

**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 MOTION FOR LEAVE TO FILE RESPONSE TO
APACHE CORPORATION'S POST-HEARING BRIEF**

Avant Operating, LLC, ("Avant") requests that the Division issue an order authorizing it to file a response to Apache Corporation's ("Apache") Post-Hearing Brief. In support of this Motion, Avant states the following.

1. Avant and Apache filed their post-hearing briefs, along with proposed findings of fact and conclusions of law, on July 11th and 12th, respectively.
2. Given the significance of these matters (*i.e.* competing 1,280-acre spacing units that involve numerous wells) and the Division's role in preventing waste and protecting correlative rights, Apache's Post-Hearing Brief raised several issues that warrant a response, particularly regarding ownership and control of the proposed spacing units.
3. To facilitate the Division's review of these matters, Avant requests that the Division authorize it to file a short response brief. A copy of the proposed response is attached as Exhibit A.

4. Counsel for Apache was contacted regarding this motion and opposes Avant's request. Counsel for Northern Oil & Gas was contacted regarding this motion and supports Avant's request.

For the foregoing reasons, Avant respectfully requests that the Division authorize it to file the attached response brief.

Respectfully submitted,

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I hereby certify that on July 19, 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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AVANT OPERATING, LLC'S POST-HEARING RESPONSE BRIEF

Avant Operating, LLC (“Avant”) submits the following response to Apache Corporation’s (“Apache”) Post-Hearing Brief. For the reasons discussed below and in Avant’s Closing Statement, Avant’s application should be approved because it will best prevent waste and protect correlative rights.

INTRODUCTION

As discussed in detail in Avant’s Closing Statement, the benefits of Avant’s development plan demonstrably outweigh the benefits of Apache’s proposed plan, and the factors considered by the Division in evaluating competing development plans weigh in favor of Avant. Avant will not reiterate that analysis here but rather will address three points discussed in Apache’s Post-Hearing Brief: (1) Apache’s incorrect argument that the Division should ignore letters of support in evaluating unit control; (2) Apache’s argument that its term assignment should supersede Avant’s – and all the other interest owners’ – correlative rights; and (3) Apache’s unsubstantiated argument that it is somehow better situated than Avant to address Lesser Prairie Chicken Habitat. Apache’s arguments ignore Division precedent and the evidentiary record and should be rejected.

Exhibit A

A. The Division considers letters of support in evaluating unit control.

As an initial matter, the primary issue before the Division is which development plan will most efficiently develop the acreage, prevent waste, and protect correlative rights. *See* Order R-21834 at 15. The Division considers other factors, particularly working interest control, if there are no significant differences between the competing development plans. *Id.* As discussed extensively at hearing, there are significant differences between Avant's and Apache's development plans, and Avant's plan will most efficiently develop the acreage. Regardless, Avant holds a greater percentage of the working interest when its letters of support are considered.

It is well established that the Division considers letters of support in evaluating unit control. *See* Order No. R-10731-B at ¶¶ 23-24; *see also* Order No. R-21834 at ¶¶ 24-25 (discussing crediting of interests based on letters of support). Despite this well-established policy, Apache takes the position – unsupported by any authority – that the Division should only consider Avant and Apache's record title interest because CXA Oil & Gas (“CXA”) and Southwest Royalties signed joint operating agreements (“JOAs”) with both Avant and Apache. Apache's position ignores the correlative rights of the interest owners that support Avant's unit, including CXA and Northern Oil & Gas (“Northern”), and should be rejected.

Avant does not dispute that Southwest Royalties' less than 1% interest cannot be credited to either party because it signed JOAs with both parties. However, CXA and Northern have clearly expressed support for Avant's unit. Although CXA signed a JOA with both parties, it subsequently signed a letter of support expressly stating that it prefers Avant's development to Apache's. *See* Avant Exh. A-27. Similarly, Northern appeared at the hearing, did not object to Avant representing its interest as committed to Avant's unit, has agreed to trade its acreage to Avant, and subsequently filed a letter supporting Avant's application. *See* Avant Exh. A-27; Tr. at 230:1-4, 232:13-23;

Northern Oil and Gas, Inc.'s Notice of Support for Avant Operating, LLC's Application (filed July 10, 2024). Northern and CXA own a significant interest in the proposed spacing units, and their support for Avant's development must be considered.

When the above information is considered in accordance with the Division's longstanding policy, 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. 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. 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.

B. Apache's term assignment does not dictate operatorship of the acreage and will be satisfied by Avant in any event.

Apache's argument that its term assignment with Marathon should dictate operatorship of the acreage ignores the correlative rights of the other interest owners, Apache's delay in developing its acreage, and Avant's ability and intent to fulfill the term assignment. First, Apache fails to cite any authority for its claim that its term assignment should supersede the correlative rights of the other interest owners, and that is not the law or the Division's policy. It is up to Marathon – not the Division – to decide whether Apache should be allowed to have a continued option to develop these assets. Contrary to Apache's claim, the Division must protect correlative rights of all interest owners. *See* NMSA 1978, § 70-2-11(A).

Second, Apache allowed its original drilling permits to expire in 2021 and did not re-propose wells until September 2023, after it received Avant's proposal. *See* Avant Exhibit A at ¶ 26; Avant Exhibit A-29. Apache's term assignment was signed nearly five years ago and expires on March 31, 2025. *See* Tr. at 271:18-23. Apache has had plenty of time to satisfy its obligations under the agreement and has failed to do so, which further demonstrates a lack of diligence in developing these lands. *See* Avant Exhibit A-29. Apache's lack of diligence has prevented other interest owners and the State of New Mexico from receiving the economic benefit of their ownership of these lands. It is not reasonable for Apache to claim that it should be rewarded, and that Avant and its supporting interest owners should be penalized, as a result of Apache's delay.

Third, Avant is able to timely develop its acreage and fulfill the term assignment. Since Avant acquired its interest in the Unit in May 2023, it has consistently pursued its development plans and is on track to spud the first wells in the Grayling Unit shortly after receiving permits from the BLM. Avant therefore plans to drill wells before Apache's term assignment expires on March 31, 2025. *See* Avant Exhibit A at ¶ 26; Avant Exhibit A-29; Tr. at 271:18-25.

C. Avant is better able to address impacts on the Lesser Prairie Chicken due to its existing midstream infrastructure.

Apache's argument that its development will reduce impacts on the Lesser Prairie Chicken ignores Avant's drilling plans and midstream capabilities in this area. Apache's own testimony demonstrates the inaccuracy of its argument that Avant will take significantly more time to complete its drilling project than Apache. *See* Apache Exhibit E at ¶¶ 5-9. Apache acknowledges that its analysis of the approximate number of days to complete the wells "does not include Avant's suggestion that it will complete the 3rd Bone Spring interval in conjunction with the 1st and 2nd Bone Spring intervals." Apache Exhibit E at ¶ 8. Avant demonstrated it took an average of 12.1 days from the date of spudding its Cutbow wells to total depth. *See* Avant Exhibit C-17. Avant's

midstream capability and activity around the proposed Grayling Unit has resulted in operational efficiencies that will minimize surface disturbances, thus minimizing the drilling impact to the Lesser Prairie Chicken. *See id.*

CONCLUSION

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.

Respectfully submitted,

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