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

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

CASE NO. 24544

I. AVANT OPERATING, LLC'S CLOSING STATEMENT

Pursuant to the instructions of the Oil Conservation Division ("Division") during the August 20-21, 2024, hearing in Case No. 24544, Avant Operating, LLC ("Avant") submits the following closing statement in support of its application ("Application") in the above-referenced matter. Avant respectfully requests that the Division approve its Application and deny the protest ("Protest") of Prima Exploration, Inc. ("Prima") in this matter.

II. INTRODUCTION

A. Summary of the Case.

Avant has imminent development plans for twelve wells in the Bone Spring Formation, to efficiently and economically develop its proposed 1,280-acre spacing unit. Avant proposed an archetypal plan for modern development in Lea County. Avant's plan will prevent waste, will protect correlative rights, and will economically recover the oil and gas from Avant's proposed unit. Avant owns nearly 42% of the working interest and has nearly 75% of the total unit working interest committed to its development plan. Avant's plan is entitled to significant deference over the protest of a party who owns a negligible fraction of the working interest in the unit.

Prima's protest should be denied for three reasons: (i) Prima owns a miniscule percentage of the unit working interest; (ii) Prima's evidence lacks credibility; (iii) the basis of Prima's protest is irrelevant. Prima owns a mere 2.75% of the working interest in the unit, whereas Avant owns nearly 42%, or 15 times more than Prima.

Nearly 75% of the total unit working interest has committed to Avant's development plan. This working interest factor alone should result in the denial of Prima's protest. Additionally, Prima's sole witness, a purported expert in petroleum engineering, has no experience drilling wells in New Mexico. Prima presented no evidence that Avant's plan would cause waste or harm correlative rights. Prima even admitted during the hearing that Avant's plan will *not* result in the recovery of less oil than Prima's proposal. Prima presented nothing more than a difference of opinion about the profitability of two different development plans. Unfortunately for Prima, maximization of profit is not a consideration for the Division's approval of Avant's Application. Even if profitability were relevant, Avant should prevail. Avant *alone* will pay more than 15 times what Prima will pay for development of the unit. The parties who are taking the ultra-majority of the economic risk deserve substantial deference on differences of opinion about profitability.

Avant conclusively demonstrated that its Application is necessary to prevent waste, will protect correlative rights, and will economically develop its proposed unit. Prima presented no evidence to the contrary, only small differences of opinion about irrelevant considerations. Avant therefore respectfully requests that its Application be approved.

B. Procedural History.

In this Case No. 24544, Avant seeks an order: (i) establishing a non-standard horizontal spacing unit ("NSHSU") covering the Bone Spring Formation underlying 1,280 acres, more or less, comprising all of Sections 25 and 36, Township 18 South, Range 33 East, N.M.P.M., Lea County, New Mexico (the "Application Lands"); and (ii) pooling all uncommitted mineral interests in the Bone Spring formation.

On June 24, 2024, Prima filed an entry of appearance and objection to hearing by affidavit, and on July 19, 2024, Prima filed a Motion to Dismiss ("Motion") based on allegations that Avant

proposed more wells than it could drill by the deadline set in the anticipated pooling order. After the Division denied Prima's Motion, Prima pivoted its strategy and argued that Avant's four-well-per-section per bench development plan will overdevelop the proposed unit. Prima instead requested the Division modify Avant's development plan to accommodate a three-well-per-section per bench proposal. At the August 20 and 21, 2024 hearing, Avant showed why it should be afforded deference to develop its acreage and why its four-well-per-section per bench development plan is preferable to fully develop the underlying reserves.

III. ARGUMENT

Avant has met its burden for approval of its Application. Its development plan will prevent waste, protect correlative rights, and economically and efficiently develop Avant's proposed unit. Avant's evidence shows, without uncertainty, that its four-well-per-section per bench development plan will produce significantly more oil than Prima's alternative three-well-per-section per bench proposal. Avant's basin-specific experience and operational experience will ensure the acreage will be developed in the most cost-effective and expeditious manner, while preventing waste and protecting correlative rights. Prima's protest should be denied for three reasons: (i) Prima owns a miniscule percentage of the unit working interest; (ii) Prima's evidence lacks credibility; (iii) the basis of Prima's protest is irrelevant.

