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

APPLICATIONS OF FRANKLIN MOUNTAIN ENERGY 3, LLC FOR COMPULSORY POOLING AND NOTICE OF OVERLAPPING SPACING UNIT, LEA COUNTY, NEW MEXICO

CASE NOS. 23833, 23835, 23838, 23839

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

CASE NOS. 24110-24112, 24115

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

CASE NOS. 23961-23964

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

CASE NOS. 24142-24145

FRANKLIN MOUNTAIN ENERGY 3, LLC'S RESPONSE TO MRC PERMIAN COMPANY'S MOTION TO VACATE

MRC Permian Company's ("MRC") Motion to Vacate should be denied. Franklin Mountain Energy 3, LLC's ("Franklin") notice was sufficient, which the Motion itself substantiates. MRC's Motion is limited only to Franklin's Cross State Wolfcamp applications in cases 23833, 23835, 23838-23839 (Cross Wolfcamp Applications). MRC's only basis to vacate a hearing that has been set for nearly two months is its factually and legally unsupported contention that the Cross Wolfcamp Applications are "vague" in how they described the overlap in Section 36. MRC's argument fails for three separate reasons.

As a threshold matter, MRC's Motion does not discuss OCD's Rule 19.15.16.15.B(9)(b)(i) NMAC pertaining to overlapping spacing units, much less demonstrate that Franklin's Cross Wolfcamp Applications violate that rule. Franklin's Cross Wolfcamp Applications do not violate any OCD rules regarding notice—tellingly, MRC does not even argue that they do. Second, as MRC tacitly admits, approval of overlapping spacing units is not a requirement for pooling cases to be heard. Last, it is undisputed that MRC *has actual knowledge* of the overlap with the Satellite units in the N/2 of Section 36. The very filing of MRC's Motion establishes that (a) MRC was able to determine what Franklin was referencing in its applications; and (b) was able to identify the nature and extent of the proposed overlapping spacing units. MRC has *actual notice* of the overlapping units, the target zones, and the number of Cross and Satellite Wolfcamp wells Franklin intends to drill, which Franklin will establish at the February 8 contested hearing are justified. Clearly, then, the information in Franklin's applications was sufficient and MRC's Motion must be denied.

MRC's Motion appears to be no more than a delay tactic to avoid going to hearing, because it is well aware that Franklin has a higher working interest and working interest control in the competing spacing units. This tactic should not be countenanced, as it impairs correlative rights by precluding Franklin from developing acreage within which it has control for all parties' benefit.

ARGUMENT

1. The above captioned cases involve competing development plans for the Bone Spring and Wolfcamp formations underlying Section 36, Township 18 South, Range 34 East, and Section 1, Township 19 South, Range 34 East. N.M.P.M., Lea County, New Mexico, designated by Franklin as its Cross State Development Area, which is part of a larger comprehensive development plan in the area planned by Franklin.

2. With respect to Section 36 and Section 1, which is the acreage at issue in the Cross and MRC Mongoose cases, Franklin has a higher working interest than MRC. Franklin's interest in the Wolfcamp units ranges from approximately 18.24% to 37.39%, whereas MRC's interest in the Wolfcamp units is a mere 3.61%. Franklin's interest in Bone Spring units ranges from approximately 28.99% to 37.3% percent, whereas MRC only has approximately 12.86%. MRC has no interest in Section 36. MRC's only interest in its proposed spacing units is in Section 1. Conversely. Franklin has interests in both Section 36 and Section 1.

3. Franklin proposed its Cross State Wolfcamp and Bone Spring wells to MRC in July 2023 and filed its applications on September 5, 2023. On September 5, 2023, Franklin also filed its Wolfcamp Satellite applications. At the time the Cross and Satellite applications were filed, there were no existing Wolfcamp spacing units within Section 36 and there were no existing Wolfcamp wells in Section 36.[1] Given the pendency of Franklin's applications, Franklin identified and provided notice of the overlapping acreage in its Cross applications, even though there were no existing spacing units or existing wells at the time of application.

