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

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, 24111, 24112, and 24115

MRC'S POST-HEARING BRIEF AND PROPOSED FINDINGS

MRC Permian Company ("MRC") (OGRID No. 4323) submits this post-hearing brief and proposed findings pursuant to the instruction from the Hearing Examiner following the conclusion of the February 8th hearing in these matters.

POSTHEARING BRIEF

Franklin Mountain ("FM") has filed applications in these consolidated matters that request two separate forms of relief from the Division:

(a) Approval of overlapping 320-acre, more or less, standup horizontal well spacing units in the Bone Spring and Wolfcamp formations underlying Section 36, T-18-S, R-34-E and Section 1, T-19-S, R-34-E for the proposed "Cross State" wells.

(b) Compulsory pooling of uncommitted working interest owners and unleased mineral owners in these proposed overlapping spacing units.

FM's applications must be denied due to the negative impact that FM's overlapping development plan will have on the correlative rights of MRC and the other mineral owners in the S2N2 and the S2 of Section 36, and all of Section 1. In addition, FM failed to provide sufficient

information about the actual acreage involved, the wells involved, and the extent of the proposed overlapping development plan to inform the affected mineral owners in the proposed Cross State units of the negative impact on their correlative rights.

A. Approval of FM's Applications Will Impair the Correlative Rights of the Owners in the S2N2 and S2 of Section 36, and all of Section 1.

The Oil and Gas Act gives the Division two major duties: The prevention of waste and the protection of correlative rights. NMSA 1978, § 70-2-11(A); *Cont'l Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, ¶ 27, 70 N.M. 310, 373 P.2d 809. The Oil and Gas Act defines correlative rights as:

> H. "correlative rights" mans the opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste 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 can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for such purpose to use his just and equitable share of the reservoir energy.

NMSA 1978, § 70-2-33(H). This definition of correlative rights is repeated in the statute granting pooling authority to the Division, requiring that the "rules, regulations or orders of the division shall, so far as it is practicable to do so afford the owner of each property…" (repeating the definition of correlative rights). NMSA 1978, § 70-2-17(A). With respect to pooling orders, subpart C of the pooling statute specifically mandates:

> All orders effecting such pooling shall be made after notice and hearing, *and shall be upon such terms and conditions as are just and reasonable and will afford to the owner or owners of each tract or interest in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil or gas*, or both.

NMSA 1978, § 70-2-17(C). It is therefore incumbent upon the applicant for a pooling order to demonstrate, and for the Division to find, that the proposed pooling and associated development plan will provide the owners in each tract "his just and fair share of the oil or gas" in the pool

developed by the proposed spacing unit. *Id.* Where the applicant fails to make that showing, the Division must deny the application. *Id.*

In *Applications of Cimarex Energy,* Order R-13228-F, the Commission succinctly laid out this requirement:

> (8) In pooling, Section 70-2-17 allows for allocation of production to occur on a straight acreage basis.
>
> (9) Section 70-2-17 requires the Commission to determine whether the pooling application will prevent waste and protect correlative rights.
>
> (10) When an operator applies for compulsory pooling of a project area, the operator must demonstrate, by appropriate technical evidence, that the formation of such a unit will prevent waste and will not impair correlative rights.

The Commission found that the proposed spacing unit did not afford all owners the opportunity to recover their just and fair share of the oil and gas after citing evidence that the S2 acreage in the proposed spacing unit would contribute more to the wellbore than the N2 acreage. *Id.* Findings ¶¶ 17, 23, 26 and Ordering ¶ 13.