A. Avant met its burden.

1. Applicable Standards of Review.

New Mexico's Oil and Gas Act, N.M. Stat. Ann. § 70-2-1, *et seq*. (the "Act") establishes various powers and duties of the Division. The Division is "empowered, and it is its duty, to prevent waste prohibited by this act and to protect correlative rights, as in this act provided." N.M. Stat. Ann. § 70-2-11(A). The Division is specifically authorized to create spacing units. N.M. Stat.

Ann. § 70-2-12 ("The oil conservation division may make rules and orders for the purposes and with respect to the subject matter stated in this subsection: … (10) to fix the spacing of wells;") (*see also*, *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 1975-NMSC-006, 7, 87 N.M. 286, 288, 532 P.2d 582, 584 ("The authority of the Commission to create spacing units is found in [former] § 65-3-11, N.M.S.A. 1953, as amended [now N.M. Stat. Ann. § 70-2-12].")).

The rules of the Division, NMAC 19.15.1, *et seq*. (the "Rules") set criteria and standards applicable to spacing unit applications. Specifically, NMAC 19.15.16.15 establishes the criteria that apply to the Division's approval of a NSHSU application.

> The division may approve non-standard horizontal spacing units for horizontal oil or gas wells after notice and opportunity for hearing, if necessary to prevent waste or protect correlative rights, in accordance with the procedures provided for director approval of non-standard spacing units in Paragraphs (3) through (5) of Subsection B of 19.15.15.11 NMAC.

Pursuant to this rule, the applicant's burden for approval of an order establishing a NSHSU includes: (i) proper application and notice; and (ii) a showing that the NSHSU is necessary to either (a) prevent waste, or (b) protect correlative rights.

Waste is defined in N.M. Stat. Ann. § 70-2-3:[1,2]

> "underground waste" as those words are generally understood in the oil and gas business, and in any event to embrace the inefficient, excessive or improper, use or dissipation of the reservoir energy, including gas energy and water drive, of any pool, and the locating, spacing, drilling, equipping, operating or producing, of any well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from any pool, and the use of inefficient underground storage of natural gas;

Correlative rights is defined in N.M. Stat. Ann. § 70-2-33(H):[3]

[1] This definition of "waste" also includes issues not relevant to the Application and not raised by Prima, including "surface waste" (i.e., flaring and venting), production in excess of reasonable market demand, the nonratable purchase or taking of oil, and oil and gas production that unduly interferes with potash production.
[2] This is substantially the same definition of correlative rights as set forth in NMAC 19.15.2.7.
[3] This is substantially the same definition of correlative rights as set forth in NMAC 19.15.2.7.

> 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 the owner's just and equitable share of the oil or gas or both in the pool, being an amount, so far as can be practicably 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 the property bears to the total recoverable oil or gas or both in the pool and, for such purpose, to use the owner's just and equitable share of the reservoir energy;

None of the definitions of waste or correlative rights contain any mention or indication relating to the profitability of wells, economic impacts on non-operators, or whether certain well costs are preferable or necessary.

Regarding the pooling aspect of Avant's Application, N.M. Stat. Ann. § 70-2-17(C) provides that when the owners of the interests in a spacing unit "have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit." Thus, pursuant to statute, there are three requirements that must be met before the Division can pool lands: (i) all owners have not agreed to pool their interests; (ii) one or more owners have drilled or propose to drill a well; and (iii) pooling is necessary to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste. The Division also requires a pooling applicant to demonstrate that it made good faith attempts to obtain the voluntary commitment of other working interest owners. *See* 19.15.4.12.A.(1) NMAC, Order No. R-13165.

2. Avant's evidence satisfied the standard of review.

Avant's burden to establish the NSHSU was to demonstrate that: (i) its Application and notice were proper; and (ii) approval of its Application will prevent waste or protect correlative rights. NMAC 19.15.16.15. Avant's Application and notice thereof were proper. Avant Exhibits

A, B, E, and F. No party raised any concerns about the propriety thereof, and no party presented any evidence to the contrary. Avant also proved that it has negotiated in good faith.

Avant presented convincing evidence that its application will prevent waste *and* protect correlative rights. Avant's engineering witness, Shane Kelly, has drilled over 450 wells in the Permian Basin. Tr. at 227:18-19. Mr. Kelly testified and presented evidence that Avant has imminent development plans and is ready to begin development of the proposed unit. Tr. at 82:18-23. Prior to first production, Avant will have multi-phase pipeline capacity established for the proposed unit, much of which already exists. Avant's Exhibit G-3. This will enable Avant to efficiently and economically bring oil and natural gas production to market and to recycle produced water. Tr. at 83:5-84:8.