4. Notice that the Cross Wolfcamp Applications included a request for the approval of an overlapping spacing unit was clearly provided. They state, in two places: "*Franklin also hereby provides notice that the spacing unit proposed in this application will partially overlap a spacing unit in Section 36, Township 18 South, Range 34 East, N.M.P.M. Lea County, New Mexico.*" (Emphasis added.) If that weren't enough, the case captions for each of the Cross Wolfcamp Applications include *"Notice of Overlapping Spacing Unit*." (Emphasis added.) In each Cross Wolfcamp Application Franklin requested that the Division issue an order *"[a]pproving, to*

[1] MRC's Motion discussion of the Satellite exhibits is irrelevant. As discussed herein, there were no existing spacing units when the Satellite applications were filed and thus any purported error in the exhibits is irrelevant because Franklin did not then and does not now need approval of an overlapping spacing unit for its Satellite Wolfcamp units.

the extent necessary, the proposed overlapping spacing unit." (Emphasis added.) The public notice Franklin provided to the Division for the dockets provides: "*The spacing unit proposed in this application will partially overlap a spacing unit in Section 36, Township 18 South, Range 34 East, N.M.P.M. Lea County, New Mexico.*" (Emphasis added.) The public notice Franklin published in the Hobbs Daily News Sun states: "*The spacing unit proposed in this application will partially overlap a spacing unit in Section 35, Township 18 South, Range 34 East, N.M.P.M. Lea County, New Mexico.*" (Emphasis added.)

5. While Franklin has diligently been trying to move its projects in this area forward, MRC has been delaying those attempts and has not acted with similar diligence. Despite receiving Franklin's proposals on July 21, 2023, MRC piecemealed its competing well proposals and applications: September 15, 2023 (Wolfcamp wells proposed), September 29, 2023 (Bone Spring wells proposed), October 6, 2023 (Wolfcamp applications filed), and November 6, 2023 (Bone Spring applications filed). MRC used its delay in proposing the Bone Spring wells as reasoning to successfully obtain a continuance of the hearings in these matters from the November docket.

6. After several status conferences, on December 7, 2023, the Division set a contested hearing for these competing cases. The Division set a special docket for these cases, February 8-9, which is outside of its normal docket dates. The Parties all agreed to hold the contested hearing on these cases on February 8-9.

7. Franklin, in reliance on the Parties' agreement on a contested hearing date, has been diligently preparing for the hearing and the development of this project. Franklin is ready to proceed to the merits of these cases and is ready to begin drilling wells on this acreage where it has a large controlling interest. MRC, again, seeks to delay these cases, which benefits no one. MRC's delay means leaving valuable resources in the ground in the near term, when Franklin is

ready to begin developing those resources, for the benefit of the working interest owners, many of whom support Franklin, and for the benefit of the State of New Mexico, from whom Franklin has approved leases and rights to operate on the surface.

A. The Cross Wolfcamp Applications Complied with the Division's Rules.

8. The sole issue MRC's Motion raises is that Franklin allegedly did not adequately identify the Satellite Wolfcamp spacing units in its Cross Wolfcamp Applications. As a reminder, the Satellite Wolfcamp spacing units had not been approved by the Division and therefore were not "existing" spacing units when Franklin filed its Cross Wolfcamp Applications. In any event, OCD's rules regarding overlapping spacing units do not require specific language to identify the existing spacing unit.

9. Tellingly, MRC does not discuss a case or single OCD rule that supports MRC's position. Instead, MRC makes the unsupported contention that the language in Franklin's Wolfcamp Applications was too vague.

