

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

**FRANKLIN MOUNTAIN ENERGY 3, LLC'S APPLICATION
FOR COMPULSORY POOLING, AND, TO THE
EXTENT NECESSARY, APPROVAL OF
AN OVERLAPPING SPACING UNIT,
LEA COUNTY, NEW MEXICO.**

CASE NO. 24472

**FRANKLIN MOUNTAIN ENERGY 3, LLC'S POST-HEARING BRIEF AND
FINDINGS OF FACT & CONCLUSIONS OF LAW**

Franklin Mountain Energy 3, LLC ("FME3") submits this Post-Hearing Brief and Proposed Findings of Fact and Conclusions of Law, pursuant to the Hearing Examiner's direction at the August 1, 2024 hearing. FME3's Proposed Findings of Fact and Conclusions of Law are attached hereto as **Attachment 1**.

INTRODUCTION

In its application in Case No. 24472, FME3 made two requests of the Division. First, FME3 sought an order pooling all uncommitted mineral interests within a 320-acre, more or less, Wolfcamp horizontal spacing unit comprised of the W/2 E/2 of Sections 27 and 34, Township 19 South, Range 35 East, N.M.P.M., Lea County, New Mexico. Franklin's pooling request is uncontested and should be granted.¹ As FME3's exhibits supporting its pooling application establish, FME3 owns 84% of the working interest in its proposed W/2 E/2 spacing unit and no other operator is seeking to develop this acreage. Second, and as is relevant to this Post-Hearing Brief, FME3 seeks Division approval of an overlapping spacing unit because FME3's spacing unit proposed in this

¹ North Fork's objection has no bearing on the pooling portion of FME3's application. The Order for the pooling application portion of FME3's application would include the usual terms of the Division's pooling orders, which FME3 does not repeat in its proposed Findings of Facts and Conclusions of Law.

case will overlap an existing spacing unit for the Toro 27 #005H (“Toro 27 5 well”), operated by North Fork Land Management, LP (“North Fork”) and its partner Aguila Operating Company, LLC (“Aguila”) (collectively “North Fork”).

The pooling portion of this case was originally heard on May 16, 2024, and FME3 filed exhibits on May 14, 2024, and supplemental notice exhibits on June 6, 2024. *See* FME3’s Proposed Findings of Fact (“FOF”) ¶ 2. The case was continued for notice purposes only, which North Fork used an opportunity to object on the basis that FME3’s proposed Treble State Com 703H well will traverse the SW/4 NE/4 of Section 27 in the same interval where North Fork’s Toro 27 5 well is located. FOF ¶ 3.

The Division’s rules authorize overlapping spacing units. *See* Rule 19.15.16.15.B(9)(b). North Fork’s counsel acknowledged that the regulations specifically allow for overlapping spacing units. *See* Transcript of August 1, 2024 Hearing (“Tr.”) p. 14, lines 13-16 (“And we agree that you can have overlapping spacing units because of the horizontal [rules]. That’s something we can’t prevent...”). Nevertheless, the Division held a contested hearing on North Fork’s objection to FME3’s overlapping spacing unit request on August 1, 2024, and this Post-Hearing Brief, and the attached Findings of Fact and Conclusions of Law, pertain to North Fork’s objection to the overlapping spacing unit of FME3’s application. As demonstrated herein, North Fork’s objections lack merit and do not support denying the overlapping spacing unit portion of FME3’s application.

ARGUMENT

North Fork’s objection to FME3’s request that the Division approve an overlapping spacing unit lacks factual and legal support and must be denied. At its core, North Fork’s argument is (1) that the Treble State Com 703H well should be 330’ from

the existing Toro 27 5 well to avoid collision risks during drilling operations and to minimize damage to the well during completion and fracturing operations; and (2) FME3 should give North Fork at least 30 days' advance notice before commencing drilling and before commencing completion operations. FME3 addressed both of these points with credible, reliable testimony, analyses, and evidence presented by a highly qualified expert witness. North Fork's testimony and exhibits, on the other hand, were based only on rank speculation and unsupported and insupportable contentions, to the point that the Hearing Examiner excluded substantial portions of North Fork witnesses' testimony and required North Fork to amend its exhibits accordingly.

The Toro 27 5 well is a vertical well, which, according to North Fork, produces 15 to 20 barrels a day of oil and about 7 to 10 MCF of gas. FOF ¶ 17(c). It is undisputed that North Fork owns only a "wellbore interest" in the Toro 27 5H vertical well, which it acquired by virtue of an assignment from Devon Energy Production Company and WPX Permian (the "Wellbore Assignment"). *See* North Fork Amended Objection, ¶ 1; FOF ¶ 9. A wellbore assignment is, "from an area standpoint, [the] narrowest for of oil and gas assignment." *See Petro Pro, Ltd. v. Upland Resources, Inc.*, 279 S.W.3d 743, 752 (Tex. App. 2007). A wellbore assignment does not convey any title to any oil and gas—rather a wellbore assignment only conveys the right to produce any oil or gas that may, essentially, find its way into the wellbore. *Id.* at 753 (likening the right to produce from a wellbore to the "rule of capture", which allows a wellbore interest owner to produce oil and gas it does not own once the operator captures it). Given the limited nature of a wellbore assignment, courts have rejected arguments made by wellbore interest owners that horizontal development constitutes a trespass, and instead, have confirmed that the

party proposing horizontal wells has the right to develop them, notwithstanding the existence of wellbore interests. *See id.* at 754.

