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, and 23839.

Case Nos. 24110-24115 (Replacing Cases 23834, 23836, 23837 and 23840)

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 (Replacing Cases 23885-23888)

REPLY IN SUPPORT OF MOTION TO VACATE PRE-HEARING ORDER IN FAVOR OF A STATUS CONFERENCE

MRC Permian Company ("MRC") submits this reply in support of its motion to vacate the Pre-Hearing Order setting these matters for a Special Hearing on February 8, 2024.

1. First, now that MRC has been made aware of the recent Division pooling orders and approved drilling permits for Franklin Mountain's Satellite wells extending into the N2N2 of Section 36, neither the MRC Mongoose applications nor the Franklin Mountain Cross State applications can include the N2N2 acreage in the proposed spacing units since that acreage is now dedicated to the Satellite wells targeting the same intervals. *See* Division Orders R-22963, 22964, 22067 & 22968 issued in Cases 23829-23832 (Satellite wells).

2. Second, Franklin Mountain's brief notes that approval and pooling of overlapping spacing units can only occur if reasonable notice is provided to "all operators and working interest owners of record or known to the applicant *in the existing and the new well's spacing units.*" *See* Response Brief at ¶3, 10 and 11, citing NMAC 19.15.16.15.(9)(b)(i).

3. Third, when counsel for MRC informed counsel for Franklin Mountain in November that merely stating "[t]his application will partially overlap a spacing unit in Section 36" failed to provide reasonable notice of the wells and the spacing units being overlapped, the hearing on the competing applications was vacated to allow Franklin Mountain time to amend the applications. For the applications seeking to create and pool overlapping spacing units in the Bone Spring formation, Franklin Mountain refiled applications that identify the wells and the spacing units being overlapped. *Compare* Franklin Mountain Cases 23834, 23836, 23837 and 23840 (cases dismissed) *with* 24110-24115 (refiled cases). For unknown reasons, Franklin Mountain made no similar change to the applications seeking to create and pool overlapping spacing units in the Wolfcamp application.

4. Fourth, Franklin Mountain concedes in its Response Brief that because of the timing of the filing of the Satellite and the Cross State applications, Franklin Mountain and only Franklin Mountain was aware that they would overlap in the N2N2 of Section 36. See Response Brief at ¶3. Since the owners in the Cross State spacing units did not receive the applications for the Satellite spacing units, and the owners in the Satellite spacing units did not receive the applications for the Cross State spacing units, the affected operators and working interest owners had no way of knowing the interplay between the filed sets of applications. Yet, Franklin Mountain contends it had no obligation to provide any information to the affected working interest owners about the planned overlap between the Satellite and the Cross State spacing units

other than to vaguely state: "The spacing unit proposed in this application will partially overlap a spacing unit in Section 36."

5. The question before the Division is whether vaguely stating in an application and public notice that a proposed spacing unit "will partially overlap a spacing unit in Section 36" provides reasonable notice to all affected operators and working interest owners in the proposed overlapping spacing units. While Franklin Mountain is correct the Division has not identified "any specific formulation for how such notice must be described" (Response Brief at ¶11), there are nonetheless guidelines to inform on what constitutes reasonable notice:

- Franklin Mountain listed the wells and the spacing units being overlapped in the refiled Cross State Bone Spring applications, thereby recognizing the importance of this information.

- If NMAC 19.15.16.15.(9)(b)(i) requires reasonable notice to "all operators and working interest owners of record or known to the applicant *in the existing and the new well's spacing units,*" then it seems self-evident that the notice must identify the wells and the spacing units being overlapped.

- NMAC 19.15.4.9.A(6) requires "a reasonable identification of the adjudication's subject matter that alerts persons who may be affected if the division grants the application." This standard is not met if the subject matter – here the wells and the spacing units being overlapped – are not identified.

- NMAC 19.15.4.9.A(9) requires applications for compulsory pooling and statutory unitization to include "a legal description of the spacing unit or geographical area the applicant seeks to pool or unitize." Reasonable notice of applications to approve and pool overlapping spacing units should likewise include at a description of the wells and spacing units being overlapped.

- A review of the Division's February 1st docket, and all prior dockets, reveals that applicants seeking approval and pooling of overlapping horizontal well spacing units routinely identify the wells and the spacing units being overlapped. *See, e.g.,* EGL Resources Case 24043 (Skyfall wells), Oxy Cases 23917-18 (Evil Olive wells), Marathon Case 24085 (Cobra Cobretti), Mewbourne Cases 24132 (Neato Bandito). Franklin Mountain appears to be the only operator on the Division dockets over the last few months that has chosen not to identify in the application and public notice the wells and the spacing units being overlapped.

6. While Franklin Mountain suggests it has provided reasonable notice "in its applications in spades" (Response Brief at ¶11), the absence of basic information on the wells and the spacing units being overlapped rebuts that contention.

7. Similarly, the fact that MRC recently obtained "actual knowledge" from Franklin Mountain's counsel that "a spacing unit in Section 36" refers to the four standup 360-acre horizontal well spacing units extending into the N2N2 of Section 36 approved for Franklin Mountain's "Satellite" wells does not cure the public notice defect for all other affected operators and working interest owners.

WHEREFORE, MRC respectfully requests that the Division vacate the amended prehearing order setting these matters for a Special Hearing on February 8, 2024, and instead hold a status at the earliest available time to address the deficiencies in the filed applications and legal notices.

Respectfully submitted,

HOLLAND & HART LLP

Michael H. Feldewert
Adam G. Rankin
Paula M. Vance
Post Office Box 2208
Santa Fe, New Mexico 87504-2208
(505) 988-4421
(505) 983-6043 Facsimile
mfeldewert@hollandhart.com
agrankin@hollandhart.com
pmvance@hollandhart.com

ATTORNEYS FOR MRC PERMIAN COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2024, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

Deana Bennett
Earl E. DeBrine, Jr.
Yarithza Peña
Modrall, Sperling, Roehl, Harris & Sisk, P.A.
Post Office Box 2168
Albuquerque, New Mexico 87103-2168
(505) 848-1800
deana.bennett@modrall.com
earl.debrine@modrall.com
yarithza.pena@modrall.com

Attorneys for Franklin Mountain Energy 3, 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

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

Attorneys for COG Operating, LLC

Michael H. Feldewert