

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

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

**CASE NOS. 24632-24633**

**APPLICATIONS OF MAGNUM HUNTER PRODUCTION, INC.  
FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.**

**CASE NOS. 24756-24759  
CASE NOS. 24913-24916**

**APPLICATIONS OF MRC PERMIAN COMPANY FOR COMPULSORY  
POOLING, LEA COUNTY, NEW MEXICO.**

**CASE NOS. 24760-24767**

**CLOSING ARGUMENT  
PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW**

Magnum Hunter Production, Inc. (“MHPI”), through its undersigned attorney submits to the New Mexico Oil Conservation Division (“Division”) its Closing Argument, Findings of Fact and Conclusions of Law in Cases 24913 – 24916 and 24756 – 24759. MHPI is a subsidiary of Coterra Energy, Inc. (“Coterra”) and MHPI and Coterra often use Cimarex Energy Co. of Colorado (“Cimarex”) as their registered operator in New Mexico. This Closing Argument, Findings of Fact and Conclusions of Law applies the relevant statutes, regulations, and Division and Oil Conservation Commission (“Commission”) precedent to facts presented in the record at the contested hearing held November 5-6, 2024.

At the November Hearing, MHPI objected to applications filed by Avant Operating, LLC (“Avant”) for Cases 24632 and 24633, and MRC Permian Company (“MRC”) for Cases 24760-24767. Following the November hearing, MHPI’s parent company – Coterra – acquired Avant. On January 31, 2025, Avant filed a Notice of Dismissal in Cases 24632 and 24633, in which Avant now affirms and agrees with the ownership percentages contained in MHPI’s exhibits, and it also concedes that law down development is acceptable within the proposed development area. *See*

Avant Notice of Dismissal (filed Jan. 31, 2025). As a result, there is no longer a contest between Avant and MHPI and there is no title dispute regarding the calculation of interests in Section 32; however, the contest remains between MRC and MHPI over development in Section 33, Township 18 South, Range 34 East, N.M.P.M., Lea County, New Mexico.

As established below, the facts and the law establish that MHPI's development plan is supported by the majority of working interest ownership in Sections 32 and 33 Township 18 South, Range 34 East, N.M.P.M. Lea County, New Mexico and is superior to the plan proposed by MRC because it is the only plan that satisfies the Division's statutory mandate to prevent waste, protect correlative rights, and avoid unnecessary costs.

### **INTRODUCTION**

The Oil and Gas Act authorizes the Division to compulsory pool the lands or interests in a spacing unit. When the owners of the interests in a spacing unit have not agreed to voluntarily pool their interests and there is one owner, who has the right to drill, that has applied to the Division, the Division has broad powers to pool the lands or interests in the unit "to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste". NMSA 1978, §70-2-17.C. MHPI, which holds majority working interest ownership in Sections 32 and 33, has applied to the Division to pool that acreage in order to protect correlative rights, prevent waste and avoid the drilling of unnecessary wells. Whereas MRC—owning no Wolfcamp interests and only ~14% Bone Spring working interest in Sections 32 and 33—opposes MHPI's development plans, raising red herring arguments about wellbore orientation. MRC's arguments are unmerited and insufficient to justify granting MRC operatorship in Section 33 in a manner that would completely override the majority owners' preferred development plans.

**CLOSING ARGUMENT, FINDINGS OF FACT & CONCLUSIONS OF LAW****I. MHPI's Applications Should be Granted Based on the Factors Governing Competing Pooling Applications.**

The Division and the Oil Conservation Commission (the "Commission") have developed several factors to consider in evaluating competing compulsory pooling applications. In *KCS Medallion Resources, Inc.*, Order R-10731-B (issued Feb. 28, 1997), the Commission listed factors such as lack of good faith negotiations, differences in proposed risk charge and ability to prudently operate the property but concluded that in the absence of "any reason why one operator would economically recover more oil or gas by virtue of being awarded operations than the other", "working interest control" would be the "controlling factor". *Id.* ¶24.

Since the issuance of Order R-10731-B, both Division and Commission decisions have applied the factors in Order R10731-B, with some additions. For example, in *Novo Oil & Gas Northern Delaware, LLC*, Order R-21420-A, ¶ 9 (Sept. 17, 2020), the Commission listed the factors it "may consider" in evaluating competing compulsory pooling applications, as:

- a. 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.
- b. A comparison of the risk associated with the parties' respective proposal for the exploration and development of the property.
- c. 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.
- d. A comparison of the ability of each party to prudently operate the property and, thereby, prevent waste.

- e. A comparison of the differences in well cost estimates (AFEs) and other operational costs presented by each party for their respective proposals.
- f. An evaluation of the mineral interest ownership held by each party at the time the application was heard.
- g. A comparison of the ability of the applicants to timely locate well sites and to operate on the surface (the "surface factor").

In recent cases, however, working interest control is often the controlling factor. *See Marathon Oil Permian LLC*, Order R-21416-A (Sept. 17, 2020); *Novo Oil & Gas Northern Delaware, LLC*, Order R-21420-A (Sept. 17, 2020); *COG Operating LLC*, Order R-21826, ¶ 21 (Aug. 31, 2021).

**1. MHPI has significantly higher working interest control than MRC.**

MHPI and MRC are both proposing to develop Section 33 with overlapping spacing units. *See* MRC Exhibit No. A, ¶4; MPHI Exhibit A, ¶15. The evidence presented at the November Hearing shows that MHPI clearly has the highest percentage of working interest control. In November, MHPI had accumulated 60.77% working interest ownership in the Bone Spring and 66.41% working interest ownership in the Wolfcamp. *See* MHPI Rebuttal Exhibit 5. Several working interest owners have executed Joint Operating Agreements in support of MHPI's development plans. *See* Testimony of Isabella Sikes, MHPI Exhibit A ¶¶ 19 – 27; MHPI Exhibit A-7(a) (listing numerous owners who have joined in support of MHPI's proposals).

Additionally, it is now a matter of public record that MHPI's parent company – Coterra Energy – acquired Avant in January 2025.<sup>1</sup> This transaction has closed and completely resolves all title differences discussed between Avant and MHPI during the hearing. Consequently, MHPI's

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<sup>1</sup> *See* Coterra Energy Closes Previously Announced Permian Basin Acquisitions | Business Wire, available at <https://www.businesswire.com/news/home/20250127763163/en/Coterra-Energy-Closes-Previously-Announced-Permian-Basin-Acquisitions> (Jan. 27, 2025).

ownership in Section 32 is **even higher** than what was represented at hearing; and both MHPI and Avant agree that MHPI's title research and ownership breakdown accurately represents MHPI's ownership in Section 32. *See* Avant Notice of Dismissal (filed Jan. 31, 2025).

MHPI has also recently entered into a letter agreement with Marathon Oil Company to execute a mutually agreeable Joint Operating Agreement for MHPI's proposed wells.<sup>2</sup> *See* **Attachment 1**. As a result, MHPI's working interest control in Sections 32 and 33 is now well-above 60% and has only grown since the November hearing – demonstrating overwhelming support by working interest owners for MHPI's development plans.

In comparison, MRC does not have any working interests in the Wolfcamp formation in Section 33. *See* Transcript Nov. 5, p. 206:20-25. And MRC only owns approximately 14% of the working interest in the Bone Spring formation in Section 33. *See* Transcript Nov. 6, p. 207:1-10. MRC's testimony and exhibits show that MRC seeks to pool between 50% - 75% of the working interest ownership in each of its cases. *See* Transcript Nov. 5, pp. 205:15-206:13.

- 50% of the working interest ownership in Case 24760;
- Approximately 25% of the working interest owners in Case 24761;
- Approximately 39% of the working interest ownership in Case 24762;
- Approximately 39% of the working interest ownership in Case 24763;
- 50% of the working interest in Case 24764;
- Approximately 25% of the working interest in Case 24765;
- Approximately 25% of the working interest in Case 24766; and
- Approximately 25% of the working interest in Case 24767.

*See* MRC Exhibit A-3. This is significantly less than the working interest support for MHPI's proposals.

**The above supports the following findings of fact and conclusions:**

- 1) Both MHPI and MRC are proposing to develop minerals in Section 33. *See* MRC Exhibit No. A, ¶4; MPHI Exhibit A, ¶15. MHPI seeks to form Bone Spring and Wolfcamp Spacing

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<sup>2</sup> Marathon Oil Company and Marathon Oil Permian LLC were recently acquired by ConocoPhillips.

Units covering Section 32 and 33. MHPI Exhibit A, ¶15. MRC seeks to form Bone Spring and Wolfcamp Spacing Units covering Sections 28 and 33. MRC Exhibit No. A, ¶4.

