

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

**APPLICATIONS OF FRANKLIN MOUNTAIN
ENERGY 3, LLC FOR COMPULSORY POOLING,
AND, TO THE EXTENT NECESSARY, APPROVAL OF AN
OVERLAPPING SPACING UNIT,
LEA COUNTY, NEW MEXICO**

CASE NOS. 24457, 24459, 24479

**APPLICATIONS OF FRANKLIN MOUNTAIN
ENERGY 3, LLC FOR COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO**

CASE NOS. 24898-24901

**APPLICATIONS OF MRC PERMIAN
COMPANY FOR APPROVAL OF AN
OVERLAPPING HORIZONTAL WELL
SPACING UNIT AND COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO**

CASE NOS. 24778-24783

**APPLICATIONS OF MRC PERMIAN COMPANY
FOR APPROVAL COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO**

CASE NOS. 24784-24786

FRANKLIN MOUNTAIN ENERGY 3, LLC'S CLOSING BRIEF

Franklin Mountain Energy 3, LLC ("FME3") submits this Closing Brief pursuant to the Hearing Examiner's direction at the November 20, 2024 contested hearing in the above cases. As demonstrated herein and at the contested hearing in these cases, FME3's Rope State Com development plan is far superior to MRC Permian, LLC's ("MRC") Airstrip development plan, which will result in waste and negatively impact correlative rights. Thus, FME3 respectfully requests that its Rope State Com applications be granted, that FME3 be designated operator of its Rope State Com spacing units ("Rope State Com Units") and that MRC's applications be denied.

INTRODUCTION

The above captioned cases involve partially overlapping competing development plans, which overlap in Section 30, Township 18 South, Range 35 East, Lea County, New Mexico. See

FME3 Exh. A-4; FME3 Exh. A-2, ¶¶ 14-15. In its applications FME3 seeks orders from the Division pooling all uncommitted interests within Bone Spring horizontal spacing units underlying Sections 18, 19, and 30 and pooling all uncommitted interests within Wolfcamp horizontal spacing units underlying Sections 19 and 30. These spacing units will be dedicated to FME3's Rope State Com wells and FME3 has designated this area as its Rope State Com Development Area. FME3's Rope State Com Development Area is part of a larger FME3 comprehensive development plan in the area—in fact, the Rope State Com Development Area is the final piece of FME3's development plan in this area.

MRC seek orders from the Division pooling uncommitted interests within cobbled together combination U-turn and two-mile Bone Spring and Wolfcamp horizontal spacing units underlying Sections 30 and 31, proposed to be dedicated to MRC's Airstrip wells.

As summarized in FME3's Exhibit A-5, FME3's Rope Applications should be granted and MRC's denied because:

- FME3 is able to develop more benches and recover more reserves than MRC and will do so more economically because FME3's AFE costs are lower than MRC's.
- FME3 is using a wine rack development plan, which is the industry standard and presents less risk than MRC's stacked development plan.
- FME3 has been active in this area—MRC has been absent. FME3 is developing units in and around the Rope State Com Development Area covering approximately 10,000 acres.
- FME3 has a greater capacity to prudently operate in this area based on FME3's current operations targeting the same formations, as well as active production from multiple recent wells in offset FME3 operated units.
- FME3 has existing infrastructure in place and has received or submitted permits necessary for operations, while MRC has not or has only recently begun.
- If MRC's applications are granted, Sections 18 and 19 will be stranded, due to logistical and economic constraints making development of those two sections impractical.
- FME3 and MRC each control approximately the same amount of working interest in their respective units (FME3 69% to 79%; MRC 61% to 79%).
- With respect to the overlapping Section 30, MRC and FME3 own undivided interests in the two leases covering Section 30 and, as a result, each have the same right to develop Section 30, notwithstanding the fact that MRC has approximately 60% working interest and FME has approximately 40% working interest in those leases.

Working interest ownership in Section 30 is not controlling in any event given that FME3's development plans are superior.

For these reasons, FME3's applications should be granted and MRC's denied.¹

I. FME3's DEVELOPMENT PLAN IS SUPERIOR TO MRC'S

FME3's Rope State Com development plan is superior to MRC's Airstrip development plan, meaning that FME3's plans will result in greater ultimate recovery of resources from the targeted Bone Spring and Wolfcamp formations, without waste in a manner that protects correlative rights. As the New Mexico Supreme Court has recognized, "the basis of [the Division's] powers is founded on the duty to prevent waste and to protect correlative rights. **Actually, the prevention of waste is the paramount power**, inasmuch as this term is an integral part of the definition of correlative rights." *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, ¶ 11, 373 P.2d 809 (emphasis added).

The Oil and Gas Act defines "correlative rights" as:

[T]he opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste the owner's just and equitable share of the oil or gas or both in the pool, being an amount, so far as can be practicably determined and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas or both under the property bears to the total recoverable oil or gas or both in the pool and, for such purpose, to use the owner's just and equitable share of the reservoir energy.

NMSA 1978, § 70-2-33(H). The Act further defines "underground waste" as "the locating, spacing, drilling, equipping, operating or producing, of any well or wells in a manner to reduce or tend to reduce the total quantity of crude petroleum oil or natural gas ultimately recovered from any pool[.]" NMSA 1978, § 70-2-3(A). And the Act defines "surface waste" as "the unnecessary or excessive surface loss or destruction without beneficial use, however caused . . . resulting from

¹ FME3 incorporates by reference its brief filed on December 9 regarding the scope of MRC's Airstrip Bone Spring Applications.

the manner of spacing, equipping, operating or producing, well or wells, or incident to or resulting from the use of inefficient storage.” *Id.* § 70-2-3(B).

