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

APPLICATIONS OF MRC PERMIAN COMPANY FOR APPROVAL OF AN OVERLAPPING HORIZONTAL WELL SPACING UNIT AND COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.

CASE NOS. 24778-24783

APPLICATIONS OF MRC PERMIAN COMPANY FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.

CASE NOS. 24784-24786

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

CASE NOS. 24457, 24459, 24479

APPLICATIONS OF FRANKLIN MOUNTAIN ENERGY 3, LLC FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO

CASE NOS. 24898-24901

MRC'S POST-HEARING BRIEF

MRC Permian Company ("MRC") (OGRID No. 4323) submits this pre-hearing statement pursuant to the instructions of the Hearing Officer in these consolidated matters.

MRC seeks to pool standard horizontal well spacing units in the Bone Spring and Wolfcamp formations underlying Sections 30 and 31, Township 18 South, Range 35 East, Lea County, New Mexico. MRC Case Nos. 24778 and 24779 seek to pool the W2 and the E2 of Section 30 for proposed "u-turn" wells to accommodate existing Bone Spring development in Section 31. *See* MRC Ex. B-6 (blue lines). These proposed spacing units will overlap the Bone Spring spacing units sought under MRC Case Nos. 24780-24782 that seek to form standup Bone Spring spacing units for two-mile laterals. *Id.*[1] The remaining Cases Nos. 24783-24786 seek to

[1] MRC noted in its filings that the E2E2 of Section 30 will be developed at a later time using infill wells or overlapping spacing units. *See* MRC Ex. C at ¶ 6.

form standup Wolfcamp spacing units for two-mile laterals in the lower Wolfcamp interval underlying Sections 30 and 31. *Id.*

Franklin Mountain Energy 3, LLC ("Franklin Mountain") has filed pooling applications under Case Nos. 24457, 24459, 24479, and 24898-24901 that seek to pool the Bone Spring formation under Sections 18, 19 and 30 for 3-mile wells, and the Wolfcamp formation under Sections 19 and 30 for 2-mile wells, thereby overlapping MRC's pooling applications in Section 30. *See* MRC Ex. B-6 (red lines). Franklin Mountain is operating existing Bone Spring wells in Section 19 (dark lines outline in red), while MRC is operating existing Bone Spring and Wolfcamp wells in Sections 30 and 31 (dark lines outlined in blue).

ARGUMENT

SINCE MRC CONTROLS A MAJORITY OF THE WORKING INTEREST AND CURRENTLY OPERATES IN SECTION 30, DIVISION PRECEDENT HOLDS MRC SHOULD BE ALLOWED TO CONTINUE DEVELOPMENT OF THAT SECTION UNLESS FRANKLIN MOUNTAIN ESTABLISHES A COMPELLING REASON TO OUST MRC AS OPERATOR.

This case falls squarely within Division precedent that, absent certain compelling factors, the working interest in the overlapping Section 30—where MRC controls 61.25% of the working interest—is the deciding factor. To the extent that Franklin Mountain contends that its Term Assignment deadline is a compelling factor sufficient to overcome MRC's working interest control, that claim is belied by Franklin Mountain's own actions in delaying more than 16 months, and less than a year before the initial deadline, to file applications to pool Section 30 for its proposed wells. As Franklin Mountain acknowledged, the company was focused on "other expirations" during the last two years and meeting the obligations under the Term Assignment "was not a top priority." Tr. 104. Franklin Mountain cannot now change its mind and argue the Term Assignment deadline is of such priority that it trumps MRC's ownership

control. This is particularly true here, where MRC offered multiple solutions that would have allowed both companies to operate on acreage where they own a majority interest and allowed the obligations under the Term Assignment to be met without the delay associated with contested pooling cases.[2]

A. It Is Undisputed MRC Controls The Majority Of The Working Interest And Currently Operates Horizontal Wells In Section 30.

It is undisputed that MRC owns 58.75% of the working interest in Section 30 and has the support of Axis Energy Corporation, thereby controlling 61.25% of the working interest in Section 30. *See* MRC Exs. A-10 and A-11; FM Ex. A-6 (Tracts 6 & 7 ownership breakdown).[3] The remaining 38.75% of the working interest in Section 30 is held by Franklin Mountain and subject to the obligations under a Term Assignment issued by Marathon Oil Permian LLC and assigned to Franklin Mountain in December of 2022. *See* Tr. 97-98.