Although not required by the standard of review for a NSHSU, Avant provided ample evidence proving that its development plan will be economic. Mr. Kelly presented testimony and evidence that proximate wells drilled and completed using modern completion techniques on four-wells-per-section per bench spacing perform well and are "highly economic to the operator as well as the operating partners." Tr. at 246:14-17, Avant Ex. G-19. Avant presented evidence that the closest wells to the proposed unit that were drilled by Avant are "at a higher spacing density than what [Avant is] proposing at Royal Oak" and "are extremely economic to [Avant], have produced a lot more oil, and prevented waste." Tr. at 247:5-10, Avant Ex. G-19. Avant's engineer testified that if Avant had spaced wells as proposed by Prima (three-wells-per-section per bench), "we would've lost not only a lot of value to the company, its shareholders, its partners, but we would've also left a lot of oil in the ground that would've been very hard to recover if not impossible going forward." Tr. at 247:10-16. Prima's three-wells-per-section per bench proposal would cause waste that will be prevented by approving Avant's four-well-per-section per bench development plan.

Mr. Kelly analyzed "three different examples, three modern designs, all at four wells or greater per section spacing." Tr. at 249:10-14, Avant Ex. G-18, G-19, G20. The three examples are proximate to the Application Lands and therefore provide a good comparison. Avant Ex. G-18, G-19, G20. Mr. Kelly testified "in every case that we've looked at, we are getting more oil out of four wells, we are preventing waste, we are creating a better situation for our partners by -- by spacing these wells at four or greater per section." Tr. at 249:20-24

No party at the hearing presented any evidence that approval of Avant's Application would cause waste or harm correlative rights, as those terms are defined by the Act and the Rules.

Avant also satisfied the requirements for a pooling application. Not all owners have agreed to pool their interests. Avant Exhibit C-4. One or more owners have drilled or propose to drill a well. See, Avant Exhibit C-6. Pooling is necessary to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste. Tr. at 92:3-11. Finally, Avant made good faith attempts to obtain Prima's voluntary commitment to Avant's development plan. Avant Exhibit C-9, Tr. at 51:3 – 52:25

B. Prima's Protest should be denied.

1. Prima's protest deserves little deference due to Prima's small fractional interest

In *Longfellow Energy, LP v. Spur Energy Partners, LLC*, Order R-21834 (Sept. 8, 2021), the Division listed factors it may use to resolve competing development plans. In this matter before the Division, Prima is not proposing to develop this unit, so there is no jurisprudence *requiring* the Division to apply these factors. Nevertheless, the factors may be persuasive.

First, when parties disagree regarding well location and geological matters, "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-21834,

¶ 13, citing Order No. R-10731-B. This factor weighs in favor of Avant, which has provided evidence that its four-well-per-section per bench development plan will most fully and efficiently develop the underlying recoverable reserves in the proposed unit.

Second, the Commission stated:

> In the absence of compelling factors such as geologic and prospect differences, ability to operate prudently 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 R-21834, ¶ 24, citing Order R-10731-B.

It is abundantly clear that in the absence of significant differences between the development plans, "working interest control" is the deciding factor. Not only does the evidence favor Avant's four-well-per-section per bench development plan, but Avant also owns 41.80% of the working interest and approximately 75% of the unit's interest has committed to Avant's proposed plan. Meanwhile, Prima owns a mere 2.75% working interest in the proposed unit.

Avant respectfully submits that the Division should defer to Avant over Prima's protest, given Avant's fifteen-times greater working interest. The working interest committed to Avant's development plan is nearly thirty times the working interest of Prima. The Division views working interest control as a critical factor when comparing competing development plans. In this protest, the owner of a very small working interest has not even proposed a competing development plan. Therefore, Avant respectfully submits that it should be entitled to a high degree of deference in this matter.

2. Prima's Witness and Testimony Lacked Credibility

Prima presented the testimony and exhibits of David Rhodes, which lacked credibility for a host of reasons. To begin, Prima's witness admitted he and Prima have no experience drilling or completing wells in the Permian Basin or New Mexico. Tr. at 115:13-118:3. Decline curve analysis

is highly basin-specific and requires experience with production and completion data. Tr. At 233:19-234:25. Prima's witness necessarily lacks the requisite experience for the Division to rely on his work product, specifically his decline curve analysis. A petroleum engineer must not only be able to explain the factors utilized, but must also utilize the appropriate factors, to develop a decline curve analysis. Tr. at 233:19-234-25. Prima provided no data to demonstrate that its decline curve analyses were appropriately built for the basin. Prima's witness admitted that: (i) many factors could result in decline curve changes; (ii) Prima does not have data from operating or participating in the wells; and (iii) he was not sure why operation or participation data from the wells he analyzed explain the step changes. Tr. at 144:9-145:5, 147:7-16, 149:6-150:11. Prima's witness was inherently unreliable because Prima's witness lacked the data and expertise to support his analyses, and Prima's witness did not perform the analyses required to explain the arguments he made.

