

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

**APPLICATION OF MRC PERMIAN COMPANY
AND MATADOR PRODUCTION COMPANYRY FOR
RESCISSION OF API NOS. ASSIGNED TO TWO
APPLICATIONS FOR PERMIT TO DRILL ISSUED
TO TAP ROCK OPERATING, LLC,
LEA COUNTY, NEW MEXICO**

Case No. 22165

**TAP ROCK'S RESPONSE TO MATADOR'S APPLICATION AND
MOTION FOR AN EMERGENCY ORDER**

Tap Rock Resources, LLC ("Tap Rock") hereby responds to the application filed by MRC Permian Company and Matador Production Company (collectively, "Matador") and Matador's related Motion for an Emergency Order rescinding Tap Rock's approved applications for permits to drill ("APDs") the Coonskin Fee #111H (API# 30-025-49260) and the Coonskin Fee #112H (API# 30-025-49261) ("Coonskin Unit"). For the reasons stated herein, the Application and Motion should both be denied.

A. FACTS

1. Tap Rock Operating, LLC ("Tap Rock") proposed its 1.5 mile First Bone Spring Coonskin wells ("Coonskin Unit(s)" or "Coonskin Development") on October 16, 2020. COG Operating, LLC, now Conoco Phillips, ("Conoco") and Matador proposed 2-mile wells in response on November 4, 2020 and January 12, 2021, respectively. On December 8, 2020, Tap Rock filed compulsory pooling applications to pool the Coonskin Units in Case Nos. 21609 and 21610. On the same date, Conoco filed compulsory pooling applications in Case Nos. 21625 and 21626. On

December 18, 2020, Matador filed compulsory pooling applications in Case Nos. 21631 and 21632.

2. Subsequently, Tap Rock negotiated in good faith and acquired the Conoco interest. Accordingly, Conoco dismissed its Case Nos. 21625 and 21626 on July 20, 2021.

3. Tap Rock or its affiliates now own 100% of the working interest, 100% of the surface estate and 83.25% of the revenue interest in its Coonskin Unit. The Coonskin Unit is entirely made of fee acreage that Tap Rock owns outright in the First Bone Spring formation. The Coonskin Unit and Tap Rock's cases no longer require force pooling. Tap Rock has spent over a year working on this spacing unit after being the first party to propose its wells, worked for months in good faith to acquire the balance of the interest in the unit and its plans have been clearly communicated to all parties from the beginning. Matador had a similar opportunity and merely failed to act or else act successfully to reach voluntary joinder on its development plans. Tap Rock's Coonskin Wells do not foreclose Matador's opportunity to continue to work with Conoco for its alternative development plan.

4. On July 30, 2021, Matador filed applications in Case Nos. 22110 and 22111, proposing 2.5 mile wells ("Matador's Later Applications"), which overlap its proposals in Case Nos. 21631 and 21632 ("Matador's First Applications"). Matador's Later Applications do not compete with Tap Rock's cases. Matador's Later Applications *compete only with its own cases*, its First Applications, which were set for hearing on August 20. Yet Matador refuses to dismiss its First Applications, which overlap the Coonskin Unit and in which Matador only owns 25% working interest.

5. As previously detailed and evidenced by Matador's Later Applications, Matador's acreage will not be stranded by Tap Rock's Coonskin Wells. Matador will not be harmed by Tap

Rock's drilling in the Coonskin Unit and will be able to develop its own acreage. Matador admits that it has at least two options for developing its acreage. *See* Motion for an Emergency Order ¶ 2 (Aug. 11, 2021).

6. This development is not last minute. Tap Rock has spent years acquiring the acreage, has infrastructure and takeaway in place, and waited until it owned in each quarter-quarter section so it would be in full compliance with Division rules before it filed for APDs for the Coonskin Wells. *See* 19.15.16.15(A) NMAC. Tap Rock has commenced drilling operations on its Coonskin Development and expended an immense amount of capital to that effect. This last-minute attempt to delay drilling is improper, baseless and any delay will cause significant financial harm to Tap Rock.

7. Matador has done nothing to advance its development plan. Given that Tap Rock owns the fee surface (and owned said surface before it acquired the Conoco lands), Matador has not contacted Tap Rock to even begin preliminary discussions to secure a surface agreement for either of its development plans.

8. Contrary to Matador's assertion, Tap Rock is not bound by the letter agreement between Matador and COG Operating dated February 10, 2021 ("Letter Agreement"). *See* Application at 5, ¶ 13. Matador provides no support for this assertion. *See generally id.* The terms of the Letter Agreement reveal otherwise. The Letter Agreement was entered into by and between COG and Matador only; Tap Rock was not a party. The Letter Agreement contains no covenant that the Agreement runs with the land and the content of the agreement, which states that "it is for the sole purpose of filing APDs," does not touch and concern the land in any way. *See generally* Application, Exhibit C attached thereto. It does not contain any language indicating that it would be binding upon successors and assigns, notwithstanding its express recognition that

neither COG nor Matador was prevented from assigning its interest in the lands. *See id.* ¶ 5. Moreover, Tap Rock did not take any actions that indicated it agreed to be bound by the Letter Agreement and did not agree to take its assignment of the lands from Conoco subject to the Letter Agreement. Tap Rock therefore is not subject to the Letter Agreement.

9. A conductor rig has already drilled to a depth of 120 feet for each of the Coonskin Wells. Tap Rock has expended approximately \$240,000 in drilling costs to date.

10. A drilling rig is currently on location to drill the Coonskin Wells and are in the process of spudding the wells. *See* Spud Notices, attached as Exhibit 1. Each day of additional delay will cost Tap Rock hundreds of thousands of dollars.

B. LAW

1. Matador cites no valid authority in support of its request to temporarily rescind Tap Rock's APDs. Existing authority requires denial of Matador's request. As the owner of 100% of the interest in the Coonskin Unit, Tap Rock applied for and was granted valid APDs. Accordingly, Tap Rock has the right to drill without interference from Matador.

2. In Case Nos. 20298, 20328, and 20329, the circumstances were strikingly similar. Mewbourne Oil Company ("Mewbourne") was poised to spud a well a few days after a motion to suspend its drilling permits had been filed by Catena Resources Operating, LLC ("Catena"). Mewbourne had 100% of the interest in the W/2 of the proposed development, except for the E/2 SW/4, where Mewbourne owned 60% of the interest. *See* Case No. 20298, Mewbourne's Response in Opposition to Motion to Suspend Drilling Permit ¶¶ 3 & 5 (Apr. 3, 2019), attached as Exhibit 2. Like Matador here, Catena argued that its acreage would be stranded. *See* Nos. 20298, 20328, and 20329, Catena's Emergency Motion to Suspend Drilling Permit on Acreage that is the Subject of Competing Well Proposals Pending Before the Division at 2, ¶ 5 (Mar. 29, 2019),

attached as Exhibit 3. The Division denied Catena's motion to suspend and allowed Mewbourne to continue its drilling operations in the W/2 of the proposed development. *See* Order No. R-20467 (entering an order after hearing), attached as Exhibit 4.

3. Similarly, in Case No. 20410, OXY USA, Inc. ("OXY") sought to rescind or stay APDs held by Murchison Oil & Gas, Inc. ("Murchison") for development by shorter laterals, under an overlapping joint operating agreement in which 100% of the interests were committed to Murchison's development. *See* Tr. at 7:4-23 (Mar. 21, 2019), attached as Exhibit 5; *see id.* at 5:19-6:9, 15:16-16:3 ("[A]s we speak, a rig is moving on location and is scheduled to spud the first well this weekend."). The Division denied OXY's expedited motion for stay. Case No. 20410, Order No. R-20430, attached as Exhibit 6.

4. In Case Nos. 21275 and 21276, the Commission addressed analogous circumstances and denied applications to drill longer laterals, which competed with development by 1.5-mile laterals under an underlying joint operating agreement. *See In re Hearing on Application of Novo Oil & Gas Northern Delaware, LLC for Compulsory Pooling*, Nos. 21275 and 21276, OCC Order No. R-21420-A at 7, ¶ 50 (Sept. 17, 2020), attached as Exhibit 7; *id.* at 8, Ordering ¶ 1; *see also id.* at 3, n.1. There, the Commission reversed the decision of the Division, which had approved Novo's applications, and concluded that "BTA's proposal protects correlative rights by presenting the best opportunity for each party to develop its own acreage." *See id.* at 8, ¶ 8; *see also* Order No. R-21252 at 4, ¶ 29, attached as Exhibit 8 (Division finding that BTA had already drilled one well). The Commission reached the same conclusion in similar circumstances in Case Nos. 20865, 20866, 21273, and 21274. *See* Order No. R-21416-A at 9, ¶ 8 (Sept. 17, 2020), attached as Exhibit 9.

5. The only legal authority that Matador cites is inapplicable to the present motion. By Order R-14525-B, the Commission dismissed the case and vacated Order R-14524 so as to render any precedential value moot. Regardless, in Case No. 15759, and in contrast to Tap Rock, VF had no immediate plans to drill its lands and took only reactionary measures to One Energy's proposals. Further, at no point did VF expend capital on developing its lands, let alone move a rig out onto the location. If anything, Matador's actions in the present circumstances are more similar to VF than to One Energy.

6. The foregoing cases support the proposition that an operator's right to drill should not be limited when 100% of the interest is committed to such development and actions have been taken in full compliance with the law toward that development. This proposition is consistent with the applicable statutes and regulations.

7. NMSA 1978, Section 70-2-17(C) expressly provides that that an owner "may validly pool its interest and develop its lands as a unit." Division approval is not required. *See* Section 70-2-17; *see also* 19.15.16.15(A) NMAC (providing that an operator may commence drilling if it has received the consent of at least one working interest or unleased mineral interest owner of each tract in the target formation in which any part of the completed lateral will be located); 19.15.16.15(B)(10) NMAC ("Whenever the operator of any horizontal well shall dedicate thereto lands comprising a standard or approved non-standard horizontal spacing unit in which there are two or more separately owned parcels of land, or royalty interests or undivided interests in oil or gas minerals which are separately owned, or any combination thereof, that have not been previously pooled for oil and gas production from the horizontal spacing unit, the operator shall obtain voluntary agreements pooling said lands or interests or an order of the division pooling said lands before producing the horizontal well.").

C. CONCLUSION

1. Based on the foregoing, Tap Rock has complied with all Division requirements to file permits and drill the proposed wells in the Coonskin Unit and will be severely harmed by the rescission or suspension of its APDs.

2. Tap Rock's proposed development of the Coonskin Unit will not impact Matador's correlative rights or cause waste. By contrast, granting Matador's motion will deprive Tap Rock of its correlative rights and cause immense waste.

3. Matador's Application and Motion for Emergency Order should therefore be denied.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

By: /s/Sharon T. Shaheen

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Attorneys for Tap Rock Resources, LLC

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2021, a true and correct copy of the foregoing pleading was served by electronic mail on counsel of record as follows:

Kyle Perkins
Matador Production company
Vice President and Assistant General Counsel
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Dallas, Texas 75240
(972) 371-5202
kperkins@matadorresources.com

*Attorneys for Matador Production Co. & MRC
Permian Company*

/s/Sharon T. Shaheen
Sharon T. Shaheen

VERIFICATION

STATE OF COLORADO)
)ss
COUNTY OF JEFFERSON)

Matthew Phillips, being duly sworn upon his oath, deposes and states that he is a landman for Tap Rock Operating, LLC; he is authorized to make this verification on its behalf; he has read the foregoing statement and knows the contents thereof; and the same are true and correct to the best of his knowledge, information, and belief.



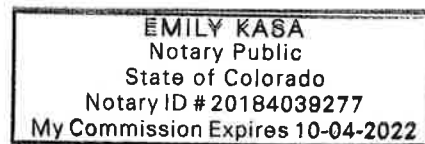
Matthew Phillips

SUBSCRIBED AND SWORN TO before me this 12th day of August, 2021 by Matthew Phillips.

My Commission expires: 10-4-2022



Notary Public



District I 1625 N. French Dr., Hobbs, NM 88240 Phone:(575) 393-6161 Fax:(575) 393-0720 District II 811 S. First St., Artesia, NM 88210 Phone:(575) 748-1283 Fax:(575) 748-9720 District III 1000 Rio Brazos Rd., Aztec, NM 87410 Phone:(505) 334-6178 Fax:(505) 334-6170 District IV 1220 S. St Francis Dr., Santa Fe, NM 87505 Phone:(505) 476-3470 Fax:(505) 476-3462	State of New Mexico Energy, Minerals and Natural Resources Oil Conservation Division 1220 S. St Francis Dr. Santa Fe, NM 87505	Form C-103 August 1, 2011 Permit 299517 WELL API NUMBER 30-025-49260 5. Indicate Type of Lease P 6. State Oil & Gas Lease No. 7. Lease Name or Unit Agreement Name COONSKIN FEE																				
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1. Type of Well: O		8. Well Number 111H																				
2. Name of Operator TAP ROCK OPERATING, LLC		9. OGRID Number 372043																				
3. Address of Operator 523 Park Point Drive, Suite 200, Golden, CO 80401		10. Pool name or Wildcat																				
4. Well Location Unit Letter <u>E</u> : <u>2303</u> feet from the <u>N</u> line and feet <u>1143</u> from the <u>W</u> line Section <u>33</u> Township <u>24S</u> Range <u>35E</u> NMPM _____ County <u>Lea</u>																						
11. Elevation (Show whether DR, KB, BT, GR, etc.) 3291 GR																						
Pit or Below-grade Tank Application <input type="checkbox"/> or Closure <input type="checkbox"/> Pit Type _____ Depth to Groundwater _____ Distance from nearest fresh water well _____ Distance from nearest surface water _____ Pit Liner Thickness: _____ mil Below-Grade Tank: Volume _____ bbls; Construction Material _____																						
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For State Use Only: APPROVED BY: <u>Kurt Simmons</u> TITLE <u>Petroleum Specialist - A</u> DATE <u>8/12/2021</u>																						

Exhibit 1

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

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

**APPLICATION OF MEWBOURNE OIL COMPANY
FOR COMPULSORY POOLING, LEA COUNTY,
NEW MEXICO.**

Case No. 20298

**MEWBOURNE OIL COMPANY'S
RESPONSE IN OPPOSITION TO MOTION TO SUSPEND DRILLING PERMIT**

Mewbourne Oil Company ("Mewbourne") files this response in opposition to the motion to suspend a drilling permit filed by Catena Resources Operating, LLC ("Catena"). The motion to suspend a drilling permit will be referenced as the "Catena Motion".