Similarly, the evidence presented in these consolidated cases demonstrates FM's proposed overlapping development plan will result in the 40-acre tracts comprising the N2N2 of Section 36 contributing roughly half of what each of the remaining 40-acre tracts in the proposed Cross State spacing units will contribute. FM's landman testified the FTPs for the Satellite State wells going north will be roughly 600 feet the quarter-quarter line between the N2N2 and S2N2 of Section 36, and the FTP for the Cross State wells going south will not start until approximately 600 feet from the quarter-quarter line between Sections 36 and 25. Tr. 94-95 (Zink, referencing FM Ex. B-8). This results in the completed intervals for the Cross State wells only developing roughly one-half the 40-acre tracts comprising the N2N2 of Section 36, while the remaining tracts comprising the Cross State spacing units will be fully developed by the completed intervals of the proposed Cross State wells. Tr. 162-163 (McCoy). Yet under a pooling order, the 40-acre tracts comprising the

N2N2 of Section 36 will receive a share of the production from the Cross State wells on a straight acreage basis as if they are contributing the same level of production to the Cross State wells as the remaining tracts comprising each spacing unit. Tr. 72 (Zink); Tr. 162-163 (McCoy). *See also* NMSA 70-2-17(C).

Moreover, FM's reservoir engineer testified the company expects the wells to produce approximately 100 barrels of oil per foot. Tr. 162 (McCoy). Using FM's estimates, that means each of the Satellite State wells located in the N2N2 of Section 36 will drain approximately 72,000 barrels of oil (100 barrels of oil per foot multiplied by 720 feet of perforated interval) from the N2N2 tracts - solely to the benefit of the Satellite State owners. Tr. 96 (Zink). This directly impairs the correlative rights of MRC and the other minerals owners in the remainder of Section 36 and Section 1, who will be forced to share production from the Cross State wells on a straight acreage basis with N2N2 tracts that are (a) only partially developed by the Cross State wells, and (b) subject to an estimated drainage of 72,000 barrels of oil per Satellite State well. This direct impairment of the correlative rights of the Cross State mineral owners requires denial of FM's applications. *See* NMSA 1978, § 70-2-17(C).

B. FM Failed to Provide Sufficient Information to Apprise the Affected Mineral Owners of What is Contemplated by the Proposed Overlapping Spacing Units

The impairment of correlative rights discussed above is particularly troubling because nothing in FM's proposals, pooling applications, or drilling permits informed the Cross State mineral owners of the nature and extent of the proposed overlapping spacing units.

FM's applications for approval and pooling of overlapping spacing units vaguely state the proposed spacing unit "will partially overlap a spacing unit in Section 36." FM's land witness acknowledged the absence of information on the company's actual development plan, the completed intervals for the Satellite State and Cross State wells, or how the wells will overlap in the N2N2 of Section 36:

> Q. Okay. Is there anything that's in your filed hearing packet, or anything that we can look at in the Division's files, that would identify how you intend to overlap these spacing units and the footages involved with your first take points? Anything?
> A In the exhibits, specifically? No.
> Q Anything that's been filed with the Division?
> A Not that I'm aware of.
> Q Anything that was provided to the affected working interest owners?
> A Nope.
> Q And sitting here today, there's nothing that shows the Division where your first take point is going to be for your cross-state wells, and where your first take point is going to be for your satellite wells?
> A That's correct.
> Q And nothing identifies to the Division, or to anybody that's looked at the record, how much perforated overlap there's going to be in the north half of the north half of section 36?
> A There's nothing in the application that mentions that.
> Q Is there anything anywhere?
> A No.

Tr. 109-110 (Zink). Further, after revealing at the hearing that the FTPs for the proposed Cross State wells will not start until approximately 600 feet from the quarter-quarter line and only develop roughly half of each of the 40-acre tracts comprising the N2N2 of Section 36, FM's witness acknowledged the Form C102s filed with the hearing exhibits incorrectly represented the FTP would start at a standard 100 feet from the north line of Section 36. Tr. 101-102 (Zink).

FM suggests that vaguely stating in the applications and public notice that the proposed spacing unit "will partially overlap a spacing unit in Section 36" provided sufficient notice to the affected mineral owners of what is contemplated by FM's overlapping development plan. However, New Mexico case law demonstrates otherwise. In *Uhden v. New Mexico Oil Conservation Commission*, the New Mexico Supreme Court issued the following instructions:

> In Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), the United States Supreme Court stated that "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." 339 U.S. at 314, 70 S.Ct. at 657. [****8] The Court also said that "[b]ut when notice is a person's due, *process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.*" Id. at 315, 70 S.Ct. at 657.

