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

APPLICATION OF POWDERHORN OPERATING, LLC FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO.

OCC CASE NO. 26206
OCD ORDER NO. R-24349

MARATHON OIL PERMIAN LLC'S REPLY IN SUPPORT OF ITS MOTION TO STAY ORDER NO. R-24349

Marathon Oil Permian LLC ("Marathon" or "MRO"), by and through undersigned counsel, respectfully submits this reply in support of the motion to stay Order No. R-24349 ("Order" or the "Division Order"). As established in the Motion and in this reply, the Order should be stayed pending a Commission order to allow Marathon the opportunity to pursue its statutory right to a de novo challenge.

INTRODUCTION

Without a stay to maintain the status quo Powderhorn can commence drilling operations, which would substantially undermine the purpose of Marathon's de novo challenge, resulting in immediate and irreparable harm to Marathon and impairment of its correlative rights. This outcome serves no one's interests but Powderhorn's and should be rejected. Arguing that because Marathon seeks to develop the N/2 of Section 2 under a 1976 JOA rather than through a compulsory pooling order, Marathon's plan of development and proposal somehow leaves "no rival development plan for the Commission to adopt," is nonsensical, contrary to the Oil and Gas Act and longstanding Commission—and Division—precedent. In contrast, the Oil and Gas Act and Commission precedent gives preference to operators, designated under a voluntary agreement, with development proposals that are ready, willing, and able to go forward over plans that require force pooling. *See* Order No. R-21416-A ¶¶ 23-25; *see also* 70-2-17(E) (the Oil and Gas Act limits the Division and/or Commission to modifying voluntary drilling agreements through orders only "to the extent necessary to prevent waste as prohibited by this act."(emphasis added)). In its response, Powderhorn relies a wrongly decided Division case—that is neither binding on the Commission nor persuasive authority—and mis-portrays the strength of controlling Commission precedent governing overlapping acreage cases and, until recently, the Division's faithful application of it. As explained in the motion and demonstrated below, the Division misapplied Commission precedent that, when properly applied, results in Marathon prevailing on the merits—and best protects correlative rights (and thereby preventing waste) by allowing each party to develop acreage under their respective control.

Because Marathon is likely to prevail on the merits, and Marathon has demonstrated it will suffer irreparable harm and that a stay will not harm Powderhorn and is in the public interest, the Commission should grant this motion and approve the requested stay.

ARGUMENT

I. Contrary to Powderhorn's Assertions, Marathon is Likely to Prevail on the Merits.

A. The Division Failed to Apply Dispositive Commission Precedent.

Several key aspects of the Division's Order expose its failure to consider—let alone correctly apply—Commission precedent that has governed partially overlapping competing compulsory pooling cases for at least the last six years. That precedent, which has until recently been consistently and faithfully applied by the Division, focuses not on a comparison of "well proposals (location, density, length, etc.)[,]" (*see* Order R-22204, ¶ 22; *see also* Order R-22205, ¶ 23), but on three specific inquiries: (a) which proposal avoids waste by not stranding acreage; (b) which proposal best protects correlative rights "by presenting the best opportunity for each party to develop its own acreage"; and (c) which party had the greatest interest in their proposed unit. *See* Div. Order R-22204, ¶ 22; Div. Order R-22205, ¶ 23 (emphasis added) (citing OCC Order Nos. R-21416-A (Sept. 17, 2020) and R-21420-A (September 17 , 2020)). With respect to the third element, rather than simply evaluate which party has the greatest interest in their proposed unit, Commission precedent turns on which party controls the greatest working interest <u>in the overlapping acreage</u>. *See, e.g.*, OCC Order No. R-21416-A ¶¶ 17, 19-20, 73 (finding BTA's acreage "includes some, but not all, of the acreage Marathon seeks to pool" and that "BTA is the designated operator of 100% of [its acreage]" and owns the majority of the working interest in its acreage, and, therefore, that its plan "will best protect correlative rights by allowing each party to develop its own acreage").

