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December 18, 2017

Florene Davidson
NM Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

**Re: Case No. 15906
Case No. 15907
APPLICATION OF MARATHON OIL PERMIAN LCC FOR A
NON-STANDARD SPACING AND PRORATION UNIT, NON-
STANDARD LOCATIONS, AND COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO**

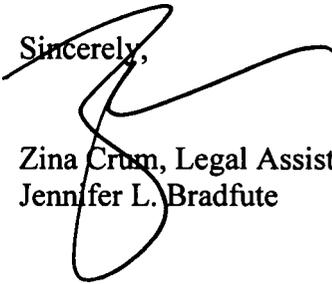
Dear Ms. Davidson:

Enclosed please find three copies of the following:

1. Marathon's Response to the Motion to Continue.

Thank you for your assistance. Please contact me if you have any questions.

Sincerely,


Zina Crum, Legal Assistant to
Jennifer L. Bradfute

JLB/zc
Enclosure

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

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

CASE NOS. 15906 and 15907

MARATHON'S RESPONSE TO THE MOTION TO CONTINUE

Marathon Oil Permian LLC ("Marathon") hereby responds to the Motion to Continue filed by EOG Resources, Inc. and EOG Y Resources, Inc. (collectively referred to as "EOG"), concerning Case Nos. 15906 and 15907. These applications involve the E/2 of Section 26, Township 24 South, Range 34 East, N.M.P.M., Lea County, New Mexico. In Case Nos. 15906, Marathon seeks the creation of a 320-acre non-standard spacing and proration unit and compulsory pooling for the development of three Wolfcamp wells – the Knife Fight Fee 24 34 26 WXY 3H, Knife Fight Fee 24 34 26 WA 6H, and Knife Fight Fee 24 34 26 WXY 19H. A 320-acre spacing unit is requested because one of the wells will be drilled crossing the center line of the E/2 of Section 26. In Case No. 15907, Marathon seeks the creation of a non-standard 160-acre non-standard spacing and proration unit and compulsory pooling for the development of a Bone Spring well – the Knife Fight Fee 24 34 26 WXY 7H.

Marathon is willing to agree to continue the case to the January 11, 2018 docket but asks that the Division issue an expedited order (within a couple of weeks) after the January 11, 2018 hearing. Marathon currently has a rig scheduled to spud the Knife Fight Fee wells by March 14, 2018, and it would be costly to reschedule this rig. Marathon further addresses incorrect statements asserted in EOG's motion below as follows:

I. MARATHON PROVIDED TIMELY NOTICE AND A PROPOSED JOA TO EOG.

Prior to filing its applications in Case Nos. 15906 and 15907 with the Division, Marathon properly notified affected parties of its intent to develop the E/2 of Section 26, Township 24 South, Range 34 East, N.M.P.M., Lea County, New Mexico. It sent out well proposals and AFEs to the working interest owners in the E/2 of Section 26 on October 17, 2017. Such well proposals and AFEs were sent to EOG via certified mail, return receipt requested, and this information was delivered to an EOG Post Office Box on October 30, 2017. On November 10, 2017, Ryan Gyllenband with Marathon e-mailed Chuck Moran at EOG to confirm that he had received the well proposals. In that e-mail, Mr. Gyllenband also sent Mr. Moran a proposed JOA. A copy of this e-mail is attached as **Exhibit A**. After discovering, on November 16, 2017, that Mr. Moran had not yet personally received copies of the proposals, Marathon e-mailed additional copies of the well proposals and AFEs directly to Mr. Moran in Midland, Texas on November 17, 2017. Marathon also mailed via certified mail, return receipt requested, additional copies of the well proposals to Mr. Moran's attention at the Midland address he provided and those well proposals were received November 21, 2017. As a result, it is clear that EOG received a proposed JOA on November 10th, and that it received numerous copies of the well proposals.

On November 30, 2017, Marathon's counsel mailed copies of the applications in Case Nos. 15906 and 15907, via certified mail return receipt requested, to EOG's offices in both Midland and Artesia. These mailings were received and signed for by EOG on Monday December 4, 2017 and Tuesday December 5, 2017. Proof of receipt of both mailings is attached hereto as **Exhibit B**. On December 1, 2017, after learning from a colleague that EOG had questions regarding the well proposals, Mr. Gyllenband also contacted Mr. Moran to discuss the proposals.

