. In evaluating competing applications, the most important factor is the competing applicants' respective control of interests in the proposed spacing unit. *See* Spur's Closing Statement at 3.

2. Spur contends that it has the majority working interest solely for purposes of consideration of the competing applications by the Division. Spur admits that costs and revenue will be allocated under the percentages of interest as represented by Longfellow and that, after the spacing unit is forcepooled, Longfellow will have the majority working interest. *See* Tr. at 209:10-19, 215:1-25, 235:16-236:5. However, Spur contends that the Division cannot consider the overlapping joint operating agreements to evaluate the percentages of interest held by Longfellow and Spur. *See, e.g.*, Spur's Closing Statement at 4-6. Spur's contention is based on novel legal argument, for which there is no precedent.

3. At the hearing in this matter, in a short opening statement and in leading questions asked of Spur's landman on rebuttal, counsel for Spur purportedly made an effort to establish the legal basis for this novel argument. *See, e.g.*, Tr. at 27:2-29:8; *id.* at 238:4-250:16 (citing to 19.15.4.12(A)(1a) NMAC and 19.15.2.7(M)(10)). Respectfully, the convoluted and novel basis for Spur's argument was less than clear at hearing. *See generally id.*

4. Thereafter, Spur submitted a closing statement containing eleven pages of legal argument in support of its unique position. Spur's Closing Statement at 3-13 (July 23, 2021). Therein, for the first time, Spur identified numerous authorities, including statutory language, eight orders previously issued by the Division or Commission, a 25-year-old memo from the Division, and exhibits and testimony from an unrelated case. *See generally id.* and exhibits attached thereto.

5. Now that Spur has provided a complete legal basis for its novel argument, Longfellow should be provided the opportunity to respond accordingly.

WHEREFORE, Longfellow requests the Division to grant leave allowing the filing of the attached Response, in the form attached hereto as Exhibit A.

Respectfully submitted,

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I hereby certify that a true and correct copy of the foregoing was served on counsel of record by electronic mail on August 6, 2021:

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Applicant Longfellow Energy, LP ("Longfellow") hereby responds to the legal arguments stated by Spur Energy Partners, LLC's ("Spur") in its closing statement, filed July 23, 2021, pertaining to contractual interests under the overlapping joint operating agreements ("JOAs") present in these cases.

I. Spur's calculation of working interest is based on an artificial construct that is contrary to the underlying concepts and practice in the Division and the oil and gas industry.

Spur contends that the Division cannot consider contractual interests in overlapping JOAs in evaluating the applicants' respective interests in the proposed spacing unit. *See generally* Spur's Closing Statement. A close look at the pertinent statutes and rules, as well as the orders cited by Spur, reveals otherwise.

EXHIBIT A

As explained by the Hearing Examiner at the hearing, the Division is pooling uncommitted interest owners in a compulsory pooling order. Tr. at 234:18-20, 235:13-15, 236:14-16. Spur admits that a party to an overlapping JOA, such as the Puma JOA and Aid JOA in this particular circumstance, is not committed to the proposed spacing unit. *Id.* at 235:16-236:5. Spur further admits that an operator should take the overlapping JOAs into consideration in calculating the percentages of interest for allocating costs and revenues. *Id.* at 209:10-19. Thus, Spur admits that the parties to the Puma JOA and Aid JOA are entitled to revenues and obligated to pay costs for development of the proposed spacing unit. As a result, any compulsory pooling order will result in requiring all parties to the overlapping JOAs to elect to participate and pay their share of estimated well costs or face a 200% non-consent penalty.

