

**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
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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 Proposed Findings of Fact and Conclusions of Law for inclusion in the New Mexico Oil Conservation Division's ("Division" or "OCD") order in these matters.

Proposed Findings of Fact

1. In Case No. 24524, Avant seeks an order: (1) establishing a 1,280-acre, more or less, non-standard horizontal spacing unit comprised of Sections 11 and 14, Township 19 South, Range 32 East, Lea County, New Mexico ("Grayling Unit"); and (2) pooling all uncommitted interests in the Bone Spring formation underlying the unit. The unit will be dedicated to the following initial wells ("Grayling Wells"):

- **Grayling 14 Fed Com #305H, Grayling 14 Fed Com #306H, Grayling 14 Fed Com #505H, Grayling 14 Fed Com #506H, Grayling 14 Fed Com #605H, and Grayling 14 Fed Com #606H**, which will be drilled from surface hole locations in the SW/4 SE/4 (Unit O) of Section 14 to bottom hole locations in the NE/4 NE/4 (Unit A) of Section 11;
- **Grayling 14 Fed Com # 304H, Grayling 14 Fed Com #504H, and Grayling 14 Fed Com #604H**, which will be drilled from surface hole locations in the SW/4 SE/4 (Unit O) of Section 14 to bottom hole locations in the NW/4 NE/4 (Unit B) of Section 11;

- **Grayling 14 Fed Com #301H, Grayling 14 Fed Com #501H, Grayling 14 Fed Com #601H**, which will be drilled from surface hole locations in the SW/4 SW/4 (Unit M) of Section 14 to bottom hole locations in the NW/4 NW/4 (Unit D) of Section 11;
- **Grayling 14 Fed Com # 302H, Grayling 14 Fed Com #502H, and Grayling 14 Fed Com #602H**, which will be drilled from surface hole locations in the SE/4 SW/4 (Unit N) of Section 14 to bottom hole locations in the NW/4 NW/4 (Unit D) of Section 11; and
- **Grayling 14 Fed Com # 303H, Grayling 14 Fed Com #503H, and Grayling 14 Fed Com #603H**, which will be drilled from surface hole locations in the SE/4 SW/4 (Unit N) of Section 14 to bottom hole locations in the NE/4 NW/4 (Unit C) of Section 11.

2. In Case No. 24141, Apache Corporation (“Apache”) seeks an order: (1) approving a non-standard 1280-acre, more or less, horizontal well spacing unit in the Bone Spring formation underlying Sections 11 and 14, Township 19 South, Range 32 East, NMPM, Lea County, New Mexico; and (2) pooling all uncommitted interests in this acreage. Apache proposes to dedicate the unit to the following wells:

- **Dustbowl 11-14 Fed Com 101H and Dustbowl 11-14 Fed Com 201H** wells, with first take points in the SW4SW4 (Unit M) of Section 14 and last take points in the NW4NW4 (Unit D) of Section 11;
- **Dustbowl 11-14 Fed Com 102H and Dustbowl 11-14 Fed Com 202H** wells, with first take points in the SE4SW4 (Unit N) of Section 14 and last take points in the NE4NW4 (Unit C) of Section 11;
- **Dustbowl 11-14 Fed Com 103H and Dustbowl 11-14 Fed Com 203H** wells, with first take points in the SW4SE4 (Unit O) of Section 14 and last take points in the NW4NE4 (Unit B) of Section 11; and
- **Dustbowl 11-14 Fed Com 104H and Dustbowl 11-14 Fed Com 204H** wells, with first take points in the SE4SE4 (Unit P) of Section 14 and last take point in the NE4NE4 (Unit A) of Section 11.

3. These cases were heard at a special OCD hearing docket on May 29 and 30, 2024.

Both Avant and Apache presented witnesses and exhibits. *See, e.g.*, Tr. at 1, 4, 5, 295, 298.

4. In support of its application, Avant presented the testimony and exhibits of: Shelly Albrecht (Vice President of Land); John Harper (Vice President of Geosciences); and Shane Kelly (Vice President of Engineering). *See, e.g.*, Tr. at 7.

5. In support of its application, Apache presented the testimony and exhibits of: Blake Johnson (Petroleum Landman); Drew Chenoweth (Petroleum Geologist); Lucas Emmett (Petroleum Engineer); and Evan Roback (Petroleum Engineer). *See, e.g.*, Tr. at 6.

6. Avant and Apache agree that development of the 1,280-acre spacing unit is best accomplished with a non-standard spacing unit. *See* Avant Exhibit A-2; Apache's Pre-Hearing Statement and Filed Evidence (hereinafter referred to as "Apache Exhibit") at 8-11.

7. Avant's proposed development of the Grayling Unit includes drilling and completing 18 initial wells in the unit, six wells each in the First, Second and Third Bone Spring intervals. *See* Avant Exhibit A at ¶ 11.

8. Apache proposes to drill and complete eight initial wells in its competing Dustbowl Unit development plans, four in the First Bone Spring interval and four in the Second Bone Spring interval. *See* Avant Exhibit A at ¶ 14.

9. Apache fails to propose any wells in the Third Bone Spring interval. *See* Tr. at 290:1-25; Avant Exhibit B at ¶ 16; Avant Exhibit B-15.

10. The Bone Spring formation underlying the proposed Grayling/Dustbowl development 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.

11. The rock in these types of unconventional sands needs to be developed at a much higher spacing to effectively drain the reservoir. *See* Tr. at 323:8-14.

12. The six well per section spacing proposed by Avant in its Grayling Unit will more effectively develop and prevent waste in this unconventional reservoir. *See* Tr. at 323:15-17.

13. Avant has successfully developed all three intervals of the Bone Spring formation at its nearby Cutbow Unit, and based on the geological evidence presented, has established that

the Third Bone Spring is productive in this area and should be developed. *See* Tr. at 289:8-10, 19-23; 290:8-16; Avant Exhibit C-16.

14. Avant has drilled nearly three times as many wells in New Mexico as Apache since 2021, including Avant's recently developed Cutbow Unit, only two miles to the south of the proposed Grayling/Dust Bowl Units. *See* Avant Exhibits A-8, A-11.

15. Apache has not drilled any wells within 10 miles of the Grayling/Dustbowl Units within the past ten years. *See* Avant Exhibit A-12.

16. Beginning in June 2023, Avant made multiple attempts to engage in negotiations with Apache over the acreage at issue. Apache rejected all of Avant's proposals, including a proposed E/2 W/2 unit split between the parties so that each could operate half of the proposed unit. Apache would not entertain any type of trade that would involve Apache not operating the entire proposed Grayling/Dustbowl Unit. *See* Avant Exhibit A-25; Avant Exhibit A at ¶ 30; Tr. at 224:21-25, 225:1-18.

17. Avant presented evidence that its recent drilling and completion activities in the immediate area of the proposed Grayling/Dust Bowl Unit stayed at, or below, the amounts set out in Avant's AFEs. *See* Avant Exhibit C at ¶ 8; Avant Exhibits C-7, C-8.

18. Avant's AFEs are 15% lower than Apache's on a per well basis. *See* Avant Exhibit C-7.

19. Avant has signed an acreage dedication with Northwind for gathering, treatment, disposal, processing, and purchase of natural gas for all of Avant's wells in the area, including the proposed Grayling wells, which secures firm capacity to serve Avant's development plan at the Grayling Unit. *See* Avant Exhibit C at ¶¶ 9, 11; Avant Exhibit C-9.

20. Avant has constructed and placed in service one water recycling facility, has commenced construction on a second water recycling facility, and is planning to construct a third water recycling facility, which it plans to use for a significant percentage of its frac water in order to conserve water and reduce waste. *See* Avant Exhibit C at ¶ 12; Avant Exhibit C-10.

21. Avant has a ten-year 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 Exhibit C at ¶ 13; Avant Exhibit C-11.

22. Apache conceded in its testimony that “it does not have signed contracts in place for oil, gas, or water takeaway.” Tr. at 84:5-9; 91:18-25.

23. Apache’s lack of midstream agreements increases the risk that Apache’s cost will substantially exceed its AFEs because they were developed without existing contracts. Further, it will increase the risk of flaring and limit Apache’s ability to timely drill and produce its wells. *See* Tr. at 338:22-25, 339:1-2.

24. Avant’s infrastructure and long-term contracts that it has in place for the area, where midstream services are difficult to engage, will allow Avant to timely drill and produce its wells. *See* Tr. at 338:22-25, 339:1-2.

25. Avant submitted its applications for permits to drill (“APDs”) to the Bureau of Land Management (“BLM”) during the first quarter of 2024, and the permits are on BLM’s “high priority” list for approval. Avant Exhibit A-13. Avant expects the BLM will approve the APDs by December of 2024.

26. Despite the clear public record, Apache refused to acknowledge or discuss that in February 2024, Apache agreed 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 Exhibit B-21; Tr. at 90:13-25.

27. Avant has worked with the OCD throughout the past year to confirm that all C-104 submissions were received and is fully committed to complying with OCD's requirements. *See* Avant Exhibit B-20.

28. Avant controls a greater percentage of the working interest in the proposed unit when Avant's recent transactions, Joint Operating Agreements, and letters of support are included. *See* Avant Exhibit A-27.

29. 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.

Proposed Conclusions of Law

1. The Division has jurisdiction to issue this Order pursuant to NMSA 1978, § 70-2-17.
2. Avant and Apache have the right to drill the Wells as owners of oil and gas working interests within the Unit.
3. Proper public notices of the Applications and the Commission's hearing were given.
4. The Division satisfied the notice requirements for the hearing as required by 19.15.4.9 NMAC.

5. The pooling of uncommitted interest in the Unit will prevent waste and protect correlative rights.

6. Avant established that its proposed development plan will best prevent waste and protect correlative rights.

7. Avant's development plan will prevent waste and protect correlative rights because developing the entire Bone Spring Formation at six well spacing in each of the First, Second and Third Bone Spring intervals will fully develop the acreage and will ensure that all of the underlying reserves will be produced.

8. Apache could decide to propose infill Third Bone Spring wells, but it is not required to do so. *See* 19.15.16.15(B)(9) NMAC (allowing, but not requiring, an operator to propose infill wells under a pooling order).

9. Failing to develop the Third Bone Spring interval of the Bone Spring Formation would result in waste and impair Avant's, and other interest owner's, correlative rights.

10. Apache failed to establish that its Application, if granted, would prevent waste.

11. Apache failed to establish that its Application, if granted, would protect correlative rights.

12. Apache failed to establish that its Application, if granted, would prevent the drilling of unnecessary wells.

13. Avant's proposed development plan will prevent waste more effectively than Apache's proposed development plan.

14. Avant's proposal protects correlative rights by presenting the best opportunity for the development of the acreage at issue.

15. Avant's interest in the acreage is greater than Apache's interest in its proposed units.

16. The geologic evidence and testimony presented by Avant demonstrates that Avant's proposed well locations, and the number of proposed wells, will more efficiently and fully recover the oil and gas reserves underlying the acreage at issue.

17. The evidence and testimony presented by Avant demonstrates that there is less risk associated with Avant's proposal for the exploration and development of the acreage at issue.

18. Avant has demonstrated through its evidence and testimony that Apache failed to make a good faith effort to negotiate prior to filing its Application to force pool.

19. The evidence and testimony presented by Avant demonstrates that when comparing Avant and Apache's drilling, completing and facilities costs, Avant's proposal is more capital-efficient for the working interest owners due to Avant's existing infrastructure in the area.

20. Avant has demonstrated through its testimony and evidence that when compared to Apache, Avant is best able to timely locate well site and operate on the surface of the acreage at issue.

21. The evidence and testimony presented by Avant demonstrates that it is a prudent operator.

For the foregoing reasons, Avant's Application is approved, and Apache's Application is 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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