- 2) The MHPI and MRC cases involve a particular category of competing compulsory pooling cases which the Commission has recently analyzed: a partial overlap of proposed spacing units. In cases involving partial overlap, the Commission compared the parties' proposals and focused on which proposal avoids waste by not stranding acreage, which proposal best protects correlative rights "by presenting the best opportunity for each party to develop its own acreage", and which party had the greatest interest in their proposed unit. *Marathon Oil Permian LLC*, Order R-21416-A (Sept. 17, 2020); *Novo Oil & Gas Northern Delaware, LLC*, Order R-21420-A (Sept. 17, 2020). In neither case did the Commission's decision rely on the relative strength of the well proposals (location, density, length, etc.). *COG Operating LLC*, Order R-21826, ¶ 14 (Aug. 31, 2021).
  - 3) In the absence of other compelling factors, "working interest control...should be the controlling factor in awarding operations". Order R-10731-B, ¶ 24.
  - 4) MHPI has obtained more than 60.77% working interest ownership in the Bone Spring and 66.41% working interest ownership in the Wolfcamp. See MHPI Rebuttal Exhibit 5; Avant Notice of Dismissal. Whereas, MRC has obtained working interest control ranging between 25% - 50% of the working interest ownership. MRC Exhibit A-3. There is no significant dispute between MRC and MHPI over these numbers.
  - 5) In Section 33, the Overlap Acreage, MRC owns no interests in the Wolfcamp and only 14% of the interests in the Bone Spring. Transcript Nov. 6, p. 207:1-10.
  - 6) The evidence on working interest control is clear and strongly favors MHPI. See MHPI Rebuttal Exhibit 5; Avant Notice of Dismissal; MRC Exhibit A-3.
2. **A comparison of the geologic evidence and the potential of the parties to efficiently recover the oil and gas reserves underlying the acreage favors MHPI.**

Even though MRC does not own *any* working interests within the Wolfcamp formation, and it owns only 14% of the working interest in Bone Spring formation in Section 33, it desires to dictate how the majority working interest ownership in that Section should develop their minerals. However, the majority of working interest ownership in Sections 32 and 33 support MHPI's development plan. In part, this is because MHPI has presented both a full initial development plan and a full infill well development program, along with a drilling schedule, showing a clear intent

to develop each productive bench within the Bone Spring and Wolfcamp formations in Section 32 and 33. *See* MHPI Exhibit A-12; and MHPI Exhibit B-10.

MHPI proposed 4 Bone Spring wells and 4 Wolfcamp wells in its pooling applications; and it has further proposed and additional 12 Bone Spring infill wells. *See* MHPI Exhibit D, Self-Affirmed Statement of Eddie Behm, ¶¶ 7-8. In contrast, the evidence shows that MRC has not proposed any wells in the 1<sup>st</sup> or Upper 2<sup>nd</sup> Sand in the Bone Spring formation. *See* Transcript Nov. 5, p. 210:10-17. As a result, there is no evidence showing if or when MRC would develop these benches. MHPI has, thus, presented the most complete plan to efficiently recover oil and gas reserves underlying the acreage.

Furthermore, the most efficient way to develop the Second Bone Spring interval in Section 32 is through lay down development. There are older one-mile wells producing from the Second Bone Spring in Section 29. *See* Transcript Nov. 5, pp. 45:13-46:2. As a result, it is not possible to drill two-mile wells using a standup orientation to develop the Second Bone Spring in Section 32. *See* Transcript Nov. 5, p. 52:7-19. Testimony offered by Avant confirms that development of the Second Bone Spring in Section 32 via a stand-up orientation would require both separate/additional facilities and additional surface disturbances. Transcript Nov. 5, p 91:10-15. This is not efficient development when this acreage could be developed using lay down wells with surface facilities located in Section 33 that develop both Sections 32 and 33 using less surface disturbance. Additionally, the surface of Section 32 is covered with critical habitat for the Dunes Sage Bruch Lizard and has a “no surface disturbance” stipulation, making one mile development of the Second Bone Spring interval in Section 32 extremely challenging, if not impossible. *See* Transcript Nov. 6, pp. 41:13-24; 205:18-206:21; Transcript, Nov. 6, p 237:5-15. No one disputes that the Second Bone Spring interval is likely the most productive interval in this area. Transcript

Nov. 6, pp. 208:24-209:6. As such it is important to facilitate development of the Second Bone Spring interval to best protect correlative rights and prevent waste.

As the largest working interest owner in Sections 32 and 33, MHPI naturally proposed the most thorough development plan to maximize mineral recovery while minimizing waste. This makes perfect sense given their substantial investment in the acreage. Yet during the November Hearing, MRC and Avant sidetracked the discussion by fixating on wellbore orientation—a distraction tactic seemingly designed to wrestle away operatorship of acreage where they hold (or held) minimal interests. *See* Transcript, Nov. 6, pp. 240:10-241:3 (stating that MRC never even contacted MHPI to discuss wellbore orientation prior filing its hearing exhibits).

MRC and Avant argued that stand-up orientation was the correct orientation, relying solely on the *State of stress in the Permian Basin, Texas and New Mexico: Implications for Induced Seismicity* by Lund Snee and Zoback (Fe. 2018) (the “Zoback paper”) and pre-existing development to the South to provide the data points for their analysis. *See* Transcript Nov. 5, pp. 142:3-16; 253:7-254:12. MRC’s geologist opined that stress does not rotate clockwise around the proposed development area. MRC’s geologist instead testified that stress changed as you go west across the area, but it remained constant as you moved from South to North, even when you look up to 18 to 20 miles south of the proposed development area. *See* Transcript Nov. 5, pp. 234:4-18; 271:15-272:5. In contrast, Avant’s geologist testified that the maximum horizontal stress rotates from approximately north south in northwest Eddy to slightly southeast across the Delaware Basin in a clockwise rotation, but that the maximum horizontal stress is greater than 45 degrees in the area where the proposed development is located. *See* Transcript Nov. 5, pp. 121:13-122:8; 167:2. Both MRC and Avant testified that the closest reference points included in the Zoback paper were approximately 8-14 miles away from the proposed spacing units. *See* Transcript Nov. 5, pp.



143:21-144:11;252:23-254:12; Transcript Nov. 6, pp 132:23-129:3. However, Avant's geologist admitted that geology changes significantly across the basin, indicating that it could change over 10 miles or as little as 2 miles. *See* Transcript Nov. 5, pp. 185:20-186:1. As a result, Avant's and MRC's analysis of the maximum stress orientation in the area varied significantly. *See* Transcript Nov. 5, pp.129:1-12.

MHPI is the only party that presented evidence using actual 3-D seismic data taken from the area. *See* Transcript Nov. 6, pp. 135:16-137:6. Like Avant, MPHI offered expert opinion testimony that the maximum horizontal stress rotates around the development area. *See* Transcript Nov. 6, pp. 129:2-5; 138:6-14. However, because there are no data points in the Zoback paper located near the spacing units, MHPI's geologist researched this issue further and found additional data that helped inform her interpretation of the maximum horizontal stress. *See* Transcript Nov. 6, pp 130:12-137:6. In part, this is because Cimarex has access to private 3-D seismic data which covers the development area and it was able to compare that 3-D seismic data with focal mechanisms to confirm that the focal mechanisms align parallel with the faulting on the 3-D survey, indicating that the stress direction near that fault is at about a 45 degree angle. *See* Transcript Nov. 6, pp 136:21-137:6. This indicates that either a stand-up or lay-down orientation is appropriate. The seismic data used in MHPI's analysis is provided through a system that uses over 50 seismometers across the basin, and it is used by several major operators including ExxonMobil, ConocoPhillips, EOG and many others. *See* Transcript Nov. 6, p. 142:7-25. Following the November Hearing, Avant has stated in its Notice of Dismissal that laydown orientation is appropriate in the development area. Based on this evidence, it is clear that MHPI/Cimarex presented the most comprehensive stress orientation analysis out of the three parties.

In several competing pooling cases, parties have attempted to demonstrate the superiority of wellbore orientation, well spacing, and lateral lengths; however, when the evidence does not clearly favor one party or another, the Division and Commission have routinely looked to working interest control. Indeed, why should one party who owns *nothing* in the Wolfcamp formation and only 14% in the Bone Spring formation get to dictate wellbore orientation for the majority ownership in Sections 32 and 33?

**The above supports the following findings of fact and conclusions:**

- 1) Proposals. Each proposal covers two sections within Township 18 South, Range 34 East, N.M.P.M. Lea County, New Mexico. MHPI proposes horizontal spacing units developing Sections 32 and 33 (“MHPI Unit”). MRC proposes units developing Sections 28 and 33 (“MRC Unit”). The overlap between the units is Section 33. MHPI proposes to drill 4 Bone Spring wells and 4 Wolfcamp wells in its pooling applications; and it has further proposed and additional 12 Bone Spring infill wells. *See* MHPI Exhibit D, Self-Affirmed Statement of Eddie Behm, ¶¶ 7-8. MRC proposed to drill 8 Bone Spring wells and 4 Wolfcamp wells in its applications and it has not yet proposed any development plans in the First and Upper Second Bone Spring intervals. MHPI Exhibit B-10; Transcript Nov. 5, p. 210:10-17. The Second Bone Spring interval is likely the most productive interval in this area. Transcript Nov. 6, pp. 208:24-209:6.
- 2) Development Plans. The primary difference between the plans is wellbore orientation: MHPI proposes lay down wells and MRC proposes stand up wells. It is not possible to drill two-mile wells using a standup orientation to develop the Second Bone Spring in Section 32, due to pre-existing wells drilled in Section 29. *See* Transcript Nov. 5, p. 52:7-19; Transcript Nov. 5, pp. 45:13-46:2.
- 3) If a stand-up orientation was required for development in Sections 29, 32 and in Sections 28 and 33, separate/additional one-mile wells would have to be drilled in Section 32 to develop the Second Bone Spring, which would require additional facilities and additional surface disturbances. *See* Transcript Nov. 5, p 91:10-15. The surface of Section 32 is covered with critical habitat for the Dunes Sage Bruch Lizard and has a “no surface disturbance” stipulation, making one-mile development of the Second Bone Spring interval in Section 32 extremely challenging, if not impossible. *See* Transcript Nov. 6, pp. 41:13-24; 205:18-206:21.
- 4) Wellbore Orientation. At the hearing, both MRC argued that stand-up orientation was the correct orientation, relying solely on the Zoback paper and pre-existing development to the South to provide the data points for their analysis. *See* Transcript Nov. 5, pp. 142:3-16; 253:7-254:12. MRC opined that stress does not rotate clockwise around the proposed development area and that stress changed moving west across the area, but it remained

constant moving from South to North, even when you look up to 18 to 20 miles south of the proposed development area. *See* Transcript Nov. 5, pp. 234:4-18; 271:15-272:5.