Indeed, Spur admits that, if operator, it would utilize the working interests from the overlapping JOAs when allocating costs and paying revenues. Tr. at 215:1-5, 17-19. Spur further admits that Longfellow has a greater working interest than Spur when you take into account the working interests from the overlapping JOAs. *Id.* at 215:22-25. Yet Spur takes the unprecedented position that the Division cannot consider the undisputed fact that Longfellow will be the majority working interest owner when this spacing unit is forcepooled. It cannot be the intent of the legislature or the Division to preclude the Division from considering reality in its "evaluation of the mineral interest ownership held by each party at the time the application was heard." *See e.g.*, *Marbob Energy Corp. v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, ¶¶ 9-10, 146 N.M. 24; *Johnson v. New Mexico Oil Conservation Comm'n*, 1999-NMSC-021, ¶ 27, 127 N.M. 120; *Regents of Univ. of New Mexico v. New Mexico Fed'n of Tchrs.*, 1998-NMSC-020, ¶ 28, 125 N.M. 401; *see also In re Hearing Called by the Oil Conservation Division to Consider Cases No. 16099-16101, and 16102-16104, 16169-16174*, Order No. R-20223, ¶ 27

(Nov. 8, 2018) (identifying factors to be considered in evaluating competing development plans in a compulsory pooling case).

As the Hearing Examiner points out, a "working interest" is a cost-bearing interest. Tr. at 242:20-21. As noted, Spur admits that all parties to the overlapping JOAs will be cost-bearing working interest owners when the compulsory pooling order is entered. For this reason, the interests of each of these parties must be considered in evaluating the percentage of "mineral interest ownership" held by Spur and by Longfellow.

The definition of "working interest owner" does not preclude the Division from considering the impact of contractual interests in a spacing unit. *See* 19.15.2.7(W) NMAC ("'Working interest owner' means the owner of an operating interest under an oil and gas lease who has an exclusive right to exploit the oil and gas minerals. Working interests are cost bearing."). Section 70-2-18(A) expressly provides that an operator must obtain voluntary agreements or a pooling order "where there are owners of royalty interests *or undivided interests in oil or gas minerals which are separately owned or any combination thereof*, embraced within [a] spacing or proration unit." (Emphasis added). *See id.* Subsection B (providing that an operator who fails to obtain voluntary pooling agreements or an order from the division "shall nevertheless be liable to account to and pay each owner of minerals or leasehold interest, including *owners of* overriding royalty interests and *other payments out of production*" (emphasis added)); *see also* NMSA 1978, § 70-2-17(C) (1977) ("All orders effecting such pooling . . . will afford to the owner or owners of each tract *or interest in the unit* the opportunity to recover or receive without unnecessary expense his just and fair share of the oil or gas, or both (emphasis added)).

Nothing in the governing statutes excludes a "contractual" interest in the oil and gas minerals from the operation of these legislative directives. Rather, if an uncommitted party is entitled to a payment out of production, its interest is subject to being pooled, regardless of the derivation of such interest. *See* § 70-2-18(B). Moreover, the owner of a working interest deriving from a contractual JOA interest has a correlative right that is entitled to be protected by the Division. *See* NMSA 1978, § 70-2-11(1977) ("The division is hereby empowered, and it is its duty, . . . to protect correlative rights[.]"). Spur's overly narrow focus on, and interpretation of, regulatory definitions cannot be used to arbitrarily support its artificial construct that contractual interests must be ignored when evaluating an applicant's mineral interest ownership. To do so would be to obviate the intent of the Legislature and the practice before the Division without justification.

Notably, utilizing the compulsory pooling statutes, each party to the overlapping JOA, regardless of whether it is the lessee of a particular tract, has the right to propose the drilling and development of oil and gas minerals by combining the contract area of the JOA, or a portion thereof, with offsetting tracts/leases to form efficiently sized and oriented units to enable and facilitate such development utilizing horizontal wells. *See* Exhibit A-12 (Rebuttal) at 5-7, art. VI, part B(1)-(2) [pdf 12-14]. Thus, each party to the overlapping JOA has the right to propose the drilling of a well within the proposed spacing unit. Section 70-2-17(C) provides as follows:

> When two or more separately owned tracts of land are embraced within a spacing or proration unit, or *where there are owners of* royalty interests or *undivided interests in oil and gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit,* the owner or owners thereof may validly pool their interests and develop their lands as a unit. *Where,* however, *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, 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.

