

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

**APPLICATION OF APACHE CORPORATION  
FOR APPROVAL OF NON-STANDARD  
HORIZONTAL WELL SPACING UNIT AND  
COMPULSORY POOLING,  
LEA COUNTY, NEW MEXICO.**

**CASE NO. 24141**

**APPLICATION OF AVANT OPERATING, LLC  
FOR COMPULSORY POOLING AND APPROVAL  
OF NON-STANDARD SPACING UNIT,  
LEA COUNTY, NEW MEXICO.**

**CASE NO. 24254**

**AVANT OPERATING, LLC'S CLOSING STATEMENT**

In accordance with the Hearing Examiner's request at the May 29-30, 2024 hearing in Case Nos. 24141 and 24254, Avant Operating, LLC ("Avant") submits the following closing statement in support of its application in Case No. 24254.

**INTRODUCTION**

These matters involve competing pooling applications filed by Avant and Apache Corporation ("Apache") for development of the Bone Spring formation underlying Sections 11 and 14, Township 19 South, Range 32 East, Lea County, New Mexico. Based on the factors considered by the Division in evaluating competing development plans, Avant's application will best prevent waste and protect correlative rights and should be approved.

The benefits of Avant's development plan demonstrably outweigh the benefits of Apache's proposed plan with respect to four main factors. First, Avant's development plan targets all three proven zones of recovery within the proposed spacing unit, while Apache's plan creates a gap by failing to develop the Third Bone Spring interval. Second, Avant proposes to drill six horizontal wells across each of the three proven zones of recovery (18 horizontal wells in total), which will fully develop the underlying reserves and is preferable in this area to Apache's proposal to develop

the acreage using four horizontal wells across only two of the three proven zones of recovery (eight horizontal wells in total). Third, Avant is prepared to commence operations because it has conducted an on-site meeting with the Bureau of Land Management (“BLM”) regarding its well pad locations, its APDs were submitted during the first quarter of 2024 and are on the BLM’s priority list for approval, and Avant is currently operating two rigs in Lea and Eddy Counties and plans to add a third rig in 2024, whereas Apache has not had an active drilling rig in New Mexico since January 2023. Finally, Avant will be able to develop more of the underlying reserves in a more timely manner and at a lower estimated cost while also preventing waste because it has built and operates water recycling and transportation infrastructure and has existing agreements for gas and oil takeaway.

In addition to prevailing on these four critical factors, every other factor considered by the Division in competing compulsory pooling cases also favors Avant:

- Risk – Avant has recently and successfully developed the First, Second, and Third Bone Spring intervals approximately two miles to the South at its Cutbow Unit, while Apache has not drilled a well within a 10-mile radius of the acreage at issue in the last 10 years.
- Good Faith Negotiations – Avant made multiple attempts to engage in trade discussions with Apache and also proposed to split the unit, but Apache would not consider any of Avant’s proposals and countered with inequitable trades.
- Prudent Operator and Prevention of Waste – Avant’s management team has extensive experience drilling and operating in this area of New Mexico, and Avant is an active and successful operator in the area.
- Ownership Interest – Avant controls approximately 49.77% of the working interest in the Grayling Unit according to its title information and approximately 52.02% of the working

interest in the Grayling Unit according to Apache's title information, while Apache controls approximately 48.84% of the working interest in the Dustbowl Unit according to Avant's title information and 46.31% of the working interest in the Dustbowl Unit according to Apache's title information.

Because all of the factors considered by the Division weigh in favor of Avant, Avant's application should be approved and Apache's application should be denied. Avant will ensure the acreage will be developed in the most cost-effective and expeditious manner, while preventing waste and protecting correlative rights.

### **ARGUMENT**

In evaluating competing development plans, the Division considers the following factors:

1. 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.
2. A comparison of the risk associated with the parties' respective proposal for the exploration and development of the property.
3. 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.
4. A comparison of the differences in well cost estimates (AFE's) and other operational costs presented by each party for their respective proposals.
5. A comparison of the ability of the applicants to timely locate well sites and to operate on the surface.
6. A comparison of the ability of each party to prudently operate the property and, thereby, prevent waste.

7. An evaluation of the mineral interest ownership held by each party at the time the application is heard.

*See, e.g.,* Order No. R-20223. Through the evidence presented at hearing, Avant has demonstrated that these factors weigh in favor of its development plan and that its application should be approved.