Section 30 is comprised of two State leases. *See* MRC Ex. A-10. MRC is the record title holder of State Lease VB-2312-2 and has applied to the State Land Office for approval of the assignment of record title to the second State Lease, VO-9145-1. *See* MRC Ex. A at ¶ 28. The State Land Office will therefore look to MRC for bonding, surface restoration and other obligations under these leases for oil and gas operations in Section 30. *See* Tr. 84-85.

MRC currently operates producing horizontal wells in Sections 30 and 31. MRC operates two horizontal Bone Spring wells in the E2 of Section 30, seven horizontal wells in the Bone Spring in Section 31, and an existing horizontal well in the Wolfcamp in Section 31. *See* MRC Exs. A-8, A-9 and B-6. Franklin Mountain operates four producing horizontal wells

[2] MRC's witness noted that since it is currently running nine rigs in the Permian Basin, it has the flexibility to meet tight drilling deadlines once a pooling order is issued. Tr. 294.

[3] Franklin Mountain's land witness acknowledged that his filed exhibits mistakenly suggests that Axis Energy supports FME3 working interest and intends to correct that mistake with amended filings. Tr. 82-83.

in the Bone Spring formation underlying Section 19 where Franklin Mountain holds a substantial working interest. *Id.*

Granting MRC's applications to pool Sections 30 and 31 for infill drilling and denying Franklin Mountain's effort to combine Section 30 with Sections 19 and 18, will allow the parties to continue to operate acreage where they currently operate and where each party has a majority of the working interest.

B. Division Precedent Places The Burden On Franklin Mountain To Bring Forth Convincing Evidence Demonstrating MRC's Additional Development Plans For Section 30 Will Cause Waste Or Otherwise Negatively Impact Correlative Rights.

As the majority working interest owner in Section 30, Division precedent establishes that MRC's pooling applications must be granted unless Franklin Mountain demonstrates with convincing evidence that MRC's continued development of Section 30 will cause waste or otherwise negatively impact correlative rights. In *COG Operating v. Mewbourne,* Order R-21198 (11/3/20), the Division was presented with a circumstance similar to that presented under these cases. COG sought to combine Section 6 with Sections 7 and 18 to drill 3-mile wells. Mewbourne objected because it owned a majority of the working interest in Section 6 and had plans to develop that acreage. The Division focused on the ownership in the disputed section and denied COG's application finding "COG failed to establish that its applications, if granted, would more efficiently recover the oil and gas reserves underlying Section 6" and concluding "the mineral interest ownership held by each party at the time the application was heard supports independent development by Mewbourne of Section 6, and by COG of Sections 7 and 18." Order R-21198, at p. 5, Conclusions ¶8 and ¶13. The same is true here: The mineral ownership held by MRC and Franklin Mountain supports the independent

development of Section 30 by MRC and the independent development of Section 19 by Franklin Mountain.

A similar result was reached in *Cimarex v. Chevron,* Order R-22204 (7/25/22). In that case Cimarex sought to combine Sections 8, 17 and 20 to drill 3-mile horizontal wells. Chevron objected because it owned a majority of the working interest in Sections 17 and 20 and had plans to develop its acreage. Cimarex claimed pooling Chevron's acreage was necessary to avoid drilling "economically inferior" one-mile wells and that it had a superior development plan. *See* Order R-22204 at ¶14-¶20. The Division found "the evidence on competing development plans to be insufficient to support one plan over the other." *Id.* at ¶25. The Division therefore decided the matter based on ownership, noting Chevron's applications still allowed Cimarex to drill one-mile wells in Section 8 where Cimarex owned a majority of the working interest, allowed Chevron to drill wells in in Sections 17 and 20 where Chevron owned a majority of the working interest, and therefore offered "the best opportunity for each party to develop its own acreage." *Id.* at ¶23-¶26.

The Division has decided other competing pooling cases based on ownership in the disputed acreage where the evidence does not clearly establish that one development plan is superior to the other. In *COG v. WPX Energy*, Order R-21826 (8/31/20), the Division found that WPX failed to establish its development plan was superior to COG's plan, and therefore concluded COG should be allowed to develop the disputed acreage where COG held superior working interest control:

> OCD concludes that the conflicting evidence over well and overall development proposals do not clearly favor one proposal, while the evidence on working interest control strongly favors the COG proposal. In the absence of other compelling factors, working interest control…should be the controlling factor in awarding operations. (citing *KCS Medallion Resources, Inc.,* Order R-10731-B at ¶24).

