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

APPLICATION OF POWDERHORN OPERATING, LLC FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO. **CASE NO. 25610**

MARATHON'S POST-HEARING BRIEF

Marathon Oil Permian, LLC ("Marathon" or "MRO") submits this post-hearing brief pursuant to the instructions of the Hearing Officer in this case.

Powderhorn Operating, LLC ("Powderhorn" or "PH") seeks to pool a standard horizontal well spacing unit for 1.5-mile laydown laterals in the Wolfcamp formation underlying the E/2 of irregular Section 3 and all of irregular Section 2, T24S-R36E, NMPM, Eddy County, New Mexico.[1] PH's plan includes force pooling acreage in the N/2 of Section 2 that MRO operates and plans to develop itself under a 1976 Joint Operating Agreement ("1976 JOA"). MRO controls 100% of the working interest under the 1976 JOA and owns the majority working interest in the overlapping acreage contested between the two development plans. Furthermore, MRO has permits to drill its proposed wells, preliminary approval of its state communitzation agreement, and is currently scheduling a rig to move forward with its development plan for its acreage.

PH has made a series of last-minute, confidential agreements to undermine MRO's ability to drill and operate its preferred plan of development under its existing 1976 JOA, where MRO is the majority working interest owner. In so doing, PH was not forthright with the Division by asserting MRO's proposed development would strand acreage in the NE/4 of Section 3 when instead it was PH's own last-minute, confidential agreements that put that acreage at risk. PH has

[1] This is the legal land description included in PH's application and notice; however, the subject acreage includes irregular sections and should therefore reflect as follows: Lots 1-4, S/2 N/2, and S/2 (all equivalent) of irregular Section 2, and Lots 1-2, S/2 NE/4, and SE/4 (E/2 equivalent) of irregular Section 3, Township 24 South, Range 36 East, NMPM, Eddy County, New Mexico.

not been upfront with the Division, nor did its negotiations with MRO meet the standards of good faith. Operators—especially operators with no experience drilling or operating wells—should not be rewarded for that kind of behavior.

The Division should deny PH's application and allow MRO to drill and operate its preferred development plan where it controls 100% of the working interest and owns 55% of the working interest in contrast to PH's 3.125% working interest stake.

ARGUMENT

I. UNDER COMMISSION PRECEDENT POWDERHORN'S APPLICATION SHOULD BE DENIED AND EACH PARTY SHOULD BE ALLOWED TO DEVELOP THEIR OWN ACREAGE.

These competing development plans fall into a particular category of contested cases involving a partial overlap. Under Commission precedent for partial overlaps, the analysis does not focus on the "well proposals (location, density, length, etc.)." *See* Order R-22204, ¶ 22; *see also* Order R-22205, ¶ 23. Rather, the focus shifts to evaluating "a) which proposal avoids waste by not stranding acreage; b) which proposal best protects correlative rights 'by presenting the best opportunity for each party to develop its own acreage'; and c) which party had the greatest interest in their proposed unit." *Id*. Where there is no geologic difference between the competing plans, the "working interest control" is the "controlling factor." *See* Order R-22204, ¶ 11; *see also* Order R-22205, ¶ 13. Here, MRO's 100% working interest control—and 55% working interest ownership—in the overlapping contested acreage is dispositive. All other factors favor MRO's plan and proposed alternatives for each party to develop its own acreage. PH's application should be denied.

Commission precedent uniformly supports this outcome. For example, under Commission Order No. R-21416-A, MRO sought to pool a portion of BTA Oil Producers, LLC's ("BTA") partially overlapping JOA. MRO argued its longer laterals were superior to BTA's, that BTA's

JOA development would cause increased surface disturbance, that its proposed setbacks would increase recoverable reserves, and its well spacing and density was better. *See Id*. ¶¶ 61, 63, 65, 68 (Findings). But BTA owned 82% of the working interest in the acreage subject to its JOA over which it had 100% control, while MRO was in the process of acquiring a mere 18% interest. *Id*. ¶¶ 15 & 20. Ultimately, MRO's applications were denied because BTA's plan "best protect[ed] correlative rights by allowing each party to develop its own acreage." *Id.* ¶¶ 73 & 76. MRO "failed to establish its proposed development would protect correlative rights, prevent waste, or avoid the drilling of unnecessary wells," in accordance with NMSA 1978, 70-2-17(E). *Id*., ¶ 71. Nearly the same facts exist in this case, yet PH makes nearly identical arguments to those of MRO when MRO sought and failed to pool a portion of BTA's partially overlapping JOA. That same conclusion applies—PH fails to overcome the same hurdles identified in Commission Order No. R-21416-A.

