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

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

CASE NO. 26206
ORDER NO. R-24349

MARATHON OIL PERMIAN LLC'S MOTION TO STAY ORDER NO. R-24349

Marathon Oil Permian LLC[1] ("Marathon" or "MRO"), by and through its undersigned counsel, respectfully moves the Commission, pursuant to 19.15.4.23.B NMAC and Commission precedent, to stay Order No. R-24349 ("Order") issued by the New Mexico Oil Conservation Division ("OCD" or "Division") on May 1, 2026 pending issuance of a final Commission order. In support thereof, MRO states as follows:

INTRODUCTION

The Division's Order grants Powderhorn Operating, LLC's ("PH") application for compulsory pooling of its proposed Super Hornet Unit, designating PH as operator of a 959.6-acre horizontal spacing unit in the Wolfcamp formation, Eddy County, New Mexico. The Order is legally deficient and contrary to well-established Division and Commission precedent governing competing development plans involving partially overlapping contested development plans. Notably, the Order fails entirely to apply the Commission's legal standard for partial overlap cases: an evaluation of working interest control in the overlapping, contested acreage designed to ensure protection of correlative rights. Instead, the Order conflates working interest ownership across the *entirety* of PH's proposed Super Hornet Unit—a much larger area that includes acreage over which

[1] Order No. R-24349 incorrectly referred to Marathon as "Marathon Oil Company." The correct entity name is "Marathon Oil Permian LLC."

MRO asserts no competing claim—to manufacture the appearance of majority support for PH's application. This approach strays from well settled Division and Commission precedent and, therefore, objectively fails to protect correlative rights.

A stay is warranted because: (1) MRO is likely to succeed on the merits of its appeal; (2) MRO will suffer immediate and irreparable harm absent a stay; (3) the balance of harms tips decidedly in MRO's favor; and (4) the public interest is served by ensuring the Division adheres to its own precedent before irreversible development activity commences. To preserve the status quo and prevent irreparable harm the Commission should approve this motion and grant the requested stay pending issuance of a final Commission order, as is common practice under similar circumstances without pending lease deadlines. *See, e.g.*, Commission Order R-23089-B (Commission order staying underlying Division pooling order "until this matter is resolved").

BACKGROUND

I. The Competing Development Plans and the Partial Overlap

PH filed an application to pool a 959.6-acre horizontal spacing unit (the "Super Hornet Unit") in the Wolfcamp formation underlying portions of irregular Sections 2 and 3, Township 24 South, Range 36 East, NMPM, Eddy County, New Mexico. MRO objected to PH's application on the grounds that PH's proposed Super Hornet Unit partially overlaps with the 320.32-acre "Campana" project area in the north half equivalent of irregular Section 2 (the "Overlapping Acreage"), over which MRO controls 100% of the working interest pursuant to a 1976 Joint Operating Agreement (the "1976 JOA"), and that MRO planned to drill and develop itself. MRO controls 100% of the working interest in that area by virtue of the 1976 JOA, to which PH itself is a party, and itself owns 55.5% of the working interest compared to PH's 3.125% working interest.

II. The Division's Order

On May 1, 2026, the Division issued Order No. R-24349, granting PH's application in its entirety and designating PH as operator of the Super Hornet Unit. The Order requires PH to commence drilling within one year of the Order's date. The Order evaluated seven factors and found that the majority of those factors weighed in favor of PH. However, the Order's analysis of the working interest factor is fatally flawed: rather than evaluating working interest control *in the overlapping contested acreage*, the Division evaluated working interest ownership across the entirety of PH's larger proposed Super Hornet Unit—a unit that encompasses acreage well beyond the area in dispute. By doing so, the Division diluted MRO's majority interest in the Overlapping Acreage and arrived at a result directly contrary to controlling precedent. As a result, the Order does not protect correlative rights and should be stayed pending the outcome of this de novo process.

ARGUMENT

I. STANDARD FOR A STAY

A stay from an order by an administrative agency is appropriate where the moving party demonstrates: (1) its likelihood of success on the merits; (2) that the moving party will suffer irreparable harm absent a stay; (3) that the non-moving party will not suffer any harm from a stay; and (4) that no harm will ensue to the public interest. *Tenneco Oil Co. v. N.M. Water Quality Control Comm'n*, 1986-NMCA-033, ¶ 10, 105 N.M. 708, 736 P.2d 986; NMSA 1978, § 70-2-26; *see also* Rule 12-207 NMRA. Each of these factors is satisfied here.

II. MRO IS LIKELY TO SUCCEED ON THE MERITS OF ITS APPEAL.

A. The Division Applied the Wrong Legal Standard by Failing to Evaluate Working Interest Control in the Overlapping Contested Acreage.