Properly applying this precedential analysis in its previous cases, the Division looks to the overlapping acreage between two contested development plans to determine which party has the greater working interest control and the better plan to allow each party to develop its own acreage. In Division Order No. 22204, the Division determined that the overlapping acreage between the two competing development plans was comprised of two sections—Sections 17 and 20. *See* Order R-22204, ¶ 13 ("The overlap between the units is Sections 17 and 20."). In the overlapping acreage that Chevron's plan would develop in Sections 17 and 20, Chevron—while not a designated operator under a JOA as Marathon in this case—controlled 64.38% of the working interest, whereas Cimarex controlled 26.35%. *Id.* ¶ 24. As to the non-overlapping acreage that would be developed solely under Cimarex's plan, Cimarex controlled 100% of that acreage. *Id.* "<u>[F]ollowing the Commission's precedent in analyzing proposed overlapping spacing units</u>," the Division determined that Chevron's plan "present[s] the best opportunity for each party to develop its own acreage[,]" because "[e]ach party will be left in control of units where they have the significant majority, or the entirety, of the working interest control." *Id.* ¶ 26 (emphasis added). Under its plan Chevron could develop Sections 17 and 20, where it controlled the majority of the working interest, and Cimarex could develop Section 8, where it controlled the majority of the working interest. This precedential analysis governing overlapping acreage cases is dispositive of the outcome in this case but was not applied by the Division.

The Division Order notes in passing that Powderhorn's proposed 959.6-acre Super Hornet Unit "partially overlap[s]" Marathon's proposed 320.32-acre Campana project.[1] But it fails to apply Commission precedent under Order Nos. R-21416-A and R-21420-A that governs the "particular category" of cases involving partially overlapping competing development plans[2] to determine which operator controls the greater working interest <u>in the overlapping acreage</u> and, therefore, which plan presents the best opportunity for each party to develop its own acreage. *See* Order No. R-24349, ¶¶ 28-30 (failing to analyze which party has greater working interest control—not just ownership—in the overlapping acreage comprised of the N/2 of Section 2). Such a determination is necessary to fully protect correlative rights, which is the opportunity for each owner to produce its just and equitable share of the oil or gas in the pool. *See* NMSA 1978, 70-2-33(H).

The Division elevated the Commission's overlapping acreage analysis into its pantheon and designated it as applicable to a separate "particular category of cases" where correlative rights may be particularly at risk because protection of correlative right is part of the Division's dual obligation under the Oil and Gas Act:

> The prevention of waste is of paramount interest, <u>and protection of correlative rights is interrelated and inseparable from it</u>. The very

[1] Order No. R-24349, ¶¶ 1, 9.

[2] Order No. R-22204, ¶ 22.

> definition of 'correlative rights' emphasizes the term 'without waste.' However, the protection of correlative rights is a necessary adjunct to the prevention of waste. Waste will result unless the commission can also act to protect correlative rights.

Cont'l Oil Co. v. Oil Conservation Comm'n, 1962-NMSC-062, ¶ 27, 373 P.2d 809 (emphasis added).

In the hearing at the Division, rather than faithfully apply the Commission's overlapping acreage analysis, the Division evaluated working interest ownership (as opposed to control) on each party's proposed spacing-unit basis (as opposed to in the overlapping acreage)—and completely failed to acknowledge Marathon's 100% working interest control of the N/2 of Section 2 through its 1976 JOA. *See* Order No. R-24349, ¶¶ 28-30. Because the Division did not properly apply Commission precedent—and completely ignored the effect of Marathon's 1976 JOA—it did not take into consideration which plan best protects correlative rights, as required. NMSA 1978, 70-2-11(A) (providing that it is the Division's "duty . . . to protect correlative rights[.]"). Worse still, it ignored the strength and validity of Marathon's 100% voluntary agreement, subjugating its correlative rights to Powderhorn's competing development plan without making the necessary finding under the Oil and Gas Act that Powderhorn's plan is "necessary to prevent waste."[3]

If the Division had faithfully applied Commission precedent to the facts of this case, as the Division did in Order No. R-22204, it would have yielded a different result, protecting Marathon's correlative rights and allowing each party to develop acreage under their respective control.

