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

APPLICATION OF ENDURING RESOURCES, LLC FOR APPROVAL OF THE BOBBY B UNIT, RIO ARRIBA COUNTY, NEW MEXICO **Case No. 26365**

EPIC ENERGY, LLC'S EMERGENCY MOTION TO CONTINUE CONTESTED HEARING

INTRODUCTION

Epic Energy, LLC ("Epic") respectfully submits this Emergency Motion to Continue the Contested Hearing set to begin September 15, 2026, and requests that the Hearing Examiner: (1) immediately vacate that hearing; (2) grant Epic no fewer than ten business days (fourteen calendar days) to respond in writing to Enduring Resources, LLC's ("Enduring") Motion to Exclude Prehearing Statement and Testimony of Epic Energy, LLC (the "Mot. to Exclude"); and (3) set the Motion to Exclude for hearing at the Division's next available docket (or on October 22, 2026, with consideration of the Epic-Enduring Case Nos. 26450-62 Enduring points out in its Motion to Exclude).

Enduring filed its Motion to Exclude at 8:30 a.m. today, September 11, 2026: the Friday before a weekend, leaving only a single business day, Monday, September 14, before the contested hearing convenes on Tuesday, September 15. Enduring characterizes its Motion to Exclude as an "evidentiary objection" permitted under Paragraph 6 of the Pre-Hearing Order to be filed as late as two days before hearing. But the relief Enduring actually seeks is nothing of the kind. Enduring asks the Hearing Examiner to exclude Epic's Prehearing Statement and the testimony and exhibits of Epic's only witness "in their entirety." Mot. to Exclude, at 2. If granted, that relief would leave Epic without a single exhibit, a single witness, or a single word of argument with which to oppose

Enduring's Application at the very hearing convened to decide it – the functional equivalent of a default judgment entered against Epic, and a complete windfall to Enduring. That is not an evidentiary ruling; it is a case-terminating sanction, and it cannot fairly be decided on a single business day's notice with no opportunity for Epic to prepare a full response to the extraordinary request in writing.

The gest of Enduring's motion contends that the Hearing Examiner ***cannot*** – not that the Hearing Examiner should not – hear evidence about Enduring's plain violation of the Division's rules and prudent operating practices in operation of its Units in connection with its consideration of the Application. Its premise is that Hearing Examiner is bound to rubber-stamp approval of the Unit, and should ignore the Legislature's empowerment of the Division to "make . . . orders" to prevent waste, and protect neighboring property. NMSA 1978, §§ 70-2-11(A); 70-2-12(B)(7). The Division and the Hearing Examiner are not, as a matter of law, as handcuffed as Enduring's motion would have you believe, and the Hearing Examiner should continue the September 15, 2026 hearing to allow full briefing and proper consideration of the scope of its authority on this issue.

ARGUMENT

I. THIS MOTION SEEKS CASE-TERMINATING RELIEF THAT PARAGRAPH 6 OF THE PRE-HEARING ORDER DOES NOT REACH.

Paragraph 6 of the Pre-Hearing Order (entered August 21, 2026) allows a party to raise "[e]videntiary objections" as late as two days before the hearing. That accommodation makes sense for garden-variety evidentiary disputes; for example, an objection to a specific exhibit or to a witness's qualification to testify on a particular topic, which the Hearing Examiner can resolve exhibit-by-exhibit or question-by-question as the hearing proceeds. It was never intended to, and cannot, authorize a party to seek the wholesale exclusion of an opposing party's entire case on two days' notice.

Enduring's own Motion to Exclude concedes as much. Enduring does not ask the Hearing Examiner to exclude particular exhibits or to limit particular testimony to particular topics; its primary request is that the Hearing Examiner exclude Epic's Prehearing Statement and the testimony and exhibits of Epic's witness, Mark Thompson, "in their entirety." Mot. to Exclude, Conclusion ¶(a), at 13. Because Epic's Prehearing Statement identifies Mr. Thompson as Epic's only witness and describes Epic's only proposed exhibits, granting that relief would leave Epic with no evidence and no argument whatsoever at the hearing on Enduring's own Application. That is, in substance, a request for the equivalent of a default judgment in Enduring's favor, and not an evidentiary ruling of the kind Paragraph 6 contemplates.

II. NEW MEXICO LAW STRONGLY DISFAVORS CASE-TERMINATING SANCTIONS, AND ENDURING HAS NOT JUSTIFIED ONE.

New Mexico courts have long held that the most severe sanctions available to a tribunal – dismissal, default, and their functional equivalents – are extraordinary remedies reserved for extreme circumstances, and not tools to be wielded over routine merits disputes. "[T]he severest of sanctions should be reserved for extreme circumstances," and a tribunal should impose such a sanction only when a party "demonstrates flagrant bad faith and callous disregard for its responsibilities." *Medina v. Foundation Reserve Ins. Co.*, 1994-NMSC-016, ¶ 7, 117 N.M. 163 (citing *United Nuclear Corp. v. General Atomic Co.*, 96 N.M. 155, 239, 629 P.2d 231 (1980)).

