

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

**IN THE MATTER OF THE HEARING  
CALLED BY THE OIL CONSERVATION  
COMMISSION FOR THE PURPOSE OF  
CONSIDERING:**

**APPLICATION OF MARATHON OIL  
PERMIAN LLC FOR COMPULSORY  
POOLING, EDDY COUNTY, NEW MEXICO**

**Case Nos. 21273 and 21274  
(Division Case Nos. 20865  
and 20866)**

**Order No. R-21416-A**

**ORDER OF THE COMMISSION**

**THIS MATTER** comes before the New Mexico Oil Conservation Commission (“Commission”) on Marathon Oil Permian, LLC’s (“Marathon”) *Applications for Compulsory Pooling* (“Applications”). The Commission, having considered the Applications at a hearing held on August 13-14 and 20, 2020 and being fully advised of the premises, enters the following findings of fact, conclusions of law, and order.

**FINDINGS OF FACT**

1. In Case No. 21273, Marathon requests an order pooling all uncommitted mineral interests within a Bone Spring horizontal spacing unit underlying the S/2 N/2 of Section 12, Township 23 South, Range 28 East and Section 7, Township 23 South, Range 29 East in Eddy County. Marathon proposes to dedicate the 320-acre horizontal spacing unit to the Valkyrie 12 SB Federal Com 13H well.

2. In Case No. 21274, Marathon requests an order pooling all uncommitted mineral interests within a Wolfcamp horizontal spacing unit underlying the N/2 of Section 12, Township 23 South, Range 28 East and Section 7, Township 23 South, Range 29 East in Eddy County. Marathon proposes to dedicate the 640-acre horizontal spacing unit to the Valkyrie 12 WXY Federal Com 1H, Valkyrie WA Federal Com 3H, Valkyrie 12 WXY Federal Com 5H, Valkyrie 12 WD Federal Com 2H, Valkyrie 12 WD Federal Com 4H, and Valkyrie 12 WD Federal Com 6H wells.

3. Marathon’s Applications were heard by the Oil Conservation Division (“Division”) on November 14, 2019, and the Division issued Order No. R-21251 granting Marathon’s Applications on April 13, 2020.

4. BTA Oil Producers, LLC (“BTA”) was a party to the Division hearing and opposed Marathon’s Applications. As a party adversely affected by Order No. R-21251, BTA timely filed Applications for *De Novo* Hearing with the Commission on April 24, 2020.

5. In accordance with NMSA 1978, Section 70-2-13 and 19.15.4.23(A) NMAC, the Commission held a *de novo* hearing on Marathon’s Applications on August 13-14 and 20, 2020. The Applications were consolidated for hearing.

6. Marathon and BTA participated in the *de novo* hearing. No other parties entered an appearance.

7. The Oil and Gas Act, NMSA 1978 §§ 70-2-1 *et seq.* (“the Act”), prohibits the waste of oil and gas and delegates to the Commission authority to prevent waste and protect correlative rights.

8. Section 70-2-17(C) of the Act provides that when the owners of the interests in a spacing unit “have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit.”

9. In evaluating competing pooling applications, the Commission may consider:

- a. A comparison of geologic evidence presented by each party as it relates to the proposed well location and the potential of each proposed prospect to efficiently recover the oil and gas reserves underlying the property.
- b. A comparison of the risk associated with the parties' respective proposal for the exploration and development of the property.
- c. A review of the negotiations between the competing parties prior to the applications to force pool to determine if there was a "good faith" effort.
- d. A comparison of the ability of each party to prudently operate the property and, thereby, prevent waste.
- e. A comparison of the differences in well cost estimates (AFE) and other operational costs presented by each party for their respective proposals.
- f. An evaluation of the mineral interest ownership held by each party at the time the application was heard.
- g. A comparison of the ability of the applicants to timely locate well

sites and to operate on the surface (the "surface factor").<sup>1</sup>

10. In support of its Applications, Marathon presented the testimony of Chase Rice (Landman), Matt Baker (Geologist), and Yuri Rodionov (Engineer).

11. In opposition to Marathon's Applications, BTA presented the testimony of Willis Price (Landman), Britton McQuien (Petroleum Engineer), and Nick Eaton (Petroleum Engineer).

12. Marathon proposes to complete one Bone Spring well in the S/2 N/2 of Sections 12 and 7 and six Wolfcamp wells in the N/2 of Sections 12 and 7, Township 23 South, Range 28 East and Township 23 South, Range 29 East. The proposed wells are 2-mile laterals.

13. Marathon's proposals in the N/2 half of Sections 12 and 7 are part of a development plan that also covers the S/2 of Sections 12 and 7. Marathon's development plan for the S/2 of Sections 12 and 7 was addressed in other cases and is not contingent on the Commission's decision in these cases.