Because North Fork owns only a naked wellbore interest, it does not have any interest in any of the minerals or leasehold rights outside of its existing wellbore, and as such, North Fork does not have the right to develop any portion of Section 27 and does not have any right to participate in FME3's development of Section 27. North Fork acknowledged as much at the hearing stating: "We don't have the right to drill outside of this wellbore, but we have the right to produce from this wellbore." Tr. p. 121, line 25; 122, lines 1-5. North Fork also agreed that it does not have the right to drill any other wells within Section 27. Tr. p 122, lines 3-8. North Fork also admitted that the wellbore assignment did not "convey a working interest or leasehold interest in the proposed spacing unit." North Fork Amended Objection, ¶ 1.

Nevertheless, North Fork seeks to preclude FME3 from developing acreage in Section 27 that FME3 undisputedly has the right to develop. In fact, FME3 owns 84% of the working interest in its proposed W/2 E/2 spacing unit and no other operator is seeking to develop this acreage. North Fork's attempt to, at best, curtail and, at worst, prohibit FME3's development of the W/2 E/2 of Sections 27 and 34 must be rejected because it is factually unsupported and is contrary to the Oil and Gas Act's mandate to prevent waste and protect correlative rights.

I. NORTH FORK DID NOT MEET ITS BURDEN TO SHOW THAT 330 FEET SEPARATION IS REQUIRED TO PROTECT THE NORTH FORK WELL DURING COMPLETION AND FRACTURING OPERATIONS.

North Fork's assertion that FME3's completion and fracturing of the Treble State Com 703H well will negatively impact the Toro 27 5 well fails because North Fork did

not submit any relevant evidence in support of its claim.² North Fork presented only skeletal testimony and failed to prepare even a single analysis to support its objection. North Fork presented testimony and evidence from two witnesses—Aaron Hoak, a petroleum engineer consultant, and David W. Bolton, the manager of North Fork Land Management LP and North Fork Operating, LP. FOF ¶ 11. Mr. Hoak was admitted as an expert witness in petroleum engineering and Mr. Bolton as a lay witness. FOF ¶ 11. Both witnesses failed to present relevant, credible testimony or evidence that would support North Fork’s objection.

The Division has stated that a party objecting to an overlapping spacing unit bears the burden of proof. *See* Order No. R-13124, ¶ 17 (“Three Span has the burden of proof to demonstrate that the completion of an authorized second well in this quarter-quarter section will impair its correlative rights.”). In Order No. R-13124, the Division rejected an argument similar to North Fork’s here, namely that completion and fracturing of a horizontal well could damage an existing wellbore. In rejecting that argument, the Division noted that, while the owner of the existing vertical wellbore

articulated concerns about possible damage to the [existing vertical] wellbore that could result from drilling and completing the [proposed horizontal] well, he cited no studies or literature indicating a probability of such damage, nor did he present any evidence of any situation where such damage had occurred.

Order No. R-13124, ¶ 12. In Order No. R-13124, the Division rejected the wellbore only interest owner’ challenge. As discussed in more detail below, the same outcome is warranted here because North Fork has not met its burden.

² North Fork conceded at the hearing that the Treble State Com 703H does not pose a collision risk and this argument is thus moot. FME3 includes in this Post-Hearing Brief a summary discussion of that issue in Section II *infra*.

In Order No. R-13124, the Division noted that the Division's rules allow for overlapping spacing units, but require notice to be given to the operator of an existing well, who has the opportunity to protest the proposed well. That process has been followed here—FME3 has the right to drill wells in the W/2E/2 of Section 27, North Fork was given notice and protested, and North Fork has not met its burden to demonstrate that FME3's completion and fracturing operations for the Treble State Com 703H well will negatively impact North Fork's wellbore.

North Fork's only requested relief is a 330 foot separation between FME3's Treble State Com 703H well and North Fork's Toro 27 5 well and 30 days' advance notice. *See, e.g.,* North Fork Exhibit A, ¶ 9.³ FME3 competently addressed both of these concerns.

First, FME3 agreed to provide North Fork the notice it requests. North Fork requested that FME3 provide North Fork notice of FME3's drilling operations at least 30 days before commencing drilling and that FME3 provide North Fork notice of completion and fracking operations no later than 30 days before those activities begin. North Fork Exhibit A, ¶ 9. FME3 has agreed to notify North Fork in advance of commencing drilling, and in advance of FME3's completion and fracturing of the Treble State Com 703H and 803H wells, to allow North Fork time to shut in the Toro 27 5 well. *See* FME3 Exhibit E, ¶ 9; Tr. p. 45, lines 10-19.

Mr. Bolton testified that North Fork has a frac protection policy, which North Fork could implement in advance of FME3 completing the Treble State Com 703H well. FOF

³ North Fork's counsel suggested that North Fork wanted the Division to order FME3 to pay damages to North Fork and to order FME3 to pay to safeguard the North Fork well, but also acknowledged that the Division likely does not have jurisdiction to require that. Tr. 14, lines 1-5. Neither of North Fork's witnesses raised this issue and thus it is not before the Division, and even if it were, FME3 agrees that the Division lacks jurisdiction over it.

¶ 17(p). Mr. Bolton testified that 30 days' advance notice prior to commencement of drilling and prior to commencing of fracking is adequate from his perspective. FOF ¶ 17(q). Thus, North Fork's objection based on FME3 providing advance notice is moot because FME3 has agreed to provide such notice and North Fork has agreed that FME3's proposed notice timing is adequate.