Order R-21826 at ¶21 (8/31/21). In *Matador v. Flat Creek*, Order R-21800 (8/26/21) the applicants sought to develop the Wolfcamp underlying Section 23 with laydown wells. The Division found that "neither party has conclusively demonstrated that its well development proposal would economically recover more oil or gas." Order R-21800 at ¶17. The Division therefore granted Matador's applications stating:

> In the absence of evidence demonstrating greater recovery from one party's development plan, OCD must consider other factors including working interest control. The weight of the factors, and in particular the working interest control factor, favors Matador

Order R-21800 at ¶22. Similarly, in *BTA Oil v. Marathon*, Order R-20368 (2/16/19), Marathon contended it had a superior development plan for acreage where BTA owned a majority of the working interest. The Division found that "Marathon has not presented sufficient empirical or modeling evidence to enable the Division to conclude that its preferred density is necessary to prevent waste." Order R-20368 at p. 8, ¶24. The Division found a lack of convincing evidence with respect to Marathon's other concerns about BTA's initial development plan. *Id.* at p. 8, ¶25-¶26. The Division therefore decided the matter based on BTA's superior ownership control in the disputed acreage. *Id.* at p. 8, ¶¶29-30.

Franklin Mountain has similarly failed to establish a compelling reason to prevent MRC from continuing to develop Section 30, where MRC has superior working interest control and facilities in place in the N2N2 of Section 30 for the additional development. *See* MRC Ex. A-13

C. Franklin Mountain Has Failed To Establish A Compelling Reason To Oust MRC As Operator Of Section 30.

MRC and Franklin Mountain have proposed to drill initial wells in the First Bone Spring, Third Bone Spring and the Lower Wolfcamp intervals under their respective applications. The only substantive differences between the initial development plans in Section 30 are (i) MRC seeks to continue development of the Second Bone Spring interval and Franklin Mountain does

not seek to initially develop that interval, (ii) Franklin Mountain seeks to initially develop the Upper Wolfcamp interval while MRC intends to wait to develop that interval until after obtaining more information from drilling into the Lower Wolfcamp interval, and (iii) Franklin Mountain has proposed 3-mile wells for the First Bone Spring and Third Bone Spring intervals while MRC has proposed "u-turn" wells to address MRC's existing development in Sections 30 and 31. *See* MRC Ex. B-6. Neither these differences, nor any other evidence presented by Franklin Mountain, establish a compelling reason to overcome MRC's superior ownership control in Section 30.

1. Both parties seek to drill 2-mile Wolfcamp wells, and MRC's plan to evaluate the Upper Wolfcamp interval after obtaining additional information from drilling the Lower Wolfcamp interval is a more prudent plan.

With respect to the Wolfcamp formation, both parties seek to drill 2-mile wells in the Wolfcamp formation, with MRC proposing to pair Section 30 with Section 31 and Franklin Mountain seeking to pair Section 30 with Section 19. *See* MRC Ex. B-6. Granting Franklin Mountain's Wolfcamp applications will require MRC to drill 1-mile wells in Section 30, while granting MRC's applications will require Franklin Mountain to either drill 1-mile wells in Section 19 or extend them into Section 18. *Id.* In an effort to reach agreement, MRC dismissed Case Nos. 24787-24790 seeking to pool the Wolfcamp under Sections 18 and 19 to allow Franklin Mountain the option to utilize Section 18 for two-mile Wolfcamp wells.[4]

[4] At the hearing Franklin Mountain raised concerns about an existing disposal well perforated in the Wolfcamp formation under the NE4SW4 of Section 18. Tr. 202-203. However, the testimony established Franklin Mountain has not studied the Wolfcamp injection intervals nor the impact, if any, this well may have on developing the Upper and Lower Wolfcamp producing intervals. Tr. 203-204. MRC presented evidence that the existing disposal well in Section 18 is injecting into the carbonate zones of the Wolfcamp formation and may not be an impediment to developing the producing zones. Tr. 322-23.

Both parties presented evidence on Franklin Mountain's difficulty drilling the Upper Wolfcamp interval in this part of Lea County. *See* FME3 Rebuttal Ex. 9; MRC Exs. B-8, C-3, C-5 and C-14; Tr. 192.[5] MRC's witnesses noted concerns with Franklin Mountain's plan to initially develop the Upper Wolfcamp in Section 30 without additional logging data. *See* MRC Ex. B at ¶29-¶33; MRC Ex. C at ¶ 13-¶21. MRC intends to drill additional wells in the Lower Wolfcamp to provide more logging data on the Upper Wolfcamp for evaluation of potential future development. *See* MRC Ex. B at ¶ 33. Franklin Mountain's reservoir engineer and geologist agreed that MRC's plan was "prudent" and that it did not threaten waste or the impairment of correlative rights since these intervals are separated by frac barriers. *See* Tr. 193.