B. Marathon Would Prevail If Commission Precedent Were Correctly Applied.

Because the Division Order failed to apply Commission precedent—and longstanding Division practice—governing "partially overlapping" cases, it failed to apply the applicable three-

[3] Under NMSA 1978, Section 70-2-17(E), the Division is authorized to modify voluntary agreements only "to the extent necessary to prevent waste as prohibited by this act." (emphasis added).

part analysis employed by the Division since at least 2020. *Compare* Order No. R-24394, ¶ 12 (outlining factors applicable to the Division analysis) *with* Order No. R-22204, ¶ 22 (noting the modification of competing development analysis where there is overlapping acreage). As a consequence, the Division Order reached the wrong result. Applying the three-element test, Marathon would prevail.

Under the first element—"which proposal avoids waste by not stranding acreage"—the Division did not make a finding that either proposal would strand acreage. *See generally*, Order No. 24349. This factor is neutral based on the Division's findings below.

Powderhorn nevertheless asserts in its response brief—as it did at the hearing below—that Marathon's proposed development in the N/2 of Section 2 would somehow strand a portion of Powderhorn's adjacent acreage in the NE/4 of Section 3; however, the Division rejected that unfounded contention—which is not based on any geologic or engineering principle—and refused to adopt a finding that Marathon's plan would strand acreage. *Id.* In fact, if any proposal risks stranding the NE/4 of Section 3, Powderhorn's own plan puts that acreage at risk—not for any geologic or engineering reason—but because "Powderhorn and Avant agreed via letter agreement on how to develop that mile and a half [i.e., the N/2 of Section 2 and the NE/4 of Section 3]"[4] that is <u>limited to development based on a laydown orientation only</u>.[5] According to Powderhorn's land witness, if Marathon were to drill its JOA acreage in the N/2 of Section 2 with a laydown orientation as proposed, Powderhorn would be <u>contractually</u> precluded from developing the NE/4

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[4] Division Case No. 25610, 3/10/26 Hrg. Tr. 112:18-113:2 (Travis Macha).

[5] *Id.* 3/10/26 Tr. 133:19-136:21 (T. Macha stating that a contractual agreement with Avant prevents Powderhorn from drilling a standup well in the NE/4 of Section 2 and that but for that agreement that he "would be comfortable being able to form [a] unit north, south[,]" which matches the well orientation of existing and future-planned immediately offsetting wells drilled by other operators).

of Section 3 with stand-up orientation wells—the only way it could be developed in that scenario given the acreage involved—putting that acreage at risk. *See* fn. 4. The risk of stranding acreage therefore has everything to do with Powderhorn's imprudent business decisions and nothing to do with Marathon's right to development its own JOA acreage.

The second element—which proposal best protects correlative rights "by presenting the best opportunity for each party to develop its own acreage"—is analyzed in conjunction with the third element—working interest control—by evaluating the working interest in the overlapping acreage to determine which proposal would best allow each party to develop the acreage each party controls. *See* Division Case No. R-24404, ¶¶ 23-24.

Here, the overlapping acreage is the N/2 of Section 2—the 320.32-acres that comprise all of Marathon's proposed spacing unit and the contract area for its 1976 JOA. As the designated operator of the JOA, Marathon controls 100% of the working interest in the N/2 of Section 2 and owns outright 55.5% of the working interest there. It is undisputed that 100% of the working interest in the N/2 of Section 2 is legally committed to Marathon's 1976 JOA, including Powderhorn's interest. *See* Tr. 3/10/26, 140: 2-17; 148:14-18. The 1976 JOA is a binding contract among the parties, and it is undisputed that it remains a valid and controlling voluntary agreement. Moreover, the Oil and Gas Act limits the Division and/or the Commission to modifying voluntary drilling agreements through orders <u>only "to the extent necessary to prevent waste as prohibited by this act</u>." NMSA 1978, § 70-2-17(E) (emphasis added).