14. Marathon does not propose to complete any Bone Spring wells in the N/2 N/2 of Sections 12 and 7 due to existing horizontal laterals that penetrate the Second Bone Spring in the N/2 N/2 of Section 12.

15. Marathon holds 37.8% of the working interest in its proposed Bone Spring horizontal spacing unit and 18.9% of the working interest in its proposed Wolfcamp horizontal spacing unit. Marathon received letters from both Oxy Y-1 Company ("Oxy") and Chevron U.S.A. Inc. ("Chevron") that supported Marathon as operator of the N/2 units and Marathon's development plan and also stated that they allowed Marathon to represent OXY and Chevron's interests. However, the letters of support were issued in November 2019 and Marathon's transactions with Oxy and Chevron had not closed as of the date of the August 2020 hearing. Marathon also received a support letter from NOVO Oil and Gas Northern Delaware, LLC ("NOVO"). NOVO filed compulsory pooling applications for spacing units covering the N/2 of Sections 8 and 9 Township 23 South, Range 29 East.

16. Marathon must pool interests to develop its acreage.

17. Pursuant to a Joint Operating Agreement ("JOA"), BTA is the operator of 474.11 acres comprising the N/2 of Section 7 and the NW/4 of Section 8, Township 23 South, Range 29 East (the "Ochoa Acreage"). The BTA Ochoa Acreage includes some, but not all, of the acreage Marathon seeks to pool in the Applications.

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<sup>1</sup> See, e.g., Order No. R-20223. Although BTA has not filed a competing pooling application because it does not need to do so since its acreage is subject to a joint operating agreement, the Commission evaluated BTA's development plan and considered these factors with respect to Marathon's and BTA's proposals.

18. BTA acquired its interest under the JOA and became the operator of the Ochoa Acreage on November 1, 2018.

19. Under the JOA, BTA is the designated operator of 100% of the Ochoa Acreage.

20. BTA owns 82% of the working interest in the Ochoa Acreage. Oxy Y-1 Company (“Oxy”) is the other party to the JOA and owns 18% of the working interest in the Ochoa Acreage.

21. Oxy ratified the JOA and BTA as operator of the Ochoa Acreage effective on November 1, 2018.

22. Oxy’s interest is subject to the JOA, and if Marathon acquires Oxy’s interest in the Ochoa Acreage, Marathon’s interest will be subject to the JOA.

23. As operator of 100% of the Ochoa Acreage, BTA does not need to file a compulsory pooling application to develop the Ochoa Acreage. BTA only needs to submit well proposals to Oxy and allow for the 30-day election period prior to drilling its wells.

24. BTA acquired its operating rights under the JOA to allow it to control costs and implement its development plan. BTA witness Willis Price testified that BTA’s operating rights under the JOA are valuable because they allow BTA to take advantage of its experience in the area, select the most efficient development plan, and control costs. Mr. Price also testified that granting Marathon’s applications would nullify BTA’s operating rights under the JOA by precluding BTA from developing the Ochoa Acreage.

25. Joint Operating Agreements facilitate development and conservation of resources by allowing operators to develop their acreage without the necessity of a pooling proceeding.

26. BTA proposes to complete four 1.5-mile horizontal wells in the Lower Wolfcamp formation in the Ochoa Acreage and has approved plans to complete four additional 1.5-mile horizontal wells in the Ochoa Acreage: two wells in the Second Bone Spring and two wells in the Wolfcamp XY Sand.

27. BTA’s 1.5-mile horizontal wells have been efficient and economic, and BTA expects that its wells in the Ochoa Acreage will be efficient and economic.

28. On May 16, 2019, BTA had its onsite meeting with the BLM for the four wells that BTA proposes to complete in the Lower Wolfcamp formation: the Ochoa 8703 Fed 1H, 2H, 3H, and 4H wells.

29. The BLM has approved BTA’s well sites for the four Lower Wolfcamp Ochoa Wells.

30. BTA’s well sites are located outside the Potash Area, and the completed laterals will extend into the Potash Area. Mosaic Potash has been notified and has no objection.

31. On June 26, 2019, BTA submitted Applications for Permits to Drill (“APD”) for the four Lower Wolfcamp Ochoa Wells to the BLM.

32. On July 8, 2019, BTA sent Oxy well proposals for the four Lower Wolfcamp Ochoa Wells.

33. BTA submitted notice of its Ochoa Development Area on August 28, 2019.

34. The BLM’s determination on BTA’s APDs and Ochoa Development Area are pending.

35. Due to the election period afforded by the JOA, BTA will formally propose its additional Second Bone Spring and Wolfcamp XY Sand wells to Oxy when permits are obtained.