- 5) Both MRC and Avant testified that the closest reference points included in the Zoback paper were approximately 8-14 miles away from the proposed spacing units. *See* Transcript Nov. 5, pp. 143:21-144:11; 252:23-254:12; Transcript Nov. 6, pp. 132:23-129:3. Avant's geologist testified that geology changes significantly across the basin, indicating that it could change over 10 miles or as little as 2 miles. *See* Transcript Nov. 5, pp. 185:20-186:1.
- 6) MHPI/Cimarex presented evidence using 3-D seismic data taken from the development area. *See* Transcript Nov. 6, pp. 135:16-137:6. MHPI testified that the maximum horizontal stress rotates around the development area. *See* Transcript Nov. 6, pp. 129:2-5; 138:6-14. MHPI further testified that it was able to compare that 3-D seismic data with focal mechanisms to confirm that the focal mechanisms align parallel with the faulting on a 3-D survey, indicating that the stress direction near that fault is at about a 45-degree angle. *See* Transcript Nov. 6, pp. 136:21-137:6. This indicates that either a stand-up or lay-down orientation is appropriate.
- 7) The seismic data used in MHPI's analysis is provided through a system that uses over 50 seismometers across the basin, and it is used by several major operators including ExxonMobil, ConocoPhillips, EOG and many others. *See* Transcript Nov. 6, p. 142:7-25.
- 8) The Division finds that a lay down wellbore orientation is appropriate within the subject lands and that MHPI has presented a superior development plan, with a schedule to drill infill wells proposed in the First and Upper Second Bone Spring benches.

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

Despite disagreeing with MHPI's proposed wellbore orientation, no-one at the November Hearing argued that MHPI's proposed development is risky. Instead, testimony was presented that there are several laydown wells proposed and being drilled within 6-7 miles of the proposed development area and that those wells are expected to perform similarly to standup wells drilled within the area. *See* Transcript Nov. 6, pp. 214:15-215:14. In comparison, there is a real risk that the Second Bone Spring interval in Section 32 will not be developed unless it can be developed from a surface location in Section 33. *See* MHPI Exhibit A, ¶ 39; MHPI Exhibit D, ¶ 30. This is

due to the no surface disturbance stipulations in place in Section 32 and the development restrictions put in place for the Dunes Sagebrush Lizard and Lesser Prairie Chicken. *Id.*

**The above supports the following findings of facts and conclusions:**

- 1) While MRC and Avant disputed wellbore orientation, neither party testified at the November Hearing that MHPI's proposals presented extra, or enhanced risk and MHPI testified that there are several laydown wells proposed and being drilled within 6-7 miles of the proposed development area and that those wells are expected to preform similarly to standup wells drilled within the area. *See* Transcript Nov. 6, pp. 214:15-215:14.
- 2) In comparison, MHPI testified that there is a risk that the Second Bone Spring interval in Section 32 will not be developed unless it can be developed from a surface location in Section 33. *See* MHPI Exhibit A, ¶ 39; MHPI Exhibit D, ¶ 30; Transcript, Nov. 6, pp. 208:24-209:6.

**4. MHPI engaged in good faith negotiations.**

It cannot be reasonably disputed that MHPI engaged in good faith negotiations with the parties that it seeks to force pool. MHPI Exhibit A, ¶¶ 52, 56. MHPI presented extensive amounts of evidence in this case showing that it communicated with interest owners. *See, e.g.*, MHPI Exhibit A-15. As part of its engagement with working interest owners, MHPI sent out well proposals, proposed Joint Operating Agreements, and notice letters related to its applications. *See* MHPI Exhibits A, E, and F. In these communications and notice letters, MHPI specifically informed all interest owners about the depth severance issue involved in the case and the potential different contract areas could be discussed at the Hearing and later acknowledged or addressed by the Division (to the extent necessary). *See* Exhibit A-13, pp. 154-155 of MHPI's First Amended Exhibit Packet (containing Exhibit A to the proposed Joint Operating Agreement which explains the different contract areas created due to the depth severances); Exhibit E-1 and E-4 (published notices further discussing the depth severances and potential contract areas).

All of the parties who own interests that were subject to the depth severance – except for Foran Oil Company – have now either sold their interests to MHPI or entered into voluntary agreements with MHPI indicating support for the development of the Turnpike wells. See MHPI Exhibit A, ¶40. Foran had actual knowledge of the hearing and was represented by counsel. As a result, it is clear that MHPI has diligently engaged in good faith negotiations to obtain voluntary joinder in its proposals. In comparison, MRC sent out proposed Joint Operating Agreements with an incomplete Exhibit A, which failed to list the ownership breakdown for the units. Transcript Nov. 5, pp. 210:18-211:18. And MRC has been less successful in obtaining support for its development plans.

**The above supports the following findings of facts and conclusions:**

- 1) Due public notice has been given as required by law, and OCD has jurisdiction of these cases and the subject matter.
- 2) MHPI engaged in good faith negotiation to obtain support of its applications.

5. **MHPI is the only applicant that showed it will prevent surface waste.**

The Division is required to enter orders that prevent waste. NMSA 1978, § 70-2-2. Waste is specifically prohibited under the Oil and Gas Act. *Id.* The Oil and Gas Act instructs that the losses of natural gas resulting from seepage or leakage of natural gas incident to equipping, operating or producing natural gas qualifies as surface waste. NMSA 1978, § 70-2-3(B). In these cases, MHPI was the only party that presented evidence showing that its proposed operations will result in the elimination of the surface waste of gas. This is because Cimarex will equip its Turnpike wells using a single tankless battery, only use high pressure flare when H<sub>2</sub>S is present to minimize flaring, and it will install redundant vapor recovery units to increase gas capture. See MHPI Exhibit C. In comparison, MRC did not present any evidence showing that it has plans to

enhance gas capture or reduce natural gas flaring at its proposed wells and facilities. This factor weighs heavily in favor of granting MHPI's applications.

**The above supports the following findings of facts and conclusions:**

- 1) The Oil and Gas Act, NMSA 1978 §§ 70-2-1 et seq. ("the Act"), prohibits the waste of oil and gas and delegates to the Commission authority to prevent waste and protect correlative rights. *Marathon Oil Permian LLC*, Order R-21416-A, ¶7 (Sept. 17, 2020).
- 2) MHPI presented evidence that its development plans would reduce surface waste. MHPI Exhibit C. This is because Cimarex will equip the Turnpike wells using a single tankless battery, only use high pressure flare when H<sub>2</sub>S is present to minimize flaring, and it will install redundant vapor recovery units to increase gas capture. See MHPI Exhibit C.
- 3) In comparison, MRC did not present any evidence showing that it has plans to enhance gas capture or reduce natural gas flaring at its proposed wells and facilities.
- 4) As a result, MHPI's development plan will prevent waste more effectively than MRC's proposed development plan.

**6. MHPI's proposals cost less than MRC's proposals.**

The evidence presented at hearing by MRC shows that MHPI's development is at least \$600,000 - \$700,000 less than the costs proposed by MRC for its Bone Spring wells and there is even more costs savings associated with the proposed Wolfcamp wells. See Transcript, Nov. 5, pp. 283:17-284:6. MRC had originally sent out well proposals in which its cost estimates were millions of dollars higher than Cimarex's cost estimates, which MRC testified that it has amended. MHPI Exhibit D, ¶22. However, as of the November Hearing, MHPI's engineer testified that MHPI/Coterra had not yet received those amended proposals from MRC. See Transcript, Nov. 6, pp. 200:22-201:1. As such, regardless of which costs are used, it is clear that MHPI's proposals have a lower cost than what has been proposed by MRC.

**The above supports the following findings of fact and conclusions:**

- 1) Evidence presented by both MRC and MHPI shows that the costs for MRC's proposals were higher than the costs for MHPI's proposals.

7. **Cimarex is well-situated to timely locate wells and responsibly operate on the surface.**

Cimarex has worked diligently to put together a responsible development plan for Sections 32 and 33. See MHPI Exhibit C. MHPI will develop the acreage with only 24.1 acres of disturbance, consisting of roads, two pads, a single battery and bulk lines. MHPI Exhibit C, ¶8. It has engaged with both the New Mexico State Land Office and the Bureau of Land Management ("BLM"). MHPI Exhibit A, ¶¶ 29-32; MHPI Rebuttal Exhibit 6. This engagement has included researching whether or not these agencies would approve communitization agreements for the wells; despite the existence of the depth severance. Cimarex has received preliminary approval of its proposed communitized area/spacing unit from the State Land Office. MHPI Exhibit A, ¶¶ 29-32; Transcript, Nov. 6, pp 42:4-43:20. Additionally, it has received information from BLM indicating that the federal agency will not approve a communitization agreement covering less than the entire Bone Spring formation. MHPI Rebuttal Exhibit 6; Transcript, Nov. 6, pp 42:4-43:20.

