

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

**APPLICATION OF FASKEN OIL & RANCH,
LTD, TO AMEND ORDER NO. R-22121,
LEA COUNTY, NEW MEXICO.**

CASE NO. 24396

**APPLICATION OF FASKEN OIL & RANCH,
LTD, TO AMEND ORDER NO. R-22122,
LEA COUNTY, NEW MEXICO.**

CASE NO. 24397

**APPLICATION OF MARATHON OIL PERMIAN, LLC,
FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO**

CASE NO. 24771

**ORDER DENYING MARATHON'S MOTION TO EXPAND SCOPE
OF CONTESTED HEARING AND STAYING CASE NO. 24771**

This matter comes before the Division on Marathon Oil Permian LLC's (Marathon) *Brief in Support of its Opposition to Fasken's Second Extension Applications*, Fasken Oil and Ranch, LTD's (Fasken) *Response*, and Marathon's *Brief on Res Judicata and Waiver*. Being otherwise fully apprised of the matter,

THE HEARING EXAMINER FINDS AND ORDERS:

1. Pooling Orders R-22121 and R-22122 were issued by the Oil Conservation Division (OCD) under Cases 22697 and 22698 respectively, in May of 2022.
2. Fasken filed permits with the Bureau of Land Management (BLM) on June 30, 2022, and has not yet received approval.
3. Under OCD practice, to obtain an extension of time to commence drilling, operators must file an application requesting the OCD exercise its discretion to amend an order.
4. In May of 2023, Fasken filed applications under Cases 23473 and 23474 to extend the drilling deadlines under each pooling Order based on the BLM's delay in issuing the drilling permits.
5. In June 2023 the OCD entered Orders R-22121-A and R-22122-A extending the drilling deadline to May 9, 2024, finding Fasken "has demonstrated good cause to extend the deadlines in the Order."

See Orders at ¶ 3.

6. Paragraph 9 of both Orders state:

This order shall terminate automatically if Operator fails to comply with Paragraph 7 unless prior to termination Operator applies, and OCD grants, to amend the Order for good cause shown.

7. On April 2, 2024 Fasken filed Applications to Amend Orders R-22121-A and R-22122-A in Case Nos. 24396 and 24397 respectively, seeking to extend the drilling deadline to May 9, 2025.
8. Fasken represents it is still waiting on the BLM to issue drilling permits for the horizontal well spacing units in the Bone Spring formation underlying the W2 of Sections 15 and 22, Township 20 South, Range 32 East (NMPM), Lea County, New Mexico.
9. Fasken bears the burden of demonstrating that good cause exists for the OCD to grant the relief of a second extension.
10. Marathon has filed a protest with the OCD resulting in a September 17-18 pre hearing order to hold a contested hearing in Case Nos. 24396 and 24397. Marathon seeks to expand the scope of the contested hearing to include the consideration of “competing development plans/competing applications filed by other operators.”
11. Marathon owns a 47.5% working interest in the W2 of Section 15, and filed a competing development plan with the OCD on August 6, 2024 under Case No. 24771 to pool all uncommitted mineral interests within the Bone Spring horizontal spacing unit comprised of the W2 of Sections 10, 15, and 22, Township 20 South, Range 32 East (NMPM), Lea County, New Mexico.
12. Marathon asserts that the OCD should make a fully informed decision on the issue of good cause based on all the circumstances (including Marathon’s competing development plan) under the NM Oil and Gas Act’s mandate to prevent waste and protect correlative rights.¹ See NMSA 1978 Sections 70-1-1 *et seq.*

Marathon’s pleadings fail to consider how additional delay aligns with the Act’s mandate to prevent waste and protect correlative rights. While not a fact of record, I take administrative notice that the OCD’s consideration of a competing compulsory pooling application and restarting the BLM’s permit approval process from the beginning would impose a delay of 18-24 months.

13. Marathon cites to Orders R-21454, R-21454-A and R-21675 to suggest the OCD can or should reopen a pooling order and allow parties to present alternative development plans whenever an operator seeks an extension of drilling completion deadlines. A close reading of the orders does not advance Marathon's position as none of the orders suggest a party subject to a final order can enlarge the scope of the hearing beyond good cause.
14. Marathon provides no alternative compelling authority to contradict the clear direction of Paragraph 9 of the Orders, and therefore the contested hearing shall admit evidence that is relevant and reliable on the sole issue of good cause to amend the Orders. Marathon's competing pooling application in Case No. 24771 is therefore outside the scope of the contested hearing in Case Nos. 24396 and 24397.
15. Marathon's Case No. 24771 is stayed pending the good cause contested hearing and the final orders in Fasken's Case Nos. 24396 and 24397.
16. The issues of *res judicata* (claim preclusion), waiver, and collateral attack of a final order are not reached here in deciding this order.

IT IS SO ORDERED.

**GREGORY CHAKALIAN
HEARING EXAMINER**