

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

**AMENDED APPLICATION OF BTA OIL PRODUCERS, LLC FOR
A NON-STANDARD SPACING AND PRORATION UNIT, AND
COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO.**

CASE NO. 16024

**APPLICATION OF BTA OIL PRODUCERS, LLC FOR A NON-
STANDARD SPACING AND PRORATION UNIT, AND
COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO.**

CASE NOS. 16161 - 16162

**AMENDED APPLICATIONS OF MARATHON OIL PERMIAN LLC
FOR APPROVAL OF A NON-STANDARD SPACING AND
PRORATION UNIT AND COMPULSORY POOLING, EDDY
COUNTY, NEW MEXICO.**

CASE NOS. 16076-16077

**APPLICATION OF MARATHON OIL PERMIAN LLC FOR A NON-
STANDARD SPACING AND PRORATION UNIT AND
COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO.**

CASE NO. 16300

BTA's CLOSING STATEMENT

These cases involve competing development plans for the Bone Spring and Wolfcamp formations underlying the W/2 of Section 29 and the NW/4 of Section 32, Township 23 South, Range 28 East, NMPM, Eddy County, New Mexico. BTA owns 70.3% of the working interest in the subject acreage and initiated development in the Wolfcamp formation by proposing in October of 2017 the Ogden 20509 32-29 Fed Com 5H and 6H Wells. *See* BTA Exs. 2 and 3. After Marathon represented for months it would either participate or trade acreage, Marathon instead sent competing well proposals in February of 2018 forcing BTA to file an initial pooling application under Case No. 16024. *See* BTA Exs. 5 and 6. The parties subsequently filed

additional competing pooling applications and Marathon recently amended its applications to now mimic the spacing units initially proposed by BTA for both the Wolfcamp and Bone Spring formations.

A depiction of the location, depth and target intervals of the wells proposed by each party is contained in BTA Exhibit 21. It reflects the absence of dispute over well orientation or lateral length for the initial horizontal wells to form each spacing unit. It reflects virtually identical spacing patterns for the initial development wells in the Third Bone Spring sands, the Wolfcamp Sands and the lower Wolfcamp D intervals. While Marathon has certainly proposed more wells at this point than BTA, Marathon's two proposed wells in the Second Bone Spring Sands (13H and 19H), the single proposed well in the upper Wolfcamp (14H) and three of the four proposed wells in the lower Wolfcamp D (11H, 20H and 18H) are not initial wells, but "Stage 2" or "Stage 3" wells. *Compare* BTA Ex. 21 with MOC Exs. CC and S.

Marathon's discernable dispute with BTA's development plan is a difference of opinion over whether the Third Bone Spring sand and the upper Wolfcamp sand intervals must be simultaneously developed in this area. While Marathon appears to take issue with BTA's initial well density, a closer examination shows the only difference exists in the gassy Wolfcamp D zone. *See* BTA Ex. 21; Tr. 7/31/18 at p. 393. While Marathon suggest 8 wells per section are necessary for this gassy Wolfcamp D zone, Marathon failed to provide any EUR analysis, pressure data or any other actual data to support that opinion. *See, infra*, at p. 8. Resolution of these competing pooling cases is therefore relatively simple under Commission and Division precedent: *Since Marathon has not proven that BTA's initial development plan will result in waste, BTA's applications for pooling must be granted since BTA owns over 70% of the working interest in the subject acreage and was the first to propose development of the acreage.*

ARGUMENT

A. In the Absence of Geologic or Prospect Differences “Working Interest Control” Decides Operations.

When the Division is presented with competing development plans, Commission Order R-10731-B (issued in 1997) instructs as follows:

(24) In the absence of compelling factors such as geologic and prospect differences, ability to operate prudently, or any reason why one operator would economically recover more oil or gas by virtue of being awarded operations than the other, “working interest control,” as defined and modified in findings 23(d) and (e) should be the controlling factor in awarding operations.

See also Division Order R-13603 (March 2006) at ¶17(f) (“The Oil Conservations Commission has indicated that working interest percentages operated is a major factor in determining whom to designate as operator.”); Division Order R-11869 (December 2002) at ¶23 (Because Great Western has significantly larger adjusted working interest control, and no other compelling factors exist, Great Western should be designated the operator of the proposed well and of the Units.”).