The Commission and Division have identified the following factors to evaluate when analyzing competing applications:

1. 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.
2. A comparison of the risk associated with the parties' respective proposal for the exploration and development of the property.
3. 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.
4. A comparison of the ability of each party to prudently operate the property and, thereby, prevent waste.
5. A comparison of the differences in well cost estimates (AFEs) and other operational costs presented by each party for their respective proposals.
6. An evaluation of the mineral interest ownership held by each party at the time the application was heard.
7. A comparison of the ability of the applicants to timely locate well sites and to operate on the surface (the "surface factor").

See Application of COG Operating LLC For Compulsory Pooling, Eddy County, New Mexico, [Order R-21826](#), ¶ 12 (Oct. 22, 2020) (“Order R-21826”).

Under Commission and Division precedent, the Division looks first to the factors regarding geologic evidence and potential of each proposed prospect, the ability to prudently operate, risk, and whether one operator can economically and efficiently recover more oil and gas than the other. If those factors are a wash, only then is working interest control “the controlling factor in awarding operations.” See *KCS Medallion Resources, Inc.*, Order R-10731-B, ¶ 24 (Feb. 28, 1997) (“Order R-10731-B”) (“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’ ...should be

the controlling factor in awarding operations.”). FME3 demonstrated through its exhibits and testimony that these factors weigh in favor of granting FME3’s applications.

A. FME3 Is Developing More Benches With More Wells, Which Means FME3 Will Recover More Reserves

FME3’s development plan is superior to MRC’s because FME3 is able to develop more benches with more wells, which means that FME3 will recover more reserves than MRC. *See* FME3 Exh. A-14; FME3 Exh. B-9 (comparison of well counts). In addition, and undisputed by MRC testimony or exhibits, FME3’s AFE costs are lower than MRC’s. *See* Hearing Tr. pp. 154-155; 157-158; FME3 Exh. E-2. Thus, FME3’s development plans prevent waste, protect correlative rights, present less risk, and are more economical than MRC’s development plans.

Focusing on Section 30, where the parties’ development plans overlap, FME3’s development plan is superior because FME3 is able to more fully develop more benches than MRC. As a result, FME3’s development plan actually benefits MRC more than MRC’s Section 30 development plans. FME3 and MRC’s development plans for the First Bone Spring are similar, with each operator proposing the equivalent of four First Bone Spring wells.² With respect to the Second and Third Bone Spring, however, FME3’s initial and second phases³ will develop one additional Second Bone Spring well and, in the near term, one additional Third Bone Spring well in the E/2E/2 of Section 30. *See* FME3 Exh. B-9.⁴ In sum, under MRC’s development plan, FME3’s correlative rights in the Second and Third Bone Spring in Section 30 will be negatively impacted because MRC will not be fully developing those benches.

² There is no dispute that four wells per section per bench is the appropriate spacing for this area.

³ To the extent MRC attempts to argue that FME3 does not have firm plans to develop the upper Second Bone Spring, FME3 addressed that at the hearing—FME3 testified it intends to develop that bench, and it is confident and excited about its ability to develop the upper Second Bone Spring. Hearing Tr. p. 150, lines 10-18; p. 151, lines 14-15.

⁴ MRC is apparently considering an E/2E/2 Third Bone Spring well. *See* Hearing Tr. p. 276, lines 1-5.

With respect to the Wolfcamp, FME3 is proposing four upper Wolfcamp wells, FME3 Exh. B-9, whereas MRC *has not proposed any* and has expressed uncertainty about whether it will drill upper Wolfcamp wells. *See* Hearing Tr. p. 327, lines 4-11.⁵ Thus, with respect to Section 30, MRC will be leaving valuable reserves behind that FME3 is proposing to target, resulting in waste and negatively impacting correlative rights. In addition, MRC's development plan creates the risk that the upper Wolfcamp in Section 30 will never get developed, meaning that a valuable bench in which FME3 has a significant interest will be undeveloped.

MRC's waste of resources and negative impacts on correlative rights is even more pronounced when one compares FME3's entire Rope State Com development plan against MRC's Airstrip development plan. FME3 is able to develop a total of 11 three-mile Bone Spring wells. *See* FME3 Exh. B-9. MRC, by contrast, is only proposing the equivalent of six two-mile Bone Spring wells, comprised of a hodge podge of two-mile U-turn wells and two-mile straight wells. *See* MRC Exh. B-6. FME3's three-mile Bone Spring development plan is more economical and will recover more than 400,000 barrels of oil per well as compared to MRC's development plan. *See* FME3 Exh. A-5.

With respect to the Wolfcamp, FME3 is proposing a total of eight two-mile Wolfcamp wells in order to fully develop the entire formation whereas MRC is only proposing four lower Wolfcamp wells. *See* FME3 Exh. B-9; MRC Exh. B-6. FME demonstrated, based upon its experience in adjacent acreage and based on other offset operator experience, that the upper Wolfcamp is productive. *See* FME3 Exh. B-11; Hearing Tr. p. 192, lines 18-25 (FME3 actively

⁵ MRC's geologist confirmed that MRC had expressed no firm intention to drill the upper Wolfcamp. *See* Hearing Tr. p. 327, lines 8-11 (Q: And nowhere in your testimony, at least that I read, did you express a firm intention to [propose any upper Wolfcamp wells] did you? A: No.). Conversely, FME 3 testified that it is confident and excited about its ability to develop the upper Second Bone Spring, Hearing Tr. p. 151, lines 14-15, and is confident in its upper Wolfcamp development. Hearing Tr. p. 215, lines 14-17.

developing upper Wolfcamp in Foxtail and Alpha units). This is supported by FME3's offset experience, as well as by MRC's exhibits relying on MRC's own Airstrip upper Wolfcamp well in Section 31 (the Airstrip 31 18 35 RN State Com 201H) as being productive. *See* FME3 Exh. B-9; *see* MRC Exh. C-15; Hearing Tr. p. 278, lines 2-19. FME3 estimated that there is approximately 530,000 recoverable barrels of oil from the upper Wolfcamp per two-mile lateral, which MRC did not refute. *See* FME3 Exh. B-9; FME3 Exh. B, ¶ 19. MRC's development plan leaves these reserves behind. Given MRC's current unwillingness to consider developing the upper Wolfcamp, it is uncertain that MRC would ever develop the significant upper Wolfcamp resources that FME3 is proposing to develop. Thus, MRC's development plans will result in waste and negatively impact correlative rights.