Turning next to North Fork's contention that the Division should require 330 feet of separation between the two wells in order to minimize potential impacts to the Toro 27 5 well arising during completion and fracturing operations, North Fork failed to meet its burden. First, Mr. Hoak's initial pre-filed testimony and exhibits did not even address the correct FME3 well. FOF ¶ 12. Given that the proximity of the Treble State Com 703H well to the North Fork Toro 27 5 well is the crux of North Fork's objection, it is somewhat baffling that North Fork's initial exhibits incorrectly discussed only the Treble State Com 803H well,⁴ and did not even mention the Treble State Com 703H well. Incredibly, although FME3 filed its exhibits as required a week before the hearing, which identified the Treble State Com 703H well as the well closest to the Toro 27 5 well, Mr. Hoak testified that he did not realize his error until the morning of the hearing. Tr. p. 80, lines 3-8; Tr. p. 93, lines 24-25. In discussions at the hearing, Mr. Hoak clarified that his pre-filed testimony and exhibits intended to refer to the Treble State Com 703H well, Tr. pp. 79-80, and North Fork filed Amended Exhibits to correct that error. FME3 understands that mistakes happen, including typographical errors, but here North Fork incorrectly identified the FME3 well that is the crux of North Fork's objection. The fact that North

⁴ North Fork acknowledged that it has no issues with the Treble State Com 803H well. FOF ¶ 17(h). In any event, as FME3 established in its testimony and exhibits, the Treble State Com 803H well poses no risk to the Toro 27 5 well. See FOF ¶¶ 16(k)-16(l).

Fork's only expert witness' initial pre-filed testimony addressed the wrong FME3 well, suggests that Mr. Hoak's testimony lacks both reliability and credibility.

Mr. Hoak's self-affirmed statement had to be amended in other respects as well. First, Mr. Hoak had been given the wrong OGRID number for North Fork by Mr. Bolton. Tr. p. 89, lines 3-12. Mr. Hoak had to correct his testimony to reflect that there was only one North Fork well at issue in this case, rather than two as he original testified. Tr. p. 90, lines 1-6. Mr. Hoak also had to revise his testimony to reflect that there was not, in fact, an "industry standard" for 330' setbacks—rather his information about setbacks supposedly came from unidentified "consultations with multiple well planners." *See* North Fork Exhibit A, ¶ 6; Tr. p. 97, lines 2-9 (when asked about "industry standards" Mr. Hoak responded "That is just basically from some geo-steer I had discussed with them. That's what they would've planned for this wellbore."); Tr. p. 132, lines 18-23.

Turning to the substance of Mr. Hoak's testimony, Mr. Hoak's written testimony includes a single unsupported statement in support of the 330 feet of separation. *See* North Fork Exhibit A, ¶ 9 ("Consultations with multiple well planners advised on a horizontal separation of 330 feet between the wellbores."). At the hearing, Mr. Hoak testified, somewhat ambiguously, that North Fork's suggested 330 foot separation was "just basically from some geo-steer I had discussed with them. That's what they would've planned for this wellbore." Tr. p. 97, lines 7-8; Tr. p. 96, lines 5-10. ("That number comes from multiple conversations with geo-steers that I talked to."). Mr. Hoak's testimony and exhibits do not include any analysis undertaken by North Fork to support the North Fork's assertion that 330 feet of separation should be required. FOF ¶ 17(j).

In any event, FME3's expert witness, Cameron Jarrett, addressed the 330 foot separation request because, with the 42 feet of shading, the Treble State Com 703H well would be at approximately 304-305 feet of separation. FOF ¶ 16(c). Mr. Jarrett testified that FME3 could not shade the Treble State Com 703 any further without needing to apply for a non-standard location approval from the Division.⁵ FOF ¶ 16(n). Mr. Hoak's testimony did not address why the 26 foot difference between the 330 foot separation North Fork requests and the 304 feet of separation that FME3 is planning is meaningful. FOF ¶ 17(k). In sum, Mr. Hoak's testimony does not provide any support for North Fork's request that the Division impose a 330 foot setback requirement from the Toro 27 5 well.

Mr. Hoak's written testimony includes only a single, again unsupported, statement in support of North Fork's claim that FME3's completion and fracturing operations will damage the Toro 27 5 well. *See* North Fork Exhibit A, ¶ 10 ("There have been instances of wells in the immediate area being damaged or destroyed by factures with similar proximity."). Neither Mr. Hoak's written or oral testimony nor his exhibits identify the "instances," what constitutes the "immediate area," or what constitutes "similar proximity." The Technical Examiner asked Mr. Hoak about his testimony in Paragraph 10 of his declaration, including the distance of the wells he was referring to from the North Fork wells. Tr. p. 102, line 25, Tr. p. 103, lines 1-5. Mr., Hoak testified that he did not have "any modeling to show close they were. But from looking at plots,...they were probably within similar distance." Tr. 103 lines 3-5; *see also* FOF ¶ 17(m). Even though

⁵ Although North Fork requested a 330 foot setback, FME3's counsel reached out to North Fork's counsel stating that FME3 was willing to apply for a NSL to allow FME3's Treble State Com 703H well to be at 330' from the Toro 27 5 well, but North Fork did not respond substantively to FME3's offer.

North Fork intended to rely on these alleged prior events, Mr. Hoak provided no information to assist the Division in assessing the relevancy (if any) of those other events.