1991-NMSC-089, at ¶9 (emphasis added). FM's vague statement in its applications and public notice that the proposed spacing unit "will partially overlap a spacing unit in Section 36" was nothing more than "a mere gesture" that lacked the specificity of "one desirous of actually informing the absentee might reasonably adopt" to provide notice of what is contemplated. This is evident by FM's refiled Bone Spring applications under Cases 24110, 24111, 24112 and 24115. In each of these applications and public notice, FM specifically identified the wells, the operator and the actual acreage being overlapped by the proposed spacing unit as follows:

> 7. Franklin's proposed spacing unit in this case will partially overlap the following existing Bone Spring spacing units:
>
> a. A 174-acre horizontal well spacing unit comprised of the N2N2 of Section 1 dedicated to COG's Wild Cobra 1 State 1H (API 30-025-41110)
>
> b. A 160-acre horizontal well spacing unit comprised of the S2N2 of Section 1 COG's Wild Cobra 1 State 2H (API 30-025-40404)
>
> *****

See FM Ex. B-21. However, for the request for approval to overlap the spacing units for the Satellite State wells, FM chose to provide little detail, opting instead to simply state the Cross State spacing units will partially overlap spacing units somewhere in Section 36.

In *Nesbit v. City of Albuquerqu*e, the New Mexico Supreme Court set aside a zoning decision after agreeing with the district court that similar, vague language was not sufficient to provide reasonable notice of what was contemplated:

> The district court found that the reference to "a revised development plan around the Indian Plaza Drive NE" was *inadequate to describe the location of the property* and was *inadequate to put a reasonable person on notice of the fundamental and substantial change in the use of the property*. We agree. Indian Plaza Drive NE was not a street in 1972. It was not surveyed, bladed or marked until 1976; it was simply a line drawn on a map somewhere. The "revised development plan" did not refer to the 82-unit townhouse development of which the Neighbors were aware, nor did this term inform the public that a multi-unit high density plan for 287 apartments was being considered. *In order to meet the statutory requirement of adequate notice, it must be determined whether notice as published fairly apprised the average citizen reading it with the general purpose of what was contemplated.* If the notice is insufficient, ambiguous, misleading or unintelligible to the average citizen, it is inadequate to fulfill the statutory purpose of informing interested persons of the hearing so that they may attend and state their views. The September 8, 1972 notice was clearly inadequate and the actual notice of four of the Neighbors was legally insufficient. Therefore, the City Commission's decision of October 2, 1972, is also void.

Nesbit v. City of Albuquerque, 1977-NMSC-107, at ¶9 (citations omitted, emphasis added). Here, FM similarly failed to provide sufficient information to apprise the affected mineral owners of what was contemplated:

- FM's statement that the proposed spacing unit "will partially overlap a spacing unit [somewhere] in Section 36" is as vague as Nesbit stating "a revised development plan [somewhere] around the Indian Plaza Drive NE"; and
- FM's failure to identify the Satellite State wells and the associated spacing units is the same as Nesbit's failure to apprise the affected parties about the extent of the proposed "revised development plan."

Id. While FM is correct the Division has not identified "any specific formulation for how such notice must be described" (FM Response Brief to Motion to Vacate at ¶11), there are nonetheless Division guidelines that inform on what is required for sufficient notice:

- 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 actual acreage, wells and 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 legal description of the acreage and wells 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 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 wells), Mewbourne Case 24132 (Neato Bandito wells).
- NMAC 19.15.16.15.(9)(b)(i) requires reasonable notice be 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." It therefore seems self-evident that an operator seeking approval and pooling of overlapping spacing units must identify the wells and the spacing units being overlapped.

As the court found *Nesbit*, simply stating that the proposed spacing unit "will partially overlap a spacing unit in Section 36" is inadequate to describe the location of the affected acreage and inadequate to fairly apprise the affected mineral owners of nature and extent of the overlapping approval sought.