The Division should deny PH's application and allow MRO to develop its own acreage and resources in the N/2 of Section 2 and allow PH to develop its own acreage in the S/2 of Section 2 and E/2 of Section 3.

A. It is undisputed that MRO controls 100% of the working interest in the N/2 of Section 2 and owns a majority of the working interest in its proposed unit.

The factors governing evaluation of contested development plans with a partial overlap overwhelmingly favor MRO, especially the working interest control factor. As an initial matter, both parties agree there is no geologic difference between the competing plans. Rather, the parties disagree on how to develop based on differing lateral lengths and sequencing vertical offset wells. Therefore, Division precedent holds that the analysis is governed by working interest control.

Here, it is undisputed that 100% of the working interest in the N/2 of Section 2 is committed to MRO's 1976 JOA, including PH's interest. *See* Tr. 3/10/26, 140: 2-17; 148:14-18; *see also*, MRO Exhibit A-5. The analysis need not proceed any further than that. The 1976 JOA is a binding contract among the parties, including PH, and it is undisputed that it remains a valid and controlling voluntary agreement.

PH nevertheless argues the 1976 JOA has been "superseded" by an agreement between itself and Kaiser-Frances Oil Company ("Kaiser-Frances" or "KFOC"); however, this argument is without merit for at least four reasons. First, there is no dispute that MRO's 1976 JOA is a valid and enforceable contract. As such, MRO has authority under a 100% voluntary agreement to develop its own acreage and resources. The Division recognizes JOAs as meeting the New Mexico Oil and Gas Act's (the "Act") requirement for voluntary agreement. *See* NMSA 1978, 70-2-17(C). In contrast, PH's purported "superseding" JOA has not been recognized as a valid voluntary agreement by a New Mexico appellate court or the Division for any purpose, let alone for purposes of compulsory pooling under the Act. New Mexico courts have not ruled on the issue of "superseding JOAs" or "overlapping JOAs" or their treatment under New Mexico contract law. Further, the Division "does not have jurisdiction to determine contractual rights" or "to determine their validity." *See* Order R-12747, ¶ 8 (Findings); *see also* Order R-14187-E, ¶ 44. Thus, a determination on the merits or application of the supposed "superseding" JOA to this case is beyond the Division's authority and should not be entertained.

Second, PH's purported "superseding" JOA is of no effect as to the contested overlapping acreage where the parties agree the 1976 JOA is an existing, valid agreement that governs operations on that acreage. Because there is an existing, valid agreement in place, all parties must agree for a "superseding" JOA to have any binding legal effect. MRO never agreed to the purported

"superseding" JOA or any type of contractual novation. *See Summit Props., Inc. v. Pub. Serv. Co.*, 2005-NMCA-090, ¶ 29, 138 N.M. 208, 118 P.3d 716 ("Novation requires (1) an existing and valid contract, (2) an agreement to the new contract by all parties, (3) a new valid contract, and (4) an extinguishment of the old contract by the new one.") (emphasis added). Here, MRO did not sign PH's "superseding" JOA or otherwise agree to amend or cancel the 1976 JOA. In fact, no party—not even PH—has sought to nullify, revoke, or renounce the effect and validity of MRO's 1976 JOA. The purported "superseding" JOA is a legal nullity; the Division should ignore it.

Third, to the extent it has any validity, PH's purported "superseding" JOA would only come into effect if PH were to prevail in this proceeding because KFOC's agreement with PH is entirely contingent upon PH prevailing. Tr. 3/10/26, 155:20-156:12. PH's "superseding" JOA is illusory—at best it is hypothetical. The Division should not give it any weight.

Lastly, even if the Division were to give credence to PH's argument, the effect of KFOC's commitment to both the 1976 JOA and PH's purported "superseding" JOA would be to simply "cancel out" KFOC's commitment to both voluntary agreements. That would leave MRO with its 55% working interest ownership compared to PH's 3.125% working interest (which is subject to a term assignment) in the contested acreage. *See* MRO Exhibit A-5. MRO thus still controls more than 50% of the working interest through its pure ownership, which far exceeds the 3.125% working interest owned by PH—an interest that is itself inchoate and not yet earned.

PH's contingent interest represents a bare minority interest and, importantly, the difference in ownership far exceeds a 25% difference between the parties, which is dispositive. *See* Order R-21834, ¶ 26 (Findings) (finding that more than 25% difference in working ownership control in overlapping acreage is a "deciding factor"); *see also*, Order R-22204, ¶ 24 (Findings) (approving

Chevron's plan based on the difference in working ownership control in the overlapping contested acreage where Chevron controlled 64.38% and Cimarex controlled 26.35%).