(Emphasis added)). Thus, nothing in the governing statute prohibits such an owner from exercising its contractual right to drill.

Moreover, Rule 19.15.14.12(A)(1)(a) NMAC is consistent with the statutory language discussed above: "The applicant shall give notice to *each owner of an interest in the mineral estate* of any portion of the lands the applicant proposes to be pooled or unitized whose interest is evidenced by a written conveyance document either of record or known to the applicant at the time the applicant filed the application and whose interest has not been voluntarily committed to the area proposed to be pooled or unitized (other than a royalty interest subject to a pooling or unitization clause)." (Emphasis added). The notice requirement for compulsory pooling applications does not exclude a contractual interest in the mineral estate. *See id.* Moreover, the contractual interests in this case, that is, the overlapping JOAs, are of record and known to the applicant Spur, as it is a party to both of these JOAs. *See* Longfellow's Amended and Rebuttal Exhibit, Exhibit H to Exhibit A-12 (Aid JOA), recorded in Eddy County, book 682, page 529-43 [pdf page 83]; Tr. at 208:6-210:18.

The flaw in Spur's position becomes obvious when considering that a leasehold interest is a contractual interest. *See generally Maralex Res., Inc. v. Gilbreath*, 2003-NMSC-023, ¶ 33, 134 N.M. 308, 318, 76 P.3d 626, 636. A lessee under an oil and gas lease owns a "contractual" interest by virtue of that lease. For all of these reasons, Spur's self-serving attempt to read such an exclusion into the statutes and regulations should not be sustained.

II. Orders cited by Spur in support of its artificial construct are not on-point and do not support Spur's position.

The orders and other exhibits attached to Spur's application provide no support for its position. *See, e.g.*, Spur's Closing Statement at 4. None are on-point; none stand for the proposition that a contractual interest should not be considered in evaluating an applicant's mineral interest ownership.

Indeed, the first case cited by Spur contradicts its position in the instant proceeding. In *In re Application of KCS Medallion Resources Inc. for Compulsory Pooling*, No. 11666, *consol. with application of Yates Petroleum Corp. for Compulsory Pooling*, No. 11677 ("Medallion/Yates Case"), the division attributed an additional 14.754 percent interest to the applicant Yates in the spacing unit by virtue of an overlapping unit agreement and a 24.101 percent interest in the spacing unit to the applicant Medallion by virtue of a farmout agreement under which Medallion would acquire its interest upon the drilling of a well. *See* Order No. R-10731-B at 6, ¶ 16(a)-(d) (Feb. 28, 1997); *id.* at 7, ¶¶ 18-19 (noting that one applicant "will earn 24.101% of the spacing unit upon the drilling of a well); *see also id.* at 8, ¶ 23(d) (stating that one applicant should be credited with the overlapping JOA's 14.8% of the spacing unit because it was the operator and had the support of the majority of interest owners in the unit). The division expressly modified the "working interest control" by considering interest arising out of an overlapping unit agreement and prospective proration units. *Id.* at 10, ¶¶ 24-24 (referring to the "adjusted working interest control'"). Similarly, in *In re Application of David H. Arrington Oil & Gas, Inc. for Compulsory Pooling*, No. 12922, *consol. with Application of Great Western Drilling for Compulsory Pooling*, No. 12943 ("Arrington/GWD Case"), the division considered the "adjusted working interest control," as that term was applied in Order No. R-10731-B. Order

No. R-11869 at 6, ¶ 18(b) & ¶ 19 (Dec. 6, 2002). Thus, the division recognizes that contractual interests must be considered in evaluating the applicants' respective interests in the spacing unit.[1]

Spur desperately tries to use smoke and mirrors in an effort to overcome its unsupported position. *See* Spur's Closing Statement at 9-13. For example, Spur cites a number of orders for the unremarkable proposition that the interests being pooled relate to minerals underlying the spacing unit. *Id.* at 9. Spur misses the point. The parties to the underlying JOAs have an interest in the underlying minerals by virtue of the contractual agreements. As explained above, the division considers contractual agreements, which include leases, in evaluating an applicant's interest in the spacing unit. Spur's reliance on the division memorandum, dated April 5, 1995, attached as Exhibit A to Spur's closing statement, is similarly unremarkable. *See* Spur's Closing Statement at 10 (relying on the memorandum for the proposition that interest ownership within the spacing unit is "relevant and pertinent").