The Division's failure to apply the correct legal standard for competing development plans involving a partial overlap is a fundamental error in the Order and fails to protect correlative rights. Under well-established Commission and Division precedent, where two development plans partially overlap, the analytical framework is distinct from that applied to fully competing applications. The focus does not rest on a comparison of "well proposals (location, density, length, etc.)." *See* Order R-22204, ¶ 22; *see also* Order R-22205, ¶ 23. Instead, the analysis centers on three specific inquiries:

(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.

See Order R-22204, ¶ 22; Order R-22205, ¶ 23 (emphasis added).

Critically, where—as here—the parties agree there is no geologic difference between the competing plans, working interest control becomes the controlling factor**.** *See* Order R-22204, ¶ 11; *see also* Order R-22205, ¶ 13. And the working interest control analysis must be conducted with respect to the overlapping contested acreage—not the entirety of the applicant's proposed unit. *See* Order R-21834, ¶ 26 (finding that more than a 25% difference in working interest ownership in the overlapping acreage is a "deciding factor"); *see also* Order R-22204, ¶ 24 (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%).

The Division's Order does not perform this analysis. Findings of Fact ¶¶ 28-30 evaluate working interest ownership but fails to specifically address the overlapping acreage. The Subject Lands encompass PH's entire proposed Super Hornet Unit, including the south half of Section 2 and the east half of Section 3—areas over which MRO asserts no competing claim and in which MRO holds no interest. By measuring working interest support across the full 959.6-acre Super Hornet Unit rather than limiting the inquiry to the 320.32-acre Overlapping Acreage (the Campana unit / north half of Section 2), the Division improperly diluted MRO's controlling position and failed to take into consideration which plan presents "the best opportunity for each party to develop its own acreage." *See* Order R-22204, ¶ 22; Order R-22205, ¶ 23.

The correct analysis—the one mandated by Division precedent—requires examining working interest control only in the overlapping acreage. In the Overlapping Acreage (the north half of Section 2 / Campana unit), the record is unambiguous: MRO controls a majority of the working interest no matter how it is analyzed.

B. The Division's Failure to Apply Commission Precedent Supports Denial of PH's Application.

The Division's Order is contrary to the outcome mandated by Commission precedent under similar facts. For example, in Order No. R-21416-A, MRO sought to pool a portion of BTA Oil Producers, LLC's ("BTA") partially overlapping JOA acreage. MRO argued that its longer laterals were superior, that BTA's development would cause increased surface disturbance, that its proposed setbacks would increase recoverable reserves, and that its well spacing and density was superior. *See* Order R-21416-A, ¶¶ 61, 63, 65, 68. These arguments are substantively identical to the arguments PH advanced in this proceeding. Nevertheless, MRO's applications were denied because BTA owned 82% of the working interest in the acreage subject to its JOA and controlled 100% of that acreage through the voluntary agreement, while MRO held only an 18%

interest. *See* Order R-21416-A, ¶¶ 15, 20. The Commission found that BTA's plan "best protect[ed] correlative rights by allowing each party to develop its own acreage" and that MRO "failed to establish its proposed development would protect correlative rights, prevent waste, or avoid the drilling of unnecessary wells." *See* Order R-21416-A, ¶¶ 71, 73, 76.

Similarly, in Order R-22204 and Order R-22205, the Commission evaluated competing development plans involving partial overlaps and in each instance found that working interest control in the overlapping acreage was the dispositive factor where no geologic (or other economic) difference existed between the competing plans. *See* Order R-22204, ¶¶ 11, 24; Order R-22205, ¶¶ 13, 23.

Applying the reasoning and analysis from these precedent cases, the outcome in this case should have been denial of PH's application. MRO's plan, not PH's plan, presented the best opportunity for each party to develop the acreage each controlled. The Division's failure to follow this precedent—or even to acknowledge it—was error and demonstrates MRO is likely to prevail on the merits.

III. MRO WILL SUFFER IMMEDIATE AND IRREPARABLE HARM ABSENT A STAY.

The Order requires PH to commence drilling within one year of its May 1, 2026 issuance date—i.e., by May 1, 2027. Once PH commences drilling operations in the Overlapping Acreage, the harm to MRO becomes irreversible. Specifically:

1. **Depletion of shared reservoir**: Once PH drills and completes wells in the Overlapping Acreage, MRO's proposed co-development plan will be permanently diminished. PH's development sequence creates a material risk of parent-child degradation that cannot be remedied after the fact, causing irreparable harm.

