

Case No. 25610 – Powderhorn’s Closing Statement

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

**APPLICATION OF POWDERHORN OPERATING, LLC  
FOR COMPULSORY POOLING,  
EDDY COUNTY, NEW MEXICO**

**CASE NO. 25610**

**POWDERHORN OPERATING, LLC’S CLOSING STATEMENT**

Powderhorn Operating, LLC (“Powderhorn”) seeks an order from the Division pooling all uncommitted interests in the Wolfcamp formation underlying a 959.6-acre horizontal spacing unit (“HSU”) comprised of Section 2 and the East Half (E/2) of Section 3, Township 24 South, Range 26 East, Eddy County, New Mexico (the “Super Hornet Unit”). Marathon Oil Permian (“MRO”) is the sole party objecting to Powderhorn’s application; with the addition of Permian Resources executing the Super Hornet JOA on April 9, 2026, 100% of the working interest (“WI”) within the proposed unit, other than MRO, is supporting Powderhorn.

Powderhorn’s development plan is the only plan before the Division. MRO has no live pooling application and seeks no affirmative relief. The only question is whether Powderhorn’s application should be approved or denied. The evidence clearly demonstrates that Powderhorn’s proposed development plan will efficiently develop the entire 959.6-acre unit, prevent waste, and protect the correlative rights of all interest owners, including the State of New Mexico. All other WI owners, being 82% of the WI within the proposed unit, support the plan. *See* Tr. 104:18 (D.1). As discussed below, the Division’s competing development plan factors, set forth in OCC Order No. R-20368, weigh in Powderhorn’s favor.

In reaching this decision, the Division must account for MRO’s objection. MRO operates one vertical well in the North Half (N/2) of Section 2 (“Campana Acreage”) under a 1976 joint operating agreement (“JOA”) and contends that this contractual position should be given such

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weight in the Division’s analysis that it precludes Powderhorn from pooling the Campana Acreage into the larger Super Hornet Unit. Division precedent consistently rejects legacy vertical-era JOAs as controlling where the proposed HSU extends beyond the JOA contract area. *See* Order No. R-14140 (*Matador*); Order No. R-23869 (*Fiero*). Denying Powderhorn’s application would not approve MRO’s plan; it would leave the acreage without any Division-approved development path. For the reasons set forth below, Powderhorn’s application should be granted.

### **ARGUMENT**

#### **1. Powderhorn’s Plan Will Prevent Waste and Protect Correlative Rights.**

(a) *Geologic Evidence and Efficient Recovery.* Both parties propose east-west development, and both parties’ geologists agree there is no substantial geologic difference between the competing plans. MRO’s geologist, Mr. Dupree, stated in his self-affirmed statement that “there is no substantial geological difference between the development plan proposed by Powderhorn and the development plan proposed by MRO.” Tr. 517:17–20 (D.2). On cross-examination, Mr. Dupree confirmed that the geology does not favor either plan and that there is no geological impediment to drilling mile-and-a-half laterals in the subject acreage. Tr. 518:14–23, 519:18–9 (D.2). Mr. Wood testified on behalf of Powderhorn that the Wolfcamp targets are uniform across the proposed Super Hornet Unit. Tr. 247:14–8 (D.2).

MRO did not propose an alternate well orientation for Powderhorn until it filed Rebuttal Exhibits 1–4 on March 9, 2026, the day before the hearing. Because orientation was not in dispute, Powderhorn built its affirmative case accordingly and had no meaningful opportunity to present rebuttal evidence on the issue. The Division should not require Powderhorn to adopt a well orientation that MRO itself does not endorse in its own proposed operations.

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MRO has proposed that Powderhorn reorient its wells north-south on the E/2 Section 3 to accommodate MRO's east-west N/2 Section 2 development, on the claim that orientation makes no difference. Tr. 356:1–3, 365:24–366:1 (D.2); MRO Rebuttal Exs. 1-4. MRO provided no data comparing well performance by orientation to support that assertion. Tr. 227:14–20 (D.1) (Umekwe conceding no such comparison was compiled or presented). MRO Rebuttal Ex. 6 depicts well orientations and vintage over a ~400 square mile area, but contains no production comparison. MRO's Geologist also confirmed that stress orientation can change over a 20-25 mile range. Tr. 523:10–16 (D.2). Mr. Wood, on the other hand, testified that maximum horizontal stress runs north 30 to 35 degrees east, making east-west the preferable orientation. Tr. 261:21–262:19 (D.2). Technical Examiner Fordyce appears to have reached the same conclusion, stating to Dr. Umekwe that based on MRO's own Rebuttal Exhibit 6, "it looks like I would be planning to drill east and west." Tr. 227:1–3 (D.1).