Spur relies heavily on a more recent case, which addressed pooling in the context of horizontal wells, *In re Application of Matador Production Co. for a No-Standard Spacing and Proration Unit and Compulsory Pooling*, Case No. 15433, Order No. R-14140 ("Matador Case"). Spur's Closing Statement at 10-12. The Matador Case is not on point. There, the issue was "whether a unit may be the subject of the compulsory pooling where a portion only of the land, or of the mineral interest in the lands in the unit, is the subject of a JOA." Order No. R-14140 at 4, ¶ 9. The resulting order stated the unremarkable proposition that the overlapping JOA does not constitute an agreement of the parties to pool their interests in production within and outside of the contract area subject to the overlapping JOA. *Id.* at 5, ¶ 17.

[1] Order Nos. R-10731-B and R-11869 addressed spacing units for vertical wells. Order No. R-13603, cited by Spur in its Closing Statement at 4, does not appear to be related to compulsory pooling and does not contain a paragraph 17(f). *Cf.* Spur's Closing Statement at 4.

Order No. R-14140 thus provides no support for Spur's position. Rather, it supports the proposition set forth in the Medallion/Yates Case and the Arrington/GWD Case, that is, the contractual interests should be taken into consideration in determining the applicant's adjusted working interest control. *See supra* at 6. Indeed, the proposition in the Matador Case illustrates precisely why the contractual interests in the overlapping JOAs in the instant case must be included, and accounted for, in the compulsory pooling case—they are uncommitted interest owners who will effectively be forcepooled. *See* Spur's Closing Statement at 13. Both the Matador Case and its immediate progeny, *In re Application of Chisholm Energy Operating, LLC for a Non-Standard Spacing and Proration Unit and Compulsory Pooling*, Case Nos. 16115 & 16117, Order No. R-14876 expressly recognize that applications in which an overlapping JOA exists must "*pool[] all uncommitted interests, whatever they may be*," in order "[t]o avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford to the owner of each interest in the Units the opportunity to recover or receive without unnecessary expense a just and fair share of hydrocarbons." Order No. R-14876 at 6, ¶ 19 (emphasis added); Order No. R-14140 at 6, ¶ 22.

Under Spur's position here, an applicant whose only interest in a proposed horizontal spacing unit derives from a "contractual" farm-out agreement would not have the right to forcepool for the drilling of horizontal wells. That cannot be the law, as farmout agreements are often the source of an applicant's working interest in a proposed spacing unit. *See, e.g.*, *Application of Cimarex Energy Co. for a Nonstandard Oil Spacing and Proration Unit and Compulsory Pooling*, Case No. 14418, Tr. at 24:22-25:3 (Feb. 4, 2010) (testifying that the applicant's only interest in the spacing unit was a farmout agreement); *see also id.*, Order No. R-13288 at 2, ¶ 10 (finding that the applicant is an owner of an oil and gas working interest within

the proposed unit and thus had the right to drill), *rev'd on other grounds by* Order of the Commission, No. R-13228-F (Dec. 20, 2010).

III. Longfellow controls the majority interest of the proposed spacing unit when calculated in accordance with the governing law and practice in the Division and the oil and gas industry.

As noted, Spur admits that Longfellow controls the majority working interest, taking into account "all uncommitted interests, whatever they may be," including the contractual interests in the oil and gas underlying the spacing unit arising out of the overlapping JOAs. *See supra* at 2. Spur further admits that if it were operator, it would allocate costs and pay revenues in the percentages of interest calculated by Longfellow. *Id.* For these reasons, and those stated in Longfellow's closing statement, Longfellow's application should be granted and Spur's application should be denied.

Respectfully submitted,

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