

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

**IN THE MATTER OF APPLICATION FOR  
COMPULSORY POOLING SUBMITTED BY  
EARTHSTONE OPERATING, LLC**

**CASE NO. 23375  
ORDER NO. R-22659**

**ORDER**

The Director of the New Mexico Oil Conservation Division (“OCD”), having heard this matter through a Hearing Examiner on March 02, 2023, and after considering the testimony, evidence, and recommendation of the Hearing Examiner, issues the following Order.

**FINDINGS OF FACT**

1. EARTHSTONE OPERATING, LLC (“Operator”) submitted an application (“Application”) to compulsory pool the uncommitted oil and gas interests within the spacing unit (“Unit”) described in Exhibit A. Operator seeks to be designated the operator of the Unit.
2. Operator will dedicate the well(s) described in Exhibit A (“Well(s)”) to the Unit.
3. Operator proposes the supervision and risk charges for the Well(s) described in Exhibit A.
4. Operator identified the owners of uncommitted interests in oil and gas minerals in the Unit and provided evidence that notice was given.
5. The Application was heard by the Hearing Examiner on the date specified above, during which Operator presented evidence through affidavits in support of the Application. No other party presented evidence at the hearing.

**CONCLUSIONS OF LAW**

6. OCD has jurisdiction to issue this Order pursuant to NMSA 1978, Section 70-2-17.
7. Operator is the owner of an oil and gas working interest within the Unit.
8. Operator satisfied the notice requirements for the Application and the hearing as required by 19.15.4.12 NMAC.
9. OCD satisfied the notice requirements for the hearing as required by 19.15.4.9 NMAC.
10. Operator has the right to drill the Well(s) to a common source of supply at the depth(s) and location(s) in the Unit described in Exhibit A.

11. The Unit contains separately owned uncommitted interests in oil and gas minerals.
12. Some of the owners of the uncommitted interests have not agreed to commit their interests to the Unit.
13. The pooling of uncommitted interests in the Unit will prevent waste and protect correlative rights, including the drilling of unnecessary wells.
14. 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**

15. The uncommitted interests in the Unit are pooled as set forth in Exhibit A.
16. The Unit shall be dedicated to the Well(s) set forth in Exhibit A.
17. Operator is designated as operator of the Unit and the Well(s).
18. If the location of a well will be unorthodox under the spacing rules in effect at the time of completion, Operator shall obtain the OCD's approval for a non-standard location in accordance with 19.15.16.15(C) NMAC.
19. If the Unit is a non-standard horizontal spacing unit which has not been approved under this Order, Operator shall obtain the OCD's approval for a non-standard horizontal spacing unit in accordance with 19.15.16.15(B)(5) NMAC.
20. The Operator 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.
21. This Order shall terminate automatically if Operator fails to comply with Paragraph 20 unless Operator obtains an extension by amending this Order for good cause shown.
22. The infill well requirements in 19.15.13.9 NMAC through 19.15.13.12 NMAC shall be applicable.
23. Operator 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").
24. No later than thirty (30) days after Operator 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 Operator 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."

25. No later than one hundred eighty (180) days after Operator submits a Form C-105 for a well, Operator 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.
26. 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 Operator its share of the Reasonable Well Costs that exceed the Estimated Well Costs, or Operator 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.
27. 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."
28. No later than within ninety (90) days after Operator submits a Form C-105 for a well, Operator 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.
29. Operator 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.

30. Operator 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.
31. Operator shall distribute a proportionate share of the costs and charges withheld pursuant to paragraph 29 to each Pooled Working Interest that paid its share of the Estimated Well Costs.
32. Each year on the anniversary of this Order, and no later than ninety (90) days after each payout, Operator 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.
33. 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.
34. Except as provided above, Operator 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.*
35. The Unit shall terminate if (a) the owners of all Pooled Working Interests reach a voluntary agreement; or (b) the well(s) drilled on the Unit are plugged and abandoned in accordance with the applicable rules. Operator shall inform OCD no later than thirty (30) days after such occurrence.
36. OCD retains jurisdiction of this matter for the entry of such orders as may be deemed necessary.

**STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION**



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**DYLAN MEUGE**  
**DIRECTOR (ACTING)**  
DMF/hat

**Date:** 4/30/2023

## Exhibit A

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<b>COMPULSORY POOLING APPLICATION CHECKLIST</b>	
<b>ALL INFORMATION IN THE APPLICATION MUST BE SUPPORTED BY SIGNED AFFIDAVITS</b>	
<b>Case: 23375</b>	<b>APPLICANT'S RESPONSE</b>
<b>Date: March 2, 2023</b>	
Applicant	<b>Earthstone Operating, LLC</b>
Designated Operator & OGRID (affiliation if applicable)	<b>Earthstone Operating, LLC (331165)</b>
Applicant's Counsel:	Darin C. Savage - Abadie & Schill, PC
Case Title:	APPLICATION OF EARTHSTONE OPERATING, LLC, FOR A HORIZONTAL SPACING UNIT AND COMPULSORY POOLING, LEA COUNTY, NEW MEXICO
Entries of Appearance/Intervenors:	MRC Permian Company
Well Family	DeLorean
<b>Formation/Pool</b>	
Formation Name(s) or Vertical Extent:	Bone Spring Formation
Primary Product (Oil or Gas):	Oil
Pooling this vertical extent:	Ex. A, Paras. 5&6; 4H Well: TVD appr. 9043'; 88H Well: TVD appr. 9983'
Pool Name and Pool Code:	Mescalero Escarpe; Bone Spring [45793]
Well Location Setback Rules:	Statewide Rules apply
<b>Spacing Unit</b>	
Type (Horizontal/Vertical)	Horizontal
Size (Acres)	320.0
Building Blocks:	quarter-quarter sections
Orientation:	West to East
Description: TRS/County	S/2 S/2 of Sections 9 and 10, Township 19 South, Range 33 East, NMPM, Lea County, New Mexico
Standard Horizontal Well Spacing Unit (Y/N), If No, describe <u>and is approval of non-standard unit requested in this application?</u>	Yes
<b>Other Situations</b>	
Depth Severance: Y/N. If yes, description	No
Proximity Tracts: If yes, description	No
Proximity Defining Well: if yes, description	No
Applicant's Ownership in Each Tract	See Exhibit A-2
<b>Well(s)</b>	
Well #1	<u>DeLorean 9-10 Fed 1BS Com 4H (API Pending)</u> SHL: Unit M: 600' FSL & 225' FWL of Section 9, 19S-R33E BHL: Unit P: 660' FSL & 100' FEL of Section 10, 19S-33E Completion Target: Bone Spring Well Orientation: West to East Laydown, Standard location
Horizontal Well First and Last Take Points	<u>DeLorean 9-10 Fed 1BS Com 4H</u> FTP: 100' FWL, 660' FSL, Section 9, 19S-R33E LTP: 100' FEL, 660' FSL, Section 10, 19S-33E
Completion Target (Formation, TVD and MD)	Bone Spring; Mescalero Escarpe; Bone Spring [45793]; TVD: appr. 9043'; TMD: appr. 19,500'

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Well #2	DeLorean 9-10 Fed 2BS Com 88H (API PENDING) SHL: Unit M: 630' FSL & 225' FWL of Section 9, 19S-R33E BHL: Unit P: 660' FSL & 100' FEL of Section 10, 19S-33E Completion Target: Bone Spring Well Orientation: West to East Laydown, Standard location
Horizontal Well First and Last Take Points	DeLorean 9-10 Fed 2BS Com 88H FTP: 100' FWL, 660' FSL, Section 9, 19S-R33E LTP: 100' FEL, 660' FSL, Section 10, 19S-33E
Completion Target (Formation, TVD and MD)	Bone Spring; Mescalero Escarpe; Bone Spring [45793]; TVD: approx. 9983'; TMD: approx. 20,500'
<b>AFE Capex and Operating Costs</b>	
Drilling Supervision/Month \$	\$7,500
Production Supervision/Month \$	\$750
Justification for Supervision Costs	See Exhibit A
Requested Risk Charge	200%
<b>Notice of Hearing</b>	
Proposed Notice of Hearing	Exhibit C, C-1
Proof of Mailed Notice of Hearing (20 days before hearing)	Exhibit C-2
Proof of Published Notice of Hearing (10 days before hearing)	Exhibit C-3
<b>Ownership Determination</b>	
Land Ownership Schematic of the Spacing Unit	Exhibit A-2
Tract List (including lease numbers and owners)	Exhibit A-2
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-2
Unlocatable Parties to be Pooled	Exhibit A, Para 12 (None)
Ownership Depth Severance (including percentage above & below)	N/A
<b>Joinder</b>	
Sample Copy of Proposal Letter	Exhibit A-3
List of Interest Owners (ie Exhibit A of JOA)	Exhibit A-2
Chronology of Contact with Non-Joined Working Interests	Exhibit A-4
Overhead Rates In Proposal Letter	Exhibit A-3
Cost Estimate to Drill and Complete	Exhibit A-3
Cost Estimate to Equip Well	Exhibit A-3
Cost Estimate for Production Facilities	Exhibit A-3
<b>Geology</b>	
Summary (including special considerations)	Exhibit B
Spacing Unit Schematic	Exhibits B-1, B-2
Gunbarrel/Lateral Trajectory Schematic	Exhibit B-7
Well Orientation (with rationale)	Exhibits B, B-1, B-2
Target Formation	Exhibits A, B, B-3, B-4
HSU Cross Section	Exhibit B-7

Depth Severance Discussion	N/A
<b>Forms, Figures and Tables</b>	
C-102	Exhibit A-1
Tracts	Exhibits A-1, A-2,
Summary of Interests, Unit Recapitulation (Tracts)	Exhibit A-2
General Location Map (including basin)	Exhibit A-2
Well Bore Location Map	Exhibits B-1, B-2
Structure Contour Map - Subsea Depth	Exhibit B-1
Cross Section Location Map (including wells)	Exhibits B-3, B-4, B-7
Cross Section (including Landing Zone)	Exhibits B-3, B-4, B-7
<b>Additional Information</b>	
Special Provisions/Stipulations	
<b>CERTIFICATION: I hereby certify that the information provided in this checklist is complete and accurate.</b>	
<b>Printed Name</b> (Attorney or Party Representative):	Darin C. Savage
<b>Signed Name</b> (Attorney or Party Representative):	/s/ <i>Darin Savage</i>
<b>Date:</b>	02.28.2023