While Mr. Hoak speculated that the Treble State Com 703H well was going to “bash” the Toro 27 5 well, he conceded that he did not include any modeling with his declaration, such as frac hit potential, to support that conclusion. Tr. p. 105, lines 11-19; FOF ¶ 17(0).⁶ Nor did Mr. Hoak’s testimony address frac propagation or model frac propagation. FOF ¶ 17(p).⁷ In fact, Mr. Hoak acknowledged that there was nothing in his self-affirmed statement that supported North Fork’s objection to FME3’s Treble State Com 703H well, other than past experience and Paragraph 10 discussed above. *See* Tr. p. 96, lines 24-25 (stating that North Fork’s objection was based on “past experience...*but it was not in the declaration*, except for discussed about in [paragraph] 10....” (emphasis added)). Simply put, Mr. Hoak did not provide the information required to demonstrate the relevancy of the statement in paragraph 10 nor does this statement assist the Division in assessing North Fork’s claim that FME3’s completion and fracturing activities will negatively impact the Toro 27 5 well. *See* N.M. R. Evid. 11-401.

As an expert witness, Mr. Hoak’s testimony should have, but did not, rest on a reliable foundation and needed to be relevant to the issues before the Division, and not be based on speculation or unfounded assertions. *See* N.M. R. Evid. 11-702 (“A witness

⁶ Because North Fork failed to support this claim with any pre-filed direct testimony, the Hearing Examiner correctly disallowed any testimony by North Fork’s petroleum engineer on the grounds that it was outside the scope of his direct testimony. Tr. p. 86-87. North Fork’s only oral testimony on the issue of frac propagation was that his unsupported statement that “we are still way too close from a completion perspective.” Tr. p. 88, lines 1-6.

⁷ North Fork’s counsel appeared to suggest that FME3 should have had additional witnesses available for North Fork to cross-examine on North Fork’s claim that FME3’s completion and fracturing operations for the Treble State Com 703H could negatively impact the Toro 27-5 wellbore (*i.e.*, risks from frac propagation or frac hits). Tr. p. 50, lines 23-25; p. 51, lines 1-9. However, it was North Fork’s burden to establish impacts to the Toro 27-5 wellbore, which it did not do. *See* Order No. R-13124.

who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.”). The circumstances surrounding Mr. Hoak’s testimony, as well as the contents of his testimony, establish that Mr. Hoak’s testimony should be accorded little, if any, weight.

Mr. Bolton’s lay witness testimony is also insufficient to support North Fork’s objection. Mr. Bolton’s bare assertion that the Toro 27 5 well will be damaged by the Treble State Com 703H well is based only on conjecture and is insufficient to meet North Fork’s burden. North Fork Exhibit B, ¶ 5. The Hearing Examiner, correctly, ruled that Mr. Bolton’s testimony about the prior two alleged events was irrelevant and required Mr. Bolton to revise his testimony accordingly. Tr. p. 113, lines 9-17 (“Mr. Padilla, I fail to see the relevance of this testimony. There's been no connection between what Franklin Mountain 12 Energy is proposing and what happened in this other unfortunate situation.”); Tr. p. 134, lines 20-25 to p. 135, lines 1-15. Mr. Bolton’s contention that North Fork has incurred financial damage, loss of production, and waste of reserves based on FME3’s alleged prior actions having nothing to do with this case, North Fork Exhibit B, ¶ 7, is both irrelevant and factually unsupported, especially in light of the Hearing Examiner’s ruling that similar testimony from Mr. Bolton was irrelevant. Thus, Mr. Bolton’s testimony provides no reliable or relevant testimony.⁸

⁸ Mr. Bolton also revised his testimony to remove what turned out to be inaccurate statements regarding FME3’s prior communications with North Fork. North Fork Exhibit B, ¶ 6.

North Fork's assertion that it has correlative rights protectable by the Division fails as well.⁹ *See, e.g.*, Tr. p. 14, lines 17-20; Tr. p. 19, lines 21-25; Tr. p. 111, line 3-4. Order No. R-13124 is instructive because in that case the Division concluded that a wellbore interest owner had not met its burden to demonstrate that the completion of a second well would impair its correlative rights. Order No. R-13124, ¶ 17. The Division noted that under the Oil and Gas Act, "a person's correlative right to the oil and gas in a pool is determined by the quantity of oil and gas underlying the land such person owns, and not by the ability of any particular well to produce that quantity." Order R-13124, ¶ 16. Because North Fork owns only a wellbore interest, it does not have a leasehold interest in Section 27 nor does it own any of the oil and gas underlying Section 27.

In sum, North Fork presented no evidence to affirmatively demonstrate that drilling or completing the Treble State Com 703H well will damage the Toro 27 5 well, especially in light of the fact that FME3 will provide North Fork advance notice so that North Fork can undertake the steps it needs to protect the Toro 27 5 well during those operations.

Not only did North Fork not meet its burden of proof, granting North Fork's objection would be contrary to the mandates of the Oil and Gas Act and contrary to the limited rights North Fork acquired under the Wellbore Assignment.

First, North Fork's position is contrary to the Oil and Gas Act's mandate to prevent waste and protect correlative rights. *See* NMSA 1978, § 70-2-11(A). As the New Mexico Supreme Court has recognized, "the basis of [the Division's] powers is founded on the duty to prevent waste and to protect correlative rights. Actually, the prevention of waste

⁹ To the extent North Fork is conflating property damage to the wellbore with correlative rights, which it seems to be doing, claims of property damage are beyond the Division's jurisdiction.

is the paramount power, inasmuch as this term is an integral part of the definition of correlative rights.” *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, ¶ 11, 373 P.2d 809.