In other words, in order to strip Marathon of the right to drill and develop its own acreage that it controls under a legally valid and active voluntary JOA, the Division was required to find that Marathon's proposed development plan <u>will cause waste</u>. That is a high bar that was not met at the Division level below and is unlikely to be met at the

Commission through a de novo hearing. Counsel is unaware of <u>any case</u> where either the Division or Commission has found that standard one-mile horizontal laterals, similar to what Marathon proposes, will cause waste. The most the Division Order determined regarding Powderhorn's competing plan with respect to the geologic/recovery factor is that its "application supports a viable development plan in the Subject Lands[]"[6]—not that Powderhorn's plan is <u>necessary</u> to prevent waste or that Marathon's plan will cause waste.

In its response, Powderhorn argues Marathon's 1976 JOA has been "superseded" by its own JOA but cites no legal authority supporting the contention it overrides or negates Marathon's JOA. Because it is undisputed that Marathon's 1976 JOA is an existing, valid agreement, <u>all parties</u> to it must agree for a "superseding" JOA to have any binding legal effect. Marathon never agreed to the purported "superseding" JOA or any type of contractual novation. *See Summit Props., Inc. v. Pub. Serv. Co.*, 2005-NMCA-090, ¶ 29, 118 P.3d 716 ("Novation requires (1) an existing and valid contract, (2) an agreement to the new contract by <u>all parties</u>, (3) a new valid contract, and (4) an extinguishment of the old contract by the new one.") (emphasis added). Here, Marathon did not sign Powderhorn's "superseding" JOA or otherwise agree to amend or cancel the 1976 JOA. In fact, no party—not even Powderhorn—has sought to nullify, revoke, or renounce the effect and validity of Marathon's 1976 JOA. The purported "superseding" JOA is a legal nullity. The Commission should ignore it.

Separately, it is undisputed that Powderhorn now owns and/or controls the majority of the working interest across the remainder of the acreage within its proposed spacing unit—the E/2 of

[6] Order No. R-24349, ¶ 15.

Section 3 and the S/2 of Section 2, where Marathon owns no acreage and Powderhorn's authority to operate is not disputed. The Division made no finding any geologic or engineering reason would prevent Powderhorn from developing this undisputed acreage with a combination of standup and laydown one-mile horizontal wells.

Under these facts, Commission precedent provides that Marathon should have been permitted to develop its own JOA acreage and Powderhorn allowed to separately pool and develop its acreage in the E/2 of Section 3 and the S/2 of Section 2, as depicted in Figure 1, below. This plan best allows each party to develop the acreage it controls.

