

ALSO FILED IN COMPETING CASES:

APPLICATION OF TUMBLER OPERATING PARTNERS, Case Nos. 25462-25465

APPLICATION OF TUMBLER OPERATING PARTNERS, Case No. 25466

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

**APPLICATIONS OF MARATHON OIL PERMIAN, LLC
FOR COMPULSORY POOLING AND APPROVAL OF
NON-STANDARD UNIT,
LEA COUNTY, NEW MEXICO**

Case No.25541, 25542

OBJECTIONS TO MARATHON OIL PERMIAN, LLC'S AMENDED EXHIBITS

Tumbler Operating Partners, LLC ("Tumbler") hereby objects to Exhibit A-13 and Exhibit B-5 submitted as part of Marathon Oil Permian, LLC's ("Marathon") Amended Exhibits, filed October 7, 2025. These exhibits exceed the scope of the Division's limited post-hearing directive, which was intended only to clarify discrete issues. Instead, Marathon seeks to expand the record by introducing new exhibits, new written testimony, and new conclusions that fall outside its witness's expertise. Allowing this submission would contravene the Division's procedural framework under 19.15.4 NMAC, unduly prejudice Tumbler because the belatedly offered evidence and testimony cannot be tested by cross-examination or rebuttal at this point in the proceeding, contrary to 19.15.4.17(A) NMAC, and would erode confidence in the finality of the hearing record. Both Exhibits A-13 and Exhibit B-5 should therefore be excluded from the record.

ARGUMENT

Division rules expressly provide that written testimony is subject to cross-examination and that all parties shall be afforded a "full opportunity" to present evidence, which should include an opportunity to rebut another party's evidence. *See* 19.15.4.14(B) NMAC ("The witness shall be present at the hearing and shall adopt, under oath, the prepared written testimony, subject to cross-examination and motions to strike unless the witness' [sic] presence at hearing is waived upon notice to other parties and without their objection."); *see also* 19.15.4.17(A) NMAC ("Subject to

other provisions of 19.15.4.16 NMAC, the commission or division examiner shall afford full opportunity to the parties at an adjudicatory hearing before the commission or division examiner to present evidence and to cross-examine witnesses.”). Marathon’s proffer of Exhibits A-13 and B-5 improperly evades the express requirements of the Division and thereby causes undue prejudice to Tumbler. *See, e.g., Armijo v. Armijo*, 1982-NMCA-124, ¶ 10, 98 N.M. 518 (recognizing that a party “is prejudiced simply by not having the opportunity in cross-examination to challenge the witness’ credibility and the weight of his testimony”). Marathon’s Exhibits A-13 and B-5 should therefore be excluded from the record.

I. Marathon’s new Exhibit A-13—Supplemental Self-Affirmed Statement of Sean Miller—should be excluded because it improperly offers new testimony denying Tumbler an opportunity for cross-examination and was not requested by the technical examiner.

Marathon’s Exhibit A-13 is the Supplemental Self-Affirmed Statement of Sean Miller, which was filed in both Case Nos. 25541 and 25542. Exhibit A-13 contains new and additional written testimony that was not requested by the technical examiner.

At the close of hearing on October 1, 2025, the technical examiner requested that Marathon supplement its exhibits, in pertinent part:

We’ll need to have Marathon conduct a review of the AFEs that are referenced within this exhibit packet and then provide a supplement exhibit with those corrected AFEs, assuming corrections are needed. If not, if you can provide a statement saying that amendment is not required to them. *Id.* at 643:20-644:2.

Indeed, in Exhibit A-13, Marathon recognizes that the technical examiner’s request was limited: “At the conclusion of the hearing, the Division requested that Marathon review the AFEs to determine whether corrections are required and either: (1) submit corrected AFEs or (2) provide a statement explaining amendment is not required.” Exhibit A-13 at 1, ¶ 3 (emphasis added).

Nonetheless, Marathon did both—it submitted corrected AFEs and submitted a supplemental statement with gratuitous testimony, such as justifications for the changes to its AFEs and for Marathon’s previous failure to provide complete AFEs to interest owners. *Id.* at 2, ¶ 6. Allowing new testimony at this stage—particularly testimony that includes explanations and justifications not subject to examination—denies Tumbler procedural fairness and contravenes the Division’s requirement that all witnesses be available for cross-examination. Accordingly, the entirety of Exhibit A-13 should be excluded from the record because it goes well beyond the Division’s limited request and prejudices Tumbler by denying any opportunity for cross-examination.