1. **A comparison of the geologic evidence and the potential of the parties to efficiently recover the oil and gas reserves underlying the acreage favors Avant.**

Both parties are targeting the Bone Spring formation, but only Avant proposes to develop all three intervals of the formation and proposes to drill six wells per section in each interval versus Apache's four wells per section. Avant's proposal will best prevent waste and protect correlative rights. When parties disagree regarding geological matters and well location, "the most important consideration in awarding operations to competing interest owners is geologic evidence as it relates to well location and recovery of oil and gas and associated risk." Order No. R-10731-B. Here, this factor weighs in favor of Avant.

Avant's demonstrated results at its nearby Cutbow Unit establish that the Third Bone Spring is productive in this area and should be developed. Tr. 290:8-16. The Cutbow Unit is located approximately two miles from the Grayling Unit and is the closest development to the units proposed here. *See* Tr. at 289:8-10; Avant Exh. C-16. Avant successfully developed all three intervals of the Bone Spring formation at Cutbow, and based on its geological evaluation and analysis, Avant expects the production results at Grayling will be similar. Tr. 289:19-23. Thus, the Third Bone Spring interval in this area is a proven productive formation and should be developed.

Apache's failure to propose any wells in the Third Bone Spring is demonstrably wasteful. Tr. 290:1-25; Avant Exh. B at ¶ 16; Avant Exh. B-15. Although Apache could decide to propose infill Third Bone Spring wells, it is not required to do so. *See* 19.15.16.15 NMAC (B)(9) (allowing,

but not requiring, an operator to propose infill wells under a pooling order). Failing to develop this interval of the Bone Spring Formation would result in waste and impair Avant's and other working interest owners' correlative rights by denying them the opportunity to access and produce these proven reserves. In contrast, Avant's proposal will fully develop the acreage and produce the underlying reserves. *See* Avant Exh. C at ¶ 4.

Avant's proposal will also best develop the underlying reserves using spacing of six wells per section, while Apache only proposes to develop the First and Second Bone Spring intervals using spacing of four wells per section. *See* Avant Exh. C at ¶ 4. Avant has also compared production for its Cutbow Third Bone Spring wells, which were drilled at six wells per section spacing, with production from Earthstone's Anaconda development, which was drilled at four wells per section. *See* Avant Exh. C-5. The graph comparing these two developments demonstrates that Avant's higher well density development outperformed lower density developments in the area. *Id.*; Avant Exh. C at ¶ 5. Under-development results in lower overall recoveries. *See* Avant Exh. C-5. The Cutbow wells have exceeded Avant's expectations, and Avant expects better results at the Grayling Unit since it plans to simultaneously develop all of the First, Second and Third Bone Spring wells. *See* Avant Exh. C at ¶ 6. Furthermore, Avant's Golden Tee Unit is another example where Avant's development spaced at six wells per section has outperformed other nearby units drilled at wider spacing patterns. *See* Avant Exh. C at ¶ 5; Avant Exh. C-4.

Apache's criticism of Avant's proposed well spacing (i) fails to recognize that this is an unconventional reservoir that requires denser spacing and (ii) is based on inapt comparisons. The Bone Spring formation in this area is an unconventional reservoir because the First, Second, and Third Bone Spring sands are low porosity and low permeability. *See* Tr. at 322:17-22. As a result of these unconventional sands, the rock needs to be developed at much higher spacing than

Apache's proposed four wells per section to effectively drain the reservoir. Tr. at 323:8-14. The six well per section spacing proposed by Avant will more effectively develop and prevent waste in this unconventional reservoir. Tr. at 323:15-17.

Further, Apache's production projections for Grayling and Dustbowl are based on inapt comparisons. Apache's reference wells are inappropriate analogs because they are located in an area of superior reservoir quality and thickness and are not reflective of the rock quality at Grayling. *See* Avant Exh. B-19. Apache's attempt to create an analog between the Grayling area and its Ghost Rider unit is improper because the Ghost Rider unit is roughly 1,300 feet deeper than the Grayling/Dust Bowl target, is higher pressure, and has significantly higher porosity. Tr. at 288:16-25. Apache's comparison of the Salt Fork Second Bone Spring and Third Bone Spring wells to Avant's Cutbow wells is also inappropriate because those developments have roughly 75% high net pay versus the pay zones at Avant's Cutbow wells. *See* Avant Exh. B-19. Essentially, Apache is using wells located in an area of superior reservoir quality and thickness to predict anticipated production results for the Grayling/Dustbowl Unit and claim it is a preferable operator, while Avant's reference wells are located in an area of similar reservoir quality to the Grayling/Dust Bowl Unit. *Id.* Apache has little, to no, relevant offset analogs to the Grayling/Dust Bowl development because it has not had any activity within a 10-mile radius of the development in the last 10 years. *Id.*

Because Avant's proposal will most effectively develop proven economic reserves that would remain unproduced under Apache's application, this factor weighs in favor of Avant and Avant's application should be approved.