2. **Loss of operational control**: MRO controls 100% of the working interest in the Overlapping Acreage under the 1976 JOA. If PH is permitted to commence operations as designated operator, MRO's contractual right to operate its own acreage will be effectively extinguished, substantially impairing its correlative rights

3. **Destruction of the 1976 JOA**: Permitting PH to proceed as operator of the Overlapping Acreage will render the 1976 JOA a nullity as a practical matter, eliminating MRO's rights under that agreement, extinguishing its ability to develop its own acreage as it sees fit.

These harms are immediate, concrete, and irreversible. They cannot be adequately remedied after the fact and will materialize as soon as PH commences drilling operations.

IV. A STAY WILL NOT CAUSE ANY HARM TO PH.

A stay will cause PH no irreparable harm. PH has not yet commenced drilling operations. PH's term assignment does not expire until March 1, 2027, and the Order itself provides for extensions of the drilling deadline upon notice to the Division. Any delay occasioned by a stay can be addressed through the Order's extension mechanism if PH ultimately prevails on rehearing. PH's financial commitments—surface staking, water contracts, and product takeaway negotiations—are preliminary in nature and do not represent sunk costs of a magnitude that would be disproportionate to the harm MRO will suffer absent a stay.

By contrast, the harm to MRO absent a stay is severe and irreversible, as described above. The balance of harms plainly favors a stay to preserve the status quo.

V. THE PUBLIC INTEREST IS SERVED BY A STAY.

The public interest is served by ensuring that the Division adheres to its own precedent before exercising the State's police power to override a majority working interest owner's right to

develop its own acreage under a valid, existing JOA. The compulsory pooling statute is a significant exercise of governmental authority that must be applied consistently and in accordance with established legal standards. *See* NMSA 1978, § 70-2-17. Allowing an order that departs from controlling precedent to take effect before administrative review by the Commission would undermine the predictability and integrity of the Division's regulatory framework—to the detriment of all operators and working interest owners in New Mexico.

Furthermore, the public interest in preventing waste and protecting correlative rights—the twin purposes of the compulsory pooling statute—is not served by permitting an inexperienced operator with no drilling track record to develop acreage over which a proven, experienced operator holds majority working interest control under a valid JOA. MRO's proposed co-development plan is more protective of the correlative rights of all interest owners than PH's development sequence.

CONCLUSION

For the foregoing reasons, MRO respectfully requests that this Court stay Order No. R-24349 in its entirety. The Order departs from controlling Division and Commission precedent, applies the wrong legal standard to the working interest control analysis, and will cause immediate and irreparable harm to MRO. A stay is necessary to preserve the status quo and to ensure that MRO's rights are preserved.

WHEREFORE, Marathon Oil Permian LLC respectfully requests that this Court:

1. Stay Order No. R-24349 in its entirety pending a final Commission order in this matter;

2. Prohibit PH from commencing any drilling or surface operations in the Super Hornet Unit pending resolution of MRO's administrative appeal; and

3. Grant such other and further relief as the Commission deems just and proper.

Respectfully submitted,

HOLLAND & HART LLP

By:_____

Adam G. Rankin
Paula M. Vance
A. Raylee Starnes
Post Office Box 2208
Santa Fe, NM 87504
505-988-4421
505-983-6043 Facsimile
agrankin@hollandhart.com
pmvance@hollandhart.com
rstarnes@hollandhart.com

ATTORNEYS FOR MARATHON OIL PERMIAN LLC

CERTIFICATE OF SERVICE

I hereby certify that on June 03, 2026, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

Benjamin B. Holliday
HOLLIDAY ENERGY LAW GROUP, PC
107 Katherine Court
San Antonio, Texas 78209
(210) 469-3197
ben@helg.law

Attorney for Powderhorn Operating LLC

James P. Parrot
Miguel A. Suazo
Jacob L. Everhart
Ryan McKee
Beatty & Wozniak, P.C.
500 Don Gaspar Ave.
Santa Fe, NM 87505
(505) 946-2090
jparrot@bwenergylaw.com
msuazo@bwenergylaw.com
jeverhart@bwenergylaw.com
rmckee@bwenergylaw.com

Attorneys for Magnum Hunter Production, Cimarex Energy of Colorado, And Coterra Energy Operating Co.

Kaitlyn A. Luck
P.O. Box 483
Taos, NM 87570
(361) 648-1973
kaitlyn.luck@outlook.com

Attorney for Avant Operating II, LLC

James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
505-982-2043
jamesbruc@aol.com

Attorney for Kaiser-Francis Oil Company

Dana S. Hardy
Jaclyn M. McLean
Yarithza Peña
HARDY MCLEAN LLC
125 Lincoln Ave., Suite 223
Santa Fe, NM 87505
(505) 230-4410
dhardy@hardymclean.com
jmclean@hardymclean.com
ypena@hardymclean.com

Attorneys for Permian Resources Operating, LLC

Adam G. Rankin