In addition to its witness lacking credibility, Prima's data and exhibits also lack credibility. Prima relied on legacy data from wells that were developed with outdated technology, and these wells are not appropriate analogs for current wells and modern drilling and completion design techniques. Tr. at 148:18-25 – 149:1-2; 151:11-13; 152:14-20. In explaining his reasons for not relying on more recent case studies, Prima's witness conceded that when looking at a parent-child relationship, wells drilled at the same time are "not […] eas[y] to distinguish" and an analysis of wells drilled from multiple benches is "even muddier." Tr. at 153:10-24. This concession by Prima's key witness further undermines his credibility to opine on Avant's development plan, which involve wells drilled around similar times and from different benches. Moreover, Prima did not have data from participating in the wells it analyzed, meaning it could not accurately explain the step changes identified in the production type curve. Tr. at 144:19-25; Prima Exhibit A-1, p.

9. Significantly, even Prima's witness acknowledged this data gap during his own re-direct: "without having any interest in these wells, there's no way of knowing what caused those changes in production." Tr. at 165:6-8.

Additionally, because Prima did not provide the estimated ultimate recovery ("EUR") for the wells analyzed in its Exhibit A-1, it cannot assert that higher density wells create waste. See Tr. at 145:15-18. Prima also excluded data on the edge wells in its Exhibit A-1, failing to portray the entire parent-child well relationship.

3. The Basis of Prima's Protest Is Irrelevant

a. Prima's irrelevant standard of review.

Prima's protest focused entirely on a concept Prima characterized as "economic waste," but that concept is not relevant to the Division's review and approval of a spacing application. As discussed above, the standard of review applicable to a NSHSU includes: (i) proper application and notice; and (ii) a showing that the NSHSU is necessary to either (a) prevent waste, or (b) protect correlative rights. The Division's definition of waste relates primarily to ensuring the maximum ultimate recovery of oil and gas from a reservoir.[4] The definition of waste *does not* include a profitability or economic impact component. However, Prima's protest and evidence focused solely on issues characterized by Prima as "economic waste."

Nothing in the Act or the Rules requires a showing of profitability or economic development to establish a spacing unit. In fact, neither the Act nor the Rules mention economics anywhere as a criterion for establishing a spacing unit. Notably, economics are among the criteria

[4] As discussed above, the statute and rule include other definitions, including surface waste, production in excess of market demand, and non-ratable purchasing, all of which are inapplicable to Prima's protest and Avant's development plan.

to be considered for a *proration* unit (NM Stat. Ann. § 70-2-17(B)[5]), but a proration unit is not an NSHSU, so economics are not relevant to a NSHSU. *Rutter*, 87 N.M. at 288 (The terms *spacing unit* and *proration unit* "are not synonymous and the commission has power to fix spacing units without first creating proration units."). The "Section 70-2-17(B) standard [which involves economics] applies only to proration units and not to spacing units." *Jalapeno Corp. v. N.M. Oil Conservation Comm'n*, 2020 N.M. App. Unpub. LEXIS 292, *11. While NM Stat. Ann. § 70-2-17(B) mentions economics, it makes no mention of *spacing* units.

The Division's authority "to create spacing units is found in [former] § 65-3-11, N.M.S.A. 1953 [now § 70-2-12(B)(10)]." *Rutter*, 87 N.M. at 288 (authorizing the Division to adopt rules to "to fix the spacing of wells…"). Pursuant to this statute, the Division adopted a rule pertaining to the establishment of *spacing units*, which only requires that the applicant demonstrate the unit is necessary for the prevention of waste or the protection of correlative rights. NMAC 19.15.16.15. Nothing in NM Stat. Ann. § 70-2-12 or NMAC 19.15.16.15 relates in any way to economics.

b. Analysis.