36. Marathon acquired its interest in the N/2 of Section 12 on May 1, 2019 and submitted its well proposals for the Valkyrie wells that are the subject of its Applications on July 12, 2019.

37. Marathon submitted notice of its Valkyrie Development Area for the N/2 of Sections 12 and 7 on November 12, 2019.

38. BLM approved Marathon’s Development Area on April 16, 2020. BLM’s approval stated: “Under the provisions of Secretary’s Order 3324, the BLM will cooperate with the NMOCD in the implementation of that agency’s rules and regulations. Therefore, in observation of NMOCD’s Order 21251 regarding the Valkyrie Development Area giving Marathon Oil Corporation the right to develop fluid minerals in all of Sections 12 in T23S R28E and Section 7 in T23S R29E, the BLM has approved the Valkyrie Development Area. The Development Area has been assigned DA-2020-025.”

39. Marathon has contracts for the takeaway of gas, produced water, and oil in place.

40. Marathon does not currently hold a record title interest in the Ochoa Acreage and seeks to pool BTA’s interest in the N/2 of Section 7 to develop its 2-mile laterals.

41. Marathon proposes to complete one well in the Lower Wolfcamp B in the N/2 of Sections 7 and 12 and two wells in the Lower Wolfcamp B in the S/2 of Sections 7 and 12.

42. BTA’s Ochoa Acreage includes the N/2 of Section 7 and the N/2 NW/4 of Section 8, and BTA proposes to complete two wells in the Lower Wolfcamp B in the Ochoa Acreage.

43. Marathon proposes to complete one Second Bone Spring well in the S/2 N/2 of Sections 7 and 12.

44. BTA’s Ochoa Acreage includes the N/2 of Section 7 and the N/2 NW/4 of Section 8, and BTA proposes to complete two wells in the Second Bone Spring in the Ochoa Acreage.

45. BTA presented evidence that Marathon's development plan fails to fully and efficiently develop the Ochoa Acreage and places fewer wells in the Lower Wolfcamp, which is more productive, and that BTA's development plan would fully and efficiently develop the Ochoa Acreage.

46. If granted, Marathon's Applications would preclude BTA from developing 80 acres of BTA's Ochoa Acreage in the S/2 NW/4 of Section 8 and would strand that acreage.

47. If Marathon's Applications were granted, BTA would still be required to drill a well to develop the Second Bone Spring formation in the N/2 N/2 of Section 7 because Marathon has not proposed any wells in that location and formation due to existing horizontal laterals that penetrate the Second Bone Spring in the N/2N/2 of Section 12.

48. BTA's similar development in proximity to the Ochoa Acreage has produced more barrels of oil per foot than Marathon's similar developments in proximity to its proposed spacing units.

49. Marathon has suspended all drilling activity in the Northern Delaware Basin during 2020 and has released its rigs.

50. BTA has spudded 28 wells in New Mexico in 2020, has two active rigs available, and is continuing to drill and complete wells in New Mexico.

51. BTA is ready, willing, and able to drill and complete the four Lower Wolfcamp Ochoa Wells once these cases are resolved and BLM approves BTA's development plan and APDs. BTA will be able to expeditiously drill and complete its four additional Ochoa Wells since it does not need to pool its acreage to do so.

52. BTA's contracts for the takeaway of gas, produced water, and oil are ready for execution.

53. BTA's four Lower Wolfcamp well sites have been approved by the BLM, and BTA is able to timely locate its wells and operate on the surface once the BLM approves BTA's development plan and APDs.

54. BTA owns a greater interest in the Ochoa Acreage than Marathon holds in its proposed spacing units.

55. If Marathon's Applications are denied, Marathon can drill 1-mile laterals in its acreage in the N/2 of Section 12.

56. Marathon has drilled 1-mile laterals in the surrounding area.

57. There is no engineering or geological reason that Marathon cannot complete 1-mile laterals in its acreage in Section 12.

58. Marathon presented evidence and testimony that codeveloping the N/2 and S/2 wells together would reduce the parent-child effect.

59. Marathon presented evidence and testimony that BTA's development plan could result in the parent-child effect because drilling the N/2 wells at a different time than the S/2 wells could negatively impact the wells developed later in time.

60. BTA witness Britton McQuien testified that Marathon's evidence regarding the parent-child effect was based on limited and incomplete data and failed to address other factors and causes. Mr. McQuien also presented opposing evidence regarding BTA's comparable developments.

61. Marathon presented evidence and testimony that its 2-mile laterals in its Malaga Upper Wolfcamp development are more capitally efficient than its 1.5 or 1-mile laterals.

62. BTA witness Britton McQuien testified that Marathon's evidence regarding 2-mile laterals was unreliable because it was based on a limited set of data, did not address efficiency (e.g. barrels of oil per foot) and did not address other factors that can impact well performance. Mr. McQuien also presented evidence that BTA's similar 1.5-mile developments are more efficient than Marathon's similar 2-mile developments.