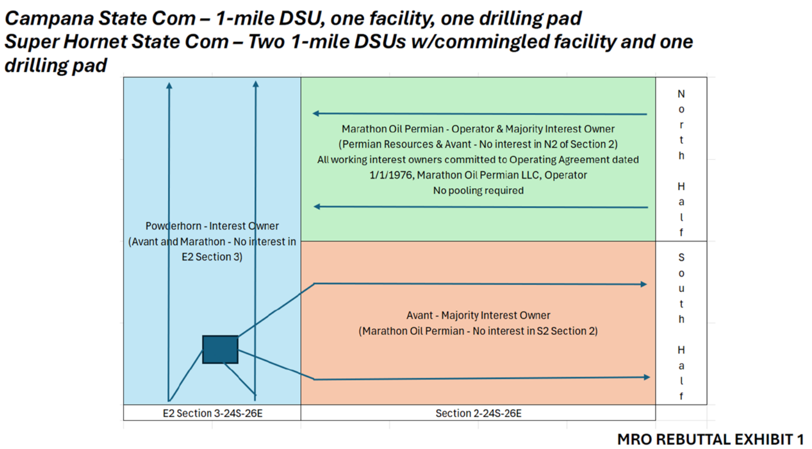

Fig. 1: MRO Rebuttal Exhibit 1, reflecting that Marathon could drill its JOA acreage in the N/2 of Section 2 and Powderhorn would still be able to drill the E/2 of Section 3 and the S/2 of Section 2 with a combination of standup and laydown one-mile laterals, thereby allowing each party to develop the acreage it controls. Note: This rebuttal exhibit was created before Marathon was aware Powderhorn made a deal with Avant, giving Powderhorn control of the S/2 of Section 2.

Because Marathon, not Powderhorn, proposed the plan that best protects correlative rights, which is "interrelated and inseparable from [waste],"[7] Marathon should have prevailed at the Division level below and should prevail before the Commission now.

[7] *Cont'l Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, ¶ 27, 373 P.2d 809.

C. Powderhorn's Arguments that Marathon Cannot Prevail on the Merits are Unavailing.

Powderhorn raises several arguments to contend Marathon cannot prevail. Each is without merit.

First, Powderhorn contends a recent Division-level case under Order No. R-23869—wrongly decided for the same reasons as Order No. R-24349—establishes that Marathon is "wrong as a matter of law." *See* Resp. at 6. But wrongly decided Division-level cases are not binding on the Commission—especially where the Division order does not explain its rationale for straying from Commission precedent, as Order No. R-23869 failed to do. In short, Order No. R-23869 also failed to apply Commission precedent governing overlapping acreage cases. The adversely affected party challenged Order No. R-23869 through a de novo application, but the parties voluntarily resolved the dispute before it could be heard and decided by the Commission. Order No. R-23869 has no persuasive authority with the Commission here.

Second, Powderhorn seeks to denigrate Marathon's still-active, still-valid 1976 JOA as a "dormant," "antiquated," "vertical-well agreement." *See* Resp. at 9. Use of those derogatory terms are all unsupported by facts or law. The 1976 JOA is active—it currently supports production in the contract area. It is undisputed it is still active and valid. Nothing in the language of the JOA limits it to vertical wells; rather, it applies and governs all operations and production within the contract area—whether related to vertical or horizontal wells. Powderhorn cites no legal authority and no language in the JOA itself to the contrary.

Third, Powderhorn attempts to use the underlying Commission precedent to show it "cuts against" Marathon. *See* Resp. at 6-8 (citing OCC Order No. R-21416-A (the "BTA Case")). As even a cursory review of the Commission's findings in Order No. R-21416-A reveals, nothing is further from the truth. While BTA owned a higher percentage of working interests within the JOA acreage (82%) than Marathon owns here (55.5%), working interest ownership is not the deciding factor, working interest control is. A quick review of the determinative findings in the BTA Case echoes the key factual elements in the case now before the Commission and supports the conclusion that Marathon is likely to prevail. For example:

- In the BTA Case, BTA was designated operator under a JOA of 100% of the overlapping acreage (the "Ochoa Acreage"). *See* Order No. R-21416-A ¶ 19.
    - Marathon also is designated operator under its 1976 JOA of 100% of the overlapping acreage (N/2 of Section 2).
- As operator of its JOA, the Commission found BTA did not need to file for compulsory pooling to develop its acreage; it only needed to submit well proposals to the JOA parties and allow for the 30-day election period prior to drilling its wells. *See* Order No. R-21416-A ¶ 23.
    - As operator under its 1976 JOA, Marathon also does not need to file for compulsory pooling to develop the N/2 of Section 2 and could have proceeded to drill is permitted wells pursuant to the JOA and well proposals—but for the fact that Division Order No. R-24349 now designates Powderhorn operator of that acreage in the Wolfcamp.
- In the BTA Case, the Commission found that BTA acquired its operating rights under its JOA to allow it to control costs and implement its development plan. *See* Order No. R-21416-A ¶ 24.
    - While Marathon acquired its operating rights under the 1976 JOA in approximately 2017, ConocoPhillips only recently acquired Marathon—and the 1976 JOA—in November 2024 and did so with the similar intent of developing its 1976 JOA acreage under its own plan and to do so quickly under a voluntary agreement and without having to force pool any interests. *See* Division Case No. 25610, 3/11/26 Hrg. Tr. 370:9-372:13.
- In the BTA Case, granting Marathon's applications would have "nullif[ied]" BTA's operating rights under the JOA by precluding BTA from developing its JOA acreage. *See* Order No. R-21416-A ¶ 24.
    - Similarly, the Division Order granting Powderhorn's application nullified Marathon's valuable operating rights under its 1976 JOA by precluding Marathon from developing its JOA acreage in the N/2 of Section 2 under its own plan.

- In the BTA Case, the Commission determined that JOAs "facilitate development and conservation of resources by allowing operators to develop their acreage without the necessity of a pooling proceeding." *See* Order No. R-21416-A ¶ 25.
  - In this case, Marathon's JOA similarly facilitates development of resources by allowing Marathon to develop its acreage under its own plan without having to force pool any parties. *See* 3/11/26 Hrg. Tr. 370:9-372:13; *see also* NMSA 1978, § 70-2-17(E) (authorizing the Division to "modify" voluntary development agreements only "to the extent necessary to prevent waste").
- In the BTA Case, BTA had approved well sites from the BLM and was awaiting approved APDs for its proposed development. *See* Order No. R-21416-A ¶ 29.
  - In this case, Marathon has approved APDs for its proposed development—but has not drilled them under its JOA because Division Order No. R-24349 now designates Powderhorn operator of that acreage in the Wolfcamp.
- In the BTA Case, Marathon could still drill one-mile horizontal wells if its applications were denied allowing BTA to drill and develop its JOA acreage. *See* Order No. R-21416-A ¶ 55.
  - Similarly, Powderhorn can still drill one-mile wells in the E/2 of Section 3 and the S/2 of Section 2 if its application is denied allowing Marathon to drill and develop its 1976 JOA acreage in the N/2 of Section 2. *See* Fig. 1, above.
- In the BTA Case, there was no "engineering or geological reason" that Marathon could not drill one-mile horizontal wells in the acreage it controlled. *See* Order No. R-21416-A ¶ 57.
  - Similarly, there is no "engineering or geological reason" that Powderhorn cannot drill a combination of standup and laydown one-mile horizontal wells in the acreage it controls in the E/2 of Section 3 and the S/2 of Section 2, as depicted in Fig. 1, above. *See also* Tr. 3/11/26 280:2-281:14 (Powderhorn geologist agreeing that immediately offsetting standup horizontal wells that were previously drilled and planned to be drilled are "based on sound geologic and engineering principles").
- In the BTA Case, the Commission found "BTA's development plan will best protect correlative rights by allowing each party to develop its own acreage." *See* Order No. R-21416-A ¶ 73. And, "[i]f Marathon's applications are denied, each operator [could] develop its own acreage." *Id.* ¶ 76.
  - Similarly, in this case Marathon's development plan will best protect each party's correlative rights—which is "interrelated and inseparable from [waste]"[8]—by allowing Marathon and Powderhorn to separately develop the acreage they

[8] *Cont'l Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, ¶ 27, 373 P.2d 809.

> respectively control. *See, supra*, Fig. 1. And, denying Powderhorn's application would allow Marathon to develop its acreage in the N/2 of Section 2 and still allow Powderhorn to develop its acreage in the E/2 of Section 3 and the S/2 of Section 2. *Id.*

The close alignment between the factual findings supporting the outcome in the governing Commission case and the undisputed facts of this case strongly support the conclusions that (1) the Division erred and misapplied the controlling analysis to the facts of the case; and (2) Marathon is likely to prevail on the merits.