Enduring's Motion to Exclude does not allege, because it cannot, that Epic has acted in bad faith, violated any order of the Division, or engaged in any misconduct in this proceeding at all. Epic timely filed its Prehearing Statement in full compliance with 19.15.4.13(B) NMAC and the Pre-Hearing Order. Enduring's entire argument is that the substance of Epic's evidence is, in Enduring's view, immaterial to the unit-approval inquiry and duplicative of separate proceedings Epic has initiated. Whatever the merits of that argument – and Epic disputes them, as explained below – it is, at most, a disagreement about the scope of relevant evidence. It is not a claim that Epic did anything wrong, let alone the kind of flagrant misconduct that New Mexico law requires before a case-terminating sanction may even be considered. Seeking the functional equivalent of a default judgment as a remedy for an ordinary merits disagreement is precisely the kind of severe, case-dispositive relief that New Mexico law reserves for extreme circumstances that are simply not present here.

III. THE UNOPPOSED ORDERS ENDURING CITES AS "PRECEDENT" WERE NEVER ACTUALLY LITIGATED AND CANNOT BEAR THE WEIGHT ENDURING PLACES ON THEM.

Enduring's entire theory for excluding Epic's evidence rests on the premise that Order No. R-22081 (Greater Lybrook Unit) and Order No. R-24088 (Alamos Canyon Unit) establish "the Division's established framework for evaluating unit applications," and that because those orders do not discuss notice compliance, anti-collision analysis, or historical drilling incidents, such evidence must be categorically outside the Division's unit-approval inquiry. Mot. to Exclude, at 6. But both orders recite, on their face, that no other party appeared or otherwise opposed Enduring's applications. Order No. R-22081, Finding ¶ (7); Order No. R-24088, Finding ¶ (6). And nowhere in those Orders does the Division use the wording that it is analyzing some "framework" or articulate that there is any "framework" or even any specific (or unspecific) factors for such evaluation. Compare this, for example, to the Division's explicitly articulated "several factors" framework that the Division and Commission expressly "developed" that they "'may consider' in evaluating competing compulsory pooling applications." *In re Application of Powderhorn Operating, LLC for Standard Horizontal Spacing Unit and Compulsory Pooling, Eddy County, New Mexico*, Order No. R-24349, ¶ 12, Case No. 25610 (May 1, 2026) (attached as Ex. 1).

Unlike the analysis for competing compulsory pooling applications, the cited precedent includes no analytical framework and articulates no factors it analyzed. Rather, as stated in the two Orders Enduring submits, the Commission made factual findings only based on a hearing where only Enduring submitted evidence, and only by affidavit. Those findings were made on an unopposed record, without any adversary presenting the kind of evidence Epic proposes to present here. They cannot be "precedent" for the proposition that such evidence is immaterial, because no one ever offered it, and no one ever argued that the Division should consider it, in either proceeding.

This is not a novel evidentiary principle; it is the same premise that underlies the "actually litigated" requirement running throughout New Mexico's law of preclusion. Collateral estoppel bars relitigation of an issue only when, among other things, "the ultimate fact or issue was actually litigated" in the prior proceeding. *City of Sunland Park v. Macias*, 2003-NMCA-098, ¶ 10, 134 N.M. 216; *see Adams v. Un. Steelworkers of Am.*, 1982-NMSC-014, ¶ 16, 97 N.M. 369 (collateral estoppel prevents relitigation only of issues "actually and necessarily decided in a prior suit"). An issue that no party contested (because no party appeared to contest it) is not "actually litigated," and a determination made without contest settles nothing beyond the parties who failed to appear. If an unopposed order does not even bind the same non-appearing party under the doctrine of collateral estoppel, because the issue was never actually litigated, it certainly cannot be wielded as generally applicable "precedent" to exclude a different, actively participating party's evidence in a later contested proceeding. The Division's orders for Greater Lybrook and Alamos Canyon say nothing about the categories of evidence Epic proposes to present because no one ever asked the Division to consider them – not because the Division considered and rejected them.

On the other hand, what Enduring points out the Orders do say is telling: Enduring contends that Epic's evidence of its flagrant disregard for the Division's notice rules and reckless drilling practices are "an ongoing supervisory function that continues after unit approval," and "have no place here." Mot. to Exclude at 7. Enduring bases this contention on the language in the Orders that "the Division's approval 'shall not be considered as waiving or relinquishing, in any manner, any right duty or obligation that is now, or may hereafter be, vested in the OCD to supervise and control operations for the unit and production of oil and gas therefrom." *Id.* (quoting Order No. R-22081, Ordering ¶ (12); Order No. R-24088, Ordering ¶ (7)).

Thus, Enduring concedes that the Division has authority to supervise and control its unlawful and harmful operation of its Units; it contends only that the Division shouldn't do so now. But Enduring cites no precedent, and gives no compelling reason, why the Division should wait. As discussed below, the New Mexico Statutes Annotated empower the Hearing Examiner and Division to provide that oversight at any time, including in its order on this application.

IV. ENDURING'S OWN UNIT AGREEMENT CONTRADICTS THE NARROW READING OF THE DIVISION'S AUTHORITY IT NOW URGES.

Enduring's Motion to Exclude asks the Hearing Examiner to confine the unit-approval inquiry to "structural and geological adequacy" and to treat all evidence of injury to Epic's existing wellbores – including the Ridge Unit incident and the Bobby B 047H anti-collision data – as categorically outside that inquiry. Mot. to Exclude, at 6. That position cannot be squared with Enduring's own Bobby B Unit Agreement, which recites, in its penultimate WHEREAS clause, that the Division has authority "to approve this agreement and the conservation provisions hereof," citing NMSA 1978, Chapters 70 and 71, the same New Mexico Oil and Gas Act provisions that give the Division its waste-prevention and correlative-rights mandate.

Those Acts that Enduring acknowledges govern the Division's approval establish the Division's broad authority in consideration of this Application. NMSA 1978, Section 70-2-11(A) empowers and obligates the Division "to prevent waste prohibited by this act and to protect correlative rights," and, specifically, "***to make and enforce*** rules, regulations and ***orders***, and to do whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof." (Emphasis added.) And NMSA 1978, § 70-2-12(B)(7) specifically empowers the Division to "make . . . ***orders*** . . . ***to require*** wells to be drilled, operated and produced in such manner as ***to prevent injury to neighboring*** leases or ***properties***." (Emphasis added.) Notably, neither of those statutes have any language cabining those powers and obligations to applications to revoke permits or to any other proceeding. *Contra* Mot. to Exclude, at 7.

Enduring cannot invoke the Division's broad statutory authority under the Oil and Gas Act as the basis for the very approval it seeks, while simultaneously arguing that evidence of injury to neighboring wells – the Ridge Unit incident, the Bobby B 047H anti-collision warnings, and the notice failures that prevented Epic from raising these dangers before the underlying APDs were approved – falls entirely outside the Division's inquiry. Waste and injury to correlative rights are the very touchstones of the Division's statutory mandate, and Epic's evidence goes directly to whether unitizing the Bobby B Unit under Enduring's operatorship will prevent, or cause, exactly the kind of injury § 70-2-12(B)(7) explicitly authorizes the Division to guard against. That is, at a minimum, a substantial and contested legal question, and certainly not a matter to be resolved by excluding Epic's evidence outright on two days' notice.

V. DUE PROCESS REQUIRES A MEANINGFUL, WRITTEN OPPORTUNITY TO RESPOND BEFORE THE DIVISION CONSIDERS CASE-TERMINATING RELIEF.

New Mexico courts have repeatedly held that proceedings before the Division "must conform to fundamental principles of justice and the requirements of due process of law," and that "[a] litigant must be given a full opportunity to be heard with all rights related thereto," because "[t]he essence of justice is largely procedural." *Uhden v. N. M. Oil Conservation Comm'n*, 1991-NMSC-089, ¶ 10, 112 N.M. 528; *accord Santa Fe Exploration Co. v. Oil Conservation Comm'n*, 1992-NMSC-044, ¶¶ 13-25, 114 N.M. 103 (applicants and affected parties before the Division hold constitutionally protected interests). Due process requires that the opportunity to be heard be "granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965); *accord Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

A motion that would, if granted, dispose of Epic's entire opposition to Enduring's Application implicates exactly the kind of significant property and contractual interests – the continued operation of Epic's existing wellbores and Epic's correlative rights in the affected pool – that due process protects. And it raises complex, contested legal questions that plainly were not present or addressed in the two Orders to which Enduring refers the Division Hearing Examiner, and which this Motion has only begun to brief: the scope of the Division's unit-approval inquiry; the weight, if any, that unopposed prior orders can carry against a party that never had the chance to contest them; and the relationship between the Division's structural approval function and its overarching statutory duty to prevent waste and protect correlative rights. Given the novelty of these questions and their importance to the Division's authority to grant the Application, the Hearing Examiner likely cannot properly and deliberately decide them through oral argument sprung on Epic with a single business day's notice, with no mechanism under the Pre-Hearing

Order for Epic to respond at all, let alone adequately, to the Motion to Exclude in writing before the Hearing Examiner rules, and with the Hearing Examiner's notice to the party this morning at 9:20 a.m. via an email from the Division's Law Clerk that "[t]he Hearing Examiner is not providing [a] deadline for a response." Due process requires more.

CONCLUSION AND REQUESTED RELIEF

For the foregoing reasons, Epic respectfully requests that the Hearing Examiner, in writing, as soon as possible today, but by no later than noon on Monday, September 14, 2026:

(a) Vacate the contested hearing currently set to begin September 15, 2026;

(b) Grant Epic no fewer than ten business days (fourteen calendar days) from the date of this Motion to respond in writing to Enduring's Motion to Exclude Prehearing Statement and Testimony of Epic Energy, LLC; and

(c) Set Enduring's Motion to Exclude for hearing at the Division's next available docket, or to be heard on October 22, 2026 with the Enduring-referenced Epic Notices to Revoke in Case Nos. 26450-62.

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 and the below parties and on the Division's law clerk at Freya.Tschantz@emnrd.nm.gov by electronic mail this 11th day of September, 2026, and filed with the Division online.

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

APPLICATION OF POWDERHORN OPERATING, LLC FOR STANDARD HORIZONTAL SPACING UNIT AND COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO

CASE NO. 25610
ORDER NO. R-24349

ORDER

The Director of the New Mexico Oil Conservation Division ("OCD"), having heard this matter through a Hearing Examiner on March 10, 2026, and March 11, 2026, and after considering the testimony, evidence, and recommendation of the Hearing and Technical Examiners, issues the following Order.

FINDINGS OF FACT

1. This case involves a compulsorily pooling application filed by Powderhorn Operating, LLC ("PH"). Marathon Oil Company ("MRO") objected to PH's application on the ground that the proposed development partially overlaps with acreage that MRO controls under a Joint Operating Agreement ("JOA").

2. PH has the right to drill within the proposed spacing unit, and seeks to be named operator of its proposed wells and spacing unit.

3. PH submitted an application under case number 25610 to compulsorily pool the uncommitted oil and gas interests in the Wolfcamp formation. This case is comprised of 959.6 acres, described as ("Subject Lands"):

   Township 24 South, Range 26 East, N.M.P.M.
   Irregular Section 2: Lots 1-4, S/2 N/2, S/2 (all equivalent)
   Irregular Section 3: Lots 1-2, S/2 NE/4, SE/4 (east half equivalent)

4. PH's application was for the Purple Sage; Wolfcamp (Gas) [98220] gas pool under special pool rules established by Order R-14262.

5. PH proposed a 959.6-acre horizontal spacing unit ("Super Hornet Unit") within the Subject Lands to dedicate four approximately 1.5-mile horizontal wells targeting the Wolfcamp XY bench of the Wolfcamp formation.

6. MRO initially filed a competing application on February 3, 2026 for compulsory pooling in the Wolfcamp formation in case No. 25973 for 479.57 acres equivalent to the north half of the described Subject Lands. MRO filed a notice of dismissal for case No. 25973 on February 25, 2026.

7. MRO submitted four applications for permit to drill ("APDs") to the Division on February 23, 2026 which were approved on February 25, 2026. These four APDs

EXHIBIT
1

were for two wells targeting the Wolfcamp XY bench and two wells targeting the Wolfcamp B/C bench of the Wolfcamp formation; each well being approximately one mile. MRO objected to PH's application stating that 100% of the working interest for MRO's proposed project was committed to MRO via a Joint Operating Agreement ("JOA") dated January 1, 1976. MRO's proposed project area is comprised of 320.32 acres, described as ("Campana"):

Township 24 South, Range 26 East, N.M.P.M.
Irregular Section 2: Lots 1-4, S/2 N/2 (north half equivalent)

8. MRO operates the State K 4401 #001 (API No. 30-015-21056) well spud by operator Jake L Hamon in 1974 and operated under the JOA. MRO took over operatorship of this well, a Morrow formation gas producer, located within Campana on July 7, 2017.

9. The Subject Lands proposed in PH's 959.6-acre Super Hornet Unit application partially overlap MRO's proposed 320.32-acre Campana project.

10. PH presented three witnesses in support of its applications:
   a. Travis Macha, Landman
   b. Leonard Wood, Geologist
   c. Brendan Tippen, Reservoir Engineer

11. MRO presented three witnesses in support of its objection to PH's application:
   a. Shelley Klingler, Landman
   b. Preston Dupree, Geologist
   c. Pascal Umekwe, Reservoir Engineer

12. The Oil Conservation Commission ("Commission") and OCD have developed several factors they "may consider" in evaluating competing compulsory pooling applications which are listed as follows:
   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").

Geological Evidence:

13. PH proposed four approximately 1.5-mile laterals in the Wolfcamp XY target drilled from west to east. PH's geologist, Mr. Wood, testified that the intention was to return to the Super Hornet Unit to develop the Wolfcamp B bench within approximately one year of completing the initial Wolcammp XY wells. *See* Transcript ("Tr.") (March 11, 2026), 274: 6-16. PH's reservoir engineer, Mr. Tippen, stated that there was no clear evidence that the the proposed timing for the development of the Wolfcamp XY and B benches would result in parent-child degradation, a concern raised by MRO. *See* PH Rebuttal Exhibit C-8, ¶ 3; *see also* PH Rebuttal Exhibit C-7.

14. MRO proposed two wells targeting the Wolfcamp XY bench and two wells targeting the Wolfcamp B/C bench of the Wolfcamp formation; each well being approximately 1-mile and drilled from east to west. MRO stated that the four Wolfcamp wells in their proposed Campana unit would be "co-developed", meaning developed together without a gap in drilling. Referring to PH's proposed development plan timeline, MRO geologist, Mr. Dupree stated "it is my professional opinion, as well as the professional opinion of Pascal Umekwe, that this development sequence presents a risk of degradation to the Wolfcamp B/C target". *See* MRO Exhibit B, ¶ 8. MRO provided production data from a pilot test designed to quantify parent-child effects in MRO's "Potato Baby" Wolfcamp "Top-Down" unit with a three year gap in drilling versus MRO's "Keg Shell" Wolfcamp "Co-Development" unit with no gap in drilling. *See* MRO Rebuttal Exhibit 5. Mr. Dupree described this pilot test that was conducted circa 2020-2023 as a "well-confined, well-controlled project" and further stated that there were "no outside of normal anomalies that would have affected any kind of production between these two projects". *See* Tr. (March 11, 2026), 511: 24; 513: 20-22. The production data from this pilot test was determined to be skewed and invalid by OCD due to the presence of a Wolfcamp B well (Diamondback 22 State Com #003H) that was drilled in 2012 as a 1-mile test in the northern portion of the "Potato Baby" test unit which has produced over one million barrels of liquids and over 1.7 million mcf of gas, and this well's presence led to approximately three miles less lateral length producing from the "Potato Baby" test unit when compared to the co-developed "Keg Shell" test unit.

15. OCD finds that PH's application supports a viable development plan in the Subject Lands. OCD also finds that MRO's concern of parent-child degradation was unsubstantiated by the project data presented by MRO due to unquantified depletion effects and shortened test well laterals in the "Potato Baby" test unit resulting from the presence of a 2012 vintage well compromising the validity of the test. This factor weighs in favor of PH.

Risk and Development:

16. PH has assembled an experienced team, but have yet to drill and operate a well in New Mexico under the PH umbrella. MRO's landman, Ms. Klingler, described this as "particularly problematic because Powderhorn is a new operator in New Mexico with no established track record". *See* MRO Exhibit A, ¶ 19. PH presented evidence that MRO has entered into agreements with at least one other operator that also had yet to drill or operate a well in New Mexico. *See* PH Exhibit A-13; *see also* PH Rebuttal Exhibit A, ¶ 6-7. PH is subject to a term assignment for a portion of the interest in the Subject Lands with an expiration date of March 1, 2027 and is seeking a compulsory pooling order that has deadlines associated with it.

17. MRO received approval for four Wolfcamp formation APDs in its proposed approximately 1-mile Campana unit on February 25, 2026. No obligation to drill is associated with the approval of an APD. Since MRO's own executive leadership has a desire to deploy capital to the drilling of horizontal wells with lengths of 2-miles or greater, the submission of these four APDs may have only been for the purpose of the March 10, 2026 contested hearing. *See* PH Exhibit A-14. MRO operates one well in the Campana unit drilled in 1974, and has not taken any action to develop this acreage under the 1976 JOA until recently, when PH filed its application for compulsory pooling.

18. OCD finds that PH is incentivized to develop its proposed Super Hornet Unit and that track record, while relevant, is outweighed by PH's demonstrated commitments to develop such as surface staking, securing a water contract, and netotiating product takeaway. OCD also finds that MRO's APD approvals carry no development obligation and MRO has lacked incentive and not taken any steps to develop its proposed Campana unit since acquiring the acreage in 2017 prior to raising objection to PH's Super Hornet Unit. This factor weighs in favor of PH.

Negotiations:

19. PH was in contact with, or made attempts to contact MRO on four occassions between July 24, 2025 and September 5, 2025 when PH filed its application for compulsory pooling of the Super Hornet Unit. PH was in contact with, or made attempts to contact MRO another fifteen times after filing its application prior to being informed that MRO did not wish to engage in further negotiations on February 20, 2026. *See* PH Exhibit A-15.

20. MRO's landman, Ms. Klingler, summarized the decision to terminate negotiations with PH by stating "we thought it would be best if everybody stays in their own sandbox and it'd be fair if each company developed their interest". *See* Tr. (March 11, 2026), 411: 8-11.

21. OCD finds that PH made repeated and substantive attempts to negotiate in the Subject Lands but was unable to finalize a satisfactory commercial agreement with

MRO who stated a preference for independent development. Thus, the good-faith negotiation factor weighs in favor of PH.

Prudent Operatorship:

22. PH has assembled an experienced team, but MRO raised concerns regarding the lack of experience PH possesses as a newly formed entity and its lack of an in-house drilling team.

23. MRO did not present relevant evidence of being a prudent operator, relying solely on the size and longevity of its operations.

24. OCD finds that all operators manage contractors, including drilling contractors, and the record contains no evidence to suggest that either party, PH or MRO, would undertake operations in an imprudent manner. This factor is neutral.

Comparison of Cost:

25. PH submitted a total estimated well cost for a Wolfcamp XY development of $8.428 million and proposes to complete approximately 7,720 feet of lateral. These numbers translate to a development cost of $1,092 per completed foot.

26. MRO submitted a total estimated well cost for a Wolfcamp A development of $7.557 million and proposes to complete approximately 4,620 feet of lateral. These numbers translate to a development cost of $1,636 per completed foot.

27. OCD finds PH's proposed development cost to be approximately thirty-three percent less than MRO's proposed development cost on a completed foot basis, and therefore this factor weighs in favor of PH.

Working Interest:

28. PH has 33.7 percent interest in the proposed Super Hornet Unit within the Subject Lands. PH has obtained support from all other working interest parties in the proposed unit with the exception of MRO's 16.8 percent of the interest.

29. MRO has 55.5 percent interest in its proposed Campana unit and does not own any interest in PH's proposed Super Hornet Unit outside of the north half equivalent of irregular Section 2.

30. OCD finds that 83.2 percent of the interest in the Subject Lands is in support of PH's Super Hornet Unit development which constitutes substantial support for the PH proposal.

Surface Factor:

31. PH has undertaken steps toward development of its proposed 959.6-acre Super Hornet Unit by staking surface locations, securing a water contract, and has begun negotioations for product takeaway. *See* PH Rebuttal Exhibit A-20, ¶11-12.

32. MRO has obtained approved APDs for its proposed 320.32-acre Campana unit and argued that it would be better to split PH's proposed Super Hornet Unit into thirds to be developed independently by three different operators.

33. OCD finds that PH's proposal to develop the Super Hornet Unit would result in more efficient and economic recovery of hydrocarbons and prevent surface waste that would be caused by splitting up the proposed Super Hornet Unit into three separate units.

Conclusion:

34. OCD finds PH's proposal will result in effective recovery of hydrocarbons while preventing waste and protecting the correlative rights of the interest owners in the Subject Lands.

35. PH will dedicate the well(s) described in Exhibit A ("Well(s)") to the Unit.

36. PH proposes the supervision and risk charges for the Well(s) described in Exhibit A.

37. PH identified the owners of uncommitted interests in oil and gas minerals in the Unit and provided evidence that notice was given.

CONCLUSIONS OF LAW

38. OCD has jurisdiction to issue this Order pursuant to NMSA 1978, Section 70-2-17.

39. PH is the owner of an oil and gas working interest within the Subject Lands.

40. PH satisfied the notice requirements for the Application and the hearing as required by 19.15.4.12 NMAC.

41. OCD satisfied the notice requirements for the hearing as required by 19.15.4.9 NMAC.

42. PH has the right to drill the Well(s) to a common source of supply at the depth(s) and location(s) in the Subject Lands described in Exhibit A.

43. The Subject Lands contain separately owned uncommitted interests in oil and gas minerals.

44. Some of the owners of the uncommitted interests have not agreed to commit their interests to the Subject Lands.

45. The pooling of uncommitted interests in the Subject Lands will prevent waste and protect correlative rights, including the drilling of unnecessary wells.

46. This Order affords to the owner of an uncommitted interest the opportunity to produce his just and equitable share of the oil or gas in the pool.

ORDER

47. The uncommitted interests in the Unit within the Subject Lands are pooled as set forth in Exhibit A.

48. The Unit within the Subject Lands shall be dedicated to the Well(s) set forth in Exhibit A.

49. PH is designated as operator of the Unit within the Subject Lands and the Well(s).

50. If the location of a well will be unorthodox under the spacing rules in effect at the time of completion, PH shall obtain the OCD's approval for a non-standard location in accordance with 19.15.16.15(C) NMAC.

51. If a Unit is a non-standard horizontal spacing unit which has not been approved under this Order, PH shall obtain the OCD's approval for a non-standard horizontal spacing unit in accordance with 19.15.16.15(B)(5) NMAC.

52. PH shall commence drilling the Well(s) within one year after the date of this Order, and complete each Well no later than one (1) year after the commencement of drilling the Well.

53. This Order shall terminate automatically if PH fails to comply with the preceding paragraph unless PH requests an extension by notifying the OCD and all parties that required notice of the original compulsory pooling application in accordance with 19.15.4.12.B and 19.15.4.12.C NMAC. Upon no objection after twenty (20) days the extension is automatically granted up to one year. If a protest is received the extension is not granted and PH must set the case for a hearing.

54. PH may propose reasonable deviations from the development plan via notice to the OCD and all parties that required notice of the original compulsory pooling application in accordance with 19.15.4.12.B and 19.15.4.12.C NMAC. Upon no objection after twenty (20) days the deviation is automatically granted. If a protest is received the deviation is not granted and PH must set the case for a hearing.

55. The infill well requirements in 19.15.13.9 NMAC through 19.15.13.12 NMAC shall be applicable.

56. PH shall submit each owner of an uncommitted working interest in the pool ("Pooled Working Interest") an itemized schedule of estimated costs to drill, complete, and equip the well ("Estimated Well Costs").

57. No later than thirty (30) days after PH submits the Estimated Well Costs, the owner of a Pooled Working Interest shall elect whether to pay its share of the Estimated Well Costs or its share of the actual costs to drill, complete and equip the well ("Actual Well Costs") out of production from the well. An owner of a Pooled Working Interest who elects to pay its share of the Estimated Well Costs shall render payment to PH no later than thirty (30) days after the expiration of the election period, and shall be liable for operating costs, but not risk charges, for the well. An owner of a Pooled Working Interest who fails to pay its share of the Estimated Well Costs or who elects to pay its share of the Actual Well Costs out of production from the well shall be considered to be a "Non-Consenting Pooled Working Interest."

58. No later than one hundred eighty (180) days after PH submits a Form C-105 for a well, PH shall submit to each owner of a Pooled Working Interest an itemized schedule of the Actual Well Costs. The Actual Well Costs shall be considered to be the Reasonable Well Costs unless an owner of a Pooled Working Interest files a written objection no later than forty-five (45) days after receipt of the schedule. If an owner of a Pooled Working Interest files a timely written objection, OCD shall determine the Reasonable Well Costs after public notice and hearing.

59. No later than sixty (60) days after the expiration of the period to file a written objection to the Actual Well Costs or OCD's order determining the Reasonable Well Costs, whichever is later, each owner of a Pooled Working Interest who paid its share of the Estimated Well Costs shall pay to PH its share of the Reasonable Well Costs that exceed the Estimated Well Costs, or PH shall pay to each owner of a Pooled Working Interest who paid its share of the Estimated Well Costs its share of the Estimated Well Costs that exceed the Reasonable Well Costs.

60. The reasonable charges for supervision to drill and produce a well ("Supervision Charges") shall not exceed the rates specified in Exhibit A, provided however that the rates shall be adjusted annually pursuant to the COPAS form entitled "Accounting Procedure-Joint Operations."

61. No later than within ninety (90) days after PH submits a Form C-105 for a well, PH shall submit to each owner of a Pooled Working Interest an itemized schedule of the reasonable charges for operating and maintaining the well ("Operating Charges"), provided however that Operating Charges shall not include the Reasonable Well Costs or Supervision Charges. The Operating Charges shall be considered final unless an owner of a Pooled Working Interest files a written objection no later than forty-five (45) days after receipt of the schedule. If an owner of a Pooled Working Interest files a timely written objection, OCD shall determine the Operating Charges after public notice and hearing.

62. PH may withhold the following costs and charges from the share of production due to each owner of a Pooled Working Interest who paid its share of the Estimated Well Costs: (a) the proportionate share of the Supervision Charges; and (b) the proportionate share of the Operating Charges.

63. PH may withhold the following costs and charges from the share of production due to each owner of a Non-Consenting Pooled Working Interest: (a) the proportionate share of the Reasonable Well Costs; (b) the proportionate share of the Supervision and Operating Charges; and (c) the percentage of the Reasonable Well Costs specified as the charge for risk described in Exhibit A.

64. PH shall distribute a proportionate share of the costs and charges withheld pursuant to the preceding paragraph to each Pooled Working Interest that paid its share of the Estimated Well Costs.

65. Each year on the anniversary of this Order, and no later than ninety (90) days after each payout, PH shall provide to each owner of a Non-Consenting Pooled Working Interest a schedule of the revenue attributable to a well and the Supervision and Operating Costs charged against that revenue.

66. Any cost or charge that is paid out of production shall be withheld only from the share due to an owner of a Pooled Working Interest. No cost or charge shall be withheld from the share due to an owner of a royalty interests. For the purpose of this Order, an unleased mineral interest shall consist of a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest.

67. Except as provided above, PH shall hold the revenue attributable to a well that is not disbursed for any reason for the account of the person(s) entitled to the revenue as provided in the Oil and Gas Proceeds Payment Act, NMSA 1978, Sections 70-10-1 *et seq.*, and relinquish such revenue as provided in the Uniform Unclaimed Property Act, NMSA 1978, Sections 7-8A-1 *et seq.*

68. A Unit in the Subject Lands shall terminate if (a) the owners of all Pooled Working Interests in that Unit reach a voluntary agreement; or (b) the well(s) drilled on the Unit are plugged and abandoned in accordance with the applicable rules. PH shall inform OCD no later than thirty (30) days after such an occurrence.

69. OCD retains jurisdiction of this matter for the entry of such orders as may be deemed necessary.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

Albert Chang

ALBERT C.S. CHANG
DIRECTOR
AC/asf

Date: 05/01/2026

Exhibit A

COMPULSORY POOLING APPLICATION CHECKLIST

ALL INFORMATION IN THE APPLICATION MUST BE SUPPORTED BY SIGNED AFFIDAVITS	
Case: 25610	**APPLICANT'S RESPONSE**
Date: March 10, 2026	
Applicant	**Powderhorn Operating, LLC**
Designated Operator & OGRID (affiliation if applicable)	**Powderhorn Operating, LLC (332857)**
Applicant's Counsel:	Holliday Energy Law Group
Case Title:	Application of Powderhorn Operating, LLC for Compuslory Pooling, Eddy County, New Mexico
Entries of Appearance/Intervenors:	Marathon Oil Permian, LLC, Avant Operating II, LLC, Coterra Energy Operating Company, Magnum Hunter Production, Inc., Cimarex Energy Co. of Colorado, Permian Resources Operating, LLC, Kaiser Francis Oil Company
Well Family	Super Hornet
Formation/Pool	
Formation Name(s) or Vertical Extent:	Wolfcamp
Primary Product (Oil or Gas):	Gas
Pooling this vertical extent:	Wolfcamp
Pool Name and Pool Code:	Purple Sage, Wolfcamp (Gas) pool (Code 98220)
Well Location Setback Rules:	Special Pool Rules, Order R-14262
Spacing Unit	
Type (Horizontal/Vertical)	Horizontal
Size (Acres)	959.6
Building Blocks:	half-section
Orientation:	E/W
Description: TRS/County	**Section 3:** Lots 1-2, S/2NE/4, SE/4; **Section 2:** Lots 1-4, S/2N/2, S/2,Township 24 South, Range 26 East
Standard Horizontal Well Spacing Unit (Y/N), If No, describe and is approval of non-standard unit requested in this application?	Y
Other Situations	
Depth Severance: Y/N. If yes, description	N
Proximity Tracts: If yes, description	Yes. Section 3: SE/4, Section 2: S/2, T24S, R26E
Proximity Defining Well: if yes, description	Super Hornet State Com 402H within 330' of center section line
Applicant's Ownership in Each Tract	Exhibit A-10
Well(s)	

Received by OCD: 3/18/2026 5:10:27 PM Page 9 of 172

Name & API (if assigned), surface and bottom hole location, footages, completion target, orientation, completion status (standard or non-standard)	Add wells as needed
Well #1	Super Hornet State Com 401H SHL: 2,550' FEL & 1,380' FNL or at a legal location in unit G of section 3 BHL: 100' FEL & 990' FNL of Section 2 TVD: 8,690' Targeted Interval: Wolfcamp XY Orientation: E/W
Well #2	Super Hornet State Com 402H - Defining Well SHL: 2,550' FEL & 1,410' FNL or at a legal location in unit G of section 3 BHL: 100' FEL & 2,330' FNL of Section 2 TVD: 8,690' Targeted Interval: Wolfcamp XY Orientation: E/W
Well #3	Super Hornet State Com 403H SHL: 2,535' FEL & 1,380' FSL or at a legal location in unit J of section 3 BHL: 100' FEL & 1,650' FSL of Section 2 TVD: 8,690' Targeted Interval: Wolfcamp XY Orientation: E/W
Well #4	Super Hornet State Com 404H SHL: 2,535' FEL & 1,350' FSL or at a legal location in unit J of section 3 BHL: 100' FEL & 330' FSL of Section 2 TVD: 8,690' Targeted Interval: Wolfcamp XY Orientation: E/W
Horizontal Well First and Last Take Points	Exhibit A-16
Completion Target (Formation, TVD and MD)	TVD: 8,690' TMD: 16,790' Targeted Interval: Wolfcamp XY
AFE Capex and Operating Costs	
Drilling Supervision/Month $	$10,000
Production Supervision/Month $	$1,000
Justification for Supervision Costs	Exhibit A
Requested Risk Charge	200%
Notice of Hearing	
Proposed Notice of Hearing	Exhibit A-1
Proof of Mailed Notice of Hearing (20 days before hearing)	Exhibits D-1, D-2, D-3
Proof of Published Notice of Hearing (10 days before hearing)	Exhibit D-4
Ownership Determination	
Land Ownership Schematic of the Spacing Unit	Exhibit A-3

Received by OCD: 3/18/2026 5:10:27 PM
Page 10 of 172

Tract List (including lease numbers and owners)	Exhibit A-3
If approval of Non-Standard Spacing Unit is requested, Tract List (including lease numbers and owners) of Tracts subject to notice requirements.	N/A
Pooled Parties (including ownership type)	Exhibit A-10
Unlocatable Parties to be Pooled	N/A
Ownership Depth Severance (including percentage above & below)	N/A
Joinder	
Sample Copy of Proposal Letter	Exhibit A-16
List of Interest Owners (ie Exhibit A of JOA)	Exhibit A-9
Chronology of Contact with Non-Joined Working Interests	Exhibit A-15
Overhead Rates In Proposal Letter	$10,000/$1,000
Cost Estimate to Drill and Complete	Exhbit A-16
Cost Estimate to Equip Well	Exhbit A-16
Cost Estimate for Production Facilities	Exhbit A-16
Geology	
Summary (including special considerations)	Exhibit B
Spacing Unit Schematic	Exhibit B
Gunbarrel/Lateral Trajectory Schematic	Exhibit B-4
Well Orientation (with rationale)	Exhibit B
Target Formation	Exhibit B
HSU Cross Section	Exhibit B-3
Depth Severance Discussion	N/A
Forms, Figures and Tables	
C-102	Exhbit A-4
Tracts	Exhibit A-3 & A-10
Summary of Interests, Unit Recapitulation (Tracts)	Exhibit A-10
General Location Map (including basin)	Exhibit B-1
Well Bore Location Map	Exhibit B-4
Structure Contour Map - Subsea Depth	Exhibit B-2
Cross Section Location Map (including wells)	Exhibit B-3
Cross Section (including Landing Zone)	Exhibit B-3
Additional Information	
Special Provisions/Stipulations	N/A
CERTIFICATION: I hereby certify that the information provided in this checklist is complete and accurate.	
Printed Name (Attorney or Party Representative):	Ben Holliday
Signed Name (Attorney or Party Representative):	
Date:	7 3/3/26