MHPI is the only party who presented evidence at hearing regarding Fish and Wildlife Service's surface development restrictions in Section 32, showing that it's plans can comply with requirements imposed under the Endangered Species Act (including the no surface disturbance restrictions in Section 32). MHPI Exhibit A, ¶39. And it has put forth a responsible facilities plan to streamline its surface use and minimize its emissions. MHPI Exhibit C. Additionally, Cimarex has access to take away for oil, gas, and water production. MHPI Exhibit C, ¶11.

**The above supports the following findings of facts and conclusions:**

- 1) Surface Factors. MHPI will develop the acreage with only 24.1 acres of disturbance, consisting of roads, two pads, a single battery and bulk lines. MHPI Exhibit C, ¶8.
- 2) Cimarex will construct a single tankless facility for the Turnpike Development Plan. Cimarex's tankless facility utilizes surge vessels rather than tanks. In doing so, Cimarex testified that it removes all high-risk emissions devices from the facility. MHPI Exhibit C, ¶12.
- 3) MHPI testified that Cimarex would invest in lowering the spill risk of the facility. MHPI Exhibit C, ¶13. Cimarex will install lined containment around all equipment and pumps. Berm switches will be installed inside the containment to minimize a spill if one should occur. *Id.* Cimarex will install stainless steel piping in high spill risk areas which significantly reduces the likelihood of a spill occurring. Cimarex will install pump seal leak detection to minimize the likelihood of a spill off the water transfer pumps. *Id.*
- 4) Cimarex is a well-established operator in Lea County. MHPI testified that Cimarex has already secured proposals for oil, water, and gas takeaway and submitted load requests to power surface equipment to develop the acreage. MHPI Exhibit C, ¶11.
- 5) Cimarex and MHPI engaged with both the NMSLO and BLM to discuss their development plans, and the approval of communitization agreements. MHPI obtained preapproval from NMSLO for a communitization agreement covering its proposed spacing units and it obtained information from BLM indicating that it would not approve depth-limited communitization agreements. MHPI Rebuttal Exhibit 6; Transcript, Nov. 6, pp 42:4-43:20.

8. **Cimarex is a prudent operator.**

Finally, Cimarex is a prudent operator. As shown in MHPI Exhibit D, ¶¶ 12 -18 and Exhibits D-1 and D-2, Cimarex is one of the highest performing operators in Lea County. The wells drilled by Cimarex, on average, have outperformed wells drilled by its competitors. As a result, Cimarex knows how to properly evaluate geology and how to execute drilling and completion operations in a manner that achieves good production results. Furthermore, Cimarex has conducted business in New Mexico for many years and was one of the first companies to drill wells Northern Lea County in order to help delineate the area.

**The above supports the following findings of fact and conclusions:**



1) MHPI's operator, Cimarex, is a reasonably prudent operator.

**Conclusion: The factors in Order R10731-B Support Granting MHPI's Applications.**

In summary, the evidence clearly shows that MHPI's applications stand apart: MHPI established the strongest working interest control, presented the most comprehensive development strategy at the lowest cost, and they are offering the only option that can prevent surface waste. As a result, the Division should grant MHPI's applications

**II. MHPI's Applications Properly Seek to Pool All the Interests Within the Bone Spring Formation.**

Despite the above factors weighing heavily in MHPI's favor, MRC argued at hearing that the Division cannot pool all of a pool/formation that contains depth severances unless separate spacing units are created for each depth severed zone. That position, however, is not codified anywhere in statute, regulation, published policies, recent notifications, or Commission precedence. While there is a line item in the compulsory pooling checklist which states "Ownership Depth Severance (including percentage above & below)", there is nothing codified in an order, rule, or statute to put applicants on-notice that this language would require applications to be filed in a particular format. Instead, the Division and Commission have handled compulsory pooling cases covering multiple geological zones, multiple pools, and in depth-severed areas in a variety of ways over the years, all of which have been considered consistent with the requirements contained in the Oil and Gas Act.

For example, in numerous cases, the Division and Commission pooled interests in multiple formations and pools under a single order; in other cases, the Division and Commission have refused to create spacing units that fail to cover an entire pool/formation; while yet still in other

cases, the agency has issued pooling orders covering only portions of a pool/formation which include specific depth limitations. The governing principle across all order variations in these cases remains consistent: the goal of the agency is to protect correlative rights and prevent waste, as mandated by the Oil and Gas Act.

There are **numerous** orders issued pursuant to the Oil and Gas Act, in which the Division pooled interests in multiple spacing units using a single order, and these orders commonly involved multiple formations.<sup>3</sup> Notifications provided in these cases were very simply and oftentimes sought compulsory pooling of the pooled formations, without mentioning or discussing the depth severance. This practice extended to both horizontal and vertical wells and took place even in cases where depth severances existed.<sup>4</sup>

In Commission case 15327, resulting in Commission Order R-14023-A, the Commission found that pooling less than an entire formation was only okay under a specific fact pattern and comments made by the Commission discourage the use of depth-limited pooling orders. *See COG Operating, LLC*, Order R-14023 – A (Dec. 10, 2015). In the months leading up to the issuance of

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<sup>3</sup>See, e.g., *Marshall & Winston, Inc.*, Order R-13372-D (Jan. 23, 2012) (pooling interests in multiple formations); Division Order R-13287-A (pooling interests in a 160-Acre oil spacing and proration unit in the Abo and Wolfcamp formations); *Heirs of H.N. Smith*, Order R-11993 (Jun. 29, 2011) (pooling all mineral interests from the surface to the base of the Abo formation to create a 40-acre oil proration unit for all formations or pools spaced on 40 acres within the vertical extent of the wellbore, which included but were not limited to the DK-Abo and DK-Drinkard pools and the undesignated Blinebery pool); *Yates Energy Corp.*, Order R-9457 (Mar. 7, 1991) (issuing a similar order pooling interests in multiple formations, from the surface to the base of the Delaware formation); see also *Yates Energy Corp.*, Order R-9214 (Jun. 9, 1990); *Yates Energy Corp.*, Order R-9502 (May 16, 1991); *Xeric Oil & Gas Corporation*, Order R-10830 (July 2, 1997); *Trilogy Operating, Inc.*, Order R-11659 (Sept. 18, 2001)).

<sup>4</sup>See, e.g., *RSC Resources Ltd. P'ship*, Order R-13329 (Oct. 22, 2010) (pooling all interests in the Abo formation and the Wolfcamp formation in the W/2 W/2 of Section 35, Township 16 South, Range 29 East, Eddy County, New Mexico where Hearing Transcript shows on pp. 24-25 that there was a depth severance within the spacing unit for that well); *COG Production, LLC*, Order R-13748 (Sept. 18, 2013) (pooling all interests within the formation despite the fact that Hearing Transcript clearly shows that the applicant presented evidence of depth severance at 5,000' and the applicant requested depth limitations be written into the pooling order); *Mewbourne Oil Co.*, Order R-13139 (Jun. 17, 2009) (issuing a pooling order that pooled various oil and gas spacing units in all formations between the surface and the Marrow formation despite the fact that there were depth severances uphole of the Marrow formation; but providing terms and conditions governing costs associated with uphole development in the depth severed zones).

Commission Order R-14023-A, the Division issued several orders in which it refused to pool less than an entire pool/formation.<sup>5</sup> On July 22, 2015, the Division likewise denied pooling in case 15327 in Division Order No. R-14023. Even though the project area contained depth severance clauses, the Division found that its rules did not explicitly permit it to force pool just a portion of a formation or pool. As a result, the Division indicated that the applicant could refile its application and seek to pool all of the mineral interests within the pool/formation. The applicant in Case 15327 sought *de novo* review before the Commission because it wanted to pool only part of a formation – creating a depth-limited spacing unit.

The Commission found that the particular facts involved in the case created sufficient justification to create a depth-limited spacing unit. Those facts showed that the deeper Tubb interval, below the base of the Blinebry, contained no recoverable hydrocarbons. As a result, pooling the entire formation would cause the owner located in the Tubb to receive a share of production even though the intervals below the base of the Blinebry did not contribute oil or gas to the proposed wellbore. Additionally, there was only one party who owned a working interest in the non-productive interval that was proposed to be excluded from the pooled unit and that party received notice of the application and did not object to the pooling. And finally, approval of the proposed spacing and proration unit would enable the majority of the working interest owners within the unit to efficiently produce the reserves underlying the Unit and protect their correlative rights.

On the record, the Commissioners stated that “one of the things that we try and do is-protect the integrity of a pool. And, you know, it's a complicated thing, pooling a portion of a pool.”

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<sup>5</sup> See e.g., *COG Operating, LLC*, Order R-14004 (July 14, 2015) (finding that the “application should be denied without prejudice to the case being reopened once again to list and ask for compulsory pooling of unsigned owners within the entire vertical limits of the Atoka; Glorieta-Yeso Pool”).