Prima offered no evidence that Avant's development plan will cause waste or harm correlative rights, as those terms are defined by NM Stat. Ann. § 70-2-3(a) and NMAC 19.15.2.7. making Prima's entire case irrelevant. In fact, Prima admitted on cross examination that it did not perform a cumulative EUR analysis for four (4) wells as compared to three (3) wells. Tr. at 155:8-12. Prima admitted on cross examination that four (4) wells will not produce *less* than three (3) wells and even could produce more. Tr. at 157:3-6; 155:13-19.

[5] NM Stat. Ann. § 70-2-17(B) states: "The division may establish a ***proration unit*** for each pool, such being the area that can be efficiently and economically drained and developed by one well, and in so doing the division shall consider the economic loss caused by the drilling of unnecessary wells, the protection of correlative rights, including those of royalty owners, the prevention of waste, the avoidance of the augmentation of risks arising from the drilling of an excessive number of wells, and the prevention of reduced recovery which might result from the drilling of too few wells." (emphasis added).

Prima's entire protest and all the evidence it presented pertained solely to "economic damage" or "economic waste," indicating that an operator must present *the most profitable* plan for the Division to approve a NSHSU. Tr. at. 160:1-3; 162:21-24. Prima's witness stated that the "unnecessary expenditure of money and funds to drill extra wells" is "economic waste." Tr. 171:1-3. However, this concept of "economic waste" or profitability is found nowhere in the definitions of waste and is not relevant to the Division's approval of Avant's Application.

Even if economics were a criterion for approval of a NSHSU, which is not the case, Prima presented no evidence that Avant's plan would be uneconomic or unprofitable. Prima did not present testimony or evidence that Avant would need to spend more money drilling, completing, and operating its wells that it could reasonably expect to make from the wells' production. Prima only opined that its three-well-per-section per bench proposal would be more profitable than Avant's proposed four-well-per-section per bench development plan. The Division is not required or even authorized to ensure maximization of profit in any context, and certainly not in the context of reviewing and approving an application for a NSHSU.

Prima's three-well-per-section per bench recommendation would result in unrecovered reserves and would strand productive acreage, as compared to Avant's plan. Tr. at 226:3-11. Prima failed to establish a connection that well interference necessarily causes waste, making its testimony irrelevant. In fact, Prima acknowledged that "to fully drain everything" and "to recover all of the reserves" well interference is necessary. Tr. at. 139:3-8. Contrary to Prima's assertion, well interference does not equate to waste, and is even necessary to prevent waste. *See, e.g.*, Tr. at 170:18-19 (Prima's witness acknowledged that "significant interference" still occurs in its three-well-per-section per bench alternative development plan); *see also*, Tr. at 225:23-25 – 16:1-2

(Avant's engineering witness noted that all operators expect well interference with three or four-well-per-section plans, so as to efficiently drain the reserves).

Many operators are operating at four or greater-wells-per-section per bench, *see* Avant's Exhibit G-10, and Prima offered no evidence that Avant's four-well-per-section per bench development plan will cause waste or harm correlative rights.

4. Prima Presented No Argument or Evidence Against Pooling

Prima presented no argument or evidence against pooling of Avant's proposed NSHSU, and did not refute Avant's evidence supporting pooling. As discussed above, Avant satisfied all the requirements for approval of a pooling application, and demonstrated that Avant made good-faith attempts to obtain Prima's voluntary commitment to Avant's development plan. *See* Avant Exhibits C-4, C-6, C-9; Tr. at 92:3-11; Tr. at 51:3 – 52:25. Avant offered a JOA to Prima not once but twice. Avant Exhibit C-9, Tr. at 51:13-16, 52:21-25. Avant even offered to purchase Prima's interest after Avant became aware that Prima was trying to sell it. Tr. at 51:10-22. Conversely, Prima failed to respond in good faith to Avant's attempts at voluntary cooperation. At one point, Prima demanded an "exclusivity fee" to drop its protest. Tr. at 52:8-10. Prima refuted none of this information, and even agreed in principle to sell its interest to Avant. Tr. at 51:24 – 52:1. Prima's actions strongly indicate that Prima protested primarily to generate leverage in the sale negotiations.

C. The Division Should Reject the Election Provision Proposed by Prima.

Prima requested the Division supplement its standard pooling order to include an aberrant election provision, but Prima provided no evidence or testimony to justify its request. The aberrant provision, which the Division has never included in its orders, would allow for a well-by-well election by requiring the operator to furnish to pooled working interest owners an authority for

expenditure ("AFE") 60 days prior to a well being drilled and then providing the working interest owners 30 days upon receipt of the AFE to make an election to participate or not. (This is considered a "30/30 election" because the non-operator has 30 days upon receipt of the AFE to elect and then the operator has 30 days to commence drilling.) The aberrant provision would also force Avant to cover Prima's costs out of Avant's own pocket, resulting in a de facto loan to Prima. However, Prima presented no evidence to justify a departure from the standard pooling order, which otherwise addresses how and when operators must submit costs and how and when non-operators must pay invoices.