II. Marathon will Suffer Immediate and Irreparable Harm Absent a Stay.

As the BTA Case makes clear, approval of a compulsory pooling application that partially overlaps an existing, valid JOA contract area would effectively "nullify" the designated operator's "operating rights under the JOA" by precluding the operator from being able to develop its JOA contract area. *See* Order No. R-21416-A ¶ 25. That, by definition, is the impairment of correlative rights because it extinguishes the JOA operator's right to operate its own wells.[9] *See* § 70-2-33(H).

Without a stay pending a final Commission order, Powderhorn is free to commence drilling and completion operations, effectively perfecting its rights under the challenged Division Order—and de facto extinguishing Marathon's operating rights—<u>before</u> Marathon is given its statutory opportunity for a de novo hearing before the Commission. *See* § 70-2-13 ("[A]ny party of record adversely affected [by a Division order] <u>shall have the right to have the matter heard de novo</u>

[9] Powderhorn's assertion that Marathon's argument would "convert every dormant legacy JOA . . . into a perpetual veto over efficient develop" (Resp. at 8) that it devotes an entire argument on is overblown. Section 70-2-17(E) has been the law for decades, Commission precedent, applied by the Division, as been clearly articulated since at least 2020 and there has been no mad rush to use old JOAs to defeat partially overlapping compulsory pooling. That is because JOA contract areas have to provide sufficient acreage for a self-contained horizontal well development to avoid having to force pool, which is not often the case, and JOA operators must have proposed a viable well development plan that it is ready, able, and willing to drill and operate. *See, e.g.*, Order No. R-21416-A ¶ 51; *see also* Tr. 3/11/26 414:13-417:13 (Marathon has all APDs approved, 15 hot rigs running, has committed capital to the project, and is planning to spud its wells in a timely manner under its JOA)

before the commission upon application filed with the division within thirty days from the time any such decision is rendered." (emphasis added)). That would constitute an injury under the Oil and Gas Act that is not "remediable through money"—it would be irreparable.

This is exactly the dilemma the Commission recently addressed when asked to stay another Division compulsory pooling order being challenged in de novo Case No. 25371, involving competing development plans between Read & Stevens/Permian Resources and Coterra. Coterra was challenging a pooling order in favor of Read & Stevens/Permian Resources and seeking a stay. Commissioner Ampomah raised the concern that if the requested stay is denied and Permian Resources' wells are drilled before a de novo hearing can be held, "would that not be harm to Coterra if the Commission is to consider the de novo case or to grant the de novo hearing[?]" *See* Case No. 25371, 6/24/2025 Tr. 85:17-20. Commissioner Bloom raised a similar concern over how high the bar should be to approve a stay pending a Commission order where there is the risk of waste and impairment of correlative rights. *See id.* Tr. 83:5-18. In consideration of these concerns and in the interest of maintaining the status quo, the Commission took a conservative, protective approach and granted the stay to guard Coterra's right to a de novo hearing.[10] The stay was granted even though, after a full evidentiary hearing, the Commission ultimately unanimously ruled in favor of Permian Resources. *See* Order No. R-24080.

To prevent irreparable harm to Marathon—and to protect its statutory right to a de novo hearing—the Commission should do the same here.

[10] https://ocdimage.emnrd.nm.gov/Imaging/FileStore/santafe/ho/20250626/r-23089-b_06_26_2025_04_07_04.pdf.

III. Powderhorn Will Suffer No Harm from a Stay.

Powderhorn complains about potential adverse impacts due to its rig commitments and midstream obligations it voluntarily elected to prematurely put in motion, knowing that Marathon had a statutory right to de novo hearing before the Commission. These are risks Powderhorn voluntarily chose to take on before Marathon's deadline for de novo appeal expired. The fact that Powderhorn continues to pursue these commitments and obligations knowing that Marathon has filed a de novo challenge to the underlying Division Order—and is seeking a stay—are not factors that should weigh in the balance of harms. These are risks Powderhorn has voluntarily undertaken.