PROPOSED FINDINGS AND CONCLUSIONS

1. Franklin Mountain ("FM") has filed applications in these consolidated matters that request two separate forms of relief from the Division:

(a) Approval of overlapping 320-acre standup horizontal well spacing units in the Bone Spring and Wolfcamp formations underlying Section 36, T-18-S, R-34-E and Section 1, T-19-S, R-34-E for the proposed "Cross State" wells; and

(b) Compulsory pooling the uncommitted mineral owners in these proposed overlapping spacing units.

2. MRC Permian Company and COG Operating, LLC appeared in these matters and objected to the relief sought by FM.

3. At the hearing in these consolidated matters, FM confirmed that its proposed 320-acre Cross State spacing units will overlap in the N2N2 of Section 36 the 360-acre spacing units FM has permitted or proposed for its "Satellite State" wells. Tr. 69-70 (Zink)

The Approved Satellite State Spacing Units

4. In September of 2023, FM filed applications with the Division to compulsory pool 360-acre well spacing units in the Wolfcamp formation underlying the N2N2 of Section 36 and acreage to the north in Sections 25 and 24, T18S, R34E, for its proposed "Satellite State" wells. *See* Applications in Division Cases 23929-23832.

5. Each application also requested an order "approving, to the extent necessary, the proposed overlapping spacing unit" and stated: "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." *Id.* at ¶ 4 and ¶ B .

6. During the October 5, 2023, hearing on the Satellite State applications, FM informed the Division the proposed spacing units will overlap spacing units FM had proposed for

the "Cross State" wells in the N2N2 of Section 36. *See* Case 23829 at Exhibit B-2 (reproduced and presented in this matter as MRC Exhibit C-2).

7. While FM represented at the October hearing on the Satellite State wells that notice was provided to the "Cross State" working interest owners, the record demonstrates the Cross State working interest owners did not receive notice of the hearing on the Satellite State wells. *Compare* Exhibit B filed in Case 23829 (land affidavit) at para. 10 ("Franklin's applications were sent to the working interest owners in each of the proposed Satellite and Cross units identified on Exhibit B-2") *with Exhibit* B-5 filed in Case 23829 (ownership plat) *and* Exhibit B-18-b filed in these matters (ownership plat).

8. FM's landman confirmed at the Cross State hearing that the working interest owners and the unleased mineral owners in the Cross State spacing units did not receive the applications for the Satellite State spacing units nor did they receive notice of the October 5, 2023, hearing on the Satellite State applications. Tr. 124-126 (Zink).

9. While FM represented at the October 5th hearing that the first take points (FTPs) and the last take points (LTPs) for the Satellite State wells were identified in the Form C-102s, the forms provided to the Division do not identify the FTP or the LTP. *Compare* Exhibit B in Case 23829 (land affidavit) at para. 18 and 19 *with* Form C-102s filed in Case 23829 on 10/31/23.[1]

10. On December 1, 2023, the Division issued orders pooling the 360-acre spacing units for the Satellite State wells. *See* Division Orders R-22963, 22964, 22067 & 22968. None of these orders addressed FM's request for approval of overlapping spacing units.

[1] The Division files for Cases 23829-23832 reflect that absence of Form C-102s in the initial hearing package filed on 10/3/23 and were subsequently provided in a separate filing on 10/31/23.

11. On December 14, 2023, the Division approved applications for permits to drill the Satellite State wells in the Wolfcamp formation, but these approved applications likewise do not identify the FTP or the LTP for these wells. *See* Division wells files for 30-025-52317 (Satellite State Com #701H), 30-025-52318 (Satellite State Com #702H), 30-025-52319 (Satellite State Com #703H), 30-025-52322 (Satellite State Com #704H), 30-025-52392 (Satellite State Com #801H), 30-025-52393 (Satellite State Com #802H), 30-025-52394 (Satellite State Com #803H), and 30-025-52395 (Satellite State Com #804H).

12. Nowhere in FM's filed drilling permits, the filed pooling applications, or the exhibits submitted in the Satellite State cases does FM identify the FTPs for its Satellite wells in the N2N2 of Section 36. *Id.*

The Negative Impact of the Proposed Pooling on Correlative Rights

13. Under FM's development plan, each of the 40-acre tracts comprising the N2N2 of Section 36 will be dedicated to two different spacing units: 360-acre standup spacing units for the Satellite State wells going north and 320-acre spacing units for the Cross State wells going south. Tr. 72 (Zink); MRC Ex. C-2.