Franklin Mountain provided no compelling reason for rejecting MRC's Wolfcamp development plan in Section 30. Since MRC controls 61.25% of Section 30, MRC should be allowed to develop the Wolfcamp underlying Section 30. Granting MRC's Wolfcamp applications will still allow Franklin Mountain to either drill 1-mile Wolfcamp wells in Section 19 or extend them into Section 18 after studying the potential impact of the existing disposal well in the NE4SE4 of Section 18.

2. Franklin Mountain has not drilled 3-mile wells and its desire to try them in the Bone Spring is not a compelling reason to strip MRC of its ability to continue to develop the Bone Spring formation underlying Section 30.

As noted above, MRC operates two horizontal Bone Spring wells in the E2 of Section 30. *See* MRC Exs. A-8 and B-6. To address MRC's existing Bone Spring development in Section 30, Franklin Mountain has proposed to drill seven 3-mile horizontal wells extending from the S2S2 of Section 30 to the N2N2 of Section 18 in the First and Third Bone Spring intervals. *Id.*

[5] MRC's hearing exhibits refer to the Upper Wolfcamp as the Wolfcamp B and the Lower Wolfcamp as the Wolfcamp D.

In contrast, MRC seeks to continue to develop Section 30 with proven "u-turn" wells in the First and Third Bone Spring intervals, and complete development in the Second Bone Spring interval with 2-mile wells extending into Section 31. *Id.* MRC intends to develop the E2E2 of Section 30 using infill wells or overlapping spacing units. *See* MRC Ex. C at ¶ 6.

MRC's reservoir expert (Tanner Schulz) expressed concerns that Franklin Mountain has not drilled a 3-mile well and that MRC was being asked to invest over $19 million to participate in Franklin Mountain's first attempt to do so. *See* MRC Ex. C at ¶34-¶37. Franklin Mountain's testifying Engineer (Cory Mitchell) acknowledged that:

- Franklin Mountain has no experience drilling 3-mile horizontal wells in the Bone Spring or any other formation. Tr. 183.
- The drilling and completion risks associated with 3-mile wells increase as you extend into Section 18 where MRC does own any interest in the Bone Spring formation, and which will share in the production from any 3-mile well on a straight acreage basis. Tr. 185-86; 189.
- The proposed 3-mile laterals raise concerns about depletion impacts in Section 18 where there are existing vertical Bone Spring wells. Tr. 194-95; 198-200.

Since MRC has a prudent plan to continue development of the Bone Spring in Section 30, Franklin Mountain's desire to drill, for the first time, 3-mile horizontal wells from Section 30 into Section 18 is not a compelling reason to oust MRC as the operator of the Bone Spring formation underlying Section 30.[6]

[6] MRC agrees that drilling 3-mile wells can be prudent and do not alone present a basis for denying a pooling application. *See, e.g., Cimarex v. Chevron,* Order R-22204 at ¶25 ("The arguments about both the riskiness of three-mile laterals and the possible stranding of acreage because one mile wells are no longer practicable were raised less than a year ago in another compulsory pooling case. OCD rejected both claims. *COG Operating LLC,* Order R-21826 (August 31, 2021).") MRC simply notes that Franklin Mountain's desire to drill 3-mile Bone Spring wells for the first time on MRC's acreage is not a basis to oust MRC as the operator of Section 30.

3. Franklin Mountain's obligations under the Term Assignment is a potential problem Franklin Mountain created and does not provide a compelling reason to oust MRC as operator in Section 30.

Franklin Mountain expressed concern that their minority working interest in Section 30 is subject to a Term Assignment that Franklin Mountain believes requires a well on production by June 30, 2025. Tr. 97. The Term Assignment was issued by Marathon Oil to Catena Resources in January of 2022, and Franklin Mountain acquired the Term Assignment from Catena in December 2022. Tr. 98. Franklin Mountain recently obtained an extension of the time to meet the obligations under the Term Assignment to June 30, 2025. Tr. 106. Franklin Mountain did not provide the Division with either the extension agreement or the original Term Assignment. However, MRC was able to provide the Division with a highlighted copy of the original Term Assignment. *See* MRC Rebuttal Ex. 1.[7]