North Fork’s position is apparently that North Fork, and all other vertical well operators in New Mexico, can exercise veto authority over horizontal development. That position would result in waste and impair correlative rights, because it would leave valuable reserves in the ground—reserves that can be recovered more efficiently and more effectively by horizontal wells. North Fork’s vertical well, producing 15 to 20 barrels per day, is not efficiently draining the SW4/NE/4 of Section 27. North Fork’s position is especially untenable in light of the fact that the Treble State Com unit, as its name suggests, is comprised of both State and fee lands, which further militates in favor of approving FME3’s request for an overlapping spacing unit application to fully develop State minerals. A contrary result would leave the State minerals undeveloped based only on the objections of a vertical well operator who, by its own admission, is only producing 10 to 15 barrels of oil per day.

In addition, North Fork’s expansive view of its rights is inconsistent with its limited wellbore interest. North Fork does not have the right to drill horizontally beyond the confines of its existing wellbore. *See Petro Pro, Ltd.*, 279 S.W.3d at 751. North Fork does not have an exclusive right to produce the oil and gas in the SW4/NE/4 of Section 27, nor does North Fork have a right to exclude or prohibit others from developing the oil and gas underlying that 40-acre tract. *See Tr. p. 103, 16-25 to Tr. p. 104, lines 1-3* (suggesting that FME3 should be precluded from fracking within in the 40-acre tract). If the Division were to accept North Fork’s position, FME3 would essentially be precluded

from developing minerals in the SW4/NE/4 of Section 27, which is not a right that North Fork has or can seek to exercise given the limited interest North Fork obtained under the Wellbore Assignment.

Simply put, North Fork's Amended Exhibits and the testimony at the hearing provide no reliable or relevant evidence to meet North Fork's burden, and as such, North Fork's objection must be denied.

II. NORTH FORK CONCEDED THAT THE TREBLE STATE COM 703H WELL DOES NOT POSE A COLLISION RISK

FME3's expert drilling engineer, Cameron Jarrett, demonstrated that the Treble State Com 703H well poses no collision risk to the Toro 27 5 well, and thus, there is no basis for North Fork's asserted 330 foot separation between the two wells. In fact, North Fork's petroleum engineer consultant agreed that FME3 can avoid a collision between the Treble State Com 703H well and the Toro 27 5 well, even without the 330 feet of separation, based on the technical testimony presented by Mr. Jarrett. FOF ¶ 17(h). Thus, the 330 feet of separation asserted by North Fork is not an issue with respect to collision risks between the Treble State Com 703H well and the Toro 27 5 well, and does not provide any basis to deny FME3's overlapping spacing unit request. Although North Fork conceded this issue, FME3 provides a brief summary of the testimony and evidence presented at the hearing which establishes the lack of collision risk.

As Mr. Jarrett testified, the Treble State Com 703H well poses no collision risk to the Toro 27 5 well for several reasons. *See, e.g.*, Tr. p. 38, lines 18-25 ("As far as the concern for a wellbore collision with the existing Toro number 5 well with our planned development of the Treble State Com 703 and 803H, with our current surveying technology, real time anti-collision monitoring, and best practices, there is no risk of

wellbore collision while drilling with development of those two wells from Franklin Mountain's side.”). First, FME3 intends to “shade” the Treble State Com 703H approximately 42 feet, making it a total of approximately 304 feet from the Toro 27 5 well. FOF ¶ 16(c) FME3’s decision to shade the well 42 feet is based on a conservative analysis, using a reliable modeling tool. FOF ¶ 16(d). The modeling tool FME3 used accounts for the ellipsis of uncertainty or the error ellipsis and provides a “separation factor” calculation that relates to the distance between the two wells and the potential for overlap between the two well’s ellipsis of uncertainty. FOF ¶ 16(e). As Mr. Jarrett testified, the goal is to have a separation factor of 1.0 or more. FOF ¶ 16(f). The separation factor that FME3 modeled for the Treble State Com 703H well was 0.861. FOF ¶ 16(f). In order to reach a separation factor of 1 or greater, based on the model FME3 needed to move the well 42.20 feet. FOF ¶ 16(g). FME3 plans to do so, eliminating the collision risk. FOF ¶ 16(h). Mr. Jarrett also testified that both the Treble State Com 703H and 803H wells have vertical separation from the Toro 27 5 well. FOF ¶ 16(i-1).

In addition, FME3 has implemented a proactive approach to monitoring drilling activities to avoid collision risk. FOF ¶ 16(m). FME3 has developed a proven anti-collision policy based on high density infill projects globally. FME3 Exhibit E-1 (“Conclusions” slide). This approach includes using a plane with sensors on it to collect local magnetic information over the section that is going to be drilled, which means that FME3 can measure the magnetic values (rather than just model them), which improves drilling accuracy. FOF ¶ 16(m). FME3 then puts waypoints along the proposed path of the wellbore, which allows for further refinement of the wellbore path even before it drilled. FOF ¶ 16(m); *see also* Tr. p. 66, lines 6-8 (“So when we plan, we have the

...correct error ellipsis assigned to the well plan before we approve it.”). FME3 uses real time monitoring software that North Fork will have access to in order for North Fork to monitor for any collision concerns. FOF ¶ 16(m)

FME3 has a vested interest in insuring that its wells do not collide with other wells. The cost for drilling the Treble State Com 703H well is approximately 11.8 million dollars, which is a significant investment that FME3 wants to protect. *See* Exhibit B.7 (Treble State Com 703H AFE).