MRC's geologist and reservoir engineer testified that their primary concerns with FME3's development plans were excluding the Second Bone Spring in Section 30 and including the upper Wolfcamp in Section 30. *See* MRC Exh. B, ¶¶ 27-28; MRC Exh. C, ¶¶ 7-21. FME3 addressed both of those concerns at the hearing. As FME3 testified at the hearing, based upon its development experience in the area, FME3 has determined that it can develop four 3-mile upper Second Bone Spring wells, is confident and excited to do so. *See* Hearing Tr. p. 150-152; *id.* p. 214, lines 1-10; *id.* p. 233, lines 11-25 to p. 224, lines 1-7. FME3 is also developing the Second Bone Spring in adjacent units. *See* Hearing Tr. p. 150, lines 14-20; *id.* p. 234, lines 1-7 (FME3 currently drilling in upper Second Bone Spring in adjacent Tag units). With respect to the upper Wolfcamp, FME3 corrected inaccuracies in MRC's exhibits and testimony about the Gold 701H well, explained why the Gold 701H was drilled out of zone for a portion of the lateral, and noted that FME3 is applying

the lessons it learned from the Gold 701H to move forward with its development of the upper Wolfcamp.⁶

MRC's geologist also touted MRC's knowledge of the area, as well as MRC's operating ability, neither of which ring true. MRC Exh. B, ¶¶ 34-40. First, the evidence demonstrated that FME3, not MRC, has significant knowledge of this area based upon its recent development activities in its 10,000-acre development area in and around the Rope State Com Development Area. By contrast, MRC has not drilled a well in this area *since 2019*. Second, FME3, like MRC, uses 3-D seismic and other tools for steering wells. *See* Hearing Tr. p. 224, lines 1-7. The fact that MRC has a MaxCom Room located in Dallas does not compare with FME3's first hand, on the ground experience with its approximately 10,000-acre development area in and around the Rope State Com units.

B. FME3 Has a Greater Ability to Timely Locate Wells and Operate on the Surface and a Greater Ability to Prudently Operate the Property

FME3 has a greater ability to timely locate wells and to operate on the surface (the "surface factor") and a greater ability to prudently operate the property and, thereby, prevent waste. *See* Order R-10731-B, ¶ 24. Thus, these factors weigh heavily in FME3's favor. *See Longfellow Energy, LP*, R-21834, ¶¶ 29-31 (Sept. 8, 2021) (Longfellow proposed a wine rack pattern, follows development in adjacent units, matches geologic evidence, and has surface facilities within the immediate area). MRC failed to demonstrate its ability to do so with respect to MRC's proposed Airstrip wells, given MRC's lack of activity in the area and its early stage, if any, preparations for its Airstrip development.

⁶ *See generally* Hearing Tr. p. 149, lines 7-25; p. 215, lines 10-16; pp. 277-229; p. 234, lines 18-25; FME3 Exh. E-4.

1. FME3 has been active in this area—MRC has been absent

FME3 is ready, willing, and able to develop the Rope State Com Units in the near term. FME3's Exh. A-13 speaks volumes because it demonstrates that FME3 has been incredibly active in this area, with 8 development areas, covering approximately 10,000 acres, surrounding the Rope State Com Development Area. FME3 acquired its first lease in this area in December 2022 and has been diligently developing this area, moving from the outer corners of the 10,000-acre area to the interior, with the Rope State Com Development Area being the final piece of the puzzle. *See* FME3 Exh. A-13 & A-14 and associated written testimony; FME3 Exh. B-8 and associated written testimony; Hearing Tr. p. 14, lines 9-22. FME3 has acquired additional leases and interests since 2022—FME3 has acquired an interest in every tract across all of the well bores in its Rope State Com wells. *Id.*; *see also* FME3 Exh. A-2, ¶ 12.

FME3 has a proven record as operator in this area based on its current operations in this area developing the same formations, as well as active production from wells in offset FME3 operated units. *See generally* FME3 Exh. B, ¶¶ 16-18; FME3 Exh. B-8. FME3 operates multiple wells within a six-mile radius of the Rope State Units and had completion fleets on its Alpha and Foxtail projects as of November 2024. *See* FME3 Exh. B-8. FME3 has turned on production of 27 wells between October 2023 and November 2024. *Id.* FME3 has built the infrastructure necessary to develop this area, including building its own power grid and acquiring surface use agreements covering approximately 77,000 acres. *See generally* FME3 Exh. A-5; FME3 Exh. B, ¶¶ 10-15; FME3 Exh. B-3 to B-7. And the Rope State Com wells at issue in these cases are on FME3's 2025 drilling schedule to meet the term assignment expiration. FME3 Exh. A-14; Hearing Tr. p. 65, lines 14-17.

MRC's written and live testimony was completely devoid of any evidence about MRC's activity in the area. MRC's lack of initiative in this area is exemplified by the fact that the last time MRC drilled any wells in this area was in 2019. *See* Hearing Tr. p. 280, lines 10-12; p. 316, lines 9-11. MRC drilled its first well in this area in 2016. In other words, it has been 9 years since MRC drilled its first well and 5 years since it drilled its last well in this area. MRC's inaction over the past 5 years is especially telling given that MRC could have, but did not further develop Section 31 pursuant to existing pooling orders or voluntary agreements. *See* Hearing Tr. p. 307, lines 13-18. Additionally, according to MRC, MRC has had a corporate goal of drilling two-mile laterals since 2019 or 2020. *See* Hearing Tr. p. 281, lines 3-25. MRC testified that MRC "certainly could have" drilled two-mile wells in Sections 30 and 31 after 2019, but MRC did not. *Id.* p. 281, lines 15-25 to p. 282, lines 1-6. Thus, despite this corporate goal and ability to drill wells demonstrated by its activity in other areas, MRC has done nothing for 5 years to advance development of its acreage until FME's proposed development triggered its sudden interest.