14. The Satellite State and the Cross State wells that FM intends to drill in the N2N2 of Section 36 will produce from the same intervals. Tr. 72 (Zink).

15. The Satellite State wells will drain reserves inside the proposed Cross State spacing units, thereby diluting the reserves of the working interest owners in the proposed Cross State spacing units. Tr. 198 (Shulz).

16. The chosen surface locations for wells determines where a company can place the FTP. Tr. 170 (McCoy); Tr. 82, line 24 – Tr. 83, line 3 (Zink).

a. FM acknowledged that moving the surface locations for the Cross State wells north into Section 25 will avoid "back-build" issues and allow the FTP for the Cross State wells to be located 100 feet from the quarter-quarter line. Tr. 155-156 (McCoy).

b. Changing the surface locations for the Cross State wells will require additional "paperwork that can be approved." Tr. 156, lines 17-25 (McCoy).

17. FM signed and provided the Division Form C-102s for all the Cross State wells that demonstrated an intent and ability to place the FTP for the Cross State wells 100 feet from the north line in the N2N2 of Section 36. *See, e.g.,* FM Ex. B-17-a; FM Ex. B-24-a; Tr. 171-172 (McCoy); TR. 102 (Zink).

18. However, at the hearing FM's witnesses testified the company intends to place the surface locations in the N2N2 of Section 36 and "back build" the Cross State wells in a fashion that will place the FTP for the Cross State wells roughly halfway through the N2N2 of Section 36, or 600 feet off the quarter-quarter lines. Tr. 91-92 (Zink, referencing FM Ex. B-8).

a. FM land witness testified the FTPs for the Satellite State wells will be roughly 600 feet from the from the quarter-quarter line between the N2N2 and S2N2 of Section 36, and the FTP for the Cross State wells will be approximately 600 feet from the line between Sections 36 and 25. Tr. 94-95 (Zink, referencing FM Ex. B-8)

b. FM's witness acknowledged that the FTPs for the Cross State wells and the FTPs for the Satellite State wells will overlap in the N2N2 of Section 36, but the extent of that overlap is unknown. Tr. 154 (McCoy); Tr. 97-98, Tr. 101 (Zink).

19. FM's reservoir engineer testified that the company expects the wells to produce approximately 100 barrels of oil per foot. Tr. 162 (McCoy).

a. Using FM's estimates, each of the Satellite State wells will drain approximately 72,000 barrels of oil (100 barrels of oil per foot multiplied by 720 perforated feet) from the N2N2 of Section 36.

b. The benefit from the 72,0000 barrels of oil produced by the Satellite State wells from the N2N2 of Section 36 will be allocated solely to the benefit of the owners in the Satellite State spacing units. Tr. 96 (Zink).

20. Under FM's proposed development plan, the completed interval for the Cross State wells will only develop roughly one-half the 40-acre tracts comprising the N2N2 of Section 36, while the remaining tracts comprising the Cross State spacing units will be fully developed by the completed intervals of the proposed Cross State wells. Tr. 162-163 (McCoy)

a. FM's engineer testified the Cross State wells will only have approximately 600 feet of perforated interval in the N2N2 of Section 36. Tr. 159-160 (McCoy).

b. As a result, the 40-acre tracts comprising the N2N2 of Section 36 will only contribute roughly one-half of the production that is expected to be contributed by each of the remaining 40-acre tracts comprising the proposed Cross State spacing units. Tr. 162-163 (McCoy).

c. If a pooling order is issued by the Division, the owners in the 40-acre tracts comprising the N2N2 of Section 36 will receive a share of the production from the Cross State wells on a straight acreage basis as if those tracts are contributing the same level of production to the Cross State wells as the remaining tracts comprising each spacing unit. Tr. 72 (Zink); Tr. 162-163 (McCoy). *See also* NMSA 70-2-17(C).