Conversely, the 330 foot setback North Fork advanced was not supported by any analysis or any relevant evidence. North Fork did not undertake any independent analysis or do any modeling of the potential collision risk between the Toro 27-5 well and the Treble State Com 703h well. FOF ¶ 17(i). Rather, North Fork’s position was based only on Mr. Hoak’s vague assertion that he had “[c]onsultations with multiple well planners.” North Fork Exhibit A, ¶ 9. North Fork’s contention, untethered to any of the facts presented by this case, that well planners advise a 330 foot separation to avoid collision risks is entitled to little, if any, weight in light of FME3’s actual analysis of the potential collision risks associated with the wells at issue, and FME3’s conclusion that shading the Treble State Com 703H will avoid collision risks.

In fact, North Fork’s petroleum engineer consultant acknowledged that he did “not have any problem with [Mr. Jarrett’s] testimony” regarding the collision risks. Tr. p. 85, lines 14-15. He testified that, given Mr. Jarrett’s technical testimony, he agreed that FME3 could avoid a collision with the Toro 27 5 well at the shaded location. FOF ¶ 17(h). In response to a question from the Technical Examiner, Mr. Hoak agreed that FME3 addressed North Fork’s concerns as far as the collision risk. FOF ¶ 17(h).

North Fork's objection based on collision risk fails either because it lacks merit or because it is moot. As a result, North Fork's purported concern regarding collision risk provides no basis for North Fork's objection the FME3's request for approval of an overlapping spacing unit.

CONCLUSION

North Fork did not meet its burden to establish that drilling and completing/fracturing operations for FME3's Treble State Com 703H well will impact North Fork's 27 5 well. North Fork's Amended Exhibits and the testimony at the hearing provide no reliable or relevant evidence to meet North Fork's burden, and as such, North Fork's objection must be denied. North Fork's objection should be denied because allowing an existing vertical well operator to have veto authority over full horizontal development of this acreage violates the Oil and Gas Act's mandate to prevent waste and protect correlative rights.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on counsel of record by electronic mail on September 13, 2024.

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Attachment 1—FME3 Proposed Findings of Fact and Conclusions of Law

Proposed Findings of Fact

1. In Case No. 24472, Franklin Mountain Energy 3, LLC seeks an order from the Division pooling all uncommitted mineral interests within a 320-acre, more or less, Wolfcamp horizontal spacing unit comprised of the W/2 E/2 of Sections 27 and 34, Township 19 South, Range 35 East, N.M.P.M., Lea County, New Mexico. Franklin also seeks approval of an overlapping spacing unit. This spacing unit will be dedicated to the **Treble State Com 703H** and **Treble State Com 803H** wells. *See* Application, FME3 Exhibit B.1.

2. This case was originally heard on May 16, 2024, and is part of a comprehensive development plan for the E/2 of Sections 27 and 34. FME3 filed exhibits on May 14, 2024. FME3 witnesses were available for questions. *See* May 16, 2024 Hearing Transcript, pp. 199-208.

3. FME3 filed supplemental notice exhibits on June 6, 2024. The case was continued for notice purposes only. *See* May 16, 2024 Hearing Transcript, pp. 202-204. North Fork Land Management, LP (“North Fork”) and Aquila Operating Company, LLC (“Aquila”) (collectively “North Fork”) objected to this case based on the fact that FME3’s proposed Treble State Com 703H well will traverse the SW/4NE/4 of Section 27 in the same interval where North Fork’s existing Toro 27 #005H vertical well is located. *See* North Fork Amended Objection, ¶ 2.

4. The rules implementing the Oil and Gas authorize overlapping spacing units. *See* Rule 19.15.16.15.B(9)(b) NMAC.

5. The operator proposing the overlapping spacing unit is required to provide notice to the existing spacing unit, who then has the opportunity to protest. *See* Rule 19.15.16.15.B(9)(b).

6. FME3 gave notice to North Fork and North Fork has protested FME3’s proposed Treble State Com 703H well. *See* FME3 Exhibit D5-D7.

7. FME3 owns 84% of the working interest in its proposed W/2 E/2 Unit. *See* FME3 Exhibit B.3.

8. OCD set a contested hearing on the limited issue of North Fork’s objection to FME3’s proposed well location. *See* July 11 Hearing Transcript, p. 23.

9. North Fork owns only a “wellbore interest” in the Toro 27 5 well. *See* North Fork Amended Objection, ¶ 1. *See* North Fork Amended Objection, ¶ 1 (“The assignment dated as of October 1, 2022 from Devon Energy Production Company, LP and WPX Permian, LLC to North Fork and Aquila conveyed the Toro 27-5 well located in the SW/4NE/4 of Section 27, T19S, R35E, Lea County, NM, and did not convey a working interest or leasehold interest in the proposed spacing unit....”).

10. At the contested hearing, FME3 presented testimony and exhibits from Cameron Jarrett (Drilling Engineer). *See generally* August 1, 2024 Hearing Transcript (“Tr.”) pp. 16-66 and FME3 Exhibit E. Mr. Jarrett was sworn, was qualified to present expert testimony, and was subject to cross-examination by the other party and by the OCD Hearing Examiners.

Attachment 1—FME3 Proposed Findings of Fact and Conclusions of Law

11. North Fork presented testimony and evidence from two witnesses—Aaron Hoak, a petroleum engineer consultant, and David W. Bolton, the manager of North Fork Land Management LP and North Fork Operating, LP. *See generally* Tr. pp. 67-127 and North Fork Exhibits. North Fork’s witnesses were sworn, Mr. Hoak was qualified to present expert testimony, and were subject to cross-examination by the other party and by the OCD Hearing Examiners.