2. FME3 has existing infrastructure in place and has received or submitted permits

FME3's development plan is superior to MRC's because FME3 has existing infrastructure in place in the N/2N/2 of Section 31, which is ready to tie into FME3's proposed surface locations in the S/2S/2 of Section 30. *See* FME3 Exh. B-1; FME3 Exh. B, ¶¶ 6-7. As a result, FME3 can develop its Rope State Com units quickly and efficiently, due to the presence of surface facilities and infrastructure previously built for its offset development.

FME3 has committed significant resources to long-term solutions to oil, gas, and water take-away in this area. FME3's Exhibits B-3 to B-8 and associated written testimony highlight FME3's infrastructure commitment to develop this more than 10,000 acre area. FME has actively addressed gas and water takeaway constraints, including investing \$44 million dollars to build and

place in service 25 miles of new water pipeline infrastructure and 16 miles of new gas pipeline infrastructure and two H₂S central treatment points put in service. *See* FME3 Exh. B-3 to B-5. FME3 also has a reliable oil pipeline solution in place, including agreements in place to ensure oil pipeline takeaway for the entire Rope State Com Development Area. *See* FME3 Exh. B-6. FME3 has also address grid power constraints by constructing an infield power distribution system to support its development. *See* FME3 Exh. B-7. FME3 has invested \$3 million in this power distribution system, including 15 miles of new power lines. *Id.*; *see also* FME3 Exh. B, ¶¶ 10-15.

FME3 has received or submitted permits necessary to commence development. FME3 has an approved access right-of-way, approved infrastructure rights-of-way, and other approved permits. FME3 Exh. B-2. The Rope State Com wells are on FME3's plan to develop in early 2025 to meet the expiration in a term assignment. FME3 Exh. A-14. Approving FME3's applications will thus allow the prompt development of this acreage.

MRC's written and live testimony provided no similar detail or commitment with respect to infrastructure, permits, or third party contracts for takeaway. *See, e.g.*, Hearing Tr. p. 316, lines 12-14 (when asked if MRC has spent any money on infrastructure in Section 30 and 31, the MRC landman answered: "I don't know how to answer that question."); Hearing Tr. p. 316-317 (when asked if MRC has any contracts in place as of the date of the hearing, the MRC landman answered: "I don't know the answer to that."). MRC's exhibits and testimony do not address water or oil takeaway at all. *See* MRC Exh. A, ¶ 38 (no mention of water or oil takeaway). With respect to gas takeaway, MRC's testimony is that MRC is "confident" it will have sufficient gas takeaway—in other words, MRC currently does not have gas takeaway. *See* MRC Exh. A, ¶ 38. At the time of the hearing, MRC had not submitted APDs because MRC was only just then doing surveys.

Hearing Tr. p. 297, lines 1-15. MRC's testimony reflects a lack of preparedness that stands in stark contrast to the time, effort, and expense that FME3 has devoted to developing this area.

C. FME3 Is Using A Wine Rack Development Plan, Which Is the Industry Standard

FME3's development plan is superior to MRC's because FME3 is proposing a wine racked development, as opposed to MRC's proposed stacked development.⁷ MRC's Vice President of Reservoir Engineering confirmed that wine racked development is the industry standard as opposed to stacked development. He testified that, in his expert opinion, wine racked development has been adopted by industry to avoid the "risk of overlapping depletion with stacked laterals." Hearing Tr. p. 264, lines 8-10. Mr. Schulz further testified that wine racking "is kind of the best practice." *Id.* lines 10-11. Although Mr. Schulz testified that MRC's current Airstrip wells have "plenty of separation," *id.* lines 18-23, that does not negate the fact that, as acknowledged by MRC, wine racked development is the industry standard, which is what FME3 is proposing.

D. Granting MRC's Applications Would Likely Result in Stranding Significant Reserves

MRC's proposed solution is to grant MRC's applications and leave FME3 to develop Sections 19 and 18. This purported solution, however, ignores the evidence that if MRC's applications are granted, Sections 18 and 19 will likely be stranded, due to logistical and economic constraints making development of those two sections impractical. As FME3 established, Section 30 is key to efficiently and effectively developing Sections 18 and 19. *See* Hearing Tr. pp. 146-148; p. 157, lines 2-13; FME3 Exh. E-1. First, FME3 cannot develop Sections 19 and 18 from surface locations in Section 19 due to existing infrastructure. *See* Hearing Tr. p. 61, lines 1-14; p. 64, lines 2-25 to p. 65, line 1; p. 147, lines 19-25 to p. 148, lines 1-4; FME3 Exh. A-15. And,

⁷ At the November 20 hearing, MRC argued that FME3 had not provided any data about the benefits of wine racked development and had never raised the difference between wine racked or stacked before, which FME3 disputes. *See, e.g.,* FME3 Exh. B, ¶¶ 20-22; FME3 Exh. B-10. However, MRC's hollow rhetoric was undercut by its own expert witness who testified that "a wine racking pattern is kind of the best practice." Hearing Tr. p. 264, lines 8-11.

developing Sections 19 and 18 from the N/2 of Section 30 would be challenging, if not impossible, because MRC is proposing to put its surface locations in the N/2N/2 of Section 30. *See* Hearing Tr. p. 76, lines 14-18; pp. 205-206; pp. 219-220.