A standard pooling order already requires an operator to submit estimated well costs to non-operators, and governs the non-operator's election to participate or not. *See* Division's typical pooling order, ¶¶ 24 through 26, an example of which can be found as Order R-23302 in Division Case No. 24497 ("Standard Pooling Order"). As such, the Standard Pooling Order already adequately addresses Prima's concerns related to the time frame for making an election. Additionally, the Standard Pooling Order contains provisions that address payment of costs, which require non-operators to pay estimated costs up front. *See* Standard Pooling Order, ¶¶ 24-29. Prima's proposed aberrant provision directly contradicts the well-established standard provisions in the Division's Standard Pooling Order, which have been proven to work over hundreds of pooling orders. Prima submitted no evidence to support its request to replace the standard pooling provisions with its proposed abnormal pooling provision.

Furthermore, Avant provided evidence that it offered to enter and negotiate a joint operating agreement ("JOA") with Prima on two separate occasions. Avant's Exhibit C-9; Tr. at 52:21-25. In a standard industry JOA, the typical election provision is a 30/90 provision, whereby the non-operator has 30 days to elect, and thereafter the operator has 90 days to commence drilling.

The committed parties to this Application, which account for approximately 34% of the working interest in addition to Avant's 42% ownership, have already executed JOAs with Avant. Including this provision would therefore only benefit the non-consenting pooled parties who did not enter into a JOA, yet have already been offered the opportunity to elect into Avant's proposed wells on a well-by-well basis. See Avant's Exhibit C-6; Tr. at 49:23-25 – 50:1-2. Even Prima's witness acknowledges that Prima could elect into only certain wells, as provided for in the election letters, and is not obligated to elect to participate in all the proposed wells. Tr. at 158:24-25 - 159:1. Without offering evidence that it attempted to negotiate the JOA's election provision with Avant, Prima has disregarded Avant's attempts to arrive at a mutually agreed-upon provision that is more consistent with common industry practice.

Without any evidence or testimony supporting Prima's request for its aberrant election provision, there is no basis for the Division to include the provision in an order. Moreover, doing so would undermine the negotiations that occurred between the committed parties and Avant. Including Prima's requested election provision would result in a drastic departure from the normal pooling order and from standard industry practice.

IV. CONCLUSION

This case involves a simple difference of opinion between: (i) a highly experienced operator with a super-majority working interest commitment and active operations in the region; and (ii) and a miniscule minority, non-operating working interest owner with no experience drilling wells in New Mexico. The Division should not let Prima use its protest to generate leverage in the parties' otherwise good-faith negotiations.

The parties' difference of opinion pertains only to profitability, an irrelevant consideration for a spacing unit. Prima's opinion is that it does not prefer Avant's economics and Avant could

be more profitable. However, Prima would only be responsible for about 1/15th of what Avant will pay. Avant's opinion is that its development plan is the most profitable, and Avant presented ample evidence that its development plan will be economic. Moreover, the vast majority of the capital expense will be borne by Avant. In any case, where a difference of opinion exists, the very minor working interest cannot be allowed to dictate the well-founded plans of the operator to develop its own acreage.

Most importantly, Avant presented evidence that its four-well-per-section per bench development plan will protect correlative rights and prevent waste, as it is defined in NM Stat. Ann. § 70-2-3 and NMAC 19.15.2.7.W. Avant met the burdens for a pooling application. Prima presented no evidence to indicate that Avant's development plan might cause waste or harm correlative rights. Prima did not argue against or submit any evidence refuting Avant's pooling request. Avant's engineer has experience drilling hundreds of wells in New Mexico, while Prima's engineer has never drilled a well in the Permian Basin.

Lastly, Prima presented no evidence to justify the inclusion of a special election provision that would result in a drastic departure from the Standard Pooling Order.

V. REQUEST FOR RELIEF

For these reasons and those discussed previously, Avant respectfully requests that the Division defer to Avant, approve Avant's Application, and reject Prima's request to include a special election provision in the pooling order.

Case No. 24544
Closing Statement of Avant Operating, LLC

Respectfully submitted,

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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 16th day of September 2024, as follows:

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