On December 5, 2017, EOG indicated to Mr. Gyllenband that it believed that EOG Resources, Inc. owned interests in 5 mineral leases within the NW/4 NE/4 of Section 26, covering a total of approximately 9 net mineral acres. Marathon's title records, however, showed that (1) EOG Resource's leases for this acreage had expired in or around September of 2015, (2) that the acreage had subsequently been leased by the mineral owners to Black Mountain, and (3) that Black Mountain had sold its interests in this acreage to Marathon. As a result, Marathon sent Clay Haggard at EOG an e-mail on December 8, 2017 asking if EOG had any records

showing that the lease was perpetuated between the time period of September 2015 – April 24, 2016, prior to the interests being leased to Black Mountain by the mineral owners. To date, EOG has not responded to this request by providing any information which shows that these leases were perpetuated.

On December 14, 2017, EOG's counsel contacted Marathon's counsel in this case to discuss a continuance. That same day, EOG and Marathon discussed various trade proposals. The parties agreed that they would attempt to negotiate a trade until December 18 or 19 before determining if a continuance was needed. On December 15, 2017, EOG moved for a continuance with the Division. That motion asserted several incorrect statements concerning the prior discussions between the parties, including incorrect statements as to whether a JOA was sent to Mr. Moran, and when notice of Case Nos. 15906 and 15907 were received by EOG's Midland Office. The parties have now been actively discussing Marathon's proposed development plans for the E/2 of Section 26 since November 10, 2017 and EOG has not provided any indication that it intends to develop this acreage; as a result, this case should only be continued to the January 11th hearing.

II. EOG'S LEGAL ARGUMENTS ARE WITHOUT MERIT.

In Paragraph 5 of the Motion, EOG argues that the Division lacks statutory authority to issue a pooling order in Case No. 15906 because Marathon is asking to pool mineral interests which underlie a proposed 320-acre non-standard oil proration unit that covers the E/2 of Section 26. This argument is without merit. Indeed, several operators have recently obtained orders from the Division creating non-standard oil proration units for 320-acres (or more) in similar circumstances. *See, e.g.*, Division Order Nos. R-14335-A (approving the creation of a non-standard 480-acre spacing and proration unit); R-14383 (providing similar relief); R-14422 (same); R-14261 (approving the creation of 446.86-acre oil proration unit).¹ In each of these orders, the Division concluded that it had authority (i.e. jurisdiction under the Oil and Gas Act)

¹ The Horizontal Well Rule Committee (consisting of both Division staff and industry members) has drafted revisions to the rules for horizontal wells which provide that operators, at their election, may include 40-acre tracts within the spacing unit which are located within 165 feet of the proposed completed interval for the well. Under these draft rules, Marathon's requested 320-acre spacing unit would notably be considered "standard" and Marathon would be required to obtain a pooling order under the draft rules to consolidate interests within the horizontal spacing unit. It is clear that these rules were drafted to facilitate the drilling of wells on or near the center lines of sections and half-sections, which is exactly what Marathon seeks in its application.

to create such non-standard proration units. It would be arbitrary and capricious for the Division to now conclude that it lacks statutory authority in Case No. 15906 without likewise invalidating several past orders (that were properly) issued by the agency.

The legislature broadly empowered the Division and Commission to "make and enforce rules, regulations and orders, and do whatever may be necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof." NMSA (1978) § 70-2-11(A). To that end the Division and Commission have adopted orders and rules regarding nonstandard spacing units, horizontal wells, and compulsory pooling. NMSA (1978), § 70-2-17(B) solely addresses the creation of proration units and provides that the Division "may" establish a proration units for an "area that can be efficiently and economically drained and developed by one well[.]" When establishing proration units, the Division may consider a wide variety of factors, including the prevention of waste and the prevention of reduced recovery which might result from the drilling of too few wells within the area. In NMSA (1978), § 70-2-18(C) (adopted in 1969), the Legislature separately granted the Division and the Commission the authority to establish nonstandard spacing units. The statute states:

Nonstandard spacing and proration units may be established by the division and all mineral and leasehold interests in any such nonstandard unit shall share in production from that unit from the date of the *order* establishing such nonstandard unit.

Id.

Here, Marathon plans on drilling numerous wells within Section 26 during 2018. The most efficient spacing pattern for these wells, which will result in the greatest recovery of reserves and the reduction of waste, includes drilling a well on or near the center line of the E/2 of the Section and requires the creation of a 320-acre spacing unit. This well will efficiently and economically drain the proposed 320-acre unit and will share a well pad with two other Wolfcamp wells being drilled within the E/2 using the same drilling rig. As a result, the Division has proper authority to form a non-standard spacing or proration unit in Case No. 15906.