Stated simply, however the working interest control is evaluated—either through MRO's 1976 JOA or on a pure record title basis—MRO prevails on this factor. PH's purported "superseding" JOA is based on a contingent hypothetical. And where, as in this case, there is no difference in the geology between the competing plans, working interest control is the dispositive factor. The Division should deny PH's application on this basis alone.

i. PH misunderstands Order Nos. R-23869 and R-14140, and neither order supports PH's position of unchecked use of the State's police power.

PH misses a key distinction between this case and Permian's Fiero case it cites for support. *See* PH PHS at 4; PH Exhibit A ¶ 15; *see also* Order R-23869 ("Fiero Case"). In the Fiero Case, the Division found that Matador's plans were hypothetical because it had not sent out proposals or AFEs, filed for drilling permits, or taken any concrete steps. Here, nothing is hypothetical about MRO's plans. MRO has taken concrete steps to develop its own acreage under the 1976 JOA. MRO has approved drilling permits, preliminary approval of its state communitzation agreement, and is currently scheduling a rig to drill its development plan. Meanwhile, PH is banking on support and an interest that is completely hypothetical and contingent on PH prevailing in this case, which in turn is contingent on PH overcoming factors that strongly favor MRO.

This is not the only Division order that PH misunderstands. Order R-14140 does not stand for the proposition the Division has unlimited authority to pool legacy JOAs. *See* PH PHS at 4. In the underlying case, Nearburg argued that Matador's pooling application should be denied "if any part of the lands sought to be pooled is subject to a JOA." Order R-14140, ¶ 8 (Findings). The issue in that case was whether Nearburg was subject to compulsory pooling when it was party to a partially overlapping JOA—not whether the JOA acreage could be pooled. The Division simply

found that the existing JOA did not preclude compulsory pooling acreage "within and without the defined contract area." *Id*., ¶ 17 (Conclusions).[2]

Neither case PH relies on supports the notion that the Division has an unfettered "right to pool acreage subject to a JOA within a larger proposed spacing unit." (emphasis added). *See* PH PHS at 4. The cases simply hold where there is a partially overlapping JOA the JOA does not preclude force pooling because its parties have not reached agreement as to the spacing unit.

ii. PH's claim of stranded acreage is without merit.

In its case in chief, PH made claims that MRO's one-mile development under its 1976 JOA would "strand" the NE/4 of Section 3. *See* PH Exhibits A, ¶ 14, 16, 25, 28, A-8, A-10, A-11, and A-12. But this claim is unsupported because there is no geological or engineering reason why PH could not drill a stand-up well in its own acreage as confirmed by their landman, Mr. Macha, and geologist, Mr. Wood. Tr. 3/10/26, 134:8-15; Tr. 3/11/26, 278:15-19.

Rather, PH's restrictive laydown orientation is a product of its own making because it entered into an agreement with another operator, Avant Operating II, LLC ("Avant"). Tr. 3/10/26, 135:9-136:4. An agreement PH made even after it knew MRO intended to develop its own acreage under the 1976 JOA. Tr. 3/10/26, 158:20-159:3. That is not stranded acreage. That is a bad business decision. MRO should not be penalized because of PH's own hasty imprudence.

iii. MRO's proposed alternatives allow both parties the best opportunity to develop their own acreage.

Because no technical or geologic reason prevents PH from drilling stand-up wells, MRO's proposed alternatives should be recognized as viable because they allow both parties the best

[2] MRO does not dispute that the Division has authority to pool acreage subject to a JOA, i.e., modify a plan; however, to do so the Act requires that it must be necessary to prevent waste. In Case No. 15433, the movant did not make this argument. The movement merely argued that because a JOA existed the Division could not force pool.

opportunity to develop their own acreage as mandated by Division precedent for these types of cases. *See* MRO Rebuttal Exhibits 1-3; *see also* Order Nos. R-22204 and R-22205.

MRO can develop its one-mile wells in the N/2 of Section 2 where it controls 100% of the working interest and owns the majority interest. *See* MRO Rebuttal Exhibits 1-3. At the same time, PH can drill and operate its first wells in New Mexico in the S/2 of Section 2 and E/2 of Section 3. *Id*.