A. FACTS.

1. In this case, Mewbourne seeks an order pooling all mineral interests in the Bone Spring formation in a horizontal spacing unit comprised of the E/2W/2 of Section 21 and the E/2W/2 of Section 28, Township 19 South, Range 35 East, NMPM, Lea County, New Mexico. The unit will be dedicated to the Charolais 21/28 B2CN State Com. Well No. 1H.

2. Catena's motion proposes to "immediately suspend Mewbourne Oil Company's drilling permits on Section 21, Township 19 South, Range 35 East" and the "applications... will not be limited to Case Nos. 20298, 20328, 20329" which are the only pending pooling applications including Section 21. *See* Catena Motion at 1.

3. Mewbourne owns 100% of the working interest in the W/2W/2 of Sections 21 and 28 which is not subject to a pending pooling case, yet would be impermissibly, adversely affected by Catena's motion.

Exhibit 2

4. Approximately three (3) months ago, in January 2019, Mewbourne proposed its Charolais 21/28 B2CN State Com. Well No. 1H to the parties of record. Although Catena is not a party of record, after hearing Catena may be acquiring an interest within the proposed spacing unit, Mewbourne additionally provided notice to Catena in the same month. In February 2019, Mewbourne informed Catena that it intended to commence drilling the W/2 of Sections 21 and 28 in March 2019.

5. In the E/2W/2 of Sections 21 and 28 Mewbourne owns 100% of the working interest in all but the E/2SW/4 of Section 21. In the E/2SW/4 of Section 21, Mewbourne owns 60% of the working interest. (As a result, Mewbourne owns 90% of the working interest in the proration unit covering the E/2W/2 of Sections 21 and 28 along with 100% of the working interest in the W/2W/2 of Sections 21 and 28.) Though Mewbourne cannot locate a conveyance in the public records, Catena claims to own 32 net acres in the E/2SW/4 of Section 21, or 10% of the horizontal spacing unit. See Exhibit A.

6. Mewbourne has a rig on location and plans to spud the Charolais 21/28 B2CN State Com. Well No. 1H today and drill the Charolais 21/28 B1DM State Com. Well No. #1H immediately thereafter. The units for the wells have been established in full compliance with the rules of the Division. Mewbourne owns an interest in each tract within the well unit, an APD was approved by the Division, and Mewbourne would be severely affected by a suspension of the valid APD. Further, Catena has known about MOC's drilling plans since February 2019. This last minute attempt to delay drilling is improper, baseless, and any delay will cause significant financial harm to MOC.

7. In addition, Mewbourne owns a farmout from Chevron with a term deadline covering approximately 3000 acres of land in this same area. A last-minute suspension of the

valid APD for this well would cause Mewbourne's correlative rights to be severely affected by possibly causing Mewbourne to miss obligation dates set forth within the farmout and a loss of rights associated therewith. Mewbourne has additional term assignment obligations covering the E/2SW/4 of Section 21.

8. Catena has not proposed Bone Spring wells in the W/2 of Section 21 or W/2 of 28. Catena's only well proposals in these tracts are for developing the Wolfcamp formation: the Cable 19-35-16 1H and the Anchor 19-35-28 #1H. Copies of the proposals are attached as Exhibits B & C. Catena is seeking to suspend Mewbourne's valid APD without a competing proposal.

9. Mewbourne has been working on this prospect since January 2018 and has already commenced operations. Mewbourne's APD was filed in November 2018, before Catena acquired its interest in Section 33. Catena was on notice of Mewbourne's plans before they acquired the lease in Section 33 and should have been aware that their development plan might not be viable.

10. Catena claims that it must be allowed to drill its wells, and that its acreage in Section 33 will be "stranded" if its motion is not granted. Looking at Exhibit D, (a) Catena can develop its acreage in Section 33 with standard horizontal proration units without interfering in Mewbourne's development plans and (b) Catena has the ability to form a two mile well unit in Sections 9 and 16 without interfering with Mewbourne's development plans. The clear majority of wells in this area have been developed on one-mile laterals (83% of Bone Spring wells on Exhibit D), and Catena is free to do so in Section 33. The suspension of valid APDs because of the claim that use of standard one-mile horizontal spacing units would "strand" acreage would set a dangerous precedent and undermine the definition of a proration unit.

11. Catena delayed seeking suspension of Mewbourne's valid permits until a rig was on location.

12. Mewbourne has valid APDs and a pooling order is not necessary to drill a well, NMSA 1978 70-2-17 (B & C); NMAC 19.15.16.15 (A) and NMAC 19.15-16.15.C(10).

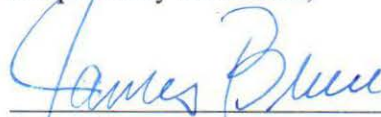
B. CONCLUSION.

13. Based on the foregoing, Mewbourne has complied with all Division requirements to pool, file permits, and drill the Charolais 21/28 B2CN State Com. Well No. 1H and Charolais 21/28 B2DM State Com. Well No. 1H and will be severely harmed by the suspension of the APDs.

14. Mewbourne's proposed development in Sections 21 & 28 will not impact Catena's correlative rights or cause waste in Section 33.

WHEREFORE, for the foregoing reasons, Mewbourne requests that Catena's motion be denied.

Respectfully submitted,



James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

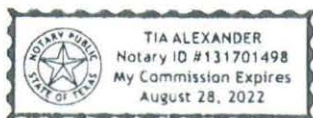
jamesbruc@aol.com

Attorney for Mewbourne Oil Company

VERIFICATION

STATE OF TEXAS)
) ss.
 COUNTY OF MIDLAND)

Cy Shook, being duly sworn upon his oath, deposes and states that: He is a landman for Mewbourne Oil Company; he is authorized to make this verification on its behalf; he has read the foregoing statement, and knows the contents of Part A; and the same are true and correct to the best of his knowledge, information, and belief.



Cy Shook
 Cy Shook

SUBSCRIBED AND SWORN TO before me this 3 day of April 2019 by Cy Shook.

My Commission Expires: 8-28-22

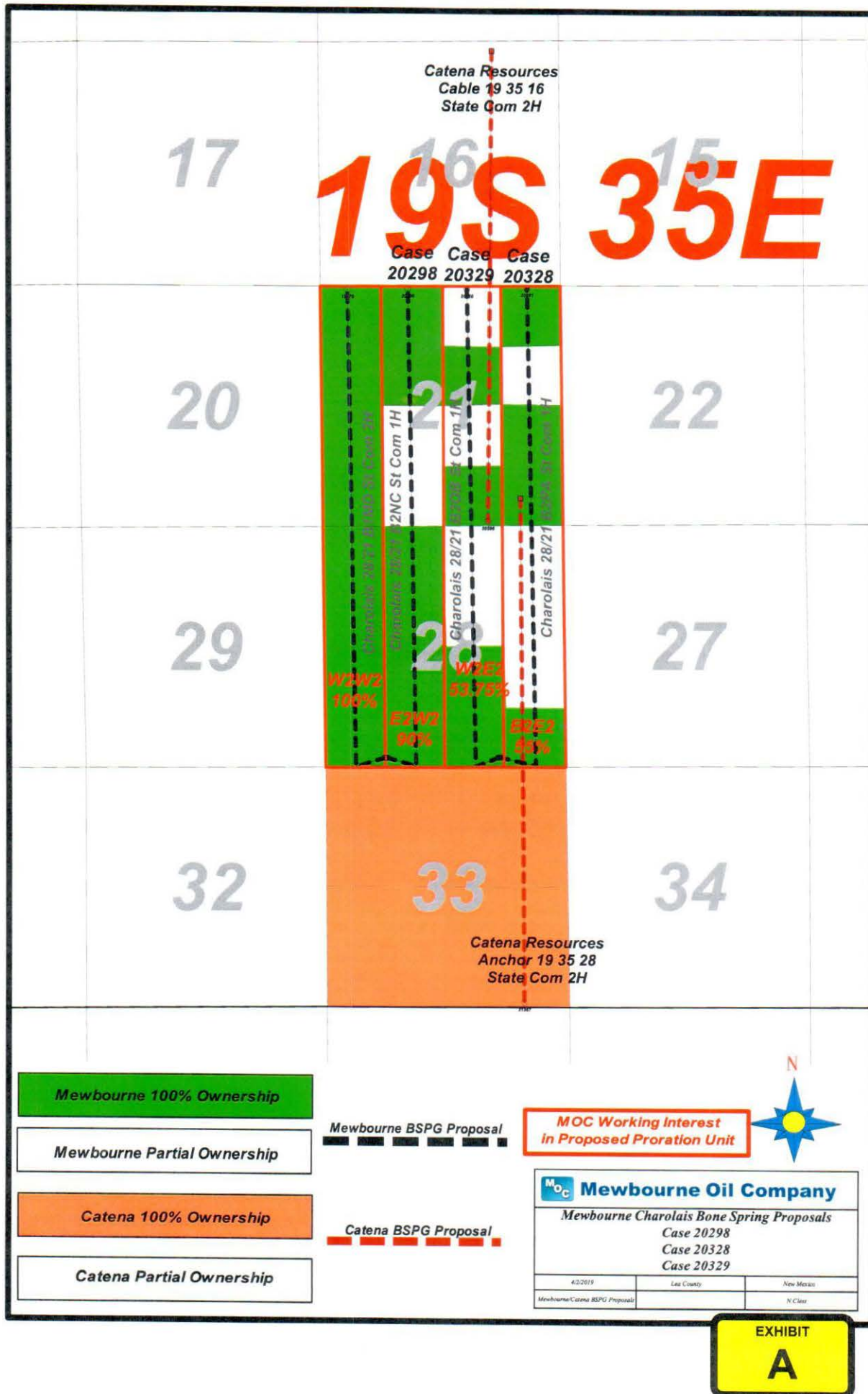
Tia Alexander
 Notary Public

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 7rd day of April, 2019 by e-mail:

Sharon Shaheen
 sshaheen@montand.com

James Bruce
 James Bruce



ATENA RESOURCES		WELL COST ESTIMATE				AFE NO. 019001	
WELL NAME: Anchor 19-35-33 #1H		DATE: 1/28/19		Prep Days: 3			
FIELD NAME:		START DATE:		Drillout Days: 3			
LOCATION: 2 sec. lateral, Lea / NM		COMPLETE DATE:		Tube Up: 2			
COUNTY / ST: Wolfcamp A		ORIGINAL: x		Flowback Days: 10			
OBJECTIVE:		STAGE/DAY:					
INTANGIBLE COSTS	ACCT CODE	DRILLING - 311XX	ACCT CODE	COMPLETION - 321XX	ACCT CODE	FACILITIES - 331XX	TOTAL
Legal Fees / Title Opinion	31001	\$500	32001		33001		\$500
Surveys / Staking / Permits / Bonds	31002	\$2,500	32002		33002		\$2,500
ROW / Surface Damages	31003		32003				\$0
Roads & Location / Reserve Pit - Construction	31004	\$75,678	32004	\$0			\$75,678
Roads & Location / Reserve Pit - Reclamation	31005		32005				\$0
Frac Pond	31006		32006				\$0
Gate Guard	31007		32007	\$7,500			\$7,500
Mouse / Rathole / Conductor	31008	\$116,867	32008				\$116,867
Mobilization / Demobilization	31009	\$513,552					\$513,552
Drilling - Daywork	31010						\$0
Drilling - Footage	31011						\$0
Drilling - Turnkey	31012		32009	\$32,000			\$32,000
Completion / Snubbing / Workover Unit	31013	\$15,330	32010	\$30,255			\$45,585
Trailer House / Communications	31014	\$80,000	32011				\$80,000
Drill Bits	31015	\$206,435	32012				\$206,435
Directional Equipment / Gyro Surveys	31016		32013	\$33,000			\$33,000
Downhole Tool / Stabilization Rental	31017	\$83,984	32014	\$22,000			\$105,984
Mud / Chemicals	31018	\$113,691	32015	\$13,295			\$126,986
Fuel / Power	31019		32016				\$0
Water Supply Well, equipment	31020		32017	\$992,000			\$992,000
Water / Water Hauling	31021	\$61,108	32018	\$21,000			\$82,108
Offsite Water & Cuttings Disposal	31022	\$187,000	32019				\$187,000
Transportation / Hauling	31023	\$29,500	32020				\$29,500
Inspection / Tubular Testing	31024	\$14,476	32021	\$28,603			\$43,079
Laydown Machine / Casing Crew / Tongs	31025	\$50,000	32022	\$114,000			\$164,000
Cementing, Float Equipment & Services	31026	\$38,623					\$38,623
Mud Logging	31027		32023				\$0
Logging - Open Hole	31028		32024	\$30,000			\$30,000
Logging - Cased Hole	31029						\$0
Coring & Analysis, Drill Stem Test	31030		32025	\$336,818			\$336,818
Perforating	31031		32026				\$0
Wireline / Slickline Services	31032	\$77,776	32027	\$165,909			\$243,685
Equipment Rental	31033	\$127,394	32028				\$127,394
Pumping Services/Rental	31034		32029	\$3,582,273			\$3,582,273
Acidizing & Fracturing	31035		32030	\$147,000			\$147,000
Coil Tubing Units	31036		32031	\$104,523			\$104,523
Flow Testing, Swabbing	31037		32032				\$0
Fishing / Sidetrack Services	31038		32033	\$7,500			\$7,500
Nipple Up / BOP Testing	31039		32034				\$0
Overhead	31040	\$152,593	32035	\$118,364	33003		\$270,957
Wellsite Consulting Services/Supervision	31041		32036	\$52,000			\$52,000
Engineering / Geological / Lab Serv Tracers and diagnostics	31042	\$22,720	32037	\$25,000	33004		\$47,720
Roustabout / Contract Labor	31043		32038	\$3,000			\$3,000
Welding Services	31044	\$10,000	32039	\$10,000	33005		\$20,000
Insurance	31045		32040		33006		\$0
Miscellaneous	31046		32041				\$0
P&A Costs	31047		32042	\$6,636	33007		\$6,636
Safety / EH&S	31048	\$98,471	32043	\$293,984			\$392,455
5% Contingency (5% Taxes on Casing Included in casing cost)	31049		32044				\$0
NON-OP Drilling Intangible	31050		32045	\$0	33008		\$0
Pipeline Installation / Interconnect							\$0
TOTAL INTANGIBLE COSTS		\$2,967,897		\$6,173,680		\$0	\$9,141,577
TANGIBLE COSTS	ACCT CODE	DRILLING - 311XX	ACCT CODE	COMPLETION - 321XX	ACCT CODE	FACILITIES - 331XX	TOTAL
Conductor	31101						\$0
Surface Casing	31102	\$67,900					\$67,900
1st Intermediate Casing / Liner	31103	\$104,750					\$104,750
2nd Intermediate Casing / Liner	31104						\$0
Production Casing / Liner			32101	\$544,750			\$544,750
Casing Tie Back			32102				\$0
Liner Hanger Assembly			32103				\$0
Tubing			32104	\$68,339			\$68,339
Casing Equipment - OHMS / Etc.			32105				\$0
Wellhead Equipment	31105	\$25,000	32106	\$15,000			\$40,000
Pumping Unit / Prime Mover / Base			32107		33101		\$0
Rods / Pony Rods / Sinker Bars			32108		33102		\$0
Artificial Lift Other - Gas Lift			32109	\$14,000	33103		\$14,000
Wellhead Equipment Completions			32110	\$42,000	33104		\$42,000
Tanks / Tank Steps / Stairs			32111		33105	\$80,000	\$80,000
Gas Treating / Dehydration Equipment			32112		33106	\$64,000	\$64,000
Separation Equipment, Heater Treater			32113		33107	\$50,000	\$50,000
Surface Pumps			32114	\$125,000	33108	\$125,000	\$250,000
Filters			32115		33109	\$65,000	\$65,000
Buildings			32116		33110		\$0
Interconnect Piping / Manifolds / Headers			32117		33111		\$0
Flowlines / Connections / Valves			32118		33112		\$0
Automation / Instruments / Controls / Analyzers			32119		33113		\$0
Electrical Equipment / Generators			32120		33114		\$0
Compressor & Related Equipment			32121		33115		\$0
Metering Equipment, LACT Unit			32122		33116	\$20,000	\$20,000
Chemical Equipment / Cathodic Protection			32123		33117		\$0
Subsurface Equipment - Packer, Plugs, TAC			32124	\$11,000	33118		\$11,000
Safety / EH&S Equipment			32125	\$2,000	33119	\$21,000	\$23,000
NON-OP Drilling Intangible			32126		33120		\$0
Transfer/DWD Pumps & Equipment			32127		33121		\$0
TBD			32128		33122		\$0
Miscellaneous	31106	\$0	32129	\$0	33123		\$0
Contingency Costs	31107	\$0	32130	\$0	33124		\$0
TOTAL TANGIBLE COSTS		\$197,850		\$895,080		\$425,000	\$1,517,930
TOTAL WELL COSTS		\$3,165,747		\$7,068,760		\$425,000	\$10,659,507