The Division also has proper authority to pool interests underlying a non-standard 320 acre spacing or proration unit. NMSA (1978), § 70-2-17(C) broadly vests the Division with discretion to enter compulsory pooling orders for "spacing or proration" units. (Emphasis

added).² Under this provision, the Division is required to create a “unit” for the pooled interests. The statutory language plainly indicates that the boundaries for such units are not limited to the boundaries of a proration unit (i.e., the area that is efficiently and economically drained and developed by one well). Instead, the statute states that a pooled unit may consist of all of a spacing or proration unit, part of a spacing or proration unit, or “both”. NMSA (1978), § 70-2-17(C) (emphasis added). While this language is ambiguous, it is clear that the Division’s pooling powers are not limited solely to the boundaries of a single proration unit, as proposed by EOG. Nonetheless, Marathon is seeking the creation of a non-standard proration unit in its application in order to facilitate the development of a well drilled across the center line of the E/2 of Section 26 and will present technical evidence which supports this request.

The fact that Marathon seeks the approval of multiple Wolfcamp wells to be drilled within the E/2 is also not a valid reason to further continue (or dismiss) Marathon’s application. Indeed, numerous operators have recently requested the approval of multiple initial wells within their pooling applications. *See, e.g.*, Case Nos. 15680, 15834, 15835, Order No. R-14513, and 15849. These applications have not been dismissed by the Division. Instead, the Division has entered orders granting these requests because wells are commonly drilled using the same drilling rig and equipment, and such approvals lower drilling costs and promote development of the acreage. Marathon seeks similar relief.

CONCLUSION

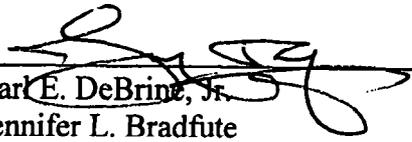
For the foregoing reasons, Marathon will agree to continue Case Nos. 15906 and 15907 to the January 11, 2018 docket, but respectfully asks that the Division enter an expedited order in these cases within 1-2 weeks after the January 11, 2018 hearing so that Marathon does not need to reschedule its drilling rig for these wells.

² It is inaccurate for EOG to state that the Division lacks statutory authority to force pool beyond an area that is drained and developed by a one well (i.e. a single proration unit). There is considerable ambiguity in the Oil and Gas Act as to what constitutes a “unit” in a pooling order. For example, NMSA (1978), § 70-2-17(C) provides that pooled “units” may consist of multiple pools, indicating that such units may contain multiple proration unit. NMSA (1978), § 70-2-17(C) also provides that either “all” of a proration unit, or “any such part” or “both” can be used to form a pooled unit. It is unclear why the Legislature would authorize the Division to create pooled units which contain “both” an existing proration unit and part of a proration unit, if it truly intended to limit the Division’s pooling authority to the scope of a single proration unit. Indeed, such an interpretation renders the use of the word “both” superfluous. Such interpretations are disfavored under New Mexico law. *See Baker v. Hedstrom*, 2013-NMSC-043, ¶ 24, 309 P.3d 1047 (“This Court must interpret a statute so as to avoid rendering the Legislature’s language superfluous.”).

Respectfully submitted,

**MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.**

By: _____


Earl E. DeBrine, Jr.

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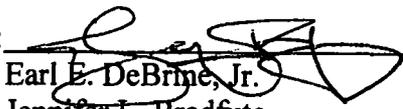
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on counsel of record by electronic mail on December 18, 2017.

Michael Feldewert
Jordan L. Kessler
Adam G. Rankin
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**MODRALL, SPERLING, ROEHL, HARRIS
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Jennifer L. Bradfute

From: Gyllenband, Ryan (MRO) <mrgyllenband@marathonoil.com>
Sent: Friday, November 10, 2017 1:13 PM
To: Charles Moran
Subject: Knife Fight JOA
Attachments: JOA Knife Fight E2 26 24S-34E.pdf

Chuck,

Good afternoon. EOG should have received proposals for 4 wells located in our Knife Fight prospect in E/2 Section 26, 24S-34E. Please forward on to the appropriate person if this is not your area.

I have attached the proposed JOA for this unit, please let me know if you have any questions.

Thanks,
Ryan



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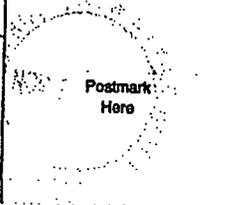
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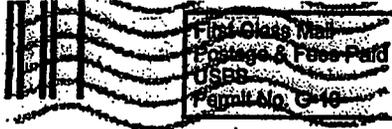
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