Case 15327, Transcript Dated Nov. 15, 2015, p. 39, lines 5-8. At the conclusion of the hearing the Commission requested that the order reflect that it was limited to the facts of the case presented. *Id.*, p. 87, lines 24-25 – p. 88, lines 1-20. In making these comments, the Commission encouraged the parties to try to promote situations where the parties could enter into voluntary agreements, in lieu of pooling only a portion of a formation. As such, it was clear that the Commission's intent was to continue to protect the integrity of the pools the agency had established vs. carving up pools into smaller, depth-limited units. Paragraph 22 of Order 14023 – A memorializes this directive, stating the:

The Commission recognizes that the formation of this Unit is uniquely based on the specific facts of the case and directs the Applicant to pursue other agreement options, such as a Joint Operating Agreement, to negotiate participation of mineral interest owners in order to avoid unnecessary subdivisions of existing pools.

In later orders issued by the Division, the agency further recognized that Commission Order 14023 – A was uniquely limited to the facts of that case.<sup>6</sup>

Indeed, over the years the Division has issued orders pooling interests within an entire pool/formation included within a proposed spacing unit even when there is a depth severance within the pool/formation, causing differences in ownership. *See, e.g. COG Operating, LLC*, Order R-13748 (Sept. 18, 2013) (pooling all interests within the formation despite the fact that Hearing Transcript clearly shows that the applicant presented evidence of depth severance at 5,000' and the applicant requested depth limitations be written into the pooling order); *Mewbourne Oil Co.*, Order R-13139 (Jun. 17, 2009) (issuing a pooling order that pooled various oil and gas spacing units in all formations between the surface and the Marrow formation despite the fact that

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<sup>6</sup> See Division Orders R-14653, ¶¶ 8-10; R-14189, ¶5, R-14225, ¶5.

there were depth severances up hole of the Marrow formation; but providing terms and conditions governing costs associated with up hole development in the depth severed zones).

In contrast to the Commission's precedent in Case 15327, the Division has also issued orders pooling portions of a formation or pool (sometimes referred to as depth-limited pooling orders). *See, e.g., Novo Oil & Gas, LLC*, Order R-20567 (May 29, 2019); *Percussion Petroleum Operating, LLC*, Order R-20653 (Jun. 24, 2019). However, the parties pooled under these more-recent depth-limited orders never objected to the pooling and no-one has sought *de novo* review with the Commission. As a result, there is no Commission precedent reconciling the findings in these recent Division orders with the Commission's precedent issued in Order R-14023-A. But, Commission precedent is what is binding on the Division.

Here, the facts in MHPI's cases materially differ from the facts in Case 15327/Order R-14023-A. Unlike the geologic formations involved in Case 15327, here the Bone Spring clearly has productive intervals above and below the depth severance. *See* MHPI Exhibit B-8. There is a depth severance in the Bone Spring formation located in the NW/4 and E/2 of Section 32 from the top of the First Bone Spring Interval down to the stratigraphic equivalent of 9,668' as seen on the Spectral Density Dual Spaced Neutron Log in the Matador Petroleum Corporation Zafiro State 32 Com 1. MHPI Exhibit A-7(a). There are no depth severances in the Wolfcamp formation. MHPI Exhibit A, ¶40(d). All the owners, except for one – Foran Oil Company – that are subject to the depth severance have either now sold their interests to MHPI or entered into voluntary agreements with MHPI. *See* MHPI Exhibit A, ¶40 (g-i) (noting that Delmar Holdings executed a JOA); and Attachment 1 (agreeing that Marathon is executing a mutually agreeable JOA).

Each of the wells that MHPI has proposed to drill are geologically limited by a frac baffle and, thus, they will not obtain production from multiple "contract areas." MHPI Exhibit B-8,

MHPI Exhibit B, ¶15; Transcript, Nov. 6, p. 231:9-21. As a result, it is relatively simple for MHPI/Cimarex to accurately calculate each party's respective interest under the pooling order, pursuant to the requirements contained within the Oil & Gas Act for each of the depth severed intervals (i.e., contract areas) within the Bone Spring formation. The calculation typically used for development covering multiple zones or formation is provided in Paragraphs 42-44 of Isabella Sike's self-affirmed statement. See MHPI Exhibit A. It is also possible to accurately track production from each interval since each well will produce only from a specific interval. Transcript, Nov. 6, p. 231:9-21; 194:14-195:22. MHPI testified that there will be a different separator per well and with a different separator there will be an orifice meter and a Coriolis meter that will be allocated back to those wells. Transcript, Nov. 6, p. 231:9-21; 194:14-195:22. And MHPI/Cimarex are willing to agree to any necessary metering stipulations that might be required to ensure that Foran obtains the correct share of production. *Id.* Consequently, there is no need to bifurcate the Bone Spring formation into different spacing units to protect correlative rights.

In the early stages of these cases, when MRC and Avant were pressing to force pool the acreage in Sections 32 and 33, there were numerous other depth severances in Section 32. MHPI Exhibit A-10. With great effort, MHPI has been able to acquire and consolidate interests in the Section to merge many of the depth severances back together – eliminating most of these issues. MHPI Exhibit A, ¶40. MHPI has now received a voluntary agreement from every owner impacted by the depth severance other than Foran. Thus, it is reasonable to expect that MHPI/Coterra might be able to reach an agreement with the remaining working interest owner in the future. As a result, it would be shortsighted in this case to require the creation of two separate Bone Spring spacing units.

**The above analysis supports the following findings of fact and conclusions:**

- 1) There is a depth severance in the Bone Spring formation located in the NW/4 and E/2 of Section 32 from the top of the First Bone Spring Interval to the stratigraphic equivalent of 9,668' as seen on the Spectral Density Dual Spaced Neutron Log in the Matador Petroleum Corporation Zafiro State 32 Com 1. MHPI Exhibit A, ¶40(b).
- 2) There are no depth severances in the Wolfcamp formation. MHPI Exhibit A, ¶40(d).
- 3) All the owners, except for one – Foran Oil Company, that are subject to the depth severance have sold their interests to MHPI or entered into voluntary agreements with MHPI. MHPI Exhibit A, ¶40 (g-i) (noting that Delmar Holdings executed a JOA); and Attachment 1 (agreeing that Marathon will execute a mutually agreeable JOA).
- 4) Foran Oil Company owns less interests from the surface to the stratigraphic equivalent of 9,668' and owns a higher working interest percentage in the lower depths of the Bone Spring formation. MHPI Exhibit A, ¶40(g); MHPI Exhibit A-8, p. 110 (showing a working interest of 9.780900%).
- 5) A frac baffle exists between the two depth severed zones in the Bone Spring formation and wells can be drilled in each depth severance zone without obtaining production from the other depth severed zone within the Bone Spring. MHPI Exhibit B-8, MHPI Exhibit B, ¶15; Transcript, Nov. 6, p. 231:9-21. MHPI testified that there will be a different separator per well and with a different separator there will be an orifice meter and a Coriolis meter that will be allocated back to those wells. Transcript, Nov. 6, p. 231:9-21; 194:14-195:22.
- 6) MHPI is willing to agree to stipulations as to the quality of the meters, calibration dates, the requirement that those meters stay in place, and that production is separate and metered prior to commingling. *Id.*
- 7) Without the pooling of the entire Bone Spring formation, including the Second Bone Spring interval, the controlling working interest ownership in Section 32 cannot develop the most prospective zone within Section 32 and their correlative rights will be impacted.

### **III. The Division and Commission Have Discretion to Issue Orders Which Best Protect Correlative Rights.**

In lieu of splitting up the Bone Spring into multiple zones in Section 32, the Division should issue an order which protects the correlative rights of these working interest owners – the majority of which who desire to develop their minerals now pursuant to the development plan proposed by MHPI – not MRC.

In *Viking Petroleum, Inc. v. Oil Conservation Comm'n*, 1983-NMSC-091, 100 N.M. 451, 672 P.2d 280, the New Mexico Supreme Court indicated that the granting of or refusal to grant forced pooling of multiple zones with an election to participate in less than all zones, the amount of costs to be reimbursed to the operator, and the percentage risk charge to be assessed, if any, are all determinations to be made by the Commission (or Division) on a **case-to-case basis and upon the particular facts in each case**. The Division and Commission, however, are required by statute to enter whatever orders are necessary to prevent waste and to protect correlative rights.

This is because the Division's and Commission's primary statutory duty is "to prevent waste prohibited by this act and to protect correlative rights, as in this act provided." NMSA 1978, § 70-2-11(A). This is the fundamental jurisdictional mandate upon which all the agencies' decisions must rest. *See, Continental v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962). The prevention of waste and the protection of correlative rights is so paramount that the Act empowers the Division and Commission to "make and enforce rules, regulations and orders, and **do whatever may be reasonably necessary** to carry out the purposes of this act, **whether or not indicated or specified in any section of the act.**" NMSA 1978, § 70-2-11(A) (emphasis added). *See also Santa Fe Exploration v. Oil Conservation Comm'n*, 114 N.M. 103, 835 P.2d 819 (1992). Further, the pooling statute provides that all orders affecting pooling "**shall be** upon such terms and conditions as are **just and reasonable** and will afford to the owner or owners of each tract or interest in the unit the opportunity to recover or receive without unnecessary expense his **just and fair share of the oil or gas** or both." NMSA 1978, §70-2-17(C) (emphasis added).