Thus, FME3 can only develop Sections 18 and 19, if at all, from Section 18. Hearing Tr. p. 76, lines 19-24. Significantly, however, FME3 cannot develop the Wolfcamp in Section 18 because there is an existing saltwater disposal well located in Section 18 that has been and is currently injecting into the Wolfcamp. *See* FME3 Exh. E-1; Hearing Tr. p. 60, lines 1-4; p. 203, lines 17-23. For this reason, FME3, as a prudent operator with experience in this area, has determined to avoid drilling Wolfcamp wells in Section 18. *See* Hearing Tr. p. 190, lines 19-22; p. 203, lines 17-23. Thus, under MRC's proposed solution, FME3 would have to develop the Wolfcamp in Section 19 from a surface hole location in Section 18, which would mean FME3 would have to drill 5280' approximately of "dead hole" to reach Section 19, creating economic waste. Hearing Tr. p. 76, lines 19-24. In addition, in order to develop Sections 18 and 19, FME3 would have to construct facilities and infrastructure to get production from Section 18 or 19 to Section 31, where FME3's current infrastructure is located. For this reason, Section 30 is key to FME3's development plan, including developing Sections 19 and 18.

MRC's proposed solution creates more problems than it remedies because MRC simply did not take into account the practical/logistical constraints of developing Sections 18 and 19 without Section 30. In sum, granting MRC's applications would leave FME3 with no real option to develop Sections 19 and 18, because doing so would be impractical and would result in surface and economic waste.⁸

⁸ For this same reason, MRC's argument that MRC's proposed surface disturbance is somehow less impactful than FME3's is misplaced. *See* MRC Exh. A, ¶¶ 35-38. If MRC's applications are granted, FME3 will have to undertake additional surface disturbance to develop Sections 18 and 19, which it cannot do in Section 19.

If FME3's applications are granted (and MRC's applications are denied), no acreage or significantly less acreage has the potential to be stranded. If FME3's applications are granted, that would leave Section 31 to be developed by MRC. There is less risk of stranding under FME3's development plan because there are only portions of Section 31 available to develop. The only "slots" in Section 31 that remain to be developed are three Second Bone Spring slots and four lower Wolfcamp slots. See MRC Exh. B-6. If FME3's applications are granted, MRC could continue its development of Section 31 as it did in 2019, with one-mile laterals or u-turn wells as it has propose for Section 30. See Hearing Tr. p. 281, lines 1-3. Even assuming MRC did not develop the remaining slots in Section 31, on balance, leaving reserves behind in the 7 remaining one-mile slots in Section 31 is better than leaving reserves behind in 11 two-mile Bone Spring slots across Sections 19 and 18 and 8 one-mile Wolfcamp slots across Section 19, which is what would result if MRC's applications were granted.

E. Working Interest Ownership/Control Is Irrelevant or Should Be Accorded Little Weight Under the Circumstances of these Cases

MRC's land testimony and exhibits focused, in part, on working interest control as a reason why the Division should grant MRC's applications. See MRC Exh. A, ¶¶ 23-29 and associated exhibits. Under the circumstances of these cases, however, working interest ownership/control should be accorded little, if any, weight. First, as discussed above, working interest ownership/control is considered controlling only 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." Order R-10731-B, ¶ 24. Because FME3's development plans are superior to MRC's and because

FME3 is positioned to timely, prudently, and more economically recover more oil or gas than MRC, working interest ownership is not controlling.⁹

In a recent contested hearing, MRC acknowledged that working interest control must give way when other factors are compelling. *See* Hearing Transcript, MRC Case Nos. 24760-24767 (November 5, 2024). In those cases, as here, MRC and Magnum Hunter's competing development plans overlapped in one section, Section 33, Township 18 South, Range 34 East, Lea County. Significantly, with respect to the overlapping section, MRC owned only **14%** in the Bone Spring and owned **0.00%** in the Wolfcamp. *See* [Nov. 5 Hearing Transcript](#), pp. 205-206; *see also* [Magnum Hunter Exh. A-7\(b\)](#). Notwithstanding the fact that Magnum Hunter had a higher ownership interest in Section 33, MRC argued at the hearing that "[t]he Division has to look beyond ownership and grant the applications that provide the most efficient and effective orientation that here is standup orientation." *See* Nov. 5 Hearing Tr. p. 194, lines 12-20. MRC argued "ownership's not controlling." *See id.* p. 197, lines 22-25. Instead, what is controlling is "what's necessary to prevent waste." *Id.*; *see also id.* p. 201-202 (MRC landman agreeing that Cimarex has the majority ownership in Section 33 and that the reason MRC was contesting Cimarex's applications was because of the differences between Cimarex' and MRC's development plans with respect to orientation). The same is true here—ownership is not controlling—what is controlling is which development plan better prevents waste and protects correlative rights, which is FME3's development plan.

MRC's likely reliance on Division orders discussing working interest control as compelling is misplaced under the circumstances presented here. *See* MRC Pre-Hearing Statement at 4 (citing Order R-21826, ¶ 21). Significantly, in Order R-21826, the Division summarized the

⁹ At the contested hearing in these cases, MRC testified that it had sought operatorship when it had less than a majority and doing so does not constitute bad faith. *See* Hearing Tr. p. 298, lines 24-25 to p. 299, lines 1-17.

Commission's analysis of then-recent Commission cases as "the Commission compared the parties' proposals and focused on which proposal avoids waste by not stranding acreage, which proposal best protects correlative rights 'by presenting the best opportunity for each party to develop its own acreage', and which party had the greatest interest in their proposed unit." Order R-21826, ¶ 14. In Order R-21826 and other similar orders, the Division did not automatically default to working interest ownership; rather the Division evaluated the parties' proposals, the differences in development plans, stranding acreage, suitability of three-mile laterals,¹⁰ and finally working interest control. In the cases underlying Order R-21826, COG controlled 96.09% of the acreage in its proposed spacing unit, whereas WPX only owned 50% in its proposed spacing unit. Order R-21826, ¶ 19. COG also had 100% working interest control in the overlapping section. *Id.* The Division concluded "that the conflicting evidence over well and overall development proposals do not clearly favor one proposal, while the evidence on working interest control strongly favors the COG proposal. In the absence of other compelling factors, "working interest control...should be the controlling factor in awarding operations.'" Order R-21826, ¶ 19.