12. North Fork’s pre-filed written testimony and exhibits suffered from multiple errors, including identifying the wrong FME3 well, listing the wrong OGRID number, including the C-102 for the Treble State Com 803H well instead of the C-102 for the Treble State Com 703H well, among other errors. *See generally* Tr. pp. 132-135 (recap of errors in North Fork Exhibits).

13. Mr. Hoak’s pre-filed testimony also had to be revised to remove the term “industry standard” from Paragraph 9, because Mr. Hoak’s testimony did not demonstrate that a 330 foot separation between well bores was actually an industry standard. *See* Tr. p. 132.

14. Mr. Bolton’s pre-filed testimony contained discussions of two prior frac hits, which the Division determined were not relevant and were not substantiated by any evidence. *See* Tr. p. 133-135. Mr. Bolton’s testimony was revised to remove that testimony. *See* Tr. p. 133-135

15. Mr. Bolton’s revised testimony also eliminated an inaccurate statement regarding FME3’s prior communications with North Fork. *See* North Fork Exhibit B, ¶ 6.

16. FME3’s drilling engineer testified:

- a. There is no risk of wellbore collision from either the Treble State Com 703H or the Treble Stat Com 803H. Tr. p. 38, lines 18-25; Tr. p. 63. Tr. p. 66, lines 6-8 (“So when we plan, we have the...correct error ellipsis assigned to the well plan before we approve it.”).
- b. The Treble State Com 703H is planned to be 262’ west of the existing Toro 27 5 well and the Treble State Com 803H is planned to be 426’ east of the existing Toro 27 5 well. Tr. p. 40, lines 8-23; Tr. p. 42, lines 20-25; FME 3 Exhibit E-1.
- c. FME3 intends to “shade” the Treble State Com 703H approximately 42-43 feet, making it a total of approximately 304 feet from the Toro 27 5 well. Tr. p. 61, lines 5-25.
- d. FME3’s decision to shade the well 42 feet is based on a conservative analysis, using a reliable modeling tool. Tr. p. 44, lines 11-15, Tr. 58, lines 5-8; Tr. p 43-44, Tr. p. 60, lines 2-9 (“My opinion would be that there would be no contact at that displacement. The [] error models that generate the ellipsis are extremely conservative.”).
- e. The modeling tool FME3 used accounts for the ellipsis of uncertainty or the error ellipsis and provides a “separation factor” calculation that relates to the

Attachment 1—FME3 Proposed Findings of Fact and Conclusions of Law

distance between the two wells and the potential for overlap between the two well's ellipsis of uncertainty. Tr. 39, lines 13-24.

- f. The goal is to have a separation factor of 1.0 or more. *Id.* The separation factor that FME3 modeled for the Treble State Com 703H well was 0.861. *See* also FME3 Exhibit E-1 (Treble State Com 703H Anti-Collision Report).
- g. In order to reach a separation factor of 1 or greater, based on the model FME3 needed to move the well 42.20 feet. *See* Exhibit E-1 (Treble State Com Anti-Collision Report); Tr. p. 40, lines 8-18.; Tr. p 58 lines 14-25.
- h. FME3 plans to do so, eliminating the collision risk. *See* Exhibit E-1 (Treble State Com Anti-Collision Report).
- i. There is vertical and horizontal separation between the Treble State Com 703H well and the Toro 27-5 well. Tr. p. 42, lines 13-20. Tr. p. 59, lines 4-10. Tr. p. 64, lines 19-23
- j. The Treble State Com 703H well will target the Wolfcamp A, but at a deeper level than where the Toro 27-f perforations are. Tr. p. 48, lines 7-9. Tr. p. 59, lines 4-10.
- k. There is vertical and horizontal separation between the Treble State Com 803H well and the Toro 27-5 well. Tr. p. 42, lines 13-20. Tr. p. 59, lines 4-10. Tr. p. 64, lines 19-23.
- l. The Treble State Com 803H well will target the Wolfcamp B formation, whereas the Toro 27-5 is located in the Wolfcamp A. Tr. p. 42, lines 13-20; Tr. p. 59, lines 4-10. The separation factor for the Treble State Com 803H well is 1.671, meaning a zero collision risk. *See* FME3 Exhibit E-1 (Treble State Com 803H Anti-Collision Report).
- m. FME3 has implemented a proactive approach to monitoring drilling activities to avoid collision risk. Tr. 56-57; FME3 Exhibit E-1 ("Conclusions" slide). This approach includes using a plane with sensors on it to collect local magnetic information over the section that is going to be drilled, which means that FME3 can measure the magnetic values (rather than just model them), which improves drilling accuracy. Tr. p. 57; Tr. p. 63. FME3 then puts waypoints along the proposed path of the wellbore, which allows for further refinement of the wellbore path even before it drilled. Tr. p. 63. Tr. p. 66, lines 6-8 ("So when we plan, we have the...correct error ellipsis assigned to the well plan before we approve it."). FME3 uses real time monitoring software that North Fork will have access to in order for North Fork to monitor for any collision concerns. Tr. p. 38, lines 18-25.