2. **A comparison of the risk associated with the parties' respective development plans demonstrates that Avant's application should be approved.**

Avant has significant acreage and operations within a 10-mile radius surrounding the Grayling Unit, with 86 active permits. *See* Avant Exh. A-12; Avant Exh. A at ¶ 16. Avant has turned 40 wells to production between February 2022 and April 2024. *See* Avant Exh. A-12. Additionally, Avant recently developed the First, Second and Third Bone Spring at the Cutbow Unit only two miles to the south of the proposed Grayling Unit. *See* Avant Exh. A-11. In contrast, Apache has not drilled a well within a ten-mile radius of the proposed Grayling Unit within the last ten years. *See* Tr. 206:7-15. Avant has been a consistently active operator since it began drilling in New Mexico, drilling nearly three times as many wells as Apache since 2021. *See* Avant Exh. A-8. In addition, Avant is currently running two rigs in Lea and Eddy Counties and is planning to add a third rig in 2024, while Apache is not running any rigs in New Mexico. *See* Avant Exh. A-3. Avant has submitted APDs for the Grayling wells and expects they will be approved by December 2024, and the Grayling wells are on Avant's drill schedule for the fourth quarter of 2024. *See* Avant Exhs. A-12, A-13.

Avant's existing and proposed development in the immediate vicinity of the Grayling Unit makes it much more likely that Avant will develop the acreage more quickly and efficiently than Apache. In addition, as discussed above, Apache's proposal involves a substantial risk that all of the underlying reserves will not be produced. As a result, this factor weighs in Avant's favor.

3. **Apache failed to engage in good faith negotiations with Avant.**

In order to satisfy a "good faith negotiation" requirement in New Mexico, parties must make bona fide efforts to reach a compromise. *See Carlsbad Hotel Associates, L.L.C. v. Patterson-UTI Drilling Co., L.P.*, 2009-NMCA-005, 145 N.M. 385, 199 P.3d 288 (finding that hotel failed to participate in "good faith" settlement negotiations when it did not have any intent to make a

settlement offer and then refused to compromise further after finally making an initial offer). In this instance, Avant made multiple attempts to engage in trade discussions with Apache over the acreage at issue. As shown by Avant, it attempted to engage in negotiations with Apache beginning in June 2023, but the negotiations proved unsuccessful. *See* Avant Exh. A-25. After taking several months to respond to Avant's trade proposal, Apache rejected Avant's proposal and offered an inequitable trade in response. *Id.* After receiving multiple unreasonable counterproposals from Apache, Avant eventually proposed a potential E/2 W/2 unit split between Apache and Avant. Under this scenario, Apache would operate half of the proposed unit and Avant would operate the other half. Apache immediately declined and expressed its unwillingness to even entertain any type of trade that would involve Apache not operating the entire proposed Grayling/Dustbowl unit. *Id.*; Avant Exh. A at ¶ 30; Tr. at 224:21-25, 225:1-18.

Apache's failure to meaningfully engage and refusal to compromise demonstrates its lack of good faith negotiation.

**4. Avant's infrastructure in the area reduces operational costs and increases efficiencies for the proposed development.**

When comparing Avant and Apache's drilling, completion and facilities costs, Avant's proposal is more capital-efficient for the working interest owners. Further, Avant has proven with recent drilling and completion activities in the immediate area that its costs will stay at, or below, the amounts set out in Avant's AFEs. *See* Avant Exh. C at ¶ 8; Avant Exhs. C-7, C-8. In contrast, Apache has not drilled a well in the area of the proposed units within the last ten years, which could lead to a wide range of outcomes with respect to the ultimate cost of the wells. Avant's AFEs are 15% lower than Apache's on a per well basis. *See* Avant Exh. C-7. Avant's expertise and experience in drilling wells in the immediate area of the proposed Grayling Unit has resulted in



meaningful cost improvements over time, and Avant's recent Cutbow development was approximately 3% under its AFE. *Id.*

Additionally, Avant can produce large development packages simultaneously to prevent waste and operate at a high level in this area due to its existing infrastructure and long-term contracts for oil, gas, and water takeaway from the Grayling wells. *See* Avant Exh. C at ¶ 9. Avant has signed an acreage dedication with Northwind for the gathering, treatment, disposal, processing, and purchase of natural gas for all of Avant's wells in the area, including the Grayling wells. This agreement secures firm capacity to serve Avant's development plan at the Grayling Unit, and to gather, treat and process sour gas and other components of the gas stream. *See* Avant Exh. C at ¶ 11; Avant Exh. C-9.