Order R-21826, and similar Division Orders, do not support a mechanical application of working interest ownership/control as the controlling factor. Unlike in Order R-21826, FME3 has demonstrated that its development plans are superior to MRC's, which clearly favors FME3. Also FME3 and MRC each own approximately the same amounts in their proposed respective units (FME3 69% to 79%; MRC 61% to 79%). *See* Hearing Tr. p. 59, lines 12-25 to p. 60, lines 1-5; FME3 Exh. A-2, ¶¶ 19-26; FME3 Exh. A-6 to A-9. Thus, working interest ownership/control in each operator's respective unit is distinguishable from Order R-21826, where one operator had

¹⁰ The Division rejected WPX's argument regarding the purported risk of three-mile laterals, noting that OCD has approved three-mile laterals in other cases and the Division has decided in favor of longer laterals, which can have production and economic benefits. Order R-21826, ¶ 18. The Division should reject MRC's similar argument here.

96.09% working interest control in its proposed units as opposed the other operator's 50% interest in its proposed units. In other words, here, there is no significant difference in ownership in the units that would tilt the scale in favor of one operator or the other. The difference in ownership in Section 30 is also distinguishable from Order R-21826 where one operator had 100% of the working interest control in the overlapping section. Here, MRC has approximately 60% working interest and FME has approximately 40% working interest in the two leases covering Section 30, which is significantly less of a difference than the 100%/0% difference presented in Order R-21826. In addition, MRC and FME3 own undivided interests in the two leases covering Section 30 and, as a result, each have the same right to develop Section 30. Working interest ownership in Section 30 is not controlling in any event given that FME3's development plans are superior.

Beyond that line of cases being distinguishable, simply deciding these cases on working interest and working interest control would also ignore the disparity between MRC's ownership in Section 19 and FME3's ownership in Section 30. If MRC's applications are granted, FME3 would lose an undivided interest in approximately 40% of 640 acres (Section 30). Hearing Tr. p. 61, lines 14-19. Conversely, MRC only owns 38 acres in Section 19, and that interest is limited to the Bone Spring. Hearing Tr. p. 61, lines 14-25 to p. 62, lines 1-13; p. 135, lines 8-20; *see also* FME3 Exh. A-6. In addition, focusing only on working interest does not take into account that MRC has already depleted much of Section 31. *See* MRC Exh. B-6 (identifying existing MRC wells in Section 31). For these reasons, working interest ownership/control simply is not controlling here.

II. MRC'S OTHER COUNTERARGUMENTS ARE UNAVAILING

MRC advanced a number of irrelevant or unavailing arguments in its written and live testimony and exhibits, none of which support granting MRC's applications over FME3's.¹¹

¹¹ MRC advanced other irrelevant arguments, sufficiently addressed at the hearing. For example, as discussed at the hearing, the recently announced acquisition of FME3 by Coterra is irrelevant. Hearing Tr. pp. 67-72; pp. 93-95. In

A. MRC's Contentions Based on the Term Assignment Are Incorrect and Irrelevant

As FME3 testified at the hearing, FME3 has a term assignment with Marathon, which originally would have terminated in January 2025 (the "Term Assignment"). See FME3 Exh. A, ¶¶ 37-38; Hearing Tr. p. 65, lines 1-17; p. 106, lines 17-19. FME3 was able to negotiate a six-month extension of time with Marathon, through July 1, 2025. *Id.* MRC's argument, although not entirely clear, appears to be that FME3 could have obtained a longer extension of time to comply with the Term Assignment's deadlines or that FME3 only needs to be engaged in actual drilling operations, as opposed to having drilled and completed a well capable of production, to satisfy the Term Assignment's requirements. See Hearing Tr. pp. 97-120. MRC's interpretation of the Term Assignment is irrelevant both because FME3 did what it thought was appropriate and obtained an extension and because even if MRC's reading is correct, FME3 would still have to be engaged in drilling operations on or before June 30, 2025. See Hearing Tr. p. 115, lines 20-23.

The Term Assignment is clear that FME3 could only seek a two-year extension if FME3 had drilled and completed a well capable of production by the end of the initial term. See MRC "Rebuttal"¹² Exhibit 1, Term Assignment ¶ 3 (*"If and only if Assignee has drilled and completed a well capable of production in paying quantities on the Assigned Premises or lands pooled,*

addition, MRC's testimony regarding the acquisition is entirely speculative and thus irrelevant. See MRC Exh. A, ¶¶ 39-40 (MRC testimony using equivocal language to characterize acquisition such as "to the extent" and "might mean" and "unclear whether"). As established at the hearing, FME3 properly notified the operator and working interest owners in the existing wells. FME3 obtained a waiver from the operator of the existing wells in Section 18 and FME3 researched whether any interests in those wells had been assigned and did not find any publicly available information of any such assignment. Thus, FME3 notified the working interest owners in the existing wells by virtue of notifying the working interest owners it seeks to pool. See FME3 Exh. A-2, ¶ 107; Hearing Tr. pp. 79-81; pp. 132-133.

¹² The Hearing Examiner admitted the Term Assignment only for impeachment purposes. Hearing Tr. p. 110-111. Thus, any attempts by MRC at the hearing or in its Closing Brief to rely on the Term Assignment for more than impeachment are improper and should be disregarded by the Division. For example, MRC raised the Term Assignment's force majeure provisions during the hearing, apparently in an attempt to argue that the delay occasioned by OCD's pooling process (which delay has been caused in part by MRC) constitutes force majeure. See Hearing Tr. p. 138-139 (explaining delays occasioned by MRC). That argument is outside the scope of impeachment which is the only basis for which the Term Assignment was admitted. FME3 reserves the right to seek to strike any arguments raised by MRC in its Closing Brief that exceed the scope of the Hearing Examiner's ruling regarding the admission of the Term Assignment.

unitized or communitized therewith within one of the Target Intervals ... prior to the end of the Initial Term, Assignee shall be afforded an extension of this Agreement for two additional years, to commence immediately upon the expiration of the Initial Term ('Two Year Extension')." (emphasis added)). FME3's understanding of this provision is that FME3 has to have drilled and completed a well capable of production by the end of the Initial Term to satisfy the Term Assignment's requirements. *See* Hearing Tr. p. 114, lines 2-8. Based on this understanding, FME3 undertook to and did receive an extension of time from Marathon through June 2025. MRC's reading of paragraph 3 of the Term Assignment ignores the requirement to drill and complete in the first sentence, and instead, only narrowly focuses on the second sentence regarding continuous operations. *See* Hearing Tr. p. 115, lines 3-8.