Twenty years later, Division Order R-14518 (issued December of 2017) cited working interest control as a major factor in awarding operation of a proposed horizontal well spacing unit in the Bone Spring formation to Mewbourne Oil Company:

(20) Mewbourne provided sufficient evidence establishing a greater capacity to prudently operate the property based on successful drilling operations for the targeted interval in this area along with active production from its existing horizontal well completed in the 3rd Bone Spring sand and located in the W/2 W/2 of Section 15.

(21) Mewbourne proved a larger control of the working interest for Section 15 with approximately 74 percent committed to Mewbourne while Black Mountain could provide documentation of approximately 24 percent committed to their proposed well.

(22) Finally, the Division identified a potential for “stranded acreage” in Section 10 should the three 11/2 -mile horizontal wells proposed by Black Mountain be approved. The continued development of Section 15 with one-mile horizontal wells as proposed by Mewbourne will prevent waste while protecting the correlative rights of mineral interest owners in Section 10.

(23) Mewbourne Oil Company should be designated operator of the Pronghorn 15 B3AP Federal Com Well No. 1H and the proposed spacing unit and project area.

Like Mewbourne, BTA has conducted successful drilling operations in the targeted formations in the offsetting acreage in the E/2 of Section 29 and the NE/4 of Section 32. *See* BTA Ex. 28.

Like Mewbourne, BTA owns over 70% of the working interest in the subject acreage and was the first to propose development of this acreage. Because BTA will pay over 70% of the costs of developing this acreage, BTA's pooling applications must similarly be granted.

B. Marathon has Failed to Demonstrate any Compelling Factors that Warrant Awarding Operations to Marathon as a Minority Working Interest Owner.

Operatorship is not and cannot be determined based on subjective opinions on the "best" development plan for the acreage at issue. Rather, in the absence of indisputable evidence demonstrating waste, the working interest owner that will actually bear the brunt of the development costs should determine the initial development plan. BTA, which owns over twice the interest held by Marathon and will pay over 70% of the costs, has proposed a development plan that follows what other longtime operators have deemed prudent to initially develop the Bone Spring and Wolfcamp formations. In response, Marathon has not presented data that definitively demonstrates the development plan proposed by BTA and used by other operators to develop the Bone Spring and Wolfcamp formations in this area will cause waste.

1. There are no significant differences in the initial spacing patterns presented for the 480-acre Wolfcamp spacing unit and the 240-acre E/2 W/2 Bone Spring spacing units.

Both companies have proposed virtually identical spacing patterns for the initial development of the 480-acre Wolfcamp spacing unit and the two 240-acre Bone Spring spacing units. *See* BTA Ex. 21 and MCO Ex. S. Marathon Exhibits S and CC confirm that the "Stage 1" wells Marathon intends to drill are limited to the 15H in the Bone Spring formation, the 12H and the 17H in the upper Wolfcamp Sands, and the 16H in the lower Wolfcamp D zone. All of these

“Stage 1” wells are at virtually the same spacing as BTA’s proposed wells for the spacing units. *Compare* BTA Ex. 21 *with* MOC Ex. S.

While Marathon has certainly proposed more wells at this point than BTA, Marathon’s two proposed wells in the Second Bone Spring Sands (13H and 19H), the single proposed well in the upper Wolfcamp (14H) and three of the four proposed wells in the lower Wolfcamp D (11H, 20H and 18H) are not initial wells, but “Stage 2” or “Stage 3” wells. *Compare* BTA Ex. 21 *with* MOC Exs. S and CC. BTA can certainly drill these additional wells if warranted. Indeed, BTA’s initial spacing for its two proposed wells in the gassy Wolfcamp D formation (7H and 8H) will allow the same infill wells in this zone if subsequently deemed necessary. *Id.*

2. Marathon’s confirmed its proposed development plan for the W/2 W/2 Bone Spring spacing unit will impair BTA’s correlative rights and the rights of other non-operating mineral interests in the subject acreage.