The dispositive issue is not geology but efficient recovery. Powderhorn's plan develops 959.6 acres versus MRO's 320. On a neutral geologic record, the Division must prioritize efficiency, acreage coverage, and execution certainty, and on all three metrics Powderhorn prevails.

**(b) Risk Comparison.** Because Powderhorn's is the only development plan before the Division, the relevant risk inquiry is whether Powderhorn's plan poses an unacceptable risk of waste or to correlative rights, not whether Marathon's proposal carries less risk. MRO argues that Powderhorn's sequential development of the Wolfcamp A and B benches will cause top-down parent-child degradation. Powderhorn's Rebuttal Exhibit C-7 addresses this claim directly: Mr. Tippen analyzed publicly available data on co-developed and non-co-developed pads within six

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miles of the Super Hornet Unit completed with modern fracs and found no clear trend supporting degradation. Tr. 307:18–308:21 (D.2).

MRO’s analysis, on the other hand, relies solely on the Potato Baby/Keg Shell units (collectively “Potato Baby”). Potato Baby is not a reliable analog to the Super Hornet Unit. It lies ~ 19 miles to the southeast, and Powderhorn identified multiple co-developed and separately developed pads at distances far closer that rebut MRO’s degradation premise. Tr. 213:3-7(D.1). MRO’s own witness confirmed that this data is publicly available. Tr. 193:23–194:2 (D.1). Potato Baby is also distinguishable by its facts. It has substantially tighter interwell spacing and overall density and has variable landings across both the Upper and Lower Wolfcamp targets. Tr. 213:20–214:2 (D.1), Tr. 525:5–23 (D.2), MRO Rebuttal Exhibit 5. Additionally, the three-year gap between Potato Baby’s A and B bench developments is dissimilar to Powderhorn's planned one-year stagger. Mr. Wood testified that returning to the Wolfcamp B bench within the one-year window could reduce any hypothetical impact, if it did exist, to as little as zero to two percent. Tr. 272:25–273:5 (D.2). MRO's degradation argument is further undermined by its own conduct. MRO, operating the adjacent Atrides unit, pooled only the Wolfcamp A and represented to the Division that its development plan protected correlative rights. Tr. 433:1–434:25 (D.2). MRO offered no explanation for how its sequential development of the same formation protects correlative rights while Powderhorn's development would not.

Powderhorn demonstrated a quantifiable risk to correlative rights caused by staggered development within the Wolfcamp A in the Super Hornet acreage that Powderhorn’s plan eliminates. Mr. Tippen's Exhibit C-3 analyzed Wolfcamp A development surrounding the Super Hornet Unit, identified a 15% EUR reduction in child wells, and presented supporting economics demonstrating that Powderhorn’s plan results in more efficient development of the primary

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Wolfcamp A Target. Tr. 304:19–306:4 (D.2); Ex. C-3. MRO did not dispute this analysis or present any economics of its own quantifying the claimed degradation’s impact on well returns. Tr. 311:8–17 (D.2). Moreover, denial of Powderhorn’s application would leave the 959.6-acre unit without a coordinated development plan, creating unmitigated parent-child interference risks that no single party could control.

**(c) Good Faith Negotiations.** Powderhorn’s communications log (Exhibit A-15) documents seven months of sustained engagement with MRO, from July 24, 2025, through February 20, 2026. This includes multiple carry offers, a voluntary docket deferral, and a formal letter of intent. Tr. 96:2–97:6, 97:19–98:5 160:15-19, 162:9-10, 164:10-14(D.1), and TR. 468:3-4, 15 (D.2). MRO made no comparable commercial effort to reach a mutually agreeable resolution with Powderhorn. Powderhorn’s good faith is further demonstrated by the voluntary agreements it has reached with the six other parties in the Super Hornet Unit including SBI West Texas, VATEX Holdings, Coterra/Magnum Hunter, Avant Operating, Kaiser-Francis, and Permian Resources.

**(d) Ability to Prudently Operate.** Prior to forming Powderhorn, the management team collectively participated in the drilling of more than one thousand horizontal wells. Tr. 109:18–23 (D.1). Powderhorn is an entity formed in 2024, backed by a significant financial commitment from Pearl Energy Investments, LP, a leading investor in upstream oil and gas development. This backing is based primarily on the team’s extensive track record. Mr. Macha previously oversaw up to seven rigs as Land Manager for Permian Resources. Tr. 110:1–3 (D.1). Mr. Wood spent almost 20 years at EOG and Earthstone, most recently as VP of Exploration and Development; Tr. 245:15–246:6 (D.2). Mr. Tippen drilled over 70 wells at Piedra Resources. Tr. 296:6–13 (D.2). Mr. Walter managed up to seven rigs at Tap Rock Resources and the drilling of 296 wells. He has

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operational experience across multiple basins and countries. Powderhorn has also hired a VP of Operations with drilling and completion experience at Halliburton and private operators, including 100+ wells in the Delaware Basin. MRO’s own witness, Dr. Umekwe, conceded that individual knowledge and experience transfer between teams, and that his own career demonstrates this. Tr. 207:7–209:18 (D.1). No witness testified to any operational deficiency. Tr. 312:17–25 (D.2).