II. Marathon’s new Exhibit B-5 should be excluded because it significantly exceeds the limited post-hearing directive from the technical examiner, improperly offers new exhibits that are procedurally prejudicial, and attempts to introduce information and analysis outside the expertise of the sponsoring witness.

Marathon’s Exhibit B-5 includes four new slides purportedly reflecting geological analyses of certain formations by Marathon’s geologist witness, Tyler Patrick. Again, Marathon is offering completely new exhibits that were not requested by the Division.

The technical examiner simply requested that Marathon provide “the parameters and [the API numbers] . . . used by Marathon’s geologists to make a high risk determination of those three different target horizons.” TR 10/01/25 at 644:4-7. Instead of providing a list of geologic parameters and API numbers for the wells that Mr. Patrick reviewed in reaching his conclusions regarding the Avalon, Third Bone Spring Sand, and Third Bone Spring Carb, *see id.* at 591:1-593:8; Marathon submitted an entirely new cross-section, *see* Marathon Amended Exhibits at pdf 155; and three slides each containing a well log; numerous extraneous details about wells, which were not requested by the Division; two maps; and summary conclusions regarding production that were not included in Mr. Patrick’s testimony, *see* Marathon Amended Exhibits at pdf 156-

158. Purportedly, these four additional slides depict the wells that Mr. Patrick reviewed in reaching his conclusions offered at the hearing, regarding the three formations identified above.

Again, Marathon offers unsolicited information, including an expanded, reformatted, and amended well log for the Madera 24 Federal 1 and extraneous information relating to the wells purportedly reviewed.¹ Notably, the slides at pdf pages 156-158 resemble in part the three rebuttal exhibits, B-5, B-6, and B-7, that Marathon withdrew at the hearing. *Id.* at pdf 156-158; *see* TR 10/01/25. Furthermore, the slides include additional information that was not part of Mr. Patrick's testimony at hearing, such as cumulative production and production over the course of six months per perforated foot, the analysis of which would require an engineer to properly interpret differences between the wells with respect to choke management, artificial lift, takeaway capacity, completion design, and numerous other factors beyond the expertise of Mr. Patrick as a geologist. *See id.* During hearing, Mr. Patrick was repeatedly instructed by the hearing examiner to testify only with respect to geology, *see, e.g.*, TR 10/01/25 at 587:18-22, 589:20-590:3, 595:20-595:3; yet is now offering evidence that is outside his expertise as a geologist. Mr. Patrick testified that the task performed by the geologist is to "select wells that are targeted" to the formation and "then . . . submit those to the reservoir engineering group and they conduct their evaluation based on spacing and completion size." *Id.* at 588:19-23; *see id.* at 599:19-21 ("My analysis is to come up with component wells to hand over to the reservoir engineering group to put numbers to it.").

Consequently, the Division requested simply that Marathon provide a list of the wells that Marathon's geologist reviewed and the geological parameters Marathon used to evaluate the wells.

¹ The Madera 24 Federal 1 well log Marathon includes in Exhibit B-5 removes the Oil in Place ("OIP") log track previously included and replaces the OIP track with a Photo Electric Factor ("PEF") log track; *compare* Marathon Exhibit B-4 (pdf 154) with Marathon Exhibit B-5 (pdf 155-157).

Marathon chose not to offer an engineer to testify about the engineering analysis at hearing. *See* Marathon's Pre-Hearing Statement. Marathon's attempt to introduce these materials post-hearing, without leave and beyond the scope of the examiner's directive, undermines the integrity of the Division's adjudicatory process and should not be condoned. For these reasons, Exhibit B-5 should be excluded from the record.

CONCLUSION

Exhibit A-13 and Exhibit B-5 should be excluded from the record because they exceed the Division's limited request and introduce evidence beyond the scope of the sponsoring witness's expertise. Admitting these materials would unduly prejudice Tumbler, which has no opportunity to cross-examine the witnesses or offer rebuttal evidence at this stage of the proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on counsel of record, by electronic mail on October 9, 2025:

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