Even if adopting this proposed alternative development means PH must re-negotiate[3] its agreement with Avant, that would not impact PH's March 1, 2027 term assignment ("TA") as PH initially claimed as part of its failed stranded-acreage argument that it eventually abandoned. So long as any operator drills a well in the north half, PH would earn its interest in that acreage (and potentially in the S/2).[4] Tr. 3/10/26, 147:17-148:5. In other words, PH does not have to be the operator to drill a well to perfect its interests under its TA; MRO could drill a well under its proposed one-mile plan and PH would still earn its interest under the TA. Tr. 3/10/26, 145:4-10.

Not only does this alternative plan align with precedent, but it is the best plan to protect correlative rights and avoid waste because it allows an experienced and proven operator to develop its acreage and resources based on its well-established track record instead of relying on an untested company.

iv. PH has never drilled or operated a well in New Mexico or delivered on its AFEs.

Even if PH's individual team members have experience drilling and operating wells, PH has zero experience drilling and operating wells as a company. Tr. 3/10/26, 127:16-20. Not only

[3] If PH is unable to re-negotiate with Avant, MRO would be willing to extend its laterals into the NE/4 of Section 3 through an agreement with PH and the other parties.

[4] Mr. Macha was unclear on the exact provisions of the TA, including if the TA had a Pugh clause or required the whole acreage be drilled, but did confirm that the TA did not require a specific lateral length. Tr. 3/10/26, 146:13-17.

is PH a new operator in New Mexico, it also has never drilled or operated a well anywhere. Nor does it have a performance track record drilling and operating under any AFEs. Tr. 3/11/26, 338:7-18. There is no doubt that experience matters—it is one of the factors considered in contested development cases. While PH's members separately have experience, PH is an unproven company with no track record on which to rely. *See* Order R-14518, ¶¶ 19-20 (Findings) (denying Black Mountain application because, among other factors, "this operator could not offer any evidence of prior experience for completing a well of this length in the State of New Mexico.").

Not only does MRO and its affiliate companies have a proven track record as successful and prudent operators in New Mexico, but unlike PH they have a well-established vetting program when working with contractors and partners to ensure that any well performs optimally and meets proposed well costs. *See* MRO Exhibit C, ¶ 20; *compare* Tr. 3/11/26, 320:4-9 *with* 504:12-505:9. As a well-established and prudent operator, MRO does not shy away from the claim that MRO is trying to protect its acreage. MRO absolutely is trying to protect its acreage—to ensure it is drilled and operated by an experienced and prudent operator.

PH admitted that its proposed plan would create vertical parent-child degradation and that the only way to mitigate the effects would be to drill the Wolfcamp B as soon as possible. Tr. 3/11/26, 284:13-285:4, 286:15-20; *see also* Tr. 3/11/26, 350:10-351:1. But PH's application includes only Wolfcamp XY wells, which means PH has no time limit to drill infill wells in the Wolfcamp B and—even worse—no requirement to drill wells in the Wolfcamp B at all. Tr. 3/11/26, 274:17-21. MRO cannot take that risk with its acreage and resources, especially with an inexperienced company like PH. That is not the only reason MRO intends to develop its own acreage and why it was forced to quickly adjust its plans.

MRO engaged in good faith negotiations with PH, but PH's negotiations fell short of that standard. Negotiations broke down when MRO learned that PH did not actually own the acreage it was offering to trade. Tr. 3/11/26, 390:8-391:16. PH strung MRO along as MRO accelerated its own internal processes to evaluate the trade PH offered. Tr. 3/11/26, 389:24-390:7. After initially failing to answer the question directly, MRO eventually learned that PH never owned the acreage it was offering to trade, which remained undisclosed until PH was forced to admit the truth. Tr. 3/10/26, 164:9-18; Tr. 3/11/26, 456:4-13.[5]

CONCLUSION

MRO is an experienced and prudent operator, ready to move forward with its plans under its 1976 JOA. All the partial overlap factors favor MRO. Plus, all the typical factors for competing compulsory pooling applications and Division and Commission precedent favor MRO.

Bottom line is that PH seeks the Division's compliance to assist with an acreage grab. But the Division has a responsibility to exercise care using the State's police powers to compulsory pool working interests, especially when the risks are high because an operator is completely and utterly unproven and the intentions of said operator have not been completely forthcoming.

WHEREFORE, MRO respectfully requests that PH's application be denied.

[5] At the hearing, Powderhorn tried to turn this issue around on MRO by arguing that Ms. Klingler did not have authorization to "consummate[] that transaction." Tr. 3/11/26, 473:4-6. But this is a red herring because MRO owns the interest that it proposed to trade, whereas Powderhorn never did.

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CERTIFICATE OF SERVICE

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