10. While MRC does not cite any OCD rule, the Division does have regulations pertaining to overlapping spacing units. *See* Rule 19.15.16.15.B(9)(b); Rule 19.15.15.12.B. The rules contemplate either approval from the operators and working interest owners in the existing and proposed units or, in the absence of approval, notice to the operators and working interest owners in the existing and proposed units. Rule 19.15.16.15.B(9)(b)(i) does not identify any specific formulation for how such notice must describe an existing spacing unit. It provides:

> "[A] horizontal well that will have a completed interval partially in an existing well's spacing unit, and in the same pool or formation, may be drilled only with the approval of, or, in the absence of approval, after notice to, all operators and working interest owners of record or known to the applicant in the existing and new well's spacing units."

11. The rule thus requires an operator proposing to drill a well partially within an existing well's spacing to unit to provide notice of the operator's intent to drill such a well to owners and operators in the existing and new well's spacing unit. The record is clear that Franklin Mountain provided such notice in its applications in spades.

12. It bears repeating that at the time Franklin filed its applications, there were no existing spacing units in Section 36. Nevertheless, Franklin's Cross Wolfcamp Applications provide notice that Franklin's proposed Cross State Wolfcamp wells would partially overlap a spacing unit in Section 36. Franklin's Cross Applications state: "Franklin also hereby provides notice that the spacing unit proposed in this application will partially overlap a spacing unit in Section 36, Township 18 South, Range 34 East, N.M.P.M. Lea County, New Mexico." This language, along with the caption of the cases, the request for relief, the information published on the OCD's docket, and Franklin's newspaper publication makes clear that Franklin provided notice in its Cross Wolfcamp Applications that the Cross State Wolfcamp wells were proposed to partially overlap with a spacing unit in Section 36. Franklin mailed copies of its Cross Wolfcamp Applications to MRC on September 15, 2023.

13. Simply put, to the extent Rule 19.15.16.15.B(9)(b) applies, Franklin complied with it by giving notice to MRC, and the other working interest owners, of Franklin's intent to drill its Cross State Wolfcamp wells and that those wells would be drilled partially in a spacing unit within Section 36.

14. MRC has not identified any regulatory defect in Franklin's Cross Wolfcamp Applications and its Motion must be denied.

B. OCD or Operator/Working Interest Owner Approval of Overlapping Units Are Not Prerequisites to Compulsory Pooling

15. MRC's Motion is conspicuously silent about the fact that its Mongoose Wolfcamp applications do not include ***any*** information about overlapping spacing units and its Motion does not propose that MRC needs to amend its Wolfcamp applications.

16. MRC's double standard only serves to demonstrate that there are no notice issues in these cases. MRC's contention that Franklin's Cross Wolfcamp Applications are deficient even though they provide notice of the overlap while MRC's Applications are not deficient *even though they are entirely silent* on the issue recognizes that all parties entitled to notice has received actual notice over the evident overlap involved. Franklin agrees—neither MRC nor Franklin need to amend their Wolfcamp applications and the February 8 contested hearing can and should move forward for two reasons.

17. First, as discussed above, Franklin's Cross Wolfcamp Applications put the operators, working interest owners, and the Division on notice of the partial overlap in Section 36, which, in turn, is applicable to MRC's Wolfcamp applications. Put another way, Franklin's Cross Wolfcamp Applications functionally cure any defect in MRC's Mongoose Wolfcamp applications because Franklins' Cross and MRC's Mongoose cases are set to be heard together. Franklin's Cross Wolfcamp Applications alert the Parties and the Division that wells proposed in Section 36 will partially overlap a spacing unit in Section 36, regardless of whether those wells are proposed by MRC or Franklin. This is not a situation where no notice was given because neither party raised the issue—here, Franklin's Cross Wolfcamp Applications are adequate to put all parties on notice and there is no reason to delay.