21. Since production from a forcibly pooled spacing unit is shared on a straight acreage basis, companies seeking pooling orders from the Division must demonstrate that each of the 40-

acre tracts comprising a proposed spacing unit will have more or less "equal contribution along the lateral" developing the spacing unit. Tr. 130-133 (Kessel); Tr. 85 (Zink). *See also* NMSA 70-2-17(C).

22. FM's geologist acknowledged that a 40-acre tract that does not have perforations similar to the other 40-acre tracts in a proposed spacing unit will not contribute proportionately to the production from the well developing the spacing unit. Tr. 141-142 (Kessel).

23. Under FM's development plan, the Cross State wells in the 40-acre tracts comprising the N2N2 of Section 36 will only have half the perforations that the Cross State wells will have in each of the remaining 40-acre tracts comprising the proposed spacing units. Tr. 162 (McCoy).

24. Under FM's development plan, the mineral owners in the N2N2 of Section 36 will receive more of the production from the Cross State wells than they have contributed to the Cross State wells. Tr. 162-163 (McCoy); Tr. 198 (Schulz); MRC Ex. C at ¶ 8 (Schulz).

a. The 40-acre tracts comprising the N2N2 of Section 36 will not contribute a proportionate share of the production from the proposed Cross State wells since some of the targeted reserves in the N2N2 of Section 36 will be produced by the Satellite State wells. *Id.*

b. The mineral owners in the S2N2 and the S2 of Section 36, and the mineral owners in all of Section 1, will receive less of the production from the Cross State wells than they have contributed to the Cross State wellbores since production will be allocated to the N2N2 owners on a straight acreage basis. *Id.*

c. Any additional reserves accessed in the N2N2 of Section 36 by FM's proposed overlapping development plan are allocated to the owners in Satellite State spacing

units to the north and not shared with the owners in the Cross State spacing units. Tr. 96 (Zink).

25. FM's proposed development plan will negatively impact the correlative rights of the mineral owners S2N2 and the S2 of Section 36, and the mineral owners in all of Section 1. Tr. 197-98 (Schulz); MRC Ex. C at ¶ 8 (Schulz).

26. FM's land witness testified that over half of the working interest in the N2N2 of Section 36 is owned by FM. Tr. 83 (Zink).

27. FM's witnesses testified that 75% to 100% of the working interest in the Satellite State well spacing units is owned by FM. Tr. 86 (Zink).

28. Under FM's proposed development plan, the owners in each of the 40-acre tracts comprising the N2N2 of Section 36 will receive a share of the production from the Satellite State wells on a straight-acreage basis, and also receive a share of the production from the Cross State wells on a straight-acreage basis, as if those tracts were contributing proportionately to both the Satellite State 360-acre and Cross State 320-acre spacing units. Tr. 83 (Zink).

29. Any additional reserves accessed in the N2N2 of Section 36 by FM's proposed overlapping development plan is allocated to the owners in Satellite State spacing units to the north, where FM owns 75% to 100%, and is not shared with the owners in the Cross State spacing units. Tr. 86, Tr. 96 (Zink).

30. Approval of overlapping spacing units is not required to consolidate tank batteries and other surface facilities. Tr. 70-71 (Zink).

31. FM's proposal to create 320-acre spacing units for the Cross State wells that overlap in the N2N2 of Section 36 with the 380-acre spacing units for the Satellite State wells will result in the mineral owners in S2N2 and the S2 of Section 36, and the mineral owners in all of Section

1, receiving less than their just and fair share of the oil or gas produced from the proposed Cross State spacing units. Tr. 197-98 (Schulz); MRC Ex. C at ¶ 8 (Schulz).

32. Approval of FM's proposed 320-acre spacing units for the Cross State wells will impair the correlative rights of the mineral owners in S2N2 and the S2 of Section 36, and the mineral owners in all of Section 1. Tr. 195-98 (Schulz); MRC Ex. C at ¶ 8 (Schulz).