The Term Assignment does not present a lease expiration concern as the underlying State leases are held by production. Instead, Franklin Mountain's Term Assignment is creature of contract and presents obligations Franklin Mountain accepted when it acquired the Term Assignment in December 2022. Tr. 98. Franklin Mountain waited over 16 months to file the pooling applications necessary to operate in Section 30. Franklin Mountain's witness testified that the company was focused on "other expirations" for the last two years and that meeting the obligations under the Term Assignment "***was not a top priority***." Tr. 104. Franklin Mountain further agreed to vacate a September pooling hearing so that it could file new pooling applications in October for a revised Wolfcamp development plan. *See* Case Nos. 24898-24901; Tr. 105.

[7] The parties appear to differ over the obligations under paragraph 3 of the Term Assignment, and whether the "Force Majeure" provisions in paragraph 12 tolled the obligations for the time necessary to obtain a pooling order. Tr. 113-120.

MRC's land witness further noted that Franklin Mountain rejected MRC's acreage trade proposals and offers to enter into Joint Operating Agreements that would have allowed either MRC or Franklin Mountain to commence drilling in Section 30, including a proposal that would have allowed Franklin Mountain to initiate drilling activity in the Bone Spring formation underlying the E2E2 of Section 30. *See, e.g.,* MRC Ex. 12. Tr. 292-93. Rather than present counteroffers, Franklin Mountain simply rejected MRC's proposals and chose instead to proceed with pooling proceedings, thereby accepting the associated delay in the commencement of drilling. *Id.*

In the end, whatever difficulties that may exist in timely meeting the obligations under the Term Assignment, those difficulties are the creation of Franklin Mountain, not MRC. While meeting the obligations under the Term Assignment may be difficult for either party without obtaining a further extension, those difficulties do not provide a compelling reason to oust MRC as the operator of Section 30 where MRC controls a majority of the working interest.[8]

4. Franklin Mountain has failed to establish that it is unable to continue to develop Section 19 from existing disturbed areas.

Franklin Mountain operates four horizontal wells in the Bone Spring formation underlying Section 19 where Franklin Mountain holds a substantial working interest. *See* MRC Exs. A-8, A-9 and B-6. Those existing wells are drilled from well pads in the S2S2 of Section 19 and serviced by the existing roads and facilities depicted in Franklin Mountain Ex. A-15. This exhibit further reflects MRC plans to continue to develop Sections 30 and 31 from wells pads in the N2N2 of Section 30 in this same corridor of existing development and surface disturbance.

[8] The Term Assignment obligations may be further complicated by the pending acquisition of Franklin Mountain by Coterra Energy, which as announced is expected to close in the first quarter of 2025. *See* MRC Ex. A-14.

As part of a rebuttal case, Franklin Mountain's reservoir engineer introduced "FME Reb. 1" which reflects a desire to build new well pads, new roads and lay new pipe in a currently undisturbed area in the S2S2 of Section 30. *Compare* MRC Ex. A-13 *with* FME Reb. 1. Franklin Mountain suggested the playa and ravine in the S2S2 of Section 19 will make it "challenging" for Franklin Mountain to locate new well pads or to expand the existing well pads in this area. *See* Tr. 205. When pressed about the extent to which Franklin Mountain studied whether it was possible to develop Section 19 from the existing disturbed corridor in the S2S2 of Section 19 and the N2N2 of Section 30, the witness preferred to stay with the words "more complicated." Tr. 206. Franklin Mountain also did not present any evidence on its ability to develop Sections 19 and 18 from the existing disturbed areas in the N2N2 of Section 18. *See* FME Reb. 1.

The fact that it may be "challenging" or "more complicated" for Franklin Mountain to continue to develop Section 19 from existing disturbed areas is not a compelling reason to oust MRC as operator of Section 30 so that Franklin Mountain can place new well pads, new roads and new pipelines in an undisturbed area in the S2S2 of Section 30. *Compare* MRC Ex. A-13 *with* FME Reb. 1. Granting MRC's applications will still allow Franklin Mountain to continue developing Section 19 from the existing disturbed areas in S2S2 of Section 19, the N2N2 of Section 30, or the N2N2 of Section 18.

CONCLUSION

Since Franklin Mountain has failed to establish a compelling reason to prevent MRC from continuing to develop Section 30, where MRC has superior working interest control and facilities in place for the proposed additional development, the Division should follow its precedent, grant MRC's pooling applications, and deny Franklin Mountain's competing pooling applications.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2024, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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