To the extent that MRC attempted to argue that FME3 has not proceeded with diligence to develop the Rope Units, knowing that there was an expiration issue, that argument is entirely misplaced. As FME3 testified, FME3 had other timing issues it had to prioritize and has proceeded in a step-wise manner to timely, and efficiently develop the acreage in this area. *See* Hearing Tr. p. 111, lines 23-24; p. 104, lines 2-5; p. 136-137 ("Franklin Mountain Energy acquired this asset at the end of 2022. Since then, we've drilled 40 wells. We've obtained more than 50 pooling orders. We have infrastructure throughout the entire footprint. Our initial plan was to test the four corners, if you will, of the area. Rope happens to be in the middle, so we have tested everything on the outside. We've had to also meet other -- or expirations for leases. And so we've been doing that. And Rope is part of the plan, but it was just a later part of the plan, and we have been trying to pool this since February, and so we're trying to get it done."). MRC's suggestion that FME3 has not been proceeding diligently is especially misplaced when it is MRC that has not pursued

developing this acreage for five years and cannot point to a single completed step it has taken to ensure that MRC can timely develop its proposed Airstrip wells.

B. FME3's Experience Is FME3's Strength

MRC's attempt to call into question FME3's ability to prudently operate the acreage based on production data or the Gold 701H well performance is misplaced. As demonstrated at the hearing, and as acknowledged by MRC, certain of MRC's exhibits comparing FME3's production to MRC's were inaccurate because MRC filtered out otherwise relevant wells due to the search settings. Hearing Tr. p. 269, lines 20-25; p. 270; p. 280, lines 14-18. Those exhibits and testimony thus should be accorded little, if any, weight. FME3 established that MRC's exhibits did not take into account shut in days, which affected the production calculations. *See* Hearing Tr. p. 152, lines 20-25 to p. 15, lines 1-18; p. 157, lines 14-25 to p. 158; FME3 Exh. E-2. FME3 also established that MRC's exhibits were unreliable or irrelevant because they included wells that were in different geologic and reservoir settings and/or excluded wells within analogous geologic and reservoir settings. *See* Hearing Tr. pp. 225-226, 231-235, 235-240 (discussing geologic and reservoir differences between certain MRC included wells and Rope area); FME3 Exh. E-5 to E-7. In addition, MRC did not include data available to MRC as a partner in FME3's Gold wells, which would have been more up to date than the publicly available information upon which MRC relied. Hearing Tr. p. 268, lines 15-25 to p. 269, lines 1-5; p. 285, lines 6-22; p. 287, lines 17-18. As FME3 testified, when corrected, the purported gap between FME3's production and that of MRC is much closer than MRC asserted. Hearing Tr. p. 243. And, on balance, difference in production is more a reflection of the geologic and reservoir setting than it is a reflection on either MRC or FME3 as an operator. *See* Hearing Tr. 232, lines 20-25 to p. 233, lines 1-2. Thus, MRC's exhibits comparing FME3's and MRC's production should be given very little weight, if any.

MRC's attempt to disparage FME3 based on the Gold 701H well is also misplaced. First, FME3 demonstrated that MRC's analysis of where the Gold 701H landed and whether it was in or out of zone was inaccurate. *See* Hearing Tr. p. 228-229; p. 235, lines 18-25; FME3 Exh. E-8. Second, FME3 explained the reason why the Gold 701H well went out of zone, which is because carbonate content increased abruptly during drilling. *See* FME3 Exh. E-5. Finally, and significantly, FME3 is applying the lessons learned from the Gold 701H to its seismic calibration and is thus better equipped to handle the challenges of drilling in this area than is MRC, which has not drilled a well in this area since 2019. *See* Hearing Tr. p. 192, lines 18-25; p. 215, lines 10-17 (FME3 applying what it learned from the Gold 701H to FME3's upper Wolfcamp wells being drilled in Foxtail and Alpha units).

C. FME3's Negotiations with MRC Were in Good Faith

Contrary to MRC's assertions, FME3 negotiated with MRC in good faith. Despite MRC trying to limit FME3's discussions with MRC to a single email chain, FME3 and MRC had multiple conversations, via email, text message, phone calls, etc., as MRC acknowledged.¹³ *See* Hearing Tr. p. 296, lines 1-7 (acknowledging that FME 3 and MRC had conversations "following up on specifics about the lands and whatnot..."). As FME3 testified, FME3 offered to discuss other options, including an option regarding Section 18. As FME3 testified, "discussing deals is how offers are made and determined." Hearing Tr. p. 123, lines 5-15. MRC's position seems to be that an operator has to propose or accept a trade in order to negotiate in good faith. This position, however, overlooks the fact that here, FME3 is confident and excited about its Rope State Com development plan and trading out of Section 30 is not a viable option for FME3.

¹³ As discussed at the hearing, the email chain provided by MRC is incomplete. *See* Hearing Tr. p. 67, lines 18-23; p. 78, lines 3-8; pp. 295-296 (acknowledging that there were communications after September 25).