To augment this experience, Powderhorn has engaged Dual Drilling Consultants (“Dual”) for the Super Hornet development. Dual operates seven rigs in the Delaware Basin, has developed acreage within two miles of the Super Hornet Unit, and is the same contractor MRO used on the adjacent Bat Bomb and War Pigeon units. Tr. 298:3–23 (D.2); 110:4–6 (D.1); 175:22–176:3 (D.1).

**(e) Well Cost Estimates.** Powderhorn’s Exhibit C-6 demonstrates that its mile-and-a-half laterals achieve approximately 19% to 21% lower drilling, completion, and facilities costs per lateral foot than MRO’s one-mile proposals. Tr. 303:8–12, 311:25–312:3 (D.2). MRO does not dispute the fact that longer laterals are more economic, nor that companies, including themselves, prefer longer laterals where possible Tr. 216:1–3 (D.1). Powderhorn has, therefore, quantified the economic penalty of MRO’s shorter laterals. MRO has offered no evidence that the degradation it alleges from Powderhorn’s plan would offset that penalty. MRO presented no AFE evidence to rebut Powderhorn’s drilling cost data. In fact, Marathon initially proposed 1.5 mile wells in competing Case No. 25973 that would have substantially similar well costs to Powderhorn’s, but dismissed this application on February 25, 2026 with no context and did not present to the Division as shown as Exhibit A-6.

**(f) WI Control.** In the absence of compelling factors such as geologic and technical differences, WI control should be the dispositive factor. *See* Order No. R-10731-B. This factor also strongly favors Powderhorn. Across the full 959.6-acre Super Hornet Unit, Powderhorn holds

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a 33.698% WI and has secured commitment and support from 100% of remaining owners making up approximately 82% of outstanding working interest, while Marathon holds the balance, being the minority 18% working interest.. Tr. 104:15-18 (D.1); Ex. A-10; *see also* MRO Rebuttal Ex. 8. Kaiser Francis, the largest non-operator under the 1976 JOA, independently chose Powderhorn’s plan and signed a superseding horizontal JOA for the full 959.6 acres. Tr. 105:10-16 (D.1). Ms. Klingler made multiple statements characterizing Kaiser Francis’ point of view that clearly contradict Kaiser Francis’ letter of support dated April 3, 2026, which has been filed with the Division. This letter affirms Kaiser Francis’s full commitment to Powderhorn’s JOA, development plan and confirms its confidence in Powderhorn’s operational capability. Ms. Klingler also confirmed that ConocoPhillips has itself signed superseding JOAs. Tr. 448:7–16 (D.2).

**(g) Surface Factor and Timeliness.** Powderhorn has taken concrete steps towards developing the Super Hornet Unit. It has staked drilling locations, secured water contracts, obtained pre-approval for a State Communitization Agreement, and commenced negotiations for oil and gas takeaway. Tr. 103:7-17 (D.1). Powderhorn’s plan contemplates two pads with a central facility, minimizing surface disturbance. Tr. 303:21–25 (D.2). Allowing multiple operators to develop the Wolfcamp within the 960 would result in redundant infrastructure such as roads, pipelines and electrical easements. In addition to the time constraints imposed by a pooling order, Powderhorn’s term assignment, which expires March 1, 2027, provides a powerful independent incentive for timely development. Tr. 104:2–4 (D.1).

MRO presented no comparable evidence of near-term readiness. Only Powderhorn has invoked the Division’s pooling authority and accepted the accompanying time-based enforcement mechanism. Ms. Klingler confirmed that if Powderhorn’s application is denied, no Division order or mechanism would require MRO to spud within any time frame. Tr. 421:11–6 (D.2). MRO’s

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plan depends entirely on ConocoPhillips’ internal drill schedule, and its own earnings guidance indicates shorter-lateral inventory is not prioritized. Tr. 218:1–15 (D.1). The record confirms MRO has not a) allocated a rig, b) routed AFEs through ConocoPhillips’ approval system, c) built a pad, or d) identified a spud date. Tr. 415:6–8, 416:22–417:6 (D.2).

**2. MRO’s JOA Does Not Warrant the Weight MRO Requests.** MRO contends that Powderhorn’s application should be denied because the proposed Super Hornet development overlaps with acreage in the N/2 of Section 2, acreage that is subject to the JOA. Powderhorn acknowledges the existence of the 1976 JOA but disputes that it warrants the weight MRO seeks to assign it. The question before the Division is whether MRO’s contractual position under this JOA should be given such weight that it effectively precludes Powderhorn from pooling the N/2 of Section 2 into a larger HSU. The Division has twice rejected this approach.