Prepared by: Jason Edwards Title: President Date: 1/28/2019

This AFE is only an estimate. By returning one signed copy, you agree to pay your share of the actual costs incurred.

Extra Expense Insurance

☐ I elect to be covered by Operator's Extra Expense Insurance and pay my proportionate share of the cost.

☐ I elect to purchase my own well control insurance policy.

Neither box is checked above, non-operating working interest owner elects to be covered by Operator's well control insurance.

Joint Owner Interest: Amount: _____

Joint Owner Name: _____ Signature: _____

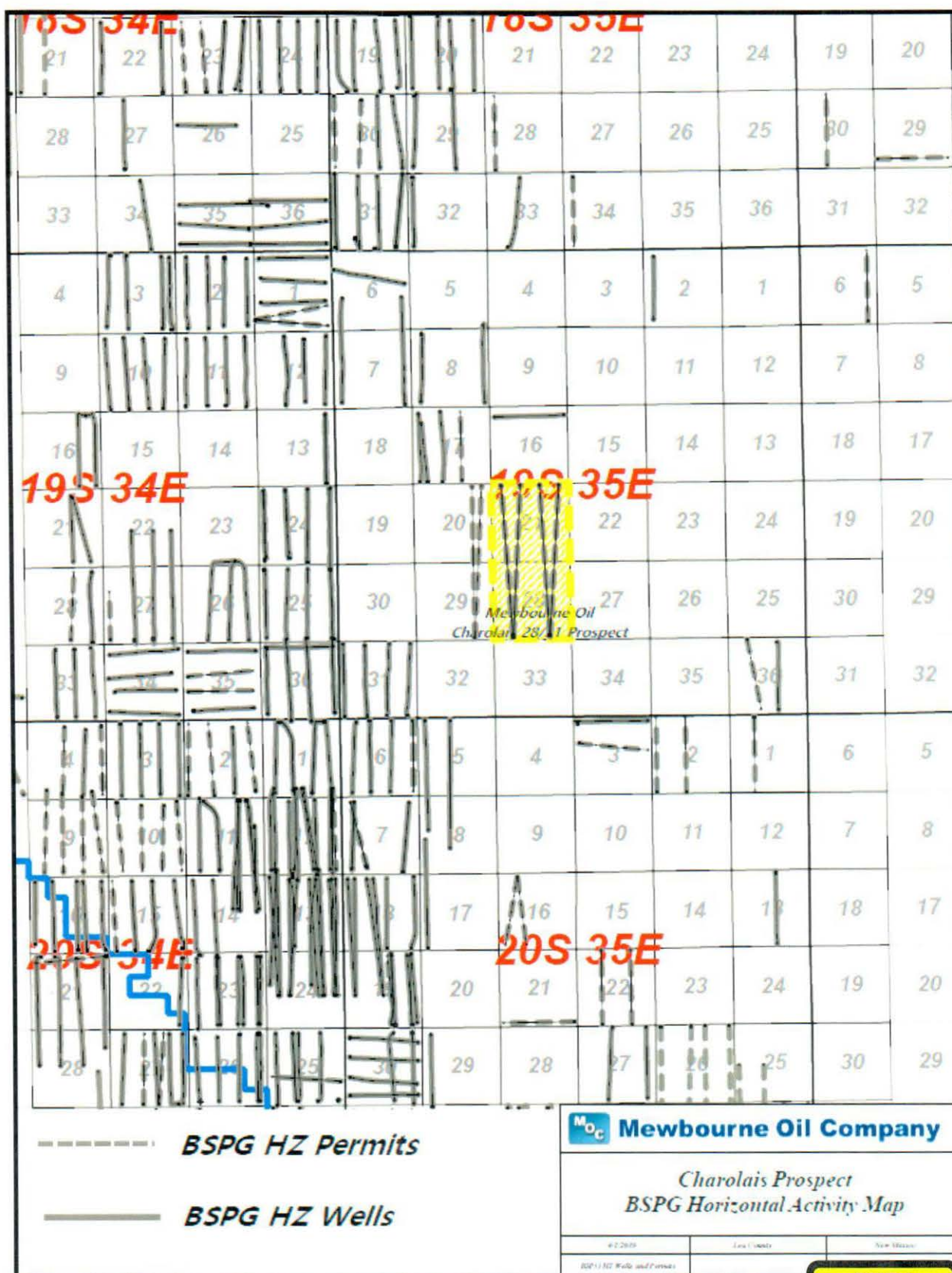
EXHIBIT

B

ATENA RESOURCES		WELL COST ESTIMATE				AFE NO. 019003		
WELL NAME: Cable 19-35-16 1H		DATE: 2/14/19						
FIELD NAME:		START DATE:						
LOCATION: 2 sec. Internal, Lea / NM		COMPLETE DATE:						
COUNTY / ST:		ORIGINAL: x						
OBJECTIVE: Wolfcamp A		SUPPLEMENT:						
INTANGIBLE COSTS		ACCT CODE	DRILLING - 310XX	ACCT CODE	COMPLETION - 320XX	ACCT CODE	FACILITIES - 330XX	TOTAL
Legal Fees / Title Opinion		31001	\$500	32001		33001		\$500
Surveys / Staking / Permits / Bonds		31002	\$2,500	32002		33002		\$2,500
ROW / Surface Damages		31003		32003				\$0
Roads & Location / Reserve Pit - Construction		31004	\$75,678	32004	\$0			\$75,678
Roads & Location / Reserve Pit - Reclamation		31005		32005				\$0
Frac Pans		31006		32006				\$0
Gate Guard		31006		32007	\$7,500			\$7,500
Moose / Rathole / Conductor		31007						\$0
Mobilization / Demobilization		31008	\$116,667	32008				\$116,667
Drilling - Daywork		31009	\$513,552					\$513,552
Drilling - Footage		31010						\$0
Drilling - Turnkey		31011						\$0
Completion / Snubbing / Workover Unit		31012		32009	\$32,000			\$32,000
Trailer House / Communications		31013	\$15,339	32010	\$39,295			\$54,634
Drill Bits		31014	\$80,000	32011				\$80,000
Directional Equipment / Gyro Surveys		31015	\$206,435	32012				\$206,435
Downhole Tool / Stabilization Rental		31016		32013	\$33,000			\$33,000
Mud / Chemicals		31017	\$83,884	32014	\$27,000			\$110,884
Fuel / Power		31018	\$113,681	32015	\$13,295			\$126,976
Water Supply Well, equipment		31019		32016				\$0
Water / Water Hauling		31020		32017	\$992,000			\$992,000
Offsite Water & Cuttings Disposal		31021	\$51,108	32018	\$21,000			\$72,108
Transportation / Hauling		31022	\$187,000	32019				\$187,000
Inspection / Tubular Testing		31023	\$25,500	32020				\$25,500
Laydown Machine / Casing Crew / Tongs		31024	\$14,476	32021	\$29,603			\$44,079
Cementing, Float Equipment & Services		31025	\$50,000	32022	\$114,000			\$164,000
Mud Logging		31026	\$38,623					\$38,623
Logging - Open Hole		31027		32023				\$0
Logging - Cased Hole		31028		32024	\$30,000			\$30,000
Coring & Analysis, Drill Stem Test		31029						\$0
Perforating		31030		32025	\$336,818			\$336,818
Wireline / Slickline Services		31031		32026				\$0
Equipment Rental		31032	\$77,776	32027	\$165,309			\$243,085
Pumping Services/Rental		31033	\$127,394	32028				\$127,394
Acidizing & Fracturing		31034		32029	\$3,562,273			\$3,562,273
Coil Tubing Unit		31035		32030	\$147,000			\$147,000
Flow Testing, Swabbing		31036		32031	\$104,523			\$104,523
Fishing / Sidedrill Services		31037		32032				\$0
Nipple Up / BOPE Testing		31038		32033	\$7,500			\$7,500
Overhead		31039		32034				\$0
Wellsite Consulting Services/Supervision		31040	\$152,593	32035	\$118,364	33003		\$270,957
Engineering / Geological / Lab Serv Tracers and diagnostics		31041		32036	\$52,000			\$52,000
Roustabout / Contract Labor		31042	\$22,720	32037	\$25,000	33004		\$47,720
Welding Services		31043		32038	\$5,000			\$5,000
Insurance		31044	\$10,000	32039	\$10,000	33005		\$20,000
Miscellaneous		31045		32040		33006		\$0
PSA Costs		31046		32041				\$0
Safety / EH&S		31047		32042	\$6,636	33007		\$6,636
5% Contingency (8% Taxes on Casing included in casing cost)		31048	\$98,471	32043	\$293,984			\$392,455
NON-Op Drilling Intangible		31049		32044				\$0
Pipeline Installation / Interconnect		31050		32045		33008		\$0
TOTAL INTANGIBLE COSTS			\$2,067,897		\$6,173,660		\$0	\$8,241,557
TANGIBLE COSTS		ACCT CODE	DRILLING - 311XX	ACCT CODE	COMPLETION - 321XX	ACCT CODE	FACILITIES - 331XX	TOTAL
Conductor	Size Feet S/Pt	31101						
Surface Casing	13 3/8" 1,840 \$35.00	31102	\$67,900					\$67,900
1st Intermediate Casing / Liner	9 5/8" 4,190 \$ 25.00	31103	\$104,750					\$104,750
2nd Intermediate Casing / Liner		31104						\$0
Production Casing / Liner	5 1/2" 21,790 \$25.00			32101	\$544,750			\$544,750
Casing Tie Back				32102				\$0
Liner Hanger Assembly				32103				\$0
Tubing	2.875 10,500 \$ 5.85			32104	\$66,339			\$66,339
Casing Equipment - OHMS / Etc.				32105				\$0
Wellhead Equipment		31105	\$25,000	32106	\$15,000			\$40,000
Pumping Unit / Prime Mover / Base				32107		33101		\$0
Rods / Pony Rods / Sinker Bars				32108		33102		\$0
Artificial Lift Other - Gas Lift				32109	\$14,000	33103		\$14,000
Wellhead Equipment Completions				32106	\$42,000	33104		\$42,000
Tanks / Tank Steps / Stairs				32111		33105	\$80,000	\$80,000
Gas Treating / Dehydration Equipment				32112		33106	\$64,000	\$64,000
Separation Equipment, Heater Treater				32113		33107	\$50,000	\$50,000
Surface Pumps				32114		33108	\$125,000	\$125,000
Filters				32115		33109	\$65,000	\$65,000
Buildings				32116		33110		\$0
Interconnect Piping / Manifolds / Headers				32117		33111		\$0
Flowlines / Connections / Valves				32118		33112		\$0
Automation / Instruments / Controls / Analyzers				32119		33113		\$0
Electrical Equipment / Generators				32120		33114		\$0
Compressor & Related Equipment				32121		33115		\$0
Metering Equipment, LACT Unit				32122		33116	\$20,000	\$20,000
Chemical Equipment / Cathodic Protection				32123		33117		\$0
Subsurface Equipment - Packer, Plugs, TAC				32124	\$11,000	33118		\$11,000
Safety / EH&S Equipment				32125	\$2,000	33119	\$21,000	\$23,000
NON-OP Drilling Intangible				32126		33120		\$0
Transfer/SWD Pumps & Equipment				32127		33121		\$0
TBD				32128		33122		\$0
Miscellaneous		31106	\$0	32129	\$0	33123	\$0	\$0
Contingency Costs		31107	\$0	32130	\$0	33124	\$0	\$0
TOTAL TANGIBLE COSTS			\$197,650		\$695,089		\$425,000	\$1,317,739
TOTAL WELL COSTS			\$2,265,547		\$6,868,749		\$425,000	\$9,559,296
Prepared by: Jason Edwards		Title: President		Date: 2/14/2019				
This AFE is only an estimate. By returning one signed copy, you agree to pay your share of the actual costs incurred.								
Extra Expense Insurance								
<input type="checkbox"/> I elect to be covered by Operator's Extra Expense insurance and pay my proportionate share of the premium.								
<input type="checkbox"/> I elect to purchase my own well control insurance policy.								
If neither box is checked above, non-operating working interest owner elects to be covered by Operator's well control insurance.								
Joint Owner Interest: _____ Amount: _____								
Joint Owner Name: _____ Signature: _____								