MRC's only offer to FME3 was for MRC to develop Sections 30 and 31, leaving FME3 to develop Sections 18 and 19.¹⁴ See MRC Exh. A, ¶¶ 32-34. MRC's offer, however, was not an offer FME3 could accept, not because FME3 was acting in bad faith, but because the offer was not workable given the logistical impediments to developing those sections as well as the fact that FME3 believes in its development plan and wants to develop acreage in which it has a large interest. Hearing Tr. p. 68, lines 1-2. In addition, as discussed above, MRC's offer does not take into account that if FME3 were to trade out of Section 30, it would be losing 40% of an undivided interest in 640 acres, whereas if MRC were to trade out of Section 19, MRC would only be trading out 38 net acres, and then only in the Bone Spring. Hearing Tr. p. 61, lines 14-25 to p. 61, lines 1-13; p. 135, lines 8-20; *see also* FME3 Exh. A-6. Simply put, not agreeing to a bad deal does not mean that FME3 acted in bad faith.¹⁵

D. FME3's Development Plans Are Not Risky and MRC Can Opt Out

MRC asserted that FME3's three-mile development plans are risky because FME3 has not drilled a three-mile well. FME3 has drilled a two and a half mile well and FME3 has the experience necessary to drill three-mile wells in this area. See Hearing Tr. p. 183, lines 4-11. In addition, as MRC acknowledged, MRC can elect to go non-consent, meaning that MRC can opt to not pay its share of well costs up front, if MRC is concerned about investing in the wells. Hearing Tr. p. 282 lines 11-25; p. 283-284; p. 318, lines 2-7.

¹⁴ At the November 20 hearing, MRC undermined the validity of MRC's offer to limit FME3 to Sections 18 and 19 when MRC suggested both that the Bone Spring in Section 18 was depleted and that the Bone Spring in Section 19 was of lower reservoir quality. See, e.g., Hearing Tr. p. 249-252.

¹⁵ While accusing FME3 of failing to negotiate in good faith, MRC, inexplicably, entirely failed to send proposal letters to two working interest owners, despite the fact that those working interest owners have been known to MRC since at least 2016, when MRC sought to develop the Airstrip wells. See MRC Exh. A, ¶ 12. It is unclear how MRC could only have "recently discovered" these working interest owners, when MRC has pooled them in prior OCD cases.

MRC also asserts that it has concerns about drilling the upper Wolfcamp wells. Again, MRC can mitigate that risk by not participating in those wells. MRC's concern, though, is misplaced given that MRC has, itself, drilled an upper Wolfcamp well, the Airstrip 201H well. Significantly, when MRC proposed its Airstrip 201H well, MRC's application was opposed. On de novo review, the Commission concluded that approving an upper Wolfcamp spacing unit would "enable [MRC] to drill a horizontal well in the Wolfcamp formation that will efficiently produce the reserves underlying the Unit, thereby prevent waste, and will not impair correlative rights." [Order R-14053-E](#), ¶ 18. While MRC acknowledged there was some risk with respect to developing the upper Wolfcamp, MRC also testified that drilling the upper Wolfcamp well was warranted. The Commission noted that MRC presented evidence that all quarter-quarter sections were expected to be equally productive, and "the drilling of the proposed well will provide data to Matador, Jalapeno, and all other interest owners regarding the drilling of Wolfcamp wells in the general area of the proposed well." Order R-14053-E, ¶ 17(o), (x). In addition, MRC relied on the Airstrip 2017H well as evidence about MRC's production in the area. *See* MRC Exh. C-15.

Beyond that, FME3 will suffer actual loss if MRC's applications are granted—FME3 will lose its rights under the Term Assignment. MRC's last minute offer of allowing FME3 to drill a single well in Section 30 is not a solution—FME3 would still not be able to fully develop Section 30 and would not be able to develop Sections 19 and 18 from Section 30. *See* Hearing Tr. p. 126, lines 4-25; p. 127, lines 18-20; p. 138, lines 10-19.

MRC's counsel also argued, without any evidentiary support from MRC, that FME3's E/2E/2 Third Bone Spring well could be affected by depletion due to existing vertical wells in Section 18. *See* Hearing Tr. pp. 195-197. The Division need not consider this contention because MRC provided no support for it in its written or live testimony or exhibits. MRC did not provide

any evidence or calculation supporting its depletion argument—rendering that argument merely speculative and unsupported. In addition, although MRC suggested it is considering an E/2E/2 Third Bone Spring well, MRC has not proposed one, *see* MRC Exh. B-6—thus any alleged depletion from pales in comparison to the fact that MRC is leaving those Section 30 reserves behind altogether.

Even if the Division considers this argument, MRC’s development plan is subject to the same criticism given the existing wells and acknowledged depletion in Sections 30 and 31. MRC’s reservoir engineer testified that there is some depletion risk arising from existing wells in Section 30 and 31. *See* Hearing Tr. pp. 275-276. As discussed in FME3’s brief regarding the improper scope of MRC’s Bone Spring Applications, MRC’s combination U-turn and two-mile development plans attempt to cobble together acreage purporting to develop the “Bone Spring” formation and seeking to pool uncommitted interest owners into “Bone Spring” units even though MRC cannot fully develop the “Bone Spring formation” across the units because of existing MRC operated wells and MRC acknowledged depletion. The fact that MRC cannot develop the entire Bone Spring due to existing wells and existing depletion demonstrate the flaws in MRC’s Bone Spring development plan and highlights the fact that working interest owners, like FME3, are being pooled into piecemeal units to account for the fact that MRC has already depleted certain benches in Section 31. Put another way, MRC has already depleted the First and Third Bone Spring benches in Section 31 and MRC benefitted from that production—whereas FME3 did not. Now, MRC wants to gerrymander its units to again benefit MRC and not FME3, by pooling FME3 into “Bone Spring” units that are incapable of developing the First and Third Bone Spring, because those benches have already been depleted by MRC.

CONCLUSION

For the foregoing reasons, and for reasons demonstrated at the Hearing and in the Hearing record, FME3 requests that FME3's applications in these cases be granted, that FME3 be designated operator of the Rope State Com wells, and that MRC's applications be denied.

Respectfully submitted,

MODRALL, SPERLING, ROEHL, HARRIS
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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 16, 2024.

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