Powderhorn also points to its term assignment, which does not expire until March 1, 2027, to claim irreparable injury as a result of a stay. *See* Resp. at 2, 11. But that is nonsensical. The statutory de novo hearing process and subsequent Commission order is going to play out over whatever timeline is required whether a stay is issued or not. A stay does nothing to delay ultimate resolution; it merely preserves the status quo, and protects Marathon's rights and interests, pending a final order. If Powderhorn were to continue to proceed to undertake costs and commitments without a stay and lose the de novo challenge, it would still be injured (not unjustly) because it voluntary chose to undertake that risk.

If anything, a stay would mitigate the risk of loss to Powderhorn by preventing it from undertaking additional costs and exposure—especially with respect to the disputed overlapping acreage—in the event it loses the de novo challenge. But even if Powderhorn loses, it can still apply the commitments, work, and expense it has already undertaken toward developing and servicing the undisputed acreage where Powderhorn clearly controls the working interest and appears to now have full voluntary commitment.

Finally, a hearing can be held and a Commission order issued well in advance of the March 1, 2027 term assignment deadline. Marathon has no interest in putting Powderhorn's term assignment at risk and will accommodate the earliest available hearing date and work cooperatively to streamline presentation of the hearing. Moreover, if Powderhorn truly controls 100% of the working interest in the undisputed acreage, it should be able to proceed to drill and develop that acreage—perfecting its interests under the term assignment—outside of the compulsory pooling order and under the provisions of a voluntary agreement at any time in advance of a de novo hearing.

In short, Powderhorn is unable to point to any realistic potential injury that it did not voluntarily elect to undertake itself. The risks Powderhorn took on voluntarily should not be part of the Commission's equation. Other claimed injuries are either illusory or can be easily managed by a prompt and streamlined hearing. The balance of harms favors a stay.

IV. The Public Interest Weighs in Favor of a Stay.

Powderhorn contends that allowing development and production to proceed ahead of a de novo hearing before the Commission serves the public interest. While a stay is not automatic with a de novo hearing, this contention is especially misplaced when the underlying Division Order so obviously failed to apply longstanding Commission precedent, resulting in an erroneous decision and impairment of correlative rights. In addition to the unrebutted reasons given in the motion, the public interest is best served instead by a deliberate hearing process that preserves Marathon's statutory right to an effective and meaningful de novo hearing without allowing Powderhorn to rush to preemptively establish itself as the de facto victor. The only way to achieve that is to impose a stay, just as the Commission recently did in Case No. 25371.

CONCLUSION

For the foregoing reasons, MRO respectfully requests that the Commission grant the motion and the relief requested and stay Order No. R-24349 in its entirety pending a final Commission order or by settlement of the parties. A proposed form of order is attached as Exhibit A.[11]

Respectfully submitted,

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[11] Marathon counsel inadvertently neglected to attach a proposed order to the motion. It is attached here.

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2026, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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EXHIBIT A

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

APPLICATION OF POWDERHORN OPERATING, LLC FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO.

OCC CASE NO. 26206
OCD ORDER NO. R-24349

[*PROPOSED*] ORDER GRANTING MOTION TO STAY ORDER No. R-24349

THIS MATTER came before the Oil Conservation Commission on a Motion to Stay Order-24329 (the "Motion") filed on June 3, 2026, by Marathon Oil Permian, LLC. Having considered the matter, and the arguments of the Parties, and being otherwise fully appraised, IT IS HEREBY ORDERED as follows:

1. Order-24329, entered on May 1, 2026 is stayed until this matter is resolved, either by the Commission or via settlement agreements between the Parties.

IT IS ORDERED.

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Dated	**Albert Chang, Division Director**