EXHIBIT

C



~ 6 Mile Radius around sections 21 & 28 T19S-R35E

EXHIBIT

D

220 HZ Bone Spring Wells Drilled

83% - 1.0 Mile Laterals

17% - 1.5 Mile Laterals

0% - 2.0 Mile Laterals

58 HZ Bone Spring Wells Drilled since 2017

66% - 1.0 Mile Laterals

34% - 1.5 Mile Laterals

0% - 2.0 Mile Laterals

*Information from IHS Energy

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

**APPLICATION OF MEWBOURNE OIL COMPANY
FOR COMPULSORY POOLING, LEA COUNTY,
NEW MEXICO.**

Case No. 20298

**APPLICATION OF MEWBOURNE OIL COMPANY
FOR COMPULSORY POOLING, LEA COUNTY,
NEW MEXICO.**

Case No. 20328

**APPLICATION OF MEWBOURNE OIL COMPANY
FOR COMPULSORY POOLING, LEA COUNTY,
NEW MEXICO.**

Case No. 20329

**CATENA RESOURCES OPERATING, LLC'S EMERGENCY MOTION TO SUSPEND
DRILLING PERMIT ON ACREAGE THAT IS THE SUBJECT OF
COMPETING WELL PROPOSALS PENDING BEFORE THE DIVISION**

Catena Resources Operating, LLC, ("Catena") hereby asks the Division to immediately suspend Mewbourne Oil Company ("Mewbourne") drilling permit(s) on Section 21, Township 19 South, Range 35 East in Lea County, New Mexico ("Section 21"). In support of this request, Catena states as follows:

1. Upon information and belief, Mewbourne intends to spud a well on Section 21 on or about Monday, April 1, 2019.
2. Catena and Mewbourne have competing development plans, both of which include development of Section 21. Catena proposes to develop Sections 16, 21, 28, and 33. Mewbourne proposes to develop only Sections 21 and 28.
3. Applications related to the competing development plans include, but will not be limited to, Mewbourne applications in Case Nos. 20298 (**Charolais 21/28 B2CN State Com. Well No. 1H – Bone Spring**), 20328 (**Charolais 21/28 B2AP State Com. Well No. 1H**), 20329 (**Charolais 21/28 B2BO State Com. Well No. 1H**), and Catena applications filed for the Anchor

19-35-28 State Com Well No. 1H and the **Anchor 19-35-28 State Com Well No. 2H**, on March 7, 2019. In addition, Catena will be filing related applications for the Cable 19-35-16 1H and 2H no later than April 2, 2019.

4. Case No. 20298 was previously set for the March 7, 2019 docket. Catena, however, filed a motion for continuance and the case was continued, ultimately with agreement between the parties, until May 2, 2019. *See* Email, William V. Jones to James Bruce, et al. (Mar. 5, 2019 11:49 am) (“All competing cases in this matter should appear on [the May 2 docket]. We intend to hear the matter on Friday May 3rd.”); Email, James Bruce to William V. Jones (Mar. 5, 2019 1:11 pm) (“Mewbourne will no longer contest a continuance[.]”), attached hereto as Exhibit A.

5. Mewbourne’s development plans, if approved, will result in waste and a violation of Catena’s correlative rights because Section 33, Township 19 South, Range 35 East, which Catena plans to develop, would be stranded from development in an economic and expeditious manner, as Catena would be limited to development by vertical wells or one-mile laterals.

6. Consequently, Mewbourne’s actions in spudding a well in acreage that is the subject of these competing development plans will likely result in waste and a violation of Catena’s correlative rights,

7. The Division has “jurisdiction and authority over all matters relating to the conservation of oil and gas,” NMSA 1978, § 70-2-6(A) (1979); and has a duty to prevent waste and protect correlative rights. NMSA 1978, § 70-2-11(A) (1977); *see Cont’l Oil Co. v. Oil Conservation Comm’n*, 1962-NMSC-062, ¶¶ 26-28, 70 N.M. 310.

8. The Division has inherent authority to suspend a drilling permit. Under the circumstances here, Mewbourne’s spudding of a well in light of the pending applications is an

attempt to circumvent the Division's hearing process and thereby interfere with the Division's authority.

WHEREFORE, Catena asks that the Division suspend Mewbourne's permits in Section 21, Township 19 South, Range 35 East in Lea County, New Mexico until a final order has been entered with respect to each application related thereto.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

By: /s/ Sharon T. Shaheen
Seth C. McMillan
Sharon T. Shaheen
Post Office Box 2307
Santa Fe, New Mexico 87504-2307
(505) 982-3873
smcmillan@montand.com
sshaheen@montand.com

Attorneys for Catena Resources Operating, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following counsel of record by electronic mail on March 29, 2019:

James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
jamesbruc@aol.com

/s/ Sharon T. Shaheen

Sharon T. Shaheen

From: jamesbruc@aol.com
Sent: Tuesday, March 5, 2019 1:11 PM
To: WilliamV.Jones@state.nm.us; Kaitlyn A. Luck; DavidK.Brooks@state.nm.us;
TerryG.Warnell@state.nm.us; Sharon T. Shaheen; David Ortiz;
Leonard.Lowe@state.nm.us
Cc: florene.davidson@state.nm.us; Gabriel.Wade@state.nm.us
Subject: Re: Mewbourne / Catena Matter; Mewbourne's Case 20298

Will: Mewbourne will no longer contest a continuance, but wants Catena to release its APDs.

Jim

-----Original Message-----

From: Jones, William V, EMNRD <WilliamV.Jones@state.nm.us>
To: jamesbruc@aol.com <jamesbruc@aol.com>; Kaitlyn A. Luck <Kluck@montand.com>; Brooks, David K, EMNRD <DavidK.Brooks@state.nm.us>; Warnell, Terry G, EMNRD <TerryG.Warnell@state.nm.us>; Sharon T. Shaheen <sshahen@montand.com>; David Ortiz <DOrtiz@montand.com>; Lowe, Leonard, EMNRD <Leonard.Lowe@state.nm.us>
Cc: Davidson, Florene, EMNRD <florene.davidson@state.nm.us>; Wade, Gabriel, EMNRD <Gabriel.Wade@state.nm.us>
Sent: Tue, Mar 5, 2019 11:49 am
Subject: Mewbourne / Catena Matter; Mewbourne's Case 20298

Jim and Kaitlyn,
Thank you for coming in;

Case 20298 and this contested matter is continued to May 2nd
Please propose all competing cases to Florene at least 30 days prior to May 2nd.

All competing cases in this matter should appear on that docket.
We intend to hear the matter on Friday May 3rd.

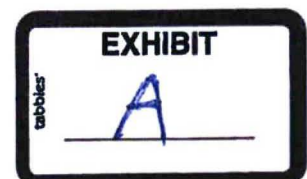
As always, anyone may petition the director to take the matter directly before the Commission.

Regards,
Will Jones
Engineer/Examiner

From: Jones, William V, EMNRD
Sent: Monday, March 4, 2019 4:48 PM
To: 'jamesbruc@aol.com' <jamesbruc@aol.com>; 'Kaitlyn A. Luck' <Kluck@montand.com>; Brooks, David K, EMNRD <DavidK.Brooks@state.nm.us>; Warnell, Terry G, EMNRD <TerryG.Warnell@state.nm.us>; 'Sharon T. Shaheen' <sshahen@montand.com>; David Ortiz <DOrtiz@montand.com>
Cc: Davidson, Florene, EMNRD <florene.davidson@state.nm.us>; Wade, Gabriel, EMNRD <Gabriel.Wade@state.nm.us>
Subject: Mewbourne Case 20298 etal Prehearing conference 10AM Tuesday at OCD 3rd floor Engineering Conference Room

Jim and Kaitlyn,
See you tomorrow morning at 10am to discuss Catena's Motion to Continue.

Will



From: jamesbruc@aol.com <jamesbruc@aol.com>
Sent: Monday, March 4, 2019 8:19 AM
To: Jones, William V, EMNRD <WilliamV.Jones@state.nm.us>
Subject: [EXT] Re: OCD Case No. 20298 - Motion for Continuance

Will get you a response this afternoon.

-----Original Message-----

From: Jones, William V, EMNRD <WilliamV.Jones@state.nm.us>
To: Kaitlyn A. Luck <KLuck@montand.com>; Sharon T. Shaheen <sshaheen@montand.com>; Seth McMillan <SMcMillan@montand.com>; jamesbruc (jamesbruc@aol.com) <jamesbruc@aol.com>; David Ortiz <DOrtiz@montand.com>
Cc: Warnell, Terry G, EMNRD <TerryG.Warnell@state.nm.us>; Hearings, OCD, EMNRD <OCD.Hearings@state.nm.us>; Brooks, David K, EMNRD <DavidK.Brooks@state.nm.us>
Sent: Fri, Mar 1, 2019 5:03 pm
Subject: RE: OCD Case No. 20298 - Motion for Continuance

Hi Kaitlyn,
 You copied Florene which is the most important person in our office – thank you.
 Kathleen and myself are also happy to get your correspondence.

Other folks for case correspondence,
 Terry Warnell has been assigned by our acting director to govern/streamline the dockets. His email is above.
 David Brooks is our oil and gas attorney and "Motions" should be copied to him: Email is above.

Also you are welcome to ALSO copy the OCD.Hearings@State.NM.US email which is visible to: Myself/Florene/Kathleen.

We are gradually getting this word out about that address – but this will keep changing as we hope to hire more folks soon who may also beg to be copied.

Thanks for the Motion.
 We will wait for Mr. Bruce's response.

Will

From: Kaitlyn A. Luck <KLuck@montand.com>
Sent: Friday, March 1, 2019 4:34 PM
To: Davidson, Florene, EMNRD <florene.davidson@state.nm.us>
Cc: Jones, William V, EMNRD <WilliamV.Jones@state.nm.us>; Murphy, Kathleen A, EMNRD <KathleenA.Murphy@state.nm.us>; Goetze, Phillip, EMNRD <Phillip.Goetze@state.nm.us>; 'jamesbruc@aol.com' <jamesbruc@aol.com>; Seth McMillan <SMcMillan@montand.com>; David Ortiz <DOrtiz@montand.com>; Sharon T. Shaheen <sshaheen@montand.com>
Subject: [EXT] OCD Case No. 20298 - Motion for Continuance

Good afternoon OCD:

Attached is Catena Resources Operating, LLC's Motion for Continuance (filed today) along with its Pre-Hearing Statement and Entry of Appearance (filed yesterday), in the above-referenced matter.

Catena requests a hearing on this matter and requests that a pre-hearing conference be held at the Division's earliest convenience. I've copied Mewbourne's counsel on this email.

Thank you and have a nice weekend.

Best,

Kaitlyn



Kaitlyn A. Luck

Attorney at Law
Montgomery & Andrews, P.A.
Post Office Box 2307
Santa Fe, New Mexico 87504-2307
Direct Line: 505-986-2530
Fax: 505-982-4289
kluck@montand.com

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From: David Ortiz
Sent: Friday, March 1, 2019 4:19 PM
To: 'jamesbruc@aol.com' <jamesbruc@aol.com>
Cc: Kaitlyn A. Luck <kluck@montand.com>; Seth McMillan <SMcMillan@montand.com>; Sharon T. Shaheen <sshaheen@montand.com>
Subject: OCD Case No. 20298

Mr. Bruce, Attached is Catena's Motion for Continuance regarding the above referenced case, filed today with OCD.

David H. Ortiz
Assistant to Stephen S. Hamilton, Seth C. McMillan, Edmund H. Kendrick
& Matthew A. Zidovsky



P.O. Box 2307
Santa Fe, NM 87504-2307
(505) 986-2641 (direct line)
(505) 982-4289 (fax)
dortiz@montand.com

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

APPLICATION OF MEWBOURNE OIL COMPANY FOR COMPULSORY POOLING, LEA
COUNTY, NEW MEXICO

Case No. 20298

APPLICATION OF MEWBOURNE OIL COMPANY FOR COMPULSORY POOLING, LEA
COUNTY, NEW MEXICO

Case No. 20328

APPLICATION OF MEWBOURNE OIL COMPANY FOR COMPULSORY POOLING, LEA
COUNTY, NEW MEXICO

Case No. 20329

Order No. R-20467

ORDER DENYING CATENA RESOURCES OPERATING, LLC'S EMERGENCY MOTION
TO SUSPEND DRILLING PERMIT

THIS MATTER came before the New Mexico Oil Conservation Division on April 4, 2019 in Santa Fe, New Mexico. It is ordered that Cantena Resources Operating, LLC'S Motion to suspend drilling permit in Section 21 and Section 28, all in Township 19 South, Range 35 East in Lea County is denied. Further, Mewbourne Oil Company is prohibited from spudding wells that could produce from the E/2 of Section 21 and Section 28, all in Township 19 South, Range 35 East until the issue has been resolved at Hearing.