The Failure to Provide Sufficient Information About What Is Contemplated by the Proposed Overlapping Spacing Units

33. The applications for the Cross State Wolfcamp wells ask the Division for an order "approving, to the extend necessary, the proposed overlapping spacing unit" and 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." *See* Applications in Division Cases 23833, 23835, 23838, 23839 at ¶4 and ¶B (emphasis added).

34. The public notice for the Cross State applications contains similar language regarding the request to approve overlapping spacing units in the Wolfcamp formation. *Id.*

35. The filed applications for the Cross State Bone Spring wells likewise request orders "approving, to the extend necessary, the proposed overlapping spacing unit." *See* Applications in Division Cases 24110, 24111, 24112, and 24115 at ¶B.

a. The filed Bone Spring applications refer to previously filed, but dismissed, corresponding cases (23834, 23836, 23837, and 23840) that FM suggests "provided notice of an overlapping spacing unit." *See, e.g.,* FM Ex. B-21 at ¶4.

b. Each of the referenced dismissed applications simply stated: "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." *See* Applications filed in dismissed Division Cases 23834, 23836, 23837, and 23840 at ¶4.

36. Neither the public notice nor the applications filed by FM (current or dismissed) for the Cross State wells notify the affected mineral owners that FM intends the proposed 320-acre Cross State spacing units to overlap 360-acre spacing units for the Satellite State wells in the N2N2 of Section 36. *Id.*

37. FM's land witness acknowledged that the well proposal letters, the filed applications, the public notice, and the Form C-102s filed with the Division for the Satellite State and the Cross State wells do not inform the affected mineral owners that the completed intervals for these wells will overlap in the N2N2 of Section 36. Tr. 103-107 (Zink).

38. FM failed to contact and discuss its overlapping development plan with all the working interest owners that it seeks to pool, including Stillwater Investments, Tarpon Industries and Jon Brickey. Tr. 68-69 (Zink).

39. FM did not attempt to contact or discuss its overlapping development plan with any of the 34 unleased mineral owners in Section 1 that the company seeks to pool. Tr. 69 (Zink).

40. FM's land witness acknowledged the failure to provide the Division or the affected mineral owners information on the actual development plan, the completed intervals for the Satellite State and Cross State wells, or how the wells will overlap in the N2N2 of Section 36:

> Q. Okay. Is there anything that's in your filed hearing packet, or anything that we can look at in the Division's files, that would identify how you intend to overlap these spacing units and the footages involved with your first take points? Anything?
> A In the exhibits, specifically? No.
> Q Anything that's been filed with the Division?
> A Not that I'm aware of.
> Q Anything that was provided to the affected working interest owners?
> A Nope.

> Q And sitting here today, there's nothing that shows the Division where your first take point is going to be for your cross-state wells, and where your first take point is going to be for your satellite wells?
> A That's correct.
> Q And nothing identifies to the Division, or to anybody that's looked at the record, how much perforated overlap there's going to be in the north half of the north half of section 36?
> A There's nothing in the application that mentions that.
> Q Is there anything anywhere?
> A No.

Tr. 109-110 (Zink).

41. The overlapping spacing unit diagram provided with FM Exhibit B-8 (p. 60 of 391 page revised pdf) is "illustrative only" and does not reflect FM's actual development plan. Tr. 154, lines 1-6 (McCoy); Tr. 96 (Zink).

42. The Form C-102s provided by FM at the hearing incorrectly identify the FTPs for the proposed Cross State wells. Tr. 102 (Zink).

43. FM has failed to provide sufficient information to the affected mineral owners to understand what was contemplated by the proposed overlapping spacing unit or assess the impact on their correlative rights. Tr. 195-98 (Schulz); MRC Ex. C at ¶ 8 (Schulz).

44. FM has failed to provide sufficient information to the Division about the proposed development plan to assess extent to which the Satellite State and the Cross State wells will overlap in the N2N2 of Section 36, or to assess the impact on the correlative rights of the affected working interest owners.

45. FM's request for approval of overlapping spacing units is denied.

46. FMs request for orders pooling the proposed 320-acre Cross State overlapping horizontal well spacing units is denied.

Respectfully submitted,

HOLLAND & HART LLP

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2024, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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