18. Second, approval of an overlapping spacing unit is not a prerequisite to compulsory pooling, which MRC tacitly acknowledges by not identifying any alleged deficiencies in its own

Wolfcamp applications or contending it needs to amend those applications. Rule 19.15.4.12.A(1)(a) sets forth the notice requirements for compulsory pooling applications. That rule does not require notice of overlapping spacing units as part of the compulsory pooling process. Rule 19.15.4.12.A(1)(b) outlines the evidence necessary to provide in support of pooling applications—and it does not require any notice or evidence regarding overlapping spacing units. Given that approval of an overlapping unit is not a prerequisite to pooling, there is no bar to moving forward with the contested hearing on February 8, 2024.

C. MRC's Motion Should Be Denied Because MRC Has Actual Knowledge of the Overlap.

19. As MRC's Motion makes clear, it is undisputed that MRC *has actual knowledge* of the overlap with the Satellite Wolfcamp units in the N/2 of Section 36 and has evaluated the nature and extent of the proposed overlap.

20. MRC's Motion proves Franklin's point. In its Motion, MRC discusses the overlapping acreage, *i.e.*, the N/2 of Section 36 (MRC Motion ¶ 3.c); discusses the four Satellite State Wolfcamp units (MRC Motion ¶ 3.c); discusses the target zone of the Satellite and Cross wells (MRC Motion ¶ 3.e); raises the number of Satellite and Cross wells targeting the Wolfcamp zones (MRC Motion ¶ 3.e); and previews its argument with respect to the Cross wells (MRC Motion ¶ 3.e), which Franklin is prepared to refute at the contested hearing.

21. MRC's Motion thus negates MRC's argument that it was not "provided sufficient notice of the nature and extent of the proposed overlapping spacing unit." MRC Motion ¶ 5.

22. Despite the fact that MRC was clearly able to determine which spacing units the Cross units will overlap, MRC presumes that the other working interest owners in the Cross units would not be able to do so. Not only does MRC not have standing to assert this claim on behalf of the other working interest owners, that MRC itself made this determination from publicly available

information completely negates MRC's contention, whether raised on MRC's behalf or purportedly on behalf of other working interest owners.

23. In sum, MRC has actual notice of the overlap and thus there is no reason to delay the hearings.

CONCLUSION

Franklin and MRC are the only two parties contesting operatorship of the acreage at issue and they each have notice of the overlap. In Franklin's view, MRC's Motion is an unjustified attempt to delay the contested hearings on these cases, likely because MRC's interest in the acreage is substantially lower than Franklin's. The issue of operatorship is ripe for the Division's determination, and, in Franklin's view, Franklin will prevail. As Franklin will establish at the contested hearing, Franklin has higher working interest control than MRC, Franklin's development plan will protect correlative rights, will reduce surface impacts, and will prevent waste. In addition, Franklin is ready to immediately begin developing this acreage. Further delay is unjustifiable and benefits no-one, especially the State of New Mexico as a mineral owner in the contested development. MRC's Motion must be denied, and the subject cases should continue to hearing.

Respectfully submitted,

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

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

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on counsel of record by electronic mail on January 29, 2024:

Michael H. Feldewert
Adam G. Rankin
Paula M. Vance
HOLLAND & HART, LLP
P.O. Box 2208
Santa Fe, NM 87504
505.998.4421
mfeldewert@hollandhart.com
arankin@hollandhart.com
pmvance@hollandhart.com
Attorneys for MRC Permian Company

Elizabeth Ryan
Jobediah Rittenhouse
ConocoPhillips
1048 Paseo de Peralta
Santa Fe, New Mexico 87501
(505) 780-8000
Beth.Ryan@conocophillips.com
Joby.Rittenhouse@conocophillips.com
Attorneys for COG Operating, LLC

Dana S. Hardy
Jaclyn M. McLean
HINKLE SHANOR LLP
P.O. Box 2068
Santa Fe, NM 87504-2068
(505) 982-4554
(505) 982-8623 FAX
dhardy@hinklelawfirm.com
jmclean@hinklelawfirm.com
Attorneys for Armstrong Energy Corporation and Slash Exploration LP

By: Deana M. Bennett
Deana M. Bennett