In Case No. 15433 (“*Matador*”), Matador Production Company sought to pool a 160-acre HSU in the Bone Spring formation. Nearburg Exploration Company opposed, filing a Motion to Dismiss on the ground that an existing JOA precluded compulsory pooling because it covered part of the acreage Matador sought to pool. *See* Order No. R-14140 at ¶¶ 6–7. As here, the JOA covered only a portion of the proposed unit. *See id.* at ¶ 12. The Division denied Nearburg’s motion, holding that “in the absence of an agreement as to how production from the proposed horizontal well is to be divided between the lands within and without the defined contract area, the JOA does not constitute an agreement of the parties to pool their interests in such production, and accordingly, does not preclude compulsory pooling under NMSA 1978 § 70-2-17(C).” *Id.* at ¶¶ 14, 17.

The Division later confirmed this holding in Order No. R-23869 (*Fiero*), issued in 2025, where it approved compulsory pooling over the objection of an operator that claimed exclusive WI control under a legacy JOA. The factual posture in *Fiero* closely tracks this case: an overlap

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between a vertical-era JOA and a larger proposed HSU, an objector who did not file competing pooling applications, and parties to the legacy JOA who executed a superseding horizontal JOA with the applicant. Here, MRO's 1976 Form 610 JOA was executed before horizontal development was contemplated in the northern Delaware Basin, covers only the N/2 of Section 2 (approximately one-third of the proposed Super Hornet Unit) and in 50 years has produced exactly one vertical well. There is no evidence of any agreement under the JOA regarding horizontal development of the proposed spacing unit. Whatever weight MRO's JOA is entitled to, it cannot be the weight MRO requests. A private contract governing 320 acres of vertical development should not override the Division's statutory mandate to ensure efficient development, prevent waste, and protect correlative rights across the full 959.6-acre unit. As in *Matador* and *Fiero*, MRO would retain its proportionate contractual interest in the North Half of Section 2 within the Super Hornet spacing unit. Marathon's central narrative—that the legacy JOA participants align with its position—is directly contradicted by the largest non-operator (and notably all non-operators) under that JOA via Kaiser's letter of support dated April 3, 2026.

Denial of Powderhorn's application would effectively give MRO's JOA the force of a Division-adopted development plan, a result MRO has not sought through the proper statutory mechanism. Under NMSA 1978, § 70-2-17(E), the Division shall adopt a voluntary agreement among owners only when the plan "has the effect of preventing waste" and "is fair to the royalty owners." MRO has made no such showing. When asked directly whether he could provide data showing that Powderhorn's mile-and-a-half laterals will result in less total recovery than MRO's one-mile laterals, Dr. Umekwe acknowledged he had not compiled that data. Tr. 229:2–23 (D.1). MRO's proposal develops only one-third of the unit, would leave State mineral interests in the

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NE/4 of Section 3 without a development timeline, and provides no Division-enforceable mechanism to compel development. Tr. 421:11–6 (D.2).

**CONCLUSION**

MRO’s objection rests on a 50-year-old vertical well JOA that has never been used for horizontal development or to drill the Wolfcamp. As set forth in Section 2, the Division has twice held — in *Matador* (R-14140) and *Fiero* (R-23869) — that a JOA covering a portion of a proposed unit does not preclude compulsory pooling under § 70-2-17(C). Granting MRO’s requested denial would effectively give that JOA the force of a Division-adopted agreement under § 70-2-17(E), without any showing that it prevents waste or protects correlative rights. The Division is not choosing between two development plans. It is choosing between development and no planned development.

Powderhorn has presented a real, engineered development plan to drill the full 959.6-acre Super Hornet Unit with mile-and-a-half laterals that are approximately 20% more capital efficient per lateral foot than MRO’s one-mile alternative. Powderhorn provided economic analysis showing the resource and economic impact of Parent Child within the Wolfcamp A, and a study of Wolfcamp A and Wolfcamp B development within the immediate area that found no appreciable difference in co-development vs sequential development. Powderhorn’s team brings collective experience from over one thousand horizontal wells on all aspects of development, has engaged an experienced Delaware Basin drilling contractor, and has secured commitments from nearly 82% of the WI. Every R-20368 factor weighs in Powderhorn’s favor. Approval will prevent waste, protect correlative rights including the State of New Mexico’s mineral interests in the NE/4 of Section 3, and ensure efficient Wolfcamp development. Powderhorn respectfully requests the Division approve its application in Case No. 25610.

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 10, 2026, I caused a true and correct copy of the foregoing Closing

Statement to be served upon the following counsel of record via electronic mail:

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