Avant has also already constructed and placed in-service one water recycling facility, has commenced construction on a second facility and is planning to construct a third facility. *See* Avant Exh. C at ¶ 12; Avant Exh. C-10. In total, Avant plans to make capital investment of approximately \$50 million to address water constraints in this area. Avant plans to obtain a significant percentage of its frac water needs from its recycling facilities to conserve water and reduce waste. *See* Avant Exh. C at ¶ 12; Avant Exh. C-10. Finally, Avant has a ten-year acreage dedication and marketing agreement in place with Plains to ensure oil pipeline takeaway will be available for the Grayling Unit on day one of production. *See* Avant Exh. C at ¶ 13; Avant Exh. C-11. Accordingly, all of Avant's midstream services will be on-line by the time Avant receives the pooling order and approved APDs.

In stark contrast, Apache concedes that it "does not have signed contracts in place for oil, gas, or water takeaway." Tr. at 84:5-9; 91:18-25. Apache's lack of midstream agreements not only increases the risk of flaring during production, but also the risk that Apache's costs will

substantially exceed its AFEs because they were developed without existing contracts and the risk that Apache will not be able to simultaneously drill its wells, resulting in depletion issues and waste. Also, Apache's witness testified that Apache will not enter into midstream agreements until a pooling order is issued. *See* Tr. at 110:1-8. As Avant has explained, it is extremely challenging to obtain midstream services in this area. *See* Tr. at 338:22-25, 339:1-2. Given right-of-way approval timelines, Apache may not have midstream services available in time to produce its wells prior to the expiration of its term assignment. With Apache's lack of midstream agreements and Avant's proven, capital-effective projects, this factor heavily favors Avant.

**5. Avant is best situated to timely locate well sites and operate on the surface.**

As discussed previously, Avant has significant development within a 5-mile radius of the Grayling Unit, while Apache does not. *See* Avant Exh. A-12. These nearby units will help ensure the success of the Grayling Unit because existing gas, oil, and water takeaway infrastructure will make the acreage ready for development once the BLM issues permits. Avant's infrastructure and agreements are critically important in this area, where midstream services are difficult to engage, and will allow Avant to timely drill and produce its wells. *See* Tr. at 338:22-25, 339:1-2. In contrast, Apache has no midstream agreements or existing infrastructure, which will limit Apache's ability to timely drill and produce its wells. *See* Tr. at 70:4-7, 338:22-25.

In addition, Avant's recent experience developing the Cutbow Unit will enable it to effectively develop the Grayling Unit because it knows which specific midstream services are required. For example, in developing the Cutbow wells, Avant learned that the First Bone Spring interval in this area produces substantial amounts of sour gas. *See* Tr. 340:4-13. Avant's contract with Northwind ensures that gas takeaway and processing is available whenever Avant is ready to

produce the Grayling wells. Because Northwind will also handle sour gas takeaway, Avant already has a solution in place to address the issue. *See id.*

Apache's claim that Avant delayed submitting its APDs and that the timing of the BLM's approval will delay development of the Grayling/Dust Bowl unit lacks merit. Avant held its on-site meeting with the BLM regarding the Grayling Unit in November 2023, and the BLM authorized Avant to proceed with its development plan, subject to approval of its APDs. Avant submitted its Grayling APDs to the BLM during the first quarter of 2024, and they are on a high priority list. *See* Avant Exh. A-13. As a result, Avant expects the permits to be issued by the end of 2024. *See id.*; Tr. at 304:3-15; Tr. at 221:4-22. While Apache questioned the expeditiousness of approval of Avant's APDs, Avant has experience obtaining approval of APDs on BLM's high-priority list within six to seven months. *See* Tr. at 241:16-24. Avant plans to drill the wells soon after receiving the approved APDs. *See* Tr. at 221:23-25. Because Avant is willing and able to expeditiously proceed with its development plan, its application should be approved.

**6. Avant is a prudent operator.**

Avant was founded in 2018 and its team is comprised of individuals with decades of experience drilling and operating wells in southeastern New Mexico. Avant has drilled 47 horizontal wells since commencing New Mexico operations in September 2021. Avant's management team includes individuals who were previously employed by Centennial, EOG Resources, Advance Energy Partners, and Franklin Mountain Energy, all of which are experienced operators in New Mexico. *See* Avant Exh. A at ¶¶ 4, 5; Avant Exhs. A-3, A-4, A-5. Together, Avant's team has drilled over 650 horizontal wells in the Permian Basin. *See* Avant Exh. A-5.

Apache makes much of compliance issues that Avant has resolved with the OCD while at the same time refusing to even acknowledge its own major compliance issue. *See* Avant Exh. B-

20; Tr. at 284:19-25, 285:1-18; Apache Exh. E. According to a February 2024 Press Release issued by the United States Department of Justice, Apache settled a civil lawsuit filed by the New Mexico Environment Department and the Environmental Protection Agency regarding illegal emissions by agreeing to pay \$4 million in civil penalties and undertake projects expected to cost \$5.5 million to ensure 322 of its oil and gas well pads in New Mexico and Texas comply with state and federal clean air regulations. *See* Avant Exh. B-21. Despite the clear public record of this lawsuit and settlement, Apache refused to acknowledge or discuss the Department of Justice's press release. *See* Tr. at 90:13-25. Apache has ignored its very recent air quality issues and fines to incorrectly portray itself as an operator with superior environmental practices and standards. *See* Avant Exh. B-21.

Unlike Apache, Avant has been a very active operator in New Mexico since 2021. Apache's lack of unapproved filings with the Division results from its limited drilling activity in New Mexico over the past year rather than superior compliance. *See* Avant Exh. B-20. Avant has worked with the OCD to confirm that all C-104 submissions were received and is fully committed to complying with OCD's requirements. *Id.* Avant will continue to prudently operate all its developments in New Mexico, including the Grayling Unit.

**7. Avant controls more of the working interest in its proposed unit than Apache.**

Avant controls the largest share of the working interest in the proposed horizontal spacing unit. *See* Avant Exh. A-27. When the Division is asked to evaluate competing development plans, “[i]n the absence of compelling factors such as geologic and prospect differences, ... or any reason why one operator would economically recover more oil or gas by virtue of being awarded operations than the other, ‘working interest control’ ... should be the controlling factor in awarding operations....” Order No. R-10731-B.

Avant controls approximately 49.77% of the working interest in the Grayling Unit according to its own title information and approximately 52.02% of the working interest in the Grayling Unit according to Apache's title information, while Apache controls approximately 48.84% of the working interest in the Dustbowl Unit according to Avant's title information and 46.31% of the working interest in the Dustbowl Unit according to Apache's title information. *See* Avant Exhs. A-17, A-18, A-27, A-28, Apache Rebuttal Slide 31. Apache's working interest ownership percentages are unsupported by Avant's title examination. However, even using Apache's interest figures, Avant controls a greater percentage of the working interest in the proposed unit when Avant's recent transactions, Joint Operating Agreements ("JOA"), and letters of support are included. *See* Avant Exh. A-27. To begin with, Northern Oil and Gas Inc., which Apache's figures show owns 15.712496% of the unit, reached an agreement with Avant in May 2024 and has submitted a letter of support for Avant's proposed development.<sup>1</sup> *See* Avant Exh. A-27; Tr. at 230:1-4, 232:13-23. CXA Oil & Gas Holdings, LP ("CXA") signed a JOA with Avant and provided a letter of support indicating its clear preference for Avant as operator of the Grayling Unit based on Avant's proposed development plans. CXA has a 5.579193% interest in the acreage at issue. *See* Avant Exh. A-27. Therefore, even based on Apache's own title figures, Avant has 52.018719% committed working interest in the Grayling unit. *See* Avant Exh. A-27.

Here, not only has Avant demonstrated that its proposal will best develop the underlying reserves, and thereby prevent waste, it also controls a larger share of the working interest than Apache.

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<sup>1</sup> *See* Northern Oil and Gas, Inc.'s Notice of Support for Avant Operating, LLC's Application (filed July 10, 2024).

**CONCLUSION**

For the foregoing reasons, and as demonstrated by the evidence submitted at hearing, all of the factors considered by the Division in evaluating competing development plans weigh in favor of Avant. Accordingly, Avant's proposal will best prevent waste and protect correlative rights and should be approved. Apache's application should be denied.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 11, 2024, I have caused a true and correct copy of the foregoing pleading to be sent to the following counsel by electronic means:

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