With respect to the 240-acre Bone Spring spacing unit comprised of the W/2 W/2 of Section 29 and the W/2 NW/4 of Section 32 (“W/2 W/2 spacing unit”), there is a significant difference in the proposed development plans. BTA has proposed to initially drill the 9H well in the Third Bone Spring interval for the W/2 W/2 Bone Spring spacing unit to mirror the 10H well in the E/2 W/2 Bone Spring spacing unit. *See* BTA Ex. 21. In contrast, Marathon intends to drill only a single Second Bone Spring well (the 13H) as part of its “Stage 3” development. *See* MOC Ex. S; Marathon Application filed in Case No. 16300. Marathon testified it will not drill a Third Bone Spring well in this W/2 W/2 spacing unit due to Marathon’s Bone Spring development in the E/2 of adjacent Section 30, where Marathon happens to hold a larger working interest. *See* MOC Ex. S; Tr. 7/31/18 at p. 304-306 (Karen). While that may be great for Marathon, such a plan impairs BTA’s correlative rights in the W/2 W/2 Bone Spring spacing *where BTA holds over 83% of the working interest*. *See* Tr. 7/31/18 at p. 304-306 (Karen). *See also* BTA Ex. 23 (noting Marathon only holds 16.66% in the W/2 W/2 Bone Spring spacing unit). Marathon conceded that

its development plan will not only impair BTA's correlative rights, but also negatively impact the non-operating mineral interests in this Bone Spring spacing unit, such as Lynn Charuk. Tr. 7/31/18 at p. 333 (Karen).

3. BTA's initial development plan is consistent with what other operators have deemed prudent to initially develop the Bone Spring and Wolfcamp formations.

It is undisputed that BTA's initial development plan for the subject acreage follows what other long-time operators in the area have deemed prudent for the Bone Spring and Wolfcamp formations. *Compare* BTA Ex. 21 *with* BTA Ex. 36 (development maps). These other operators include Oxy, COG, Mewbourne, Chevron, Devon, RKI, Matador, Caza, Rockcliff, EOG and Cimarex. *Id.* None of these long-time operators have seen a need to simultaneously drill and complete wells in the lower Bone Spring and upper Wolfcamp producing zones. *See* BTA Ex. 36 at p. 2 and 3.

These operators have also not pursued the density pattern suggested by Marathon in the Wolfcamp formation. *See* BTA Ex. 36 at p. 1. Production data from Matador's brief experiment with tighter spacing patterns in nearby Sections 24 and 25 confirm little benefit from more than four wells per section. *See* BTA Ex. 37. Petroleum engineers have published peer-reviewed articles and submitted presentations that likewise do not support the density patterns proposed by Marathon. *See* BTA Ex. 38. Mr. Charuk (a geologist and overriding royalty owner) confirmed this consensus stating:

Q. And would it also go that when you're dealing with the Wolfcamp gas wells, you might not need as many wells to recover reserves in a section or a half section?

A. Yeah. And I think Matador and Mewbourne have probably led the way in this area. As far as companies that do a lot of science, they have probably done microseismic and all the research, and they've concluded that four-well spacing per section for this Lower Wolfcamp is adequate, and it's a good drainage. It doesn't leave any waste behind.

Tr. 7/13/18 at p. 221, line 17 through p. 222, line 2.

4. BTA and Lynn Charuk presented evidence of a barrier between the Bone Spring and Wolfcamp formations.

Unlike other areas of the Permian Basin, the Oil Conservation Division does not treat the lower Bone Spring sands and the Upper Wolfcamp sands as a single source of supply. Rather, the Division has assigned separate pools to these formations precisely because they are not in communication. Both BTA and Mr. Charuk (a geologist and overriding royalty interest owner) presented evidence supporting the conclusions reached by the Division. Both parties presented evidence of a barrier between the Bone Spring and Wolfcamp formations sufficient to prevent communication between these two zones from horizontal development. *See* BTA Exhibits 33, 34 and 35; Charuk Ex. 4; Tr. 7/13/18 at p. 217-219 and p. 226. This evidence includes separate frac models in the Third Bone Spring Sands and the Wolfcamp Sands. *See* BTA Exhibits 34 and 35.

In contrast, Marathon presented no data conclusively demonstrating that the Division should treat these two zones as a single source of supply and mandate operators to develop them simultaneously.