Here, MHPI's applications best protect the correlative rights of the working interest owners in Sections 32 and 33. And they are the only applications that eliminate surface waste. Furthermore, MHPI stated on the record that it is willing to agree to additional protections, if requested by the Division. But, if the Division sees a different solution that is in the best interest of protecting the correlative rights, MHPI is willing and able to take additional steps to help further its planned development in Sections 32 and 33.

Indeed, the Division has already taken several actions during the course of this hearing in accordance with the above. It has continued MRC's cases to a later docket date to perfect a belated notice and it moved the dates of this filing to accommodate the closing of the Coterra/Avant acquisition. Likewise, the Division has the power to issue terms and conditions to further its statutory directives, when it determines that doing so will protect correlative rights and prevent waste.

### **CONCLUSION**

Based on the foregoing, the Division should enter an order granting MHPI's applications and other any other further relief that it sees fit. Attached as **Attachment 2** is a complete list of proposed findings of fact and conclusions of law, based on the above.

Respectfully submitted,

By:   
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**CERTIFICATE OF SERVICE**

I hereby certify that on February 3, 2025, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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By:   
Jennifer L. Bradfute

# ATTACHMENT 1



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432-265-6834

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January 31<sup>st</sup>, 2025

**Via Email**

Coterra Energy Inc.  
Attn: Ashley St. Pierre  
6001 Deauville Blvd, Suite 300N  
Midland, TX 79706  
ashley.stpierre@coterra.com

**RE:** Case Nos. 24632-24633, 24756-24759, and 24913-24916 located in Sections 33 & 32 in Township 18 South, Range 34 East, NMPM, Lea County, New Mexico and Sections 29 & 32 in Township 18 South, Range 34 East, NMPM, Lea County, New Mexico (the “**Lands**”).

Dear Ms. St. Pierre:

This letter agreement (“**Agreement**”) dated January 31<sup>st</sup> 2025, is between Marathon Oil Company (“**MRO**”), Coterra Energy Inc, Cimarex Energy Co. of Colorado, Coterra Energy Operating Co.,\* and Magnum Hunter Production, Inc. (collectively “**CTRA**”) and shall serve as a mutually agreeable understanding regarding Case Nos. 24632-24633, 24756-24759, and 24913-24916 (“**Daytona and Turnpike 33-32 Cases**”) currently pending before the New Mexico Oil Conservation Division (“**NMOCD**”) affecting the Turnpike 33-32 and Daytona wells (as defined below).

On or around November 21, 2024, Coterra and Avant caused to be sent certain well proposals for the following wells (collectively, the “**Daytona and Turnpike 33-32 Wells**”) for development of the Lands:

Well Name	Well Name
1. Daytona 29 Fed Com #301H	9. Turnpike 33-32 State Com 701H
2. Daytona 29 Fed Com #601H	10. Turnpike 33-32 State Com 702H
3. Daytona 29 Fed Com #302H	11. Turnpike 33-32 State Com 703H
4. Daytona 29 Fed Com #602H	12. Turnpike 33-32 State Com 704H
5. Daytona 29 Fed Com #303H	13. Turnpike 33-32 State Com 211H
6. Daytona 29 Fed Com #603H	14. Turnpike 33-32 State Com 212H
7. Daytona 29 Fed Com #304H	15. Turnpike 33-32 State Com 213H
8. Daytona 29 Fed Com #604H	16. Turnpike 33-32 State Com 214H

\* On January 17, 2025, Coterra Energy Operating Co. acquired the assets of Avant Natural

The Turnpike 33-32 and Daytona Cases are set for closing arguments on February 3<sup>rd</sup>, 2025.

In order to avoid further delay of the Turnpike 33-32 and Daytona Cases and allow MRO the option to participate in the drilling of the Turnpike 33-32 and Daytona Wells under a Joint Operating Agreement ("JOA"), the Parties hereby agree as follows:

1. **Participation in Turnpike 33-32/Daytona Wells & No Cash Call.** In exchange for MRO not delaying the hearing further for CTRA's Turnpike 33-32 Wells and Daytona Wells, MRO agrees CTRA may proceed to closing statements on February 3<sup>rd</sup>, 2025, but shall give MRO sixty (60) days from the date of this Agreement to continue to negotiate and enter into an acceptable form of JOA for the Turnpike and Daytona Wells. Upon MRO's execution of the respective JOA, CTRA agrees to dismiss MRO from the applicable pooling cases. Furthermore, under no circumstance shall MRO be subject to a cash call provision due under any NMOCD pooling order granted for the Turnpike 33-32 or Daytona Cases or subsequent wells in such spacing units until expiration of sixty (60) days from the date of this Agreement.
2. **Good Faith Negotiations: MRO and CTRA** shall continue to negotiate and enter into an acceptable form of JOA. In the event of any conflict between the provisions of any order of the NMOCD and the terms and conditions of the jointly executed JOA, the provisions of JOA shall prevail to resolve any such conflict.

If you agree with the terms of this Agreement as provided above, please execute in the space provided below and return a signed version to my attention. Upon receipt, I will provide ConocoPhillips' execution and return a fully executed version for your records. If you have any questions, contact Klarriza Carrillo by phone at (432) 265-6834 or by email at klarriza.carrillo@conocophillips.com.

Sincerely,

Klarriza Carrillo  
Associate Land Negotiator

AGREED TO this 21 day of January 2025 by:

Marathon Oil Company

By: [Signature] KRC  
VRC  
Name: Jon-Aaron N. House  
Title: Attorney-in-fact

AGREED TO this 31 day of January 2025 by:

Marathon Oil Permian LLC

By: [Signature] KRC  
VRC  
Name: Jon-Aaron N. House  
Title: Attorney-in-fact

AGREED TO this 31 day of January 2025 by:

Coterra Energy Inc.

By: Ashley St. Pierre  
Name: Ashley St. Pierre  
Title: Senior Landman

AGREED TO this 31 day of January 2025 by:

Magnum Hunter Production, Inc.

By: Ashley St. Pierre  
Name: Ashley St. Pierre  
Title: Senior Landman

AGREED TO this 31 day of January 2025 by:

Cimarex Energy of Colorado

By: Ashley St. Pierre  
Name: Ashley St. Pierre  
Title: Senior Landman

AGREED TO this 31 day of January 2025 by:

Coterra Energy Operating Co.

By: Ashley St. Pierre  
Name: Ashley St. Pierre  
Title: Senior Landman

## ATTACHMENT 2

FINDINGS AND CONCLUSIONS

- 1) Due public notice has been given as required by law, and OCD has jurisdiction of these cases and the subject matter.
- 2) These cases involve competing compulsorily pooling applications with overlapping horizontal spacing units filed by Magnum Hunter Production, Inc. (“MHPI”), Avant Operating, LLC (“Avant”), and MRC Permian Company (“MRC”). These cases were consolidated for hearing and a single order is being issued for the consolidated cases. Cimarex Energy Co. of Colorado (“Cimarex”) is the operating entity for the interests owned by MHPI.
- 3) On January 31, 2025, Avant dismissed its applications and supported MHPI’s applications.
- 4) Both MHPI and MRC have the right to drill within the proposed spacing units, and each seeks to be named operator of their proposed wells and spacing units
- 5) Applications: MHPI Case Nos. 24913-24916 and 24756 - 24759.
  - a. **Case No. 24913:** MHPI seeks to pool a 320.00-acre, more or less, spacing and proration unit in the Bone Spring compromised as the S/2 N/2 of Sections 33 and 32 in Township 18 South, Range 34 East, NMPM, Lea County, New Mexico. MHPI intends to dedicate to the unit one initial well: **Turnpike 33-32 State Com 213H.**
  - b. **Case No. 24914:** MHPI seeks to pool a 320.00-acre, more or less, spacing and proration unit in the Bone Spring compromised as the N/2 S/2 of Sections 33 and 32 in Township 18 South, Range 34 East, NMPM, Lea County, New Mexico. MHPI intends to dedicate to the unit one initial well: **Turnpike 33-32 State Com 212H.**
  - c. **Case No. 24915:** MHPI seeks to pool a 320.00-acre, more or less, spacing and proration unit in the Bone Spring compromised as the S/2 S/2 of Sections 33 and 32 in Township 18 South, Range 34 East, NMPM, Lea County, New Mexico. MHPI intends to dedicate to the unit one initial well: **Turnpike 33-32 State Com 211H.**
  - d. **Case No. 24916:** MHPI seeks to pool a 320.00-acre, more or less, spacing and proration unit in the Bone Spring compromised as the N/2 N/2 of Sections 33 and 32 in Township 18 South, Range 34 East, NMPM, Lea County, New Mexico. MHPI intends to dedicate to the unit one initial well: **Turnpike 33-32 State Com 214H.**
  - e. **Case No. 24756:** MHPI seeks to pool a 320.00-acre, more or less, spacing and proration unit in the Wolfcamp compromised as the S/2 S/2 of Sections 33 and 32 in Township 18 South, Range 34 East, NMPM, Lea County, New Mexico. MHPI intends to dedicate to the unit one initial well: **Turnpike 33- 32 State Com 701H.**
  - f. **Case No. 24757:** MHPI seeks to pool a 320.00-acre, more or less, spacing and proration unit in the Wolfcamp compromised as the N/2 S/2 of Sections 33 and 32 in Township 18 South, Range 34 East, NMPM, Lea County, New Mexico. MHPI intends to dedicate to the unit one initial well: **Turnpike 33- 32 State Com 702H.**
  - g. **Case No. 24758:** MHPI seeks to pool a 320.00-acre, more or less, spacing and proration unit in the Wolfcamp compromised as the S/2 N/2 of Sections 33 and 32 in Township 18 South, Range 34 East, NMPM, Lea County, New Mexico. MHPI intends to dedicate to the unit one initial well: **Turnpike 33- 32 State Com 703H.**
  - h. **Case No. 24759:** MHPI seeks to pool a 320.00-acre, more or less, spacing and proration unit in the Wolfcamp compromised as the N/2 N/2 of Sections 33 and 32 in Township 18 South, Range 34 East, NMPM, Lea County, New Mexico. MHPI intends to dedicate to the unit one initial well: **Turnpike 33- 32 State Com 704H.**
- 6) Applications: MHPI Case Nos. 24760-24767
  - a. **Case 24760:** MRC seeks to pool a standard 320-acre horizontal spacing unit in the Bone Spring formation underlying the W/2 W/2 of Sections 28 and 33, for the proposed **Bobby Pickard State Com #121H.**

