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

APPLICATIONS OF MARATHON OIL PERMIAN, LLC FOR COMPULSORY POOLING AND APPROVAL OF NON-STANDARD UNITS, LEA COUNTY, NEW MEXICO **Case Nos. 25541, 25542**

TUMBLER OPERATING PARTNERS LLC'S
MOTION FOR INVOLUNTARY DISMISSAL

Tumbler Operating Partners, LLC ("Tumbler"), by and through the undersigned counsel, respectfully moves for involuntary dismissal of Marathon Oil Permian, LLC's ("Marathon") compulsory pooling applications on the grounds that, upon the facts and law, Marathon has failed to meet its burden of proof to establish a right to the relief sought. This motion is made after Marathon's close of its case-in-chief and prior to the submission of closing statements or the matter being taken under advisement. The Division possesses authority to grant this motion under its obligation to conduct orderly proceedings and its statutory duty to base decisions on the transcript and record. *See* NMSA 1978, § 70-2-13.

INTRODUCTION

The Oil Conservation Division's dual statutory duties are to prevent waste and protect correlative rights. *See* NMSA 1978, § 70-2-11(A). To protect correlative rights, the Division must ensure that any pooling order will "be upon such terms and conditions as are just and reasonable and will afford…to the owner or owners of each tract … the opportunity to recover or receive…his just and fair share" in proportion to that tract's recoverable hydrocarbons. NMSA 1978, § 70-2-17(C). This mandate cannot be satisfied when the applicant's own evidence is internally contradictory on the fundamental question of whether tracts within a proposed unit will contribute more or less equally to production.

Marathon's expert geologist, Tyler Patrick, offered contradictory testimony on this dispositive issue. His written testimony asserts consistent reservoir properties and equal contribution across the unit. Mr. Patrick's oral testimony, under oath, admits to significant variations in porosity and oil in place across the unit without reconciliation. Marathon offered no reconciliation of this contradiction and no alternative allocation formula. Because Marathon has rested without curing these fatal evidentiary defects, Tumbler respectfully requests involuntary dismissal of Marathon's applications pursuant to Rule 1-041(B) NMRA and Section 70-2-13.

GOVERNING LAW AND PROCEDURAL STANDARD

A. Statutory Framework

The New Mexico Oil and Gas Act requires the Division to ensure both the prevention of waste and the protection of correlative rights. Sec. 70-2-11(A). To achieve this mandate, the Division "is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof." *Id.*

Compulsory pooling orders may be entered when necessary "to avoid the drilling of unnecessary wells, protect correlative rights or prevent waste" and must be "upon such terms and conditions as are just and reasonable" and must "afford to the owner or owners of each tract or interest in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil or gas, or both." § 70-2-17(C).

The Division's findings must be grounded in the evidence presented at hearing. Section 70-2-13 provides that the Director "shall base the decision rendered in any matter or proceeding heard by an examiner upon the transcript of testimony and record made by or under the supervision of the examiner in connection with such proceeding."

The Division's duty to protect correlative rights is central to the Oil and Gas Act. The Act defines correlative rights as "the 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).

In the context of