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

ADRIENNE SANDOVAL
Director

Exhibit 4

Page 1

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

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

APPLICATION OF OXY USA, INC. TO RESCIND CASE NO. 20410
THE HORIZONTAL SPACING UNITS AND API
NUMBERS ASSIGNED TO FOUR APPLICATIONS FOR
PERMITS TO DRILL ISSUED TO MURCHISON OIL &
GAS, INC., EDDY COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MOTION FOR EXPEDITED ORDER STAYING ADMINISTRATIVE
APPROVAL OF HORIZONTAL SPACING UNITS AND API NUMBERS

March 21, 2019

Santa Fe, New Mexico

BEFORE: TERRY WARNELL, CHIEF EXAMINER
KATHLEEN MURPHY, TECHNICAL EXAMINER
WILLIAM V. JONES, TECHNICAL EXAMINER
SUSAN SITA, LEGAL EXAMINER

This matter came on for hearing before the
New Mexico Oil Conservation Division, Terry Warnell,
Chief Examiner; Kathleen Murphy and William V. Jones,
Technical Examiners; and Susan Sita, Legal Examiner, on
Thursday, March 21, 2019, at the New Mexico Energy,
Minerals and Natural Resources Department, Wendell Chino
Building, 1220 South St. Francis Drive, Porter Hall,
Room 102, Santa Fe, New Mexico.

REPORTED BY: Mary C. Hankins, CCR, RPR
New Mexico CCR #20
Paul Baca Professional Court Reporters
500 4th Street, Northwest, Suite 105
Albuquerque, New Mexico 87102
(505) 843-9241

PAUL BACA PROFESSIONAL COURT REPORTERS
500 FOURTH STREET NW - SUITE 105, ALBUQUERQUE, NM 87102

1 well-proposal letters that OXY sent out once they
2 learned of Murchison's plan here, so it's just a sample.
3 I have four pages. I didn't give you the well proposals
4 for all the wells depicted on the first page because
5 otherwise it would be about 40 pages, and I didn't see
6 the benefit of that. But all the wells that you see on
7 first page of this handout have been proposed to the
8 working interest owners in this -- in these sections.

9 It's also important to note that OXY holds
10 the majority of the working interest in this area,
11 whether you're looking at its spacing units involving 19
12 and 30 or whether you're looking at where Murchison
13 seeks to develop with one-mile wells the north half of
14 Section 30. Murchison only owns 29 percent of the north
15 half of 30. They only own 7 percent of this acreage
16 that's depicted here in 19 and 30. OXY holds the
17 majority whether you look at their proposed plan or its
18 proposed plan.

19 Murchison seeks to drill -- they're shorter
20 laterals in the north half-north half of 30 under an
21 older JOA. It's a 2010 JOA. It's before horizontal
22 wells became prevalent. But because they are proceeding
23 rather quickly now under an existing JOA under the north
24 half -- it covers only the north half of 30. There's
25 been no real oversight opportunity yet by this Division

1 or the Commission with respect to the proposed
2 development. Murchison, simply all they had to do was
3 file their federal APDs, and then they processed their
4 spacing units, their shorter, one-mile spacing units, on
5 a Division Form C-102, which was administratively
6 approved by the Division's district office. That's been
7 it. And that administrative approval by the Division's
8 district office of those horizontal spacing units on
9 that C-102 was on February 15th.

10 So all that was done here without any
11 notice or input from OXY and the other working interest
12 owners in this acreage. They only learned of
13 Murchison's drilling plans when Murchison finally sent
14 out their ballots. Their affidavit said it was sent out
15 on February 28th, which means everybody got it the first
16 part of March. Okay? And that was after they had filed
17 their federal APDs and gotten the Division to approve
18 their spacing units on their Form C-102. So nobody had
19 any input up until that point.

20 And then when OXY got their ballots and as
21 you'll see other working interest owners got their
22 ballots, OXY objected and suggested to Murchison that we
23 should -- that this area should be developed with longer
24 stand-up laterals. I think Murchison said they weren't
25 interested. They intend to commence drilling later this

Page 7

1 month. And now I find out yesterday -- Mr. Larson was
2 kind enough to inform me -- that they intend to now
3 drill this weekend. That's their timetable.

4 So OXY filed this application for hearing,
5 and, in conjunction with that, they filed this motion
6 for a stay. And I appreciate you accommodating this
7 motion for a stay, but you can understand the timeline
8 that forced that hand given Murchison's position here.

9 And all we seek today -- all OXY seeks
10 today -- it's not a decision on which is the better
11 plan. Okay? All we're seeking is a stay on the
12 approved C-102s, which was done by the Division's
13 district office because that's what sets the spacing
14 unit and that's what assigns the API numbers. All we're
15 asking is that you stay that approval so that Murchison
16 doesn't barrel forward here with their drilling plan
17 this weekend and so that OXY, Murchison and all the
18 other affected working interest owners will have time to
19 discuss development plans and discuss what is best here
20 and, if necessary, will then have time to allow for a
21 hearing for this Division or the Commission, whichever
22 is the right body, to examine the competing development
23 plans if we can't reach an agreement.

24 Now, we filed our motion and supported it
25 with findings from the Division and facts. First off,

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1 EXAMINER JONES: Okay.

2 EXAMINER WARNELL: Mr. Larson.

3 MR. LARSON: Mr. Examiner, what I'm handing
4 out is a written response to OXY's motion, which was
5 actually filed first thing this morning, and copies were
6 provided during the earlier hearing that Mr. Feldewert
7 and Mr. Bruce had. Murchison had a short fuse to file
8 the response to the OXY motion application and motion
9 filed at the end of last week.

10 Now, attached to the response are
11 affidavits from Murchison's in-house counsel and land
12 manager and also one of Murchison's geologists. And the
13 affidavits address Murchison's development plan for the
14 north half of Section 30 and the adverse impact to
15 Murchison that will result from the entry of a stay.

16 The north half of Section 30 is covered by
17 one federal lease, and as Mr. Feldewert noted, it's
18 governed by a 2010 JOA. But what he didn't tell you is
19 100 percent of the working interests are committed to
20 the JOA. Murchison began its development plan for this
21 acreage almost two years ago, in July of 2017, with a
22 BLM on-site inspection. The following June, Murchison
23 submitted APDs to the BLM for its initial horizontal
24 wells. The BLM approved the APDs in January of this
25 year, and two months later, Murchison built the first

Page 16

1 two well pads. And as we speak, a rig is moving on
2 location and is scheduled to spud the first well this
3 weekend.

4 So that is a complete context of what we're
5 looking at in terms of the extraordinary relief that OXY
6 requests.

7 And, basically, OXY has three arguments in
8 its motion. First, we have the generalized proposition
9 that a stand-up horizontal well with a two-mile lateral
10 is preferable, but that generalization has little
11 relevance to the specific circumstances presented in
12 this case. If you look at Exhibit B to Murchison's
13 response, there are several maps that were generated by
14 the geologist, Mr. Ward, and if you look at Exhibit A,
15 he has identified on this map 248 wells in the vicinity
16 of the acreage at issue. And of that total, 142 are
17 lay-down wells, including the 70 that OXY itself has
18 drilled and completed. And if you flip to the next map
19 and some of the subsequent maps, you'll see that other
20 operators in Township 24 are recently drilling -- have
21 recently completed or are currently drilling lay-down
22 horizontal wells. As Mr. Ward states in his affidavit,
23 Murchison's experience is that the performance of
24 lay-down wells is very similar to that of stand-up wells
25 that have been drilled in this area.

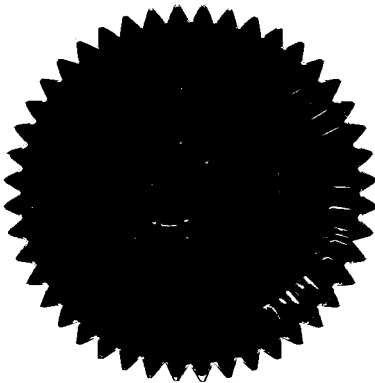
STATE OF NEW MEXICO
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES
OIL CONSERVATION DIVISION


APPLICATION OF OXY USA, INC TO RESCIND THE HORIZONTAL SPACING UNITS
AND API NUMBERS ASSIGNED TO FOUR APPLICATIONS FOR PERMITS TO DRILL
ISSUED TO MURCHISON OIL & GAS INC, EDDY COUNTY, NEW MEXICO

Case No. 20410
Order No. R-20430

ORDER DENYING OXY USA INC'S EXPEDITED MOTION FOR STAY

THIS MATTER came before the New Mexico Oil Conservation Division on March 21,
2019 in Santa Fe, New Mexico. It is ordered that Oxy USA, Inc's Motion for Expedited Order
Staying Administrative Approval is denied.





Gabriel Wade, Acting Director
New Mexico Oil Conservation Division

Exhibit 6

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

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

**APPLICATION OF NOVO OIL & GAS
NORTHERN DELAWARE, LLC
FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO**

**Case Nos. 21275 and 21276
(Division Case Nos. 20916 and
20917)
Order No. R-21420-A**

ORDER OF THE COMMISSION

THIS MATTER comes before the New Mexico Oil Conservation Commission (“Commission”) on Novo Oil & Gas Northern Delaware, LLC’s (“Novo”) *Applications for Compulsory Pooling* (“Applications”). The Commission, having considered the Applications at a hearing held on August 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. 21275, Novo requests an order pooling all uncommitted mineral interests in the Wolfcamp formation underlying a (proximity tract) horizontal spacing unit comprised of the N/2 of Section 8 and the N/2 of Section 9, Township 23 South, Range 29 East in Eddy County. Novo proposes to drill the Astrodog Fed Com 0809 Well Nos. 211H, 212H, 215H, 221H, 222H, 225H, 231H, 232H, and 235H and dedicate the N/2 of Section 8 and the N/2 of Section 9 to the wells.

2. In Case No. 21276, Novo requests an order pooling all uncommitted mineral interests in the Bone Spring formation (from 8,773 feet subsurface as found in the Road Lizard 5 Fed Com Well No. 2H [API No. 30-015-39283] to the base of the Bone Spring formation) underlying a (proximity tract) horizontal spacing unit comprised of the N/2 of Section 8 and the N/2 of Section 9, Township 23 South, Range 29 East in Eddy County. Novo proposes to drill the Astrodog Fed Com 0809 Well Nos. 131H, 132H and 135H and dedicate the N/2 of Section 8 and the N/2 of Section 9 to the wells.

3. Novo’s Applications were heard by the Oil Conservation Division (“Division”) on November 15, 2019, and the Division issued Order No. R-21252 granting Novo’s Applications on April 13, 2020.

Exhibit 7

Cases 21275 and 21276

Order No. R-21420-A

Page 2

4. BTA Oil Producers, LLC ("BTA") was a party to the Division hearing and opposed Novo's Applications. As a party adversely affected by Order No. R-21252, 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 Novo's Applications on August 14 and 20, 2020. The Applications were consolidated for hearing.

6. Novo 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 when the owners of the interests in a spacing unit "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."

9. 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 (AFE) 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

Cases 21275 and 21276

Order No. R-21420-A

Page 3

sites and to operate on the surface (the "surface factor").¹

10. In support of its Applications, Novo presented the testimony of Brandon Patrick (Landman), Michael Hale (Geoscientist), and Alex Bourland (Operations Engineer).

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

12. Novo proposes to complete three horizontal wells in the Third Bone Spring Sand and nine horizontal wells in Wolfcamp formation in the N/2 of Sections 8 and 9, Township 23 South, Range 29 East. The proposed wells are 2-mile laterals.

13. Novo's proposed wells are located in the Potash Area and are subject to the Secretary of the Interior's Order No. 3324, which imposes restrictions on oil and gas development and surface usage.

14. Novo holds 75% of the working interest in its proposed horizontal spacing units. As a result, Novo must pool the remaining interests to develop its acreage.

15. 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").

16. BTA acquired its interest under the JOA and became the operator of the Ochoa Acreage on November 1, 2018.

17. When BTA acquired the Ochoa Acreage, it was aware that the Ochoa Acreage was located within the Potash Area, which requires operators to obtain BLM approval of Development Areas, and that parties receiving notice of a Development Area proposal have the right to object.

18. Under the JOA, BTA is the designated operator of 100% of the Ochoa Acreage.

19. BTA owns 82% of the working interest in the Ochoa Acreage. Oxy Y-1 Company ("Oxy") is the other party to the JOA and owns 18% of the working interest in the Ochoa Acreage.

20. Oxy ratified the JOA and BTA as operator of the Ochoa Acreage effective on November 1, 2018. Although Oxy sent Novo a letter in support of Novo's Astrodog pooling applications on November 13, 2019, Oxy's interest is governed by the JOA.

¹See, 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 Novo's and BTA's proposals.

Cases 21275 and 21276

Order No. R-21420-A

Page 4

21. As operator of 100% of the Ochoa Acreage, BTA does not need to file a compulsory pooling application to develop the Ochoa Acreage. BTA only needs to submit well proposals to Oxy and allow for the 30-day election period prior to drilling its wells.

22. BTA acquired its operating rights under the JOA to allow it to control costs and implement its development plan. BTA witness Willis Price testified that BTA's operating rights under the JOA are valuable because they allow BTA to take advantage of its experience in the area, select the most efficient development plan, and control costs. Mr. Price also testified that granting Novo's applications would nullify BTA's operating rights under the JOA by precluding BTA from developing the Ochoa Acreage.

23. Joint Operating Agreements facilitate development and conservation of resources by allowing operators to develop their acreage without the necessity of a pooling proceeding.

24. BTA proposes to complete four 1.5-mile horizontal wells in the Lower Wolfcamp formation in the Ochoa Acreage and has approved 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.

25. 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 ("Ochoa Wells").

26. The BLM has approved BTA's well sites.

27. BTA's well sites are located outside the Potash Area, and the completed laterals will extend into the Potash Area. Mosaic Potash has been notified and has no objection.

28. On June 26, 2019, BTA submitted Applications for Permits to Drill ("APD") the Ochoa Wells to the BLM.

29. On July 8, 2019, BTA sent Oxy well proposals for the Ochoa Wells in the N/2 of Section 7 and NW/4 of Section 8.

30. BTA submitted notice of its Ochoa Development Area on August 28, 2019.

31. The BLM's determination on BTA's APDs and Ochoa Development Area are pending.

32. Novo acquired from TDY the mineral interest in the N/2 of Section 9 and the NE/4 of Section 8 on July 25, 2019 and submitted its well proposals for the Astrodog wells that are the subject of its Applications on July 29, 2019. BTA and TDY had previously been involved in a quiet title lawsuit regarding these minerals, and the lawsuit was resolved in July 2019.