- b. **Case 24761:** MRC seeks to pool a standard 320-acre horizontal spacing unit in the Bone Spring formation underlying the E/2 W/2 of Sections 28 and 33, for the proposed **Bobby Pickard State Com #122H**.
  - c. **Case 24762:** MRC seeks to pool a standard 320-acre horizontal spacing unit in the Bone Spring formation underlying the W/2 E/2 of Sections 28 and 33, for the proposed **Bobby Pickard State Com #123H**.
  - d. **Case 24763:** MRC seeks to pool a standard 320-acre horizontal spacing unit in the Bone Spring formation underlying the E/2 E/2 of Sections 28 and 33, for the proposed **Bobby Pickard State Com #124H**.
  - e. **Case 24764:** MRC seeks to pool a standard 320-acre horizontal spacing unit in the Wolfcamp formation underlying the W/2 W/2 of Sections 28 and 33, for the proposed **Bobby Pickard State Com #241H**.
  - f. **Case 24765:** MRC seeks to pool a standard 320-acre horizontal spacing unit in the Wolfcamp formation underlying the E/2 W/2 of Sections 28 and 33, for the proposed **Bobby Pickard State Com #242H**.
  - g. **Case 24766:** MRC seeks to pool a standard 320-acre horizontal spacing unit in the Wolfcamp formation underlying the E/2 E/2 of Sections 28 and 33, for the proposed **Bobby Pickard State Com #244H**.
  - h. **Case 24767:** MRC seeks to pool a standard 320-acre horizontal spacing unit in the Wolfcamp formation underlying the W/2 E/2 of Sections 28 and 33, for the proposed **Bobby Pickard State Com #243H**.
- 7) Hearing. All cases, including Avant's applications, were heard at an OCD hearing docket on November 5-6, 2024. The hearing, which took place at Pecos Hall, Wendell Chino Building and was available on a virtual platform, was conducted in accordance with the hearing procedures in 19.15.4 NMAC. MHPI, Avant and MRC presented witnesses and exhibits. No other party presented evidence. All of the witnesses were sworn, were qualified to present expert opinion testimony and were subject to cross-examination by the other parties and by the OCD Hearing Examiners.
  - 8) Other parties who appeared on the record at the Hearing were Franklin Mountain Energy E, LLC, Foran Oil Company, Marathon Oil Permian LLC, NexGen Capital Resources, LLC, Mewbourne Oil Company, and EOG Resources, Inc.
  - 9) MHPI Presented four witnesses:
    - a. Isabella Sikes, Landman
    - b. Staci Frey, Geologist
    - c. Calvin Boyle, Facilities Engineer
    - d. Eddie Behm, Petroleum Engineer
  - 10) MRC Presented three witnesses:
    - a. Clay Wooten, Landman
    - b. Andrew Parker, Geologist
    - c. Tanner Schulz, Engineer
  - 11) Avant presented three witnesses:
    - a. Sophia Guerra, Landman
    - b. Joh Haper, Geologist
    - c. Shane Kelly, Petroleum Engineer
  - 12) Franklin Mountain stated on the record that there is an ownership dispute in Section 28 between Franklin Mountain and ConocoPhillips, in acreage involved in MRC's applications. Avant and MHPI testified about title differences in Section 32; however, those title differences were resolved on January 31, 2025, as stated in Avant's Notice of Dismissal.

- 13) Legal Background. The Oil and Gas Act authorizes OCD to compulsory pool the lands or interests in a spacing unit. When the owners of the interests in a spacing unit have not agreed to voluntarily pool their interests, and when one owner, who has the right to drill, applies to OCD, OCD can pool the lands or interests in the unit “to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste”. Section 70-2-17.C.
- 14) The Oil Conservation Commission (“Commission”) and the OCD have developed a number of factors to consider in evaluating competing compulsory pooling applications.
- 15) The Commission, in a 1997 order involving vertical well proposals, concluded that “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.” *KCS Medallion Resources, Inc.*, Order R-10731-B, ¶ 23(f) (Feb. 28, 1997). In this Order, the Commission also listed several other factors such as lack of good faith negotiation, differences in proposed risk charge and ability to prudently operate the property but concluded that in the absence of “any reason why one operator would economically recover more oil or gas by virtue of being awarded operations than the other”, “working interest control” would be the “controlling factor”. *Id.* ¶ 24.
- 16) Since then, OCD and Commission decisions have applied the factors in Order R-10731-B, with some additions, in compulsory pooling cases including those involving horizontal well proposals. In a recent decision, the Commission listed the factors it “may consider” in evaluating competing compulsory pooling applications:
  - a. 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.
  - b. A comparison of the risk associated with the parties' respective proposal for the exploration and development of the property.
  - c. 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.
  - d. A comparison of the ability of each party to prudently operate the property and, thereby, prevent waste.
  - e. A comparison of the differences in well cost estimates (AFEs) and other operational costs presented by each party for their respective proposals.
  - f. An evaluation of the mineral interest ownership held by each party at the time the application was heard
  - g. A comparison of the ability of the applicants to timely locate well sites and to operate on the surface (the "surface factor"). Order R-21420, ¶ 9 (9/17/2020).
- 17) The MHPI and MRC cases involve a particular category of competing compulsory pooling cases which the Commission has recently analyzed: a partial overlap of proposed spacing units. In cases involving partial overlap, the Commission compared the parties’ proposals and focused on which proposal avoids waste by not stranding acreage, which proposal best protects correlative rights “by presenting the best opportunity for each party to develop its own acreage”, and which party had the greatest interest in their proposed unit. *Marathon Oil Permian LLC*, Order R-21416-A (Sept. 17, 2020); *Novo Oil & Gas Northern Delaware, LLC*, Order R-21420-A (Sept. 17, 2020). In neither case did the Commission’s decision rely on the relative strength of the well proposals (location, density, length, etc.). *COG Operating LLC*, Order R-21826, ¶ 14 (Aug. 31, 2021). In the absence of other compelling factors, "working interest control...should be the controlling factor in awarding operations”. Order R-10731-B, ¶ 24.
- 18) Proposals. Each proposal covers two sections within Township 18 South, Range 34 East, N.M.P.M. Lea County, New Mexico. MHPI proposes horizontal spacing units developing Sections 32 and 33 (“MHPI Unit”). MRC proposes units developing Sections 28 and 33 (“MRC Unit”). The overlap between the units is Section 33. MHPI proposes to drill 4 Bone Spring wells and 4 Wolfcamp wells in its pooling



applications; and it has further proposed and additional 12 Bone Spring infill wells. *See* MHPI Exhibit D, ¶¶ 7-8. MRC proposed to drill 8 Bone Spring wells and 4 Wolfcamp wells in its applications and it has not yet proposed any development plans in the First and Upper Second Bone Spring intervals. MHPI Exhibit B-10; Transcript Nov. 5, p. 210:10-17. The Second Bone Spring interval is likely the most productive interval in this area. Transcript Nov. 6, pp. 208:24-209:6.