- MOC chose not to present any frac models to support its opinions, despite having data from an adjacent township. *See* Tr. 7/31/18 at 314 (Karen).
- MOC Ex. CC is simply a chart “for illustrative purposes only” showing a theoretical “depletion halo.” This exhibit is not supported by any volumetric, EUR or pressure analysis. *See* Tr. 7/31/18 at p. 312 (Karen).
- MOC Ex. EE contains data from Lea County, an area Marathon’s geologist testified contains a different geologic setting that is “night and day” from the geology in the subject area. *See* Tr. 4/24/18 at p. 294, lines 16-21 (Karen). The example provided in MOC Ex. EE depicts a circumstance where only a single

Bone Spring well has been drilled. It provides no data from which to determine the reason for the performance of the single Bone Spring well.

- The two exhibits to the Affidavit of Mikhail Alekseenko, submitted after the July hearing, again depict only a single Bone Spring well completion. It provides no data from which to determine the reason or reasons for the performance of the single Bone Spring well. Further, Exhibit 1 reflects only 100 days of data, with a mere 20-day period between the initial wells and the subsequent wells. This limited time frame reflects concurrent development, and 20 days between the initial wells and the additional wells is insufficient time to suggest a “depletion” effect.

Marathon presented no data conclusively demonstrating that the lower Bone Spring and the upper Wolfcamp sands are in communication, comprise a single source of supply or should be treated as one pool by the Division and operators.

5. Marathon’s desire to experiment with what it suggests is “at density” development does not support awarding operations to Marathon as a minority working interest owner.

At the hearing, Marathon appeared to take issue with the initial density of BTA’s development plan suggesting it would not accommodate what Marathon considers “at density” development. *See* Tr. 7/31/18 at p. 393. However, as noted above, no substantive differences exist between the initial well spacing proposed by BTA and the “Stage 1” wells proposed by Marathon. *See* BTA Ex. 21 and MOC Ex.

S.

Further, the illustrations Marathon offers under MOC Ex. FF depict wells drilled in the Wolfcamp in Lea County, where Marathon’s geologist testified contains an entirely different geologic setting that is “night and day” from the subject acreage. *See* Tr. 4/24/18 at p. 294, lines

wells or the spacing units involved. In some circumstances, the “later” wells appear to track the same production curves as the “initial” wells. *See, e.g.*, MOC Ex. FF at pp. 2 and 3. In other circumstances, the illustrations appear to support what other long-time operators have observed in the subject area: A four well spacing pattern per section adequately drains the Bone Spring and Wolfcamp formations, and production from additional wells do not justify the additional drilling expenses. *See* Ex. FF at p. 4, 5 and 6.

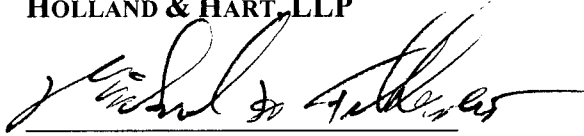
Marathon’s density illustrations certainly do not rebut the results seen from Matador’s density experiment in Sections 24 and 25 in the subject area. *See* BTA Ex. 37. Nor are these density illustrations supported by data that definitively demonstrates the density utilized by ALL other operators in this area is wrong. *See* BTA Ex. 36 and 38. Marathon’s witness confirmed the absence of supporting data, taking the position Marathon is not required bring a “data room” of information to the hearing. Tr. 7/13/18 at p. 406, lines 10-25 (Alekseenko). Instead he confirmed Marathon’s “at density” illustrations in Exhibit FF are “for illustrative purposes” only and he could not identify when eight wells per section is required. Tr. 7/13/18 at p. 393-394 (Alekseenko). Marathon’s witness offered no definitive statement on whether an operator must develop the lower Bone Spring and the upper Wolfcamp simultaneously, whether the Division should treat these zones as one pool or whether the Division should mandate simultaneous development of the lower Wolfcamp at eight wells per section. Tr. 7/13/18 at p. 398 (Alekseenko).

CONCLUSION

Since Marathon failed to present a body of evidence demonstrating that BTA’s initial development plan will result in waste, Division and Commission precedent mandate that BTA’s pooling applications be granted since BTA owns over 70% of the working interest in the subject acreage and was the first to propose development of the acreage.

Respectfully submitted,

HOLLAND & HART, LLP

A handwritten signature in black ink, appearing to read "Michael H. Feldewert", written over a horizontal line.

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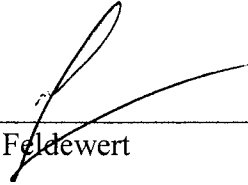
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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2018, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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