63. Marathon presented testimony regarding surface waste, because BTA's development plans would require Marathon, BTA, and Novo to each have surface facilities.

64. BTA presented testimony that if Marathon's Applications were granted, BTA would still have to drill a Second Bone Spring well, which would mean additional surface facilities; that granting Marathon's applications would not decrease surface waste; and that surface waste would not be reduced even if Marathon's and Novo's applications in Case Nos. 21275 and 21276 were both granted.

65. Marathon presented evidence and testimony that its proposal would eliminate internal setbacks. Marathon witness Yuri Rodionov testified that the setbacks would account for 120 acres within the Wolfcamp formation/targets. Marathon calculated 134,282 BOE in the first year would be recoverable from the acreage underlying the setbacks, and that drilling through the setbacks would efficiently access those reserves

66. BTA witness Britton McQuien testified that Marathon's evidence regarding the recovery of reserves underlying setbacks was inaccurate because an operator can access the reserves underlying setbacks over the life of the wells. Mr. McQuien testified that the Purple Sage Wolfcamp Pool was created to facilitate horizontal development in the Wolfcamp, and the setbacks were established to allow each operator the opportunity to recover their fair share under their respective leasehold acreage.

67. Marathon and BTA both presented evidence and testimony in support of their respective well density and spacing.

68. Marathon presented testimony and evidence that Marathon's development plan would require fewer wells than BTA's because Marathon's development plan would require 8 wells, whereas, BTA's development plan would result in 15 wells, because Marathon would have to drill 7 1-mile wells in the N/2 of Section 12, in addition to the 8 wells BTA proposes to drill in its Ochoa Acreage.

69. BTA presented evidence that if Marathon's Applications were granted, BTA would still have to drill a Second Bone Spring well, and that granting Marathon's applications would not reduce the number of drilling pads needed to develop the acreage.

70. The Commission considered evidence presented by both parties regarding operational costs and Authorizations for Expenditures, prudent operation, and good faith negotiation and found that the evidence was neutral as to whether these factors favored Marathon's or BTA's development plans.

71. Marathon failed to establish that its proposed development plan would protect correlative rights, prevent waste, or avoid the drilling of unnecessary wells.

72. BTA's development plan will fully and efficiently develop the Ochoa Acreage, will not strand any acreage and will best prevent waste.

73. BTA's development plan will best protect correlative rights by allowing each party to develop its own acreage.

74. If Marathon's Applications are granted, BTA will be unable to fully and efficiently develop the Ochoa Acreage.

75. If Marathon's Applications are granted, portions of BTA's Ochoa Acreage will be stranded.

76. If Marathon's Applications are denied, each operator can develop its own acreage.

77. If Marathon's Applications are denied, no acreage will be stranded.

### **CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the Parties and the subject matter of this case.
2. Proper public notices of the Applications and the Commission's hearing were given.
3. As the applicant in this proceeding, Marathon bore the burden of proof.
4. Marathon failed to establish that its Applications, if granted, would prevent waste.



5. Marathon failed to establish that its Applications, if granted, would protect correlative rights.

6. Marathon failed to establish that its Applications, if granted, would prevent the drilling of unnecessary wells.

7. BTA's proposed development plan will prevent waste more effectively than Marathon's proposed development plan.

8. BTA's proposal protects correlative rights by presenting the best opportunity for each party to develop its own acreage.

9. BTA's interest in the Ochoa acreage is greater than Marathon's interest in its proposed units, favoring BTA.

10. The evidence and testimony regarding the efficiencies of 2-mile laterals was either insufficient or contradictory.

11. The evidence and testimony regarding the parent-child effect was either insufficient or contradictory.

12. The evidence and testimony regarding the differences in well spacing and the number of wells was either insufficient or contradictory.

13. There was insufficient evidence to quantify surface waste.

14. The evidence regarding good faith negotiations; capability as an operator; and costs was not significantly different and did not weigh in favor of either Marathon or BTA.

### **ORDER**

1. Marathon's Applications are denied.

2. The Commission retains jurisdiction of this matter for the entry of such orders as may be deemed necessary.

DONE at Santa Fe, New Mexico on the 17 day of September, 2020.

**STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION**



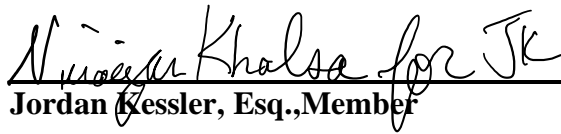
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**Adrienne Sandoval, M.E., Chair**



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**Dr. Thomas Engler, P.E., Member**



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**Jordan Kessler, Esq., Member**