- 19) Overlap. Both MHPI and MRC are proposing to develop minerals in Section 33. *See* MRC Exhibit No. A, ¶4; MPHPI Exhibit A, ¶15. MHPI seeks to form Bone Spring and Wolfcamp Spacing Units covering Section 32 and 33. MHPI Exhibit A, ¶15. MRC seeks to form Bone Spring and Wolfcamp Spacing Units covering Sections 28 and 33. MRC Exhibit No. A, ¶4.
- 20) Working Interest Control. MHPI has obtained more than 60.77% working interest ownership in the Bone Spring and 66.41% working interest ownership in the Wolfcamp. *See* MHPI Rebuttal Exhibit 5; Avant Notice of Dismissal. Whereas, MRC has obtained working interest control ranging between 25% - 50% of the working interest ownership. MRC Exhibit A-3. There is no significant dispute between MRC and MHPI over these numbers.
- 21) Ownership in the Overlap Acreage. In Section 33, the Overlap Acreage, MRC owns no interests in the Wolfcamp and only 14% of the interests in the Bone Spring. Transcript Nov. 6, p. 207:1-10.
- 22) The evidence on working interest control is clear and strongly favors MHPI. *See* MHPI Rebuttal Exhibit 5; Avant Notice of Dismissal; MRC Exhibit A-3.
- 23) Development Plans. The primary difference between MRC's and MHPI's development plans is wellbore orientation: MHPI proposes lay down wells and MRC proposes stand up wells. It is not possible to drill two-mile wells using a standup orientation to develop the Second Bone Spring in Section 32, due to pre-existing wells drilled in Section 29. *See* Transcript Nov. 5, p. 52:7-19; Transcript Nov. 5, pp. 45:13-46:2.
- 24) Avant and MHPI testified that if a stand-up orientation was required for development in Sections 29, 32 and Sections 28 and 33, separate/additional one-mile wells would have to be drilled in Section 32 to develop the Second Bone Spring, which would require additional facilities and additional surface disturbances. *See* Transcript Nov. 5, p 91:10-15. The surface of Section 32 is also covered with critical habitat for the Dunes Sage Bruch Lizard and has a "no surface disturbance" stipulation, making one-mile development of the Second Bone Spring interval in Section 32 extremely challenging, if not impossible. *See* Transcript Nov. 6, pp. 41:13-24; 205:18-206:21.
- 25) Wellbore Orientation. At the hearing, MRC and Avant argued that stand-up orientation was the correct orientation, relying solely on a paper entitled *State of stress in the Permian Basin, Texas and New Mexico: Implications for Induced Seismicity* by Lund Snee and Zoback (Fe. 2018) (the "Zoback paper") and pre-existing development to the South to provide the data points for their analysis. *See* Transcript Nov. 5, pp. 142:3-16; 253:7-254:12. MRC opined that stress does not rotate clockwise around the proposed development area and that stress changed moving west across the area, but it remained constant moving from South to North, even when you look up to 18 to 20 miles south of the proposed development area. *See* Transcript Nov. 5, pp. 234:4-18; 271:15-272:5. Both MRC and Avant testified that the closest reference points included in the Zoback paper were approximately 8-14 miles away from the proposed spacing units. *See* Transcript Nov. 5, pp. 143:21-144:11; 252:23-254:12; Transcript Nov. 6, pp 132:23-129:3. Avant's geologist testified that geology changes significantly across the basin, indicating that it could change over 10 miles or as little as 2 miles. *See* Transcript Nov. 5, pp. 185:20-186:1. MHPI/Cimarex presented evidence using 3-D seismic data taken from the development area. *See* Transcript Nov. 6, pp. 135:16-137:6. MPHPI testified that the maximum horizontal stress rotates around the development area. *See* Transcript Nov. 6, pp. 129:2-5; 138:6-14. MHPI further testified that it was able to compare that 3-D seismic data with focal mechanisms to confirm that the focal mechanisms align parallel with the faulting on a 3-D survey, indicating that the stress direction near

that fault is at about a 45-degree angle. *See* Transcript Nov. 6, pp 136:21-137:6. This indicates that either a stand-up or lay-down orientation is appropriate. Following the hearing, Avant conceded that lay down development was acceptable.

- 26) The seismic data used in MHPI's analysis is provided through a system that uses over 50 seismometers across the basin, and it is used by several major operators including ExxonMobil, ConocoPhillips, EOG and many others. *See* Transcript Nov. 6, p. 142:7-25.
- 27) While MRC and Avant disputed wellbore orientation, neither party testified at the Hearing that MHPI's proposals presented extra, or enhanced risk and MHPI testified that there are several laydown wells proposed and being drilled within 6-7 miles of the proposed development area and that those wells are expected to perform similarly to standup wells drilled within the area. *See* Transcript Nov. 6, pp. 214:15-215:14.
- 28) In comparison, MHPI testified that there is a risk that the Second Bone Spring interval in Section 32 will not be developed unless it can be developed from a surface location in Section 33. *See* MHPI Exhibit A, ¶ 39; MHPI Exhibit D, ¶ 30; Transcript, Nov. 6, pp. 208:24-209:6.
- 29) The Division finds that a lay down wellbore orientation is appropriate within the subject lands and that MHPI has presented a superior development plan, with a schedule to drill infill wells proposed in the First and Upper Second Bone Spring benches.
- 30) Surface Factors. MHPI will develop the acreage with only 24.1 acres of disturbance, consisting of roads, two pads, a single battery and bulk lines. MHPI Exhibit C, ¶8. Cimarex will construct a single tankless facility for the Turnpike Development Plan. Cimarex's tankless facility utilizes surge vessels rather than tanks. In doing so, Cimarex testified that it removes all high-risk emissions devices from the facility. MHPI Exhibit C, ¶12.
- 31) MHPI testified that Cimarex would invest in lowering the spill risk of the facility. MHPI Exhibit C, ¶13. Cimarex will install lined containment around all equipment and pumps. Berm switches will be installed inside the containment to minimize a spill if one should occur. *Id.* Cimarex will install stainless steel piping in high spill risk areas which significantly reduces the likelihood of a spill occurring. Cimarex will install pump seal leak detection to minimize the likelihood of a spill off the water transfer pumps. *Id.*
- 32) Cimarex is a well-established operator in Lea County. MHPI testified that Cimarex has already secured proposals for oil, water, and gas takeaway and submitted load requests to power surface equipment to develop the acreage. MHPI Exhibit C, ¶11.
- 33) Cimarex and MHPI also engaged with both the NMSLO and BLM to discuss their development plans, and the approval of communitization agreements. MHPI obtained preapproval from NMSLO for a communitization agreement covering its proposed spacing units and it obtained information from BLM indicating that it would not approve depth-limited communitization agreements. MHPI Rebuttal Exhibit 6; Transcript, Nov. 6, pp 42:4-43:20.
- 34) Evidence presented by both MRC and MHPI shows that the costs for MRC's proposals were higher than the costs for MHPI's proposals.
- 35) MHPI engaged in good faith negotiation to obtain support of its applications.
- 36) MHPI's operator, Cimarex, is a reasonably prudent operator.

- 37) The Oil and Gas Act, NMSA 1978 §§ 70-2-1 et seq. (“the Act”), prohibits the waste of oil and gas and delegates to the Commission authority to prevent waste and protect correlative rights. *Marathon Oil Permian LLC*, Order R-21416-A, ¶7 (Sept. 17, 2020).
- 38) MHPI presented evidence that its development plans would reduce surface waste. MHPI Exhibit C. This is because Cimarex will equip the Turnpike wells using a single tankless battery, only use high pressure flare when H<sub>2</sub>S is present to minimize flaring, and it will install redundant vapor recovery units to increase gas capture. See MHPI Exhibit C.
- 39) In comparison, MRC did not present any evidence showing that it has plans to enhance gas capture or reduce natural gas flaring at its proposed wells and facilities. As a result, MHPI’s development plan will prevent waste more effectively than MRC’s proposed development plan.
- 40) Other Factors: There is a depth severance in the Bone Spring formation located in the NW/4 and E/2 of Section 32 from the top of the First Bone Spring Interval to the stratigraphic equivalent of 9,668’ as seen on the Spectral Density Dual Spaced Neutron Log in the Matador Petroleum Corporation Zafiro State 32 Com 1. MHPI Exhibit A, ¶40(b). There are no depth severances in the Wolfcamp formation. MHPI Exhibit A, ¶40(d). All the owners, except for one – Foran Oil Company – that are subject to the depth severance have sold their interests to MHPI or entered into voluntary agreements with MHPI. MHPI Exhibit A, ¶40 (g-i) (noting that Delmar Holdings executed a JOA); and Attachment 1 (agreeing that Marathon is executing a JOA).
- 41) A frac baffle exists between the two depth severed zones in the Bone Spring formation and wells can be drilled in each depth severance zone without obtaining production from the other depth severed zone within the Bone Spring. MHPI Exhibit B-8, MHPI Exhibit B, ¶15; Transcript, Nov. 6, p. 231:9-21. MHPI testified that there will be a different separator per well and with a different separator there will be an orifice meter and a Coriolis meter that will be allocated back to those wells. Transcript, Nov. 6, p. 231:9-21; 194:14-195:22. MHPI is willing to agree to stipulations as to the quality of the meters, calibration dates, the requirement that those meters stay in place, and that production is separate and metered prior to commingling. *Id.*
- 42) Without the pooling of the entire Bone Spring formation, including the Second Bone Spring interval, the controlling working interest ownership in Section 32 cannot develop the most prospective zone within Section 32 and their correlative rights will be impacted.
- 43) OCD concludes that, following the Commission’s precedent in analyzing proposed overlapping spacing units, the MHPI’s applications prevent waste and protect correlative rights.
- 44) MHPI will dedicate the well(s) described in Exhibit A (“Well(s)”) to the MHPI Unit.
- 45) MHPI proposes the supervision and risk charges for the Well(s) described in Exhibit A.
- 46) MHPI identified the owners of uncommitted interests in oil and gas minerals in the MHPI Unit and provided evidence that notice was given.
- 47) The MHPI Unit contains separately owned uncommitted interests in oil and gas minerals. Some of the owners of the uncommitted interests have not agreed to commit their interests to the MHPI Unit.
- 48) The pooling of uncommitted interests in the MHPI Unit will prevent waste and protect correlative rights, including the drilling of unnecessary wells.