33. At the time Novo acquired its acreage, it was aware that surface restrictions would exist due to the location of the acreage in the Potash Area and was also aware of BTA's JOA.

Cases 21275 and 21276

Order No. R-21420-A

Page 5

34. Novo submitted notice of its proposed Astrodog Development Area on November 19, 2019.

35. The BLM approved Novo's Development Area on April 16, 2020 in observation of the Division's Order No. R-21252, which is the subject of these cases, and BLM stated that it would cooperate with the Division and Commission regarding the implementation of their regulations.

36. Novo does not hold an interest in the Ochoa Acreage and seeks to pool BTA's interest in the NW/4 of Section 8.

37. Novo's witnesses testified that because of surface restrictions that exist due to the location of its acreage in the Potash Area, Novo cannot drill 1.5-mile laterals in the N/2 of Section 9 and the NE/4 of Section 8 and instead must pool BTA's acreage to develop its proposed 2-mile wells in the N/2 of Sections 8 and 9.

38. Novo's witnesses testified that if Novo is not permitted to pool BTA's acreage, the following would occur: (i) Novo would have to drill 2,500 feet of "dead hole" to reach its proposed wells, thus creating economic waste; (ii) Novo and BTA would both drill wells through the NW/4 of Section 8, thus increasing the risk of wellbore collision; (iii) the tangent drilling methods Novo would have to execute to avoid drilling a "dead hole" create substantial and unreasonable risks; (iv) BTA has never executed the tangent drilling methods being asked of Novo; and (v) BTA's plan only contemplates two wells in the Wolfcamp XY and no wells in the third Bone Spring thus BTA's plan will under-develop the reservoir and strand reserves.

39. With respect to Novo's ability to access its proposed wells, BTA's witnesses testified that: (i) Novo does not need to pool BTA's acreage to access its wells because Novo can safely and economically access its wells from the approved drill island using a 20-degree, 403-foot tangent, which is a less aggressive tangent than Novo is using to access its wells in the S/2 of its Astrodog unit; (ii) Novo does not need to drill a ½ mile "dead hole" to reach its wells because it can use a tangent to access the wells; (iii) BTA's schematic modelling and analysis shows that if Novo uses a tangent, BTA and Novo can each develop their acreage without collision risk; (iv) BTA is an experienced multi-well pad operator, has completed similar developments (including its 34 well Rojo development), and is experienced in addressing collision risk; (v) tangents are routinely used in the industry and in the Potash Area; and (vi) BTA has drilled longer tangents than the one proposed here.

40. With respect to Novo's and BTA's development plans, BTA presented evidence that: (i) Novo does not propose any wells in the Second Bone Spring Sand while BTA proposes two; (ii) Novo's Applications, in conjunction with Marathon's Applications in Case Nos. 21273 and 21274, create a risk that BTA's Second Bone Spring acreage will be stranded due to the presence of the Road Lizard Well traversing the W/2 E/2 of Section 8; (iii) BTA proposes to complete four wells at different depths in the Lower Wolfcamp while Novo proposes three wells at the same depth in the Lower Wolfcamp; (iv) Novo's Applications include nine wells in three intervals, which will overdevelop the acreage and result in decreased recovery of reserves and

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unnecessary wells and expense; (v) BTA's plan will fully and efficiently develop the Ochoa Acreage, while Novo's plan will not; (vi) in comparable developments, BTA presented evidence it has captured all the reserves using fewer wells than Novo has proposed resulting in increased per well reserves; (vii) Novo's proposed development plan would not result in fewer wells or decreased surface impacts; (viii) if Marathon's and Novo's applications are granted, BTA would still need to develop the Second Bone Spring Sand in the N/2 N/2 of Section 7 and the NW/4 of Section 8; (ix) BTA's 1.5-mile horizontal wells have been efficient and economic, and BTA expects that its wells in the Ochoa Acreage will be efficient and economic; and (x) granting Novo's applications would impair BTA's correlative rights and result in waste because Novo's development plan will not fully and efficiently develop the Ochoa Acreage and will preclude BTA from developing its acreage.

41. With respect to operator experience and the ability to timely locate wells and operate on the surface, Novo's witnesses testified that: (i) Novo has drilled three 2-mile horizontal wells in New Mexico, has an active rig available in this area, and is currently drilling a 4-well program in the sections adjacent to Sections 8 and 9; (ii) Novo is ready, willing, and able to drill and complete the Astrodog Wells once these cases are resolved; (iii) Novo is currently negotiating contracts for takeaway of gas, produced water, and oil; and (iv) Novo's well sites have been approved by the BLM, and Novo is able to timely locate its wells and operate on the surface.

42. With respect to operator experience and the ability to timely locate wells and operate on the surface, BTA's witnesses testified that: (i) BTA has completed 84 horizontal wells in New Mexico; (ii) 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; (iii) BTA is ready, willing, and able to drill and complete its Ochoa Wells once these cases are resolved; (iv) BTA's contracts for the takeaway of gas, produced water, and oil are ready for execution; (v) BTA's well sites have been approved by the BLM, and BTA is able to timely locate its wells and operate on the surface; (vi) BTA is an experienced multi-well pad operator in New Mexico; (vii) Novo has not completed any similar multi-well pad developments in New Mexico; (viii) of the three wells Novo has completed in New Mexico, one did not reach its planned depth due to an error of Novo's contractor; and (ix) Novo's consultant has informed the Oil Conservation Division that Novo does not plan to complete certain other wells it has pooled anytime soon.

43. Novo witness Alex Bourland testified that in the S/2 of the Astrodog unit, which is also located in the Potash Area, Novo is accessing its wells using a 2000-foot tangent.

44. If Novo uses a tangent to access its proposed wells in the N/2 of the Astrodog unit, Novo and BTA can each complete 1.5 mile laterals in their own acreage.

45. Novo's Bone Spring Applications are depth-severed and do not encompass the Second Bone Spring Sand in the N/2 of Sections 8 and 9.

46. BTA witness Britton McQuien testified that if Novo's Applications are denied, BTA can complete additional wells in the Ochoa Acreage if it determines they are necessary. Mr. Quien also testified that: Novo's Applications propose the most aggressive plan in the area and

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include one more well than the XTO Remuda Development, which Novo has presented to support its plan; Novo's proposal will overdevelop the acreage and decrease recovery of reserves; and the drilling of an excessive number of wells cannot be remedied.

47. Novo witness Michael Hale acknowledged that Novo's Applications propose the most aggressive plan in the area and include one more well than the XTO Remuda Development.

48. Novo and BTA both presented evidence regarding good faith negotiation.

49. Novo witness Michael Hale testified generally that co-development will reduce the parent-child effect but did not provide a production analysis or quantification regarding the parent-child effect. BTA witness Britton McQuien presented opposing evidence, including production data regarding BTA's comparable developments.

50. Regarding lateral length, Novo witness Alex Bourland generally testified that 2-mile developments are preferable but did not provide data or analysis regarding the benefits of 2-mile laterals versus 1.5-mile laterals. BTA witness Britton McQuien presented opposing evidence, including production data regarding BTA's comparable developments.

51. Regarding surface waste, Novo's witnesses generally testified that its plan would reduce surface waste but provided no quantification. BTA presented evidence that Novo's plan would not reduce surface waste because if Novo's Applications were approved, BTA would still need to develop the Second Bone Spring Sand from a separate drilling pad.

52. Novo failed to establish that its development plan would protect correlative rights, prevent waste, or avoid the drilling of unnecessary wells.

53. BTA's development plan will fully and efficiently develop the Ochoa Acreage, will not strand any acreage, and will best prevent waste.

54. BTA's development plan will best protect correlative rights by allowing each party to develop its own acreage.

55. If Novo's Applications are granted, BTA will be unable to fully and efficiently develop the Ochoa Acreage.

56. If Novo's Applications are denied, each operator can develop its own acreage.

57. If Novo's Applications are denied, no acreage will be stranded.

58. The Commission considered evidence presented by both parties regarding the percentage of ownership interests, operational costs and Authorizations for Expenditures, prudent operation, and good faith negotiation and found the evidence was insufficient to determine whether these factors favored Novo or BTA.

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CONCLUSIONS OF LAW

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. As the applicant in this proceeding, Novo bore the burden of proof.
4. Novo failed to establish that its Applications, if granted, would prevent waste.
5. Novo failed to establish that its Applications, if granted, would protect correlative rights.
6. Novo failed to establish that its Applications, if granted, would prevent the drilling of unnecessary wells.
7. BTA's proposed development plan will prevent waste more effectively than Novo's proposed development plan.
8. BTA's proposal protects correlative rights by presenting the best opportunity for each party to develop its own acreage.
9. The evidence and testimony regarding the efficiencies of 2-mile laterals versus 1.5-mile laterals was either insufficient or contradictory.
10. The evidence and testimony regarding the parent-child effect was either insufficient or contradictory.
11. The evidence and testimony regarding the differences in well spacing and the number of wells was either insufficient or contradictory.
12. The evidence and testimony regarding surface waste was either insufficient or contradictory.
13. The evidence regarding good faith negotiations; capability as an operator; ownership percentage, and well costs did not weigh in favor of either Novo or BTA.

ORDER

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

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DONE at Santa Fe, New Mexico on the 17 day of September, 2020.

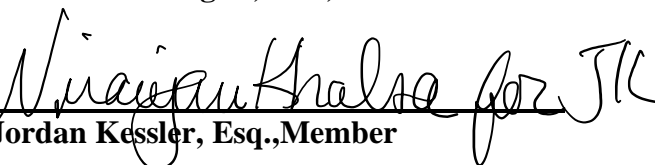
**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**



Adrienne Sandoval, M.E., Chair



Dr. Thomas Engler, P.E., Member



Jordan Kessler, Esq., Member

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

**IN THE MATTER OF APPLICATION FOR
COMPULSORY POOLING SUBMITTED BY
NOVO OIL & GAS NORTHERN DELAWARE, LLC**

**CASE NO. 20916 & 20917
ORDER NO. R-21252**

ORDER

The Director of the New Mexico Oil Conservation Division (“OCD”), having heard this matter through a Hearing Examiner on November 15, 2019, and after considering the testimony, evidence, and recommendation of the Hearing Examiner, issues the following Order.

FINDINGS OF FACT

1. Novo Oil & Gas Northern Delaware, LLC (“Novo”) submitted Applications (“Applications”) to compulsory pool the uncommitted oil and gas interests within the spacing units (“Units”) described in Exhibits A and B. The Units are expected to be standard horizontal spacing units. 19.15.16.15(B) NMAC. Novo seeks to be designated the operator of the Units.
2. Novo will dedicate the wells described in Exhibits A and B (“Well(s)”) to the Units.
3. Novo proposes the supervision and risk charges for the Wells described in Exhibits A and B.
4. Novo identified the owners of uncommitted interests in oil and gas minerals in the Units and provided evidence that notice was given.
5. The Applications were heard by the Hearing Examiner on the date specified above, during which Novo and BTA Oil Producers, LLC (“BTA”) presented evidence through live witnesses regarding the Applications. No other party presented evidence at the hearing.
6. The Oil and Gas Act, NMSA 1978, §70-2-18(A), requires an operator to either obtain a voluntary agreement or an OCD order to dedicate lands to a spacing or proration unit:

Whenever the operator of any oil or gas well shall dedicate lands comprising a standard spacing or proration unit to an oil or gas well, it shall be the obligation of the operator, if two or more separately owned tracts of land are embraced within the spacing or proration unit, or 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 such spacing or proration unit, to obtain voluntary agreements pooling said lands or interests or an order of the division pooling said lands, which agreement or order shall be effective from the first production.

Exhibit 8

7. The Oil and Gas Act, NMSA 1978, §70-2-17(C), requires OCD to pool lands and interests to a spacing or proration unit when the owners of such lands cannot agree to pool their interests:

When two or more separately owned tracts of land are embraced within a spacing or proration unit [and] 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.

8. OCD in Order No. R-14140 held:

In the absence of an agreement as to how production from the proposed horizontal well is to be divided between the lands within and without the defined contract area, the JOA does not constitute an agreement of the parties to pool their interests in such production, and accordingly does not preclude compulsory pooling under the terms of the first paragraph of NMSA 1978 Section 70-20-17(C).

9. A Joint Operating Agreement (“JOA”), originally executed on January 1, 1987, applies to 480 acres in the N/2 of Section 7 and the NW/4 of Section 8, Township 23 South, Range 29 East, Eddy County, NM.
10. BTA acquired a seventy-three (73) percent interest in the JOA in November 2018.
11. Novo is not a party to the JOA.
12. Novo send letters to mineral interest owners offering to allow separate election into each of the twelve (12) wells proposed in the Applications to pool the N/2 of Section 7 and the N/2 of Section 9, Township 23 South, Range 29 East.
13. Novo met with BTA to discuss a voluntary agreement.
14. Novo offered to trade BTA for its acreage covered by the JOA.
15. BTA did not accept Novo’s offer and did not propose a counteroffer.
16. The Oil and Gas Act, NMSA 1978, §70-2-11(A), states that OCD “is hereby empowered, and it is its duty, to prevent waste prohibited by this act and to protect correlative rights, as in this act provided.”

17. The Oil and Gas Act, NMSA 1978, §70-2-33(H), defines “correlative rights”:

[T]he opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste the owner's just and equitable share of the oil or gas in the pool, being an amount, so far as can be practically determined and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas under the property bears to the total recoverable oil or gas in the pool, and for the purpose to use the owner's just and equitable share of the reservoir energy.

18. The Oil and Gas Act, NMSA 1978, §70-2-17(A), states:

The rules, regulations or orders of the division shall, so far as it is practicable to do so, afford to the owner of each property in a pool the opportunity to produce his just and equitable share of the oil or gas, or both, in the pool, being an amount, so far as can be practically determined, and so far as such can be practicably obtained without waste, substantially in the proportion that the quantity of the recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for this purpose to use his just and equitable share of the reservoir energy.

19. If OCD issues an order granting the Applications, BTA will be entitled to a just and equitable share of production from the wells authorized by the order.

20. The Oil and Gas Act, NMSA 1978, §70-2-11(A), requires OCD to prevent underground and surface waste.

21. The Oil and Gas Act, NMSA 1978, §70-2-3(A), defines “underground waste”, *inter alia*, as “the locating, spacing, drilling, equipping, operating or producing, of any well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from any pool....”

22. The Oil and Gas Act, NMSA 1978, §70-2-3(B), defines “surface waste”, *inter alia*, as “the unnecessary or excessive surface loss or destruction without beneficial use, however caused... resulting from the manner of spacing, equipping, operating or producing, well or wells, or incident to or resulting from the use of inefficient storage....”

23. Novo has prepared a comprehensive development plan for the Wolfcamp and Third Bone Spring Formations.

24. Novo has obtained the U.S. Bureau of Land Management’s (“BLM”) approval for Novo’s drilling island, and negotiated agreements with the potash and surface lessees and surface owner.

25. The Upper and Lower Wolfcamp and Third Bone Spring Formations are expected to be productive and suitable for production by horizontal drilling.
26. Novo intends to develop its wells to avoid the “parent-child effect”, which results when the first wells drilled in a formation reduce the recoverable oil and gas in subsequently drilled wells.
27. Novo proposes to drill two (2) mile laterals, which are more efficient and less wasteful than 1.5. mile laterals.
28. Novo’s development plan is supported by OXY USA, Inc., the only interest owner other than BTA, in the N/2 of Sections 8 and 9.
29. BTA has drilled one well and proposed either three (3) or four (4) additional wells in the Lower Wolfcamp Formation.
30. BLM has not approved BTA’s development plan for the JOA acreage.
31. BTA cannot drill two (2) mile laterals unless it pools additional parties in Section 12.
32. BTA’s development plan may result in the parent-child effect.
33. BTA’s proposal that Novo drill from a different surface location and using a different orientation was rejected by the potash and surface lessees and surface owner.
34. If the Applications were denied, Novo would have to drill across a producing zone without perforation, resulting in waste and potential collision with BTA’s proposed wells.

CONCLUSIONS OF LAW

35. OCD has jurisdiction to issue this Order pursuant to NMSA 1978, Section 70-2-17.
36. Novo is the owner of an oil and gas working interest within the Units.
37. Novo satisfied the notice requirements for the Applications and the hearing as required by 19.15.4.12 NMAC.
38. OCD satisfied the notice requirements for the hearing as required by 19.15.4.9 NMAC.
39. Novo has the right to drill the Wells to a common source of supply at the depth(s) and location(s) in the Units described in Exhibits A and B.
40. The Units contain separately owned uncommitted interests in oil and gas minerals.

41. Some of the owners of the uncommitted interests have not agreed to commit their interests to the Units.
42. The pooling of uncommitted interests in the Units will prevent waste and protect correlative rights, including the drilling of unnecessary wells.
43. This Order affords to the owner of an uncommitted interest the opportunity to produce his just and equitable share of the oil or gas in the pool.
44. Novo was not obligated to negotiate a voluntary agreement with BTA.
45. Novo made a good faith effort to negotiate a voluntary agreement with BTA.
46. OCD may issue a compulsory pooling order to Novo that include BTA's JOA acreage.
47. OCD's decision to issue a compulsory pooling order to Novo does not violate New Mexico's policy regarding voluntary agreements.
48. OCD does not consider the "reasonable expectations" of parties when reviewing an application for a compulsory pooling order.
49. BTA's correlative rights will be protected by OCD's orders granting Novo's compulsory pooling application because BTA is entitled to a just and equitable share of production from the pool, not the right to be an operator or to drill a well.
50. The Applications will result in less surface and underground waste than BTA's plan.

ORDER

51. The uncommitted interests in the Units are pooled as set forth in Exhibits A and B.
52. The Units shall be dedicated to the Wells set forth in Exhibits A and B.
53. Novo is designated as operator of the Units and the Wells.
54. If the location of a Well will be unorthodox under the spacing rules in effect at the time of completion, Novo shall obtain the OCD's approval for a non-standard location in accordance with 19.15.16.15(C) NMAC.
55. Novo shall commence drilling the Wells within one year after the date of this Order, and complete each Well no later than one (1) year after the commencement of drilling the Well.
56. This Order shall terminate automatically if Novo fails to comply with Paragraph 55 unless Novo obtains an extension by an amendment of this Order for good cause shown.

57. The infill well requirements in 19.15.13.9 NMAC through 19.15.13.12 NMAC shall be applicable.
58. Novo shall submit to each owner of an uncommitted working interest in the pool ("Pooled Working Interest") an itemized schedule of estimated costs to drill, complete, and equip the well ("Estimated Well Costs").
59. No later than thirty (30) days after Novo submits the Estimated Well Costs, the owner of a Pooled Working Interest shall elect whether to pay its share of the Estimated Well Costs or its share of the actual costs to drill, complete and equip the well ("Actual Well Costs") out of production from the well. An owner of a Pooled Working Interest who elects to pay its share of the Estimated Well Costs shall render payment to Novo no later than thirty (30) days after the expiration of the election period, and shall be liable for operating costs, but not risk charges, for the well. An owner of a Pooled Working Interest who fails to pay its share of the Estimated Well Costs or who elects to pay its share of the Actual Well Costs out of production from the well shall be considered to be a "Non-Consenting Pooled Working Interest."
60. No later than one hundred eighty (180) days after Novo submits a Form C-105 for a well, Novo shall submit to OCD and each owner of a Pooled Working Interest an itemized schedule of the Actual Well Costs. The Actual Well Costs shall be considered to be the Reasonable Well Costs unless OCD or an owner of a Pooled Working Interest files a written objection no later than forty-five (45) days after receipt of the schedule. If OCD or an owner of a Pooled Working Interest files a timely written objection, OCD shall determine the Reasonable Well Costs after public notice and hearing.
61. No later than sixty (60) days after the expiration of the period to file a written objection to the Actual Well Costs or OCD's order determining the Reasonable Well Costs, whichever is later, each owner of a Pooled Working Interest who paid its share of the Estimated Well Costs shall pay to Novo its share of the Reasonable Well Costs that exceed the Estimated Well Costs, or Novo shall pay to each owner of a Pooled Working Interest who paid its share of the Estimated Well Costs its share of the Estimated Well Costs that exceed the Reasonable Well Costs.
62. The reasonable charges for supervision to drill and produce a well ("Supervision Charges") shall not exceed the rates specified in Exhibits A and B, provided however that the rates shall be adjusted annually pursuant to the COPAS form entitled "Accounting Procedure-Joint Operations."
63. No later than within ninety (90) days after Novo submits a Form C-105 for a well, Novo shall submit to OCD and each owner of a Pooled Working Interest an itemized schedule of the reasonable charges for operating and maintaining the well ("Operating Charges"), provided however that Operating Charges shall not include the Reasonable Well Costs or Supervision Charges. The Operating Charges shall be considered final unless OCD or an owner of a Pooled Working Interest files a written objection no later than forty-five (45) days after receipt of the schedule. If OCD or an owner of a Pooled

- Working Interest files a timely written objection, OCD shall determine the Operating Charges after public notice and hearing.
64. Novo may withhold the following costs and charges from the share of production due to each owner of a Pooled Working Interest who paid its share of the Estimated Well Costs: (a) the proportionate share of the Supervision Charges; and (b) the proportionate share of the Operating Charges.
65. Novo may withhold the following costs and charges from the share of production due to each owner of a Non-Consenting Pooled Working Interest: (a) the proportionate share of the Reasonable Well Costs; (b) the proportionate share of the Supervision and Operating Charges; and (c) the percentage of the Reasonable Well Costs specified as the charge for risk described in Exhibits A and B.
66. Novo shall distribute a proportionate share of the costs and charges withheld pursuant to paragraph 65 to each Pooled Working Interest that paid its share of the Estimated Well Costs.
67. Each year on the anniversary of this Order, and no later than ninety (90) days after each payout, Novo shall provide to OCD and each owner of a Non-Consenting Pooled Working Interest a schedule of the revenue attributable to a well and the Supervision and Operating Costs charged against that revenue.
68. Any cost or charge that is paid out of production shall be withheld only from the share due to an owner of a Pooled Working Interest. No cost or charge shall be withheld from the share due to an owner of a royalty interests. For the purpose of this Order, an unleased mineral interest shall consist of a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest.
69. Except as provided above, Novo shall hold the revenue attributable to a well that is not disbursed for any reason for the account of the person(s) entitled to the revenue as provided in the Oil and Gas Proceeds Payment Act, NMSA 1978, Sections 70-10-1 *et seq.*, and relinquish such revenue as provided in the Uniform Unclaimed Property Act, NMSA 1978, Sections 7-8A-1 *et seq.*
70. The Unit shall terminate if (a) the owners of all Pooled Working Interests reach a voluntary agreement; or (b) the well(s) drilled on the Unit are plugged and abandoned in accordance with the applicable rules. Novo shall inform OCD no later than thirty (30) days after such occurrence.
71. OCD retains jurisdiction of this matter for the entry of such orders as may be deemed necessary.

**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**



**ADRIENNE SANDOVAL
DIRECTOR**

Date: 4/13/2020

CASE NOS. 20916 & 20917
ORDER NO. R-21252

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Exhibit "A" Case 20916

Applicant: Novo Oil & Gas Northern Delaware, LLC
Operator: Novo Oil & Gas Northern Delaware, LLC (OGRID 372920)

Spacing Unit: Horizontal Gas
Building Blocks: Half sections
Spacing Unit Size: 640 acres, more or less
Orientation of Unit: West to East

Spacing Unit Description:
N/2 of Section 8 and 9, Township 23 South, Range 28 East; and
NMPM, Eddy County, New Mexico

Pooling this Vertical Extent: Wolfcamp Formation
Depth Severance? (Yes/No): No

Pool: Purple Sage; Wolfcamp (Pool code 98220)
Pool Spacing Unit Size: Half Sections
Governing Well Setbacks: Special Rules for the Purple Sage Gas Pool Apply
Pool Rules: Purple Sage and Horizontal Well Rules

Proximity Tracts: Yes, The Astrodog Federal Com 0809 212H is located closer than 330 feet from the adjoining tract.

Monthly charge for supervision: While drilling: \$8000, While producing: \$800
As the charge for risk, 200 percent of reasonable well costs

Proposed Wells:**Astrodog Federal Com 0809 211H**

SHL: 933 feet from the North line and 210 feet from the West line
(Unit D) of Section 8, Township 23 South, Range 29 East, NMPM
BHL: 330 feet from the North line and 130 feet from the East line
(Unit A) of Section 9, Township 23 South, Range 29 East, NMPM

Completion Target: Wolfcamp at approx. 9888 feet TVD
Well Orientation: West to East
Completion Location expected to be: standard

Astrodog Federal Com 0809 212H

SHL: 951 feet from the North line and 219 feet from the West line
(Unit D) of Section 8, Township 23 South, Range 29 East, NMPM
BHL: 1122 feet from the North line and 130 feet from the East line
(Unit A) of Section 9, Township 23 South, Range 29 East, NMPM

Completion Target: Wolfcamp at approx. 9890 feet TVD
Well Orientation: West to East
Completion Location expected to be: standard

Astrodog Federal Com 0809 215H

SHL: 1545 feet from the North line and 200 feet from the West line
(Unit E) of Section 8, Township 23 South, Range 29 East, NMPM
BHL: 1914 feet from the North line and 130 feet from the East line
(Unit H) of Section 9, Township 23 South, Range 29 East, NMPM

Completion Target: Wolfcamp at approx. 9892 feet TVD
Well Orientation: West to East
Completion Location expected to be: standard

Astrodog Federal Com 0809 221H

SHL: 969 feet from the North line and 228 feet from the West line
(Unit D) of Section 8, Township 23 South, Range 29 East, NMPM
BHL: 726 feet from the North line and 130 feet from the East line
(Unit A) of Section 9, Township 23 South, Range 29 East, NMPM

Completion Target: Wolfcamp at approx. 10108 feet TVD
Well Orientation: West to East
Completion Location expected to be: standard

Astrodog Federal Com 0809 222H

SHL: 987 feet from the North line and 236 feet from the West line
(Unit D) of Section 8, Township 23 South, Range 29 East, NMPM
BHL: 1518 feet from the North line and 130 feet from the East line
(Unit H) of Section 9, Township 23 South, Range 29 East, NMPM

Completion Target: Wolfcamp at approx. 10108 feet TVD
Well Orientation: West to East
Completion Location expected to be: standard

Astrodog Federal Com 0809 225H

SHL: 1565 feet from the North line and 200 feet from the West line
(Unit E) of Section 8, Township 23 South, Range 29 East, NMPM
BHL: 2310 feet from the North line and 130 feet from the East line
(Unit H) of Section 9, Township 23 South, Range 29 East, NMPM

Completion Target: Wolfcamp at approx. 10108 feet TVD
Well Orientation: West to East
Completion Location expected to be: standard

Astrodog Federal Com 0809 231H

SHL: 861 feet from the North line and 174 feet from the West line
(Unit D) of Section 8, Township 23 South, Range 29 East, NMPM
BHL: 330 feet from the North line and 130 feet from the East line
(Unit A) of Section 9, Township 23 South, Range 29 East, NMPM

Completion Target: Wolfcamp at approx. 10728 feet TVD
Well Orientation: West to East
Completion Location expected to be: standard

Astrodog Federal Com 0809 232H

SHL: 879 feet from the North line and 183 feet from the West line
(Unit D) of Section 8, Township 23 South, Range 29 East, NMPM
BHL: 1254 feet from the North line and 130 feet from the East line
(Unit A) of Section 9, Township 23 South, Range 29 East, NMPM

Completion Target: Wolfcamp at approx. 10738 feet TVD
Well Orientation: West to East
Completion Location expected to be: standard

Astrodog Federal Com 0809 235H

SHL: 1880 feet from the North line and 200 feet from the West line
(Unit E) of Section 8, Township 23 South, Range 29 East, NMPM
BHL: 2178 feet from the North line and 130 feet from the East line
(Unit H) of Section 9, Township 23 South, Range 29 East, NMPM

Completion Target: Wolfcamp at approx. 10748 feet TVD
Well Orientation: West to East
Completion Location expected to be: standard

Exhibit "B" Case 20917

Applicant: Novo Oil & Gas Northern Delaware, LLC
Operator: Novo Oil & Gas Northern Delaware, LLC (OGRID 372920)

Spacing Unit: Horizontal oil
Building Blocks: quarter-quarter sections
Spacing Unit Size: 640 acres, more or less
Orientation of Unit: West to East

Spacing Unit Description:
N/2 of Section 8 and 9, Township 23 South, Range 29 East; and
NMPM, Eddy County, New Mexico

Pooling this Vertical Extent: Bone Spring Formation from 8773 feet subsurface to the
base of the Bone Spring Formation
Depth Severance? (Yes/No): Yes, from 8773 feet subsurface as found in the Road Lizard
5 Fed Com Well No. 2H [API: 30-015-39283]

Pool: Culebra Bluff, South Bone Spring (Pool code 15011)
Pool Spacing Unit Size: Quarter-Quarter Sections
Governing Well Setbacks: Horizontal Oil Well Rules
Pool Rules: Latest Horizontal Rules Apply

Proximity Tracts: Yes, The Astrodog Federal Com 0809 212H is located closer
than 330 feet from the adjoining tract.

Monthly charge for supervision: While drilling: \$8000, While producing: \$800
As the charge for risk, 200 percent of reasonable well costs

Proposed Wells:**Astrodog Federal Com 0809 131H**

SHL: 897 feet from the North line and 192 feet from the West line
(Unit D) of Section 8, Township 23 South, Range 29 East, NMPM
BHL: 726 feet from the North line and 10 feet from the East line
(Unit A) of Section 9, Township 23 South, Range 29 East, NMPM

Completion Target: Third Bone Spring at approx. 9743 feet TVD
Well Orientation: West to East
Completion Location expected to be: standard

Astrodog Federal Com 0809 132H

SHL: 915 feet from the North line and 201 feet from the West line
(Unit D) of Section 8, Township 23 South, Range 29 East, NMPM
BHL: 1518 feet from the North line and 10 feet from the East line

(Unit H) of Section 9, Township 23 South, Range 29 East, NMPM

Completion Target: Third Bone Spring at approx. 9743 feet TVD

Well Orientation: West to East

Completion Location expected to be: standard

Astrodog Federal Com 0809 135H

SHL: 1900 feet from the North line and 200 feet from the West line

(Unit E) of Section 8, Township 23 South, Range 29 East, NMPM

BHL: 2310 feet from the North line and 10 feet from the East line

(Unit H) of Section 9, Township 23 South, Range 29 East, NMPM

Completion Target: Third Bone Spring at approx. 9748 feet TVD

Well Orientation: West to East

Completion Location expected to be: standard

**STATE OF NEW MEXICO
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES
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)**

Order No. R-21416-A

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.

Exhibit 9

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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 when the owners of the interests in a spacing unit "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."

9. 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 (AFE's) 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

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sites and to operate on the surface (the "surface factor").¹

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

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. Marathon proposes to complete one 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.

13. Marathon's proposals in the N/2 half of Sections 12 and 7 are part of a development plan that also covers the S/2 of Sections 12 and 7. Marathon's development plan for the S/2 of Sections 12 and 7 was addressed in other cases and is not contingent on the Commission's decision in these cases.

14. Marathon does not propose to complete any Bone Spring wells in the N/2 N/2 of Sections 12 and 7 due to existing horizontal laterals that penetrate the Second Bone Spring in the N/2 N/2 of Section 12.

15. 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 letters from both Oxy Y-1 Company ("Oxy") and Chevron U.S.A. Inc. ("Chevron") that supported Marathon as operator of the N/2 units and Marathon's development plan and also stated that they allowed Marathon to represent OXY and Chevron's interests. However, the letters of support were issued in November 2019 and Marathon's transactions with Oxy and Chevron had not closed as of the date of the August 2020 hearing. 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.

16. Marathon must pool interests to develop its acreage.

17. 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.

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.

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18. BTA acquired its interest under the JOA and became the operator of the Ochoa Acreage on November 1, 2018.

19. Under the JOA, BTA is the designated operator of 100% of the Ochoa Acreage.

20. BTA owns 82% of the working interest in the Ochoa Acreage. Oxy Y-1 Company ("Oxy") is the other party to the JOA and owns 18% of the working interest in the Ochoa Acreage.

21. Oxy ratified the JOA and BTA as operator of the Ochoa Acreage effective on November 1, 2018.

22. Oxy's interest is subject to the JOA, and if Marathon acquires Oxy's interest in the Ochoa Acreage, Marathon's interest will be subject to the JOA.

23. As operator of 100% of the Ochoa Acreage, BTA does not need to file a compulsory pooling application to develop the Ochoa Acreage. BTA only needs to submit well proposals to Oxy and allow for the 30-day election period prior to drilling its wells.

24. BTA acquired its operating rights under the JOA to allow it to control costs and implement its development plan. BTA witness Willis Price testified that BTA's operating rights under the JOA are valuable because they allow BTA to take advantage of its experience in the area, select the most efficient development plan, and control costs. Mr. Price also testified that granting Marathon's applications would nullify BTA's operating rights under the JOA by precluding BTA from developing the Ochoa Acreage.

25. Joint Operating Agreements facilitate development and conservation of resources by allowing operators to develop their acreage without the necessity of a pooling proceeding.

26. BTA proposes to complete four 1.5-mile horizontal wells in the Lower Wolfcamp formation in the Ochoa Acreage and has approved 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.

27. BTA's 1.5-mile horizontal wells have been efficient and economic, and BTA expects that its wells in the Ochoa Acreage will be efficient and economic.

28. 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.

29. The BLM has approved BTA's well sites for the four Lower Wolfcamp Ochoa Wells.

30. BTA's well sites are located outside the Potash Area, and the completed laterals will extend into the Potash Area. Mosaic Potash has been notified and has no objection.

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31. On June 26, 2019, BTA submitted Applications for Permits to Drill (“APD”) for the four Lower Wolfcamp Ochoa Wells to the BLM.

32. On July 8, 2019, BTA sent Oxy well proposals for the four Lower Wolfcamp Ochoa Wells.

33. BTA submitted notice of its Ochoa Development Area on August 28, 2019.

34. The BLM’s determination on BTA’s APDs and Ochoa Development Area are pending.

35. Due to the election period afforded by the JOA, BTA will formally propose its additional Second Bone Spring and Wolfcamp XY Sand wells to Oxy when permits are obtained.

36. 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.

37. Marathon submitted notice of its Valkyrie Development Area for the N/2 of Sections 12 and 7 on November 12, 2019.

38. BLM approved Marathon’s Development Area on April 16, 2020. BLM’s approval stated: “Under the provisions of Secretary’s Order 3324, the BLM will cooperate with the NMOCD in the implementation of that agency’s rules and regulations. Therefore, in observation of NMOCD’s Order 21251 regarding the Valkyrie Development Area giving Marathon Oil Corporation the right to develop fluid minerals in all of Sections 12 in T23S R28E and Section 7 in T23S R29E, the BLM has approved the Valkyrie Development Area. The Development Area has been assigned DA-2020-025.”

39. Marathon has contracts for the takeaway of gas, produced water, and oil in place.

40. Marathon does not currently hold a record title interest in the Ochoa Acreage and seeks to pool BTA’s interest in the N/2 of Section 7 to develop its 2-mile laterals.

41. Marathon proposes to complete one well in the Lower Wolfcamp B in the N/2 of Sections 7 and 12 and two wells in the Lower Wolfcamp B in the S/2 of Sections 7 and 12.

42. BTA’s Ochoa Acreage includes the N/2 of Section 7 and the N/2 NW/4 of Section 8, and BTA proposes to complete two wells in the Lower Wolfcamp B in the Ochoa Acreage.

43. Marathon proposes to complete one Second Bone Spring well in the S/2 N/2 of Sections 7 and 12.

44. BTA’s Ochoa Acreage includes the N/2 of Section 7 and the N/2 NW/4 of Section 8, and BTA proposes to complete two wells in the Second Bone Spring in the Ochoa Acreage.

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45. BTA presented evidence that Marathon's development plan fails to fully and efficiently develop the Ochoa Acreage and places fewer wells in the Lower Wolfcamp, which is more productive, and that BTA's development plan would fully and efficiently develop the Ochoa Acreage.

46. If granted, Marathon's Applications would preclude BTA from developing 80 acres of BTA's Ochoa Acreage in the S/2 NW/4 of Section 8 and would strand that acreage.

47. If Marathon's Applications were granted, BTA would still be required to drill a well to develop the Second Bone Spring formation in the N/2 N/2 of Section 7 because Marathon has not proposed any wells in that location and formation due to existing horizontal laterals that penetrate the Second Bone Spring in the N/2N/2 of Section 12.

48. BTA's similar development in proximity to the Ochoa Acreage has produced more barrels of oil per foot than Marathon's similar developments in proximity to its proposed spacing units.

49. Marathon has suspended all drilling activity in the Northern Delaware Basin during 2020 and has released its rigs.

50. 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.

51. BTA is ready, willing, and able to drill and complete the four Lower Wolfcamp Ochoa Wells once these cases are resolved and BLM approves BTA's development plan and APDs. BTA will be able to expeditiously drill and complete its four additional Ochoa Wells since it does not need to pool its acreage to do so.

52. BTA's contracts for the takeaway of gas, produced water, and oil are ready for execution.

53. BTA's four Lower Wolfcamp well sites have been approved by the BLM, and BTA is able to timely locate its wells and operate on the surface once the BLM approves BTA's development plan and APDs.

54. BTA owns a greater interest in the Ochoa Acreage than Marathon holds in its proposed spacing units.

55. If Marathon's Applications are denied, Marathon can drill 1-mile laterals in its acreage in the N/2 of Section 12.

56. Marathon has drilled 1-mile laterals in the surrounding area.

57. There is no engineering or geological reason that Marathon cannot complete 1-mile laterals in its acreage in Section 12.

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58. Marathon presented evidence and testimony that codeveloping the N/2 and S/2 wells together would reduce the parent-child effect.

59. 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.

60. BTA witness Britton McQuien testified that Marathon's evidence regarding the parent-child effect was based on limited and incomplete data and failed to address other factors and causes. Mr. McQuien also presented opposing evidence regarding BTA's comparable developments.

61. Marathon presented evidence and testimony that its 2-mile laterals in its Malaga Upper Wolfcamp development are more capitally efficient than its 1.5 or 1-mile laterals.

62. BTA witness Britton McQuien testified that Marathon's evidence regarding 2-mile laterals was unreliable because it was based on a limited set of data, did not address efficiency (e.g. barrels of oil per foot) and did not address other factors that can impact well performance. Mr. McQuien also presented evidence that BTA's similar 1.5-mile developments are more efficient than Marathon's similar 2-mile developments.

63. Marathon presented testimony regarding surface waste, because BTA's development plans would require Marathon, BTA, and Novo to each have surface facilities.

64. BTA presented testimony that if Marathon's Applications were granted, BTA would still have to drill a Second Bone Spring well, which would mean additional surface facilities; that granting Marathon's applications would not decrease surface waste; and that surface waste would not be reduced even if Marathon's and Novo's applications in Case Nos. 21275 and 21276 were both granted.

65. Marathon presented evidence and testimony that its proposal would eliminate internal setbacks. Marathon witness Yuri Rodionov testified 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

66. BTA witness Britton McQuien testified that Marathon's evidence regarding the recovery of reserves underlying setbacks was inaccurate because an operator can access the reserves underlying setbacks over the life of the wells. Mr. McQuien testified that the Purple Sage Wolfcamp Pool was created to facilitate horizontal development in the Wolfcamp, and the setbacks were established to allow each operator the opportunity to recover their fair share under their respective leasehold acreage.

67. Marathon and BTA both presented evidence and testimony in support of their respective well density and spacing.

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68. 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.

69. BTA presented evidence that if Marathon's Applications were granted, BTA would still have to drill a Second Bone Spring well, and that granting Marathon's applications would not reduce the number of drilling pads needed to develop the acreage.

70. The Commission considered evidence presented by both parties regarding operational costs and Authorizations for Expenditures, prudent operation, and good faith negotiation and found that the evidence was neutral as to whether these factors favored Marathon's or BTA's development plans.

71. Marathon failed to establish that its proposed development plan would protect correlative rights, prevent waste, or avoid the drilling of unnecessary wells.

72. BTA's development plan will fully and efficiently develop the Ochoa Acreage, will not strand any acreage and will best prevent waste.

73. BTA's development plan will best protect correlative rights by allowing each party to develop its own acreage.

74. If Marathon's Applications are granted, BTA will be unable to fully and efficiently develop the Ochoa Acreage.

75. If Marathon's Applications are granted, portions of BTA's Ochoa Acreage will be stranded.

76. If Marathon's Applications are denied, each operator can develop its own acreage.

77. If Marathon's Applications are denied, no acreage will be stranded.

CONCLUSIONS OF LAW

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. As the applicant in this proceeding, Marathon bore the burden of proof.
4. Marathon failed to establish that its Applications, if granted, would prevent waste.

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5. Marathon failed to establish that its Applications, if granted, would protect correlative rights.

6. Marathon failed to establish that its Applications, if granted, would prevent the drilling of unnecessary wells.

7. BTA's proposed development plan will prevent waste more effectively than Marathon's proposed development plan.

8. BTA's proposal protects correlative rights by presenting the best opportunity for each party to develop its own acreage.

9. BTA's interest in the Ochoa acreage is greater than Marathon's interest in its proposed units, favoring BTA.

10. The evidence and testimony regarding the efficiencies of 2-mile laterals was either insufficient or contradictory.

11. The evidence and testimony regarding the parent-child effect was either insufficient or contradictory.

12. The evidence and testimony regarding the differences in well spacing and the number of wells was either insufficient or contradictory.

13. There was insufficient evidence to quantify surface waste.

14. 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.

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.

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DONE at Santa Fe, New Mexico on the 17 day of September, 2020.


**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**



Adrienne Sandoval, M.E., Chair



Dr. Thomas Engler, P.E., Member



Jordan Kessler, Esq., Member