Attachment 1—FME3 Proposed Findings of Fact and Conclusions of Law

- n. In order for FME3 to move the 703H well to 330 feet, FME3 would need to apply for a non-standard unit location. Tr. p. 59, lines 23-25 to Tr. p. 60, line 1.
 - o. FME3 has agreed to notify North Fork in advance of commencing drilling, and in advance of FME3's fracturing and completion of the Treble State Com 703H and 803H wells, to allow North Fork time to shut in the Toro 27 #005 well. *See* Exhibit E, ¶ 9; Testimony Tr. p. 45, lines 10-19.
17. North Fork's witnesses testified:
- a. North Fork objects to the drilling of the Treble State Com 703H well because of concerns about damage to the wellbore during drilling and during completions. *See* Amended Objection, ¶ 2.
 - b. The Toro 27 5 well is a vertical well. Tr. p. 81, lines 21-24.
 - c. The Toro 27 5 well produces 15 to 20 barrels a day of oil and about 7 to 10 MCF of gas. Tr. p. 111, lines 7-8.
 - d. North Fork acknowledged that it does not have the right to drill outside of the wellbore, but that it does have the right to produce from the wellbore. Tr. p. 121, line 25; 122, lines 1-5.
 - e. North Fork agreed that it does not have the right to drill any other wells within Section 27. Tr. p 122, lines 3-8.
 - f. North Fork's Amended Objection states that the wellbore assignment did not "convey a working interest or leasehold interest in the proposed spacing unit." North Fork Amended Objection, ¶ 1.
 - g. North Fork acknowledged that it had no concerns with the Treble State Com 803H well. Tr. p. 85, lines 5-9 (Question by North Fork counsel: "As I understand your testimony, you've only got one problem. One well is the only problem you're really concerned with right? You're not concerned about the 803 well." Answer: "That's correct."); Tr. p. 84, lines 4-9.
 - h. North Fork agreed that FME3 can avoid a collision between the Treble State Com 703H well and the Toro 27-5 well based on its currently proposed location. Tr. 85 lines 19-23 ("Yes. From a drilling perspective, it will probably be close, but that's not the only concern."); *see* Tr. p. 101, lines 14-17 (Question: "But previously you did state that the applicant's witness addressed your concerns as far as, like the setbacks and the zones of uncertainty." Answer: "Yes.").
 - i. North Fork did not undertake any independent analysis or do any modeling of the potential collision risk between the Toro 27 5 well and the Treble State Com 703h well. Tr. p. 94, lines 24- 25, p. 95, lines 1-3 ("No. I didn't do any

Attachment 1—FME3 Proposed Findings of Fact and Conclusions of Law

modeling.”); Tr. p. 94, line 16 (conceding that North Fork had not undertaken a calculation of the collision distance).

- j. North Fork contended, without substantiation or analysis, that a 330 foot or greater set back is required to protect the Toro 27 5 well during FME3’s completion operations for the Treble State Com 703H well. See North Fork Exhibit A, ¶ 9; Tr. p. 97, lines 1-9.
- k. North Fork did not address why the 26 foot difference between the 330 foot separation North Fork requests and the 304 feet of separation that FME3 is planning is meaningful. *See generally* Tr. p. 87-88.
- l. North Fork contended, without substantiation or analysis, that FME3’s completion operations for the Treble State Com 703H well will result in a frac hit to the Toro 27 5 well. Tr. p. 105, lines 11-20.
- m. “There have been instances of wells in the immediate area being damaged or destroyed by fractures with similar proximity.” Exhibit A, ¶ 10. But North Fork did not provide any information allowing the Division to evaluate the relevance of those instances with respect to North Fork’s objection to FME3’s request for approval of an overlapping spacing unit. Tr. p. 102, line 25 to Tr. p.103, lines 1-5, Tr. p. 105, lines 17-25 to Tr. p.106, lines 1-4.
- n. North Fork did not model the frac hit potential. *See* Tr. p. 96, lines 15-17
- o. North Fork did not prepare any analyses of frac propagation or prepare any models to support North Fork’s contention that FME3’s drilling and completion operations will negatively impact the Toro 27 5 well. *See* Tr. p. 96, lines 15-17.
- p. North Fork has a frac protection policy, which North Fork could implement in advance of FME3 completing the Treble State Com 703H well. Tr. p. 126, lines 13-25, p. 127, lines 1-9.
- q. North Fork agree that 30 days’ advance notice prior to commencement of drilling and prior to commencing of fracking is adequate. Tr. p. 127, lines 1-9.

Proposed Conclusions of Law

1. The Division has jurisdiction to issue this Order pursuant to NMSA 1978, § 70-2-17.
2. FME3 satisfied the notice requirements pertaining to overlapping spacing unit.
3. The Division satisfied the notice requirements for the hearing as required by 19.15.4.9 NMAC.

Attachment 1—FME3 Proposed Findings of Fact and Conclusions of Law

4. North Fork's objection is denied because North Fork did not meet its burden of proof. Although North Fork articulated concerns about possible damage to the Toro 27 5 well that could result from the drilling and completion of the Treble State Com 703H well, North Fork did not undertake any analysis or present any studies or evidence to substantiate those concerns. North Fork's testimony does not provide any support for North Fork's request that the Division impose a 330 foot setback requirement from the Toro 27 5 well.

5. The Division concludes that the Treble State Com 703H well will not impair any correlative rights North Fork alleges to have.

6. Because North Fork has a wellbore only interest, North Fork does not have a leasehold interest in the property nor does North Fork own any of the oil and gas under the leasehold. Rather, North Fork only has the right to produce such oil and gas as makes its way into the Toro 27 5 well.

7. To the extent North Fork is conflating property damage to the wellbore with correlative rights, claims of property damage are beyond the Division's jurisdiction.

8. If the Division were to grant North Fork's objection, doing so would result in waste by limiting FME3's ability to produce oil and gas from Section 27 and impair the correlative of rights of FME3 and the other working interest owners actually own mineral interests in Section 27.

9. FME3's application for an order approving an overlapping spacing unit is approved.