

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

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

CASE NO. 24544

**AVANT OPERATING, LLC’S RESPONSE IN OPPOSITION TO
PRIMA’S MOTION TO DISMISS POOLING APPLICATION**

Avant Operating, LLC, (“Avant”), submits this response in opposition to Prima’s *Motion to Dismiss Pooling Application on the Bases that More Initial Wells Have Been Proposed than Can Be Drilled by the Pooling Order Deadline* (“Prima’s Motion”). In support of this Motion, Avant states as follows:

I. New Mexico Oil Conservation Division Rules Allow for Multiple Initial Wells

1. The New Mexico Oil Conservation Division’s (“Division”) infill well provision, under 19.15.13.9 NMAC, allows operators to propose the drilling of infill wells any time after the completion of the “initial well.” With the progression of horizontal well development, the Division has allowed for multiple initial wells, which Prima’s Motion concedes “the Division has generously accommodated” the “need to spud and drill more than one initial well” under its interpretation of the rule. Prima’s Motion ¶ 1.

2. The Division’s standard compulsory pooling order provides that “[t]he Operator shall commence drilling the Well(s) within one year after the date of this Order, and complete each Well no later than one (1) year after the commencement of drilling the Well,” Standard Compulsory Pooling Order ¶ 20, and Avant understands that all of its proposed wells must be spud within one (1) year.

3. On July 12, 2024, the Division issued *Notice: OCD Clarification of Compulsory Pooling Processes Update* (“Notice”), which provided additional guidance on operator’s obligations to drill all of its initial wells, while also establishing new procedures to allow for operators to present extended development plans. Prima’s Motion blatantly disregards the Division allowance for extended development plans. *See* Notice, p. 1-2, providing “[i]n any contested or uncontested hearing an applicant can now present a development plan and associated timelines with each well being proposed so plans can be fully evaluated by the OCD for complete development potential.” At this time, Prima has no knowledge whether Avant plans to propose an extended development plan, as is now permissible under Division guidance. Until Avant files its exhibits for Case No. 24544 in preparation for the contested hearing, Avant reserves the right to request an extended development plan. Therefore, Prima’s assumption that Avant cannot drill the wells within the prescribed timeline is at best premature and potentially erroneous because the timeline for drilling those wells has yet to be determined.

II. Avant’s Proposed Development Plan Is Consistent with OCD Rules and Industry Practice

4. In Case No. 24544, Avant seeks an order approving a 1,280-acre, more or less, non-standard horizontal spacing units (“HSUs”) composed of all of Sections 25 and 36, Township 18 South, Range 33 East, N.M.P.M., Lea County, New Mexico, and to pool all uncommitted mineral interests in the Bone Spring formation, designated as oil pools, underlying said HSUs. Avant seeks to dedicate the HSU to the proposed Royal Oak 25 Fed Com wells.

5. Avant is proposing twelve wells¹, with four wells to be drilled in the First Bench of the Bone Spring, four wells to be drilled in the Second Bench of the Bone Spring, and four wells to be drilled in the Third Bench of the Bone Spring. See Exhibit A, ¶ 6.

6. A contested case hearing is scheduled for August 20, 2024, where Avant will provide exhibits demonstrating how it plans to develop the twelve wells efficiently and timely. Further, Avant has negotiated a drilling contract and established a drilling schedule set and plans to drill the proposed unit wells within the allotted time. See Exhibit A, ¶ 9.

7. As an operator, Avant has a history of successfully batch drilling numerous wells in an efficient and timely manner, as demonstrated by recent drilling of 16 wells in eight (8) months on the Sandra Jean 23 Fed Com units, as approved under Order Nos. R-22957 and R-22958. See Exhibit A, ¶ 7.

8. Avant's proposed Royal Oak development plan is consistent in scale and scope with compulsory pooling applications filed by other operators that provide for multiple initial wells. See Order No. R-23267, approving the Emerald Fed Com unit in the Bone Spring formation with 18 initial wells; see also applications filed by EOG Resources, Inc. in Case Nos. 24539 and 24540, which propose 25 wells in the Bone Spring formation and 11 wells in the corresponding Wolfcamp formation; see also application filed by E.G.L. Resources, Inc. in Case Nos. 24154 and 24155, which propose 23 wells in the Bone Spring formation and 10 wells in the corresponding Wolfcamp formation.

III. Prima Fails to Assert Compelling Grounds for Dismissal

¹ The proposed wells are the Royal Oak 25 Fed Com #301H, Royal Oak 25 Fed Com #302H, Royal Oak 25 Fed Com #303H, Royal Oak 25 Fed Com #304H, Royal Oak 25 Fed Com #501H, Royal Oak 25 Fed Com #502H, Royal Oak 25 Fed Com #503H, Royal Oak 25 Fed Com #504H, Royal Oak 25 Fed Com #601H, Royal Oak 25 Fed Com #602H, Royal Oak 25 Fed Com #603H, and Royal Oak 25 Fed Com #604H.

9. Prima's Motion ignores New Mexico's standards for motions to dismiss and seeks an untimely determination on evidence scheduled to be presented at the August 20, 2024, hearing. The purpose of a motion to dismiss is to test the legal sufficiency of the claim or case, and not the facts supporting the case. *See Trujillo v. Berry*, 1987-NMCA-072, 106 N.M. 86, 738 P.2d 1331. Prima's intervention and objection to this case fail to provide legal grounds supporting the dismissal of this case for failure to state a claim upon which relief can be granted and should therefore be denied. Prima's requested relief is for OCD to reduce the number of proposed wells, which is properly determined at the hearing on the merits and not through a motion to dismiss and refile a compulsory pooling application.

10. New Mexico's Oil and Gas Act (the "Oil and Gas Act"), Chapter 70, Article 2 of NMSA 1978, provides the limited authority conferred by the Legislature upon the Division and expressly prohibits waste of oil or gas products. *See* NMSA 1978, § 70-2-2. Concurrently, the Division and the Oil Conservation Commission "have jurisdiction, authority and control of and over all persons, matters or things necessary or proper to enforce effectively" the Oil and Gas Act, which includes "jurisdiction and authority over all matters relating to the conservation of oil and gas and the prevention of waste of potash as a result of oil and gas operations in this state." NMSA 1978, § 70-2-6. *See also* 70-2-11 ("[D]ivision is hereby empowered, and it is its duty, to prevent waste prohibited by this act and to protect correlative rights"). Prima's Motion fails to invoke the Division's regulatory authority for granting or denying its Motion, based on either the prevention of waste or the protection of correlative rights. Prima fails to make a claim that Avant's development plans would negatively impact Prima's correlative rights or would result in waste. Prima also fails to furnish any evidence that Avant's development plans will adversely impact correlative rights or cause waste, generally or specifically.

IV. The Division Should Assess the Case Presented at the Scheduled Contested Hearing

11. The Division should not dismiss this case prior to the hearing on the merits because the hearing is the forum in which the Division can determine whether Avant's development plan meets the Divisions rules or otherwise requires modification. New Mexico law is clear that contested administrative proceedings are the proper place for New Mexico's administrative bodies to assess evidence and render decisions—which is why it would be premature for the Division to grant Prima's Motion. New Mexico courts recognize that in a "contested administrative [case], conflicting evidence will be produced," and deference should be given to the agency proceedings "where a state agency possesses such knowledge and expertise." *Santa Fe Expl. Co. v. Oil Conservation Comm'n*, 1992-NMSC-044, ¶ 37, 114 N.M. 103, 835 P.2d 819 (finding "resolution and interpretation of such evidence presented requires expertise, technical competence, and specialized knowledge of engineering and geology as possessed by Commission members") (citing NMSA 1978, § 70-2-4 (commissioners to have "expertise in regulation of petroleum production by virtue of education or training"); NMSA 1978 § 70-2-5 (director is "state petroleum engineer" who is "registered by the state board of registration for professional engineers and land surveyors as a petroleum engineer" or "by virtue of education and experience [has] expertise in the field of petroleum engineering")). Because the Division already has a scheduled opportunity to assess Avant's proposal on August 20, 2024, and Prima will have the opportunity on that date to present any conflicting evidence, the Division should deny Prima's motion. Because a dismissal of Avant's application would be a legal and not an evidentiary determination, the Division should render its decision on Avant's application at the August 20, 2024, hearing, where the evidence may be fully assessed.

12. Even assuming *arguendo* there is merit to Prima's claim that the proposed unit would be overdeveloped, this argument should be heard and evaluated at the scheduled contested hearing and each party should be afforded the opportunity to present evidence after the Applicant sets forth its development plan.

13. Additionally, Prima contends that Avant would be ineligible to request an extension of drilling obligations, as permitted under the Division's standard compulsory pooling order, claiming it would be "probably unlikely" for Avant to establish good cause. Prima's Motion, ¶ 5. This claim is presumptuous, and Prima provides no basis for its assertion. Moreover, Prima's claim again seeks the Division make a premature determination on an alleged issue that is not ripe for review.

14. Prima has provided no evidence to the Division or information to Avant to support its objections to the development plan of this proposed nonstandard unit. Moreover, the Self-Affirmed Statement of David Rhodes, Prima's designated expert, does not establish Mr. Rhodes' qualifications to opine on Avant's "current commitments and workload" or Avant's ability to "satisfy the terms of the pooling order." Prima's Motion, Exhibit 1, ¶ 7. Instead, Mr. Rhodes only details his qualifications to opine on petroleum engineering matters, which are wholly unrelated to Avant's business operations and commitments. Prima's Motion, Exhibit 1, ¶ 4.

15. Further, Prima's concerns with Avant's 110 active drilling permits in New Mexico, and its ability to fulfill its commitments, is outside the scope of this pooling application and are irrelevant to the instant proceeding.

V. Prima's Motion is Made in Bad Faith Because it Undermines the Parties Good Faith Negotiations

16. Prima and Avant have had ongoing communications since March 2024, and at no time did Prima raise concerns about Avant's development plan prior to Avant's filing the applications or exhibits in preparation for the June 27, 2024, hearing. Since March 2024, the parties have engaged in extensive negotiations, and nearly an executed agreement regarding the development of the Bone Spring formation as proposed in Case No. 24544. Prima's Motion was filed in bad faith because it represents an attempt to gain leverage in those negotiations and the Division should not grant a dismissal of this proceeding.

17. Prima's position is further weakened because it is actively marketing and accepting bids for its minor interests in this unit, along with its interests in surrounding lands. Therefore, even if Prima disagrees with the development plan for these units, its behavior indicates that it is actively seeking to relinquish its minor stake in the proposed Bone Spring unit.

18. Lastly, Prima holds a miniscule working interest in the proposed unit, less than 3%. As a minor working interest owner, Prima seeks not to become operator of these lands in which Avant owns or has committed the majority of the ownership in the lands to the proposed unit. Therefore, Prima's Motion is a disingenuous attempt by a minority working interest owner to obstruct Avant's development plan and should be considered an act of bad faith.

WHEREFORE, the Applicant respectfully requests that the Division DENY Prima's *Motion to Dismiss Pooling Application on the Bases that More Initial Wells Have Been Proposed than Can Be Drilled by the Pooling Order Deadline*, and allow the parties to present evidence at the contested hearing on August 20, 2024, as set by the Pre-Hearing Order.

Respectfully submitted,

BEATTY & WOZNIAK, P.C.

By:  _____

Miguel A. Suazo
James P. Parrot
Sophia A. Graham
Kaitlyn A. Luck
500 Don Gaspar Ave.,
Santa Fe, NM 87505
(505) 946-2090
msuazo@bwenerylaw.com
jparrot@bwenerylaw.com
sgraham@bwenerylaw.com
kluck@bwenerylaw.com

Attorneys for Avant Operating, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing was served to counsel of record by electronic mail this 29th day of July 2024, as follows:

Michael H. Feldewert
Adam G. Rankin
Paula M. Vance
Post Office Box 2208
Santa Fe, NM 87504
505-988-4421
mfeldewert@hollandhart.com
agrarkin@hollandhart.com
pmvance@hollandhart.com
Attorneys for COG Operating LLC

Jordan L. Kessler
125 Lincoln Ave., Suite 213
Santa Fe, NM 87501
(432) 488-6108
jordan_kessler@eogresources.com
Attorney for EOG Resources, Inc.

Darin C. Savage
Andrew D. Schill
William E. Zimsky
214 McKenzie Street
Santa Fe, NM 87501
(970) 385.4401
darin@abadieschill.com
andrew@abadieschill.com
bill@abadieschill.com
Attorneys for Prima Exploration, Inc.

Dana S. Hardy
Jaclyn McLean
P.O. Box 2068
Santa Fe, NM 87504
(505) 982-8623
dhardy@hinklelawfirm.com
jmclean@hinklelawfirm.com
Attorneys for BTA Oil Producers, LLC



Rachael Ketchledge

Exhibit A

**STATE OF NEW MEXICO
ENERGY, MINERALS, AND NATURAL RESOURCES DEPARTMENT
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**APPLICATION OF AVANT OPERATING, LLC
FOR COMPULSORY POOLING AND
APPROVAL OF NON-STANDARD SPACING
UNIT, LEA COUNTY, NEW MEXICO**

CASE NO. 24544

SELF-AFFIRMED STATEMENT OF SHANE KELLY

I, Shane Kelly, state the following:

1. My name is Shane Kelly, and I am employed by Avant Operating, LLC (“Avant”) as the Vice President of Engineering.

2. I have previously testified before the New Mexico Oil Conservation Division (“Division”), and my qualifications as an expert in petroleum reservoir engineer matters were accepted and made a matter of record. Most recently, I testified before the Division in Avant’s Application for Compulsory Pooling and Approval of Non-Standard Spacing Unit in Case No. 24254 for the Grayling 14 Fed Com wells. I have several years of experience in petroleum reservoir engineer matters, and I have worked directly or in a supervisory role with the properties that are the subject of this matter.

3. I am familiar with the application filed by Avant in this case, the reservoir engineering involved, and the development plan for the proposed unit.

4. I am submitting this self-affirmed statement in support of Avant’s Response in Opposition to Prima’s Motion to Dismiss Pooling Application.

5. In Case No. 24544, Avant seeks an order to approve a 1,280-acre, more or less, non-standard horizontal spacing units (“HSUs”) composed of all of Sections 25 and 36, Township 18 South, Range 33 East, N.M.P.M., Lea County, New Mexico, and to pool all uncommitted

mineral interests in the Bone Spring formation, designated as an oil pool, underlying said HSU. Avant seeks to dedicate the HSU to the proposed Royal Oak 25 Fed Com wells.

6. Avant is proposing twelve wells, with the Royal Oak 25 Fed Com #301H, Royal Oak 25 Fed Com #302H, Royal Oak 25 Fed Com #303H, and Royal Oak 25 Fed Com #304H wells to be drilled in the First Bench of the Bone Spring; the Royal Oak 25 Fed Com #501H, Royal Oak 25 Fed Com #502H, Royal Oak 25 Fed Com #503H, and Royal Oak 25 Fed Com #504H wells to be drilled in the Second Bench of the Bone Spring; and the Royal Oak 25 Fed Com #601H, Royal Oak 25 Fed Com #602H, Royal Oak 25 Fed Com #603H, and Royal Oak 25 Fed Com #604H wells to be drilled in the Third Bench of the Bone Spring.

7. Avant is an active and prudent operator, more than qualified and competent to meet its obligations, including its drilling obligations. As an operator, Avant has a history of successfully batch drilling numerous wells in an efficient and timely manner. For example, in the recently developed Sandra Jean 23 Fed Com units, as approved under Order Nos. R-22957 and R-22958, Avant drilled 16 wells within eight (8) consecutive months and plans to spud the remaining five (5) wells in the next month, for a total of 21 wells drilled within ten (10) consecutive months.

8. Avant has negotiated and entered into contracts with various oil and gas midstream companies that are capable of marketing the anticipated production volume from the 12 proposed Royal Oak wells.

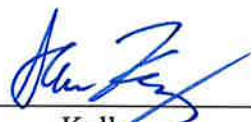
9. Avant has negotiated a drilling contract and established a drilling schedule for the Royal Oak wells in the above-referenced case. Once an approved pooling order is granted, Avant is prepared to promptly begin drilling operations on the proposed Royal Oak wells to ensure all wells are drilled within the allotted development plan.

10. Avant's past experience in drilling multiple wells in a timely manner, coupled with Avant's existing midstream and drilling rig contracts reflect that Avant is the appropriate operator of the proposed Unit and is capable of timely completion of the proposed development plan.

11. Based on my extensive analysis and experience in the field, it is my opinion that drilling 12 wells within the Bone Spring formation is consistent with development in the Permian Basin. The drilling of three wells within three distinct benches in no way results in the drilling of unnecessary wells or the overdevelopment of the unit.

12. Avant's development plan is in the best interest of conservation, the prevention of waste, and the protection of correlative rights, and will avoid the drilling of unnecessary wells.

13. I affirm that to the best of my knowledge and belief, all of the matters set forth herein are true, correct, and accurate and made under penalty of perjury under laws of the State of New Mexico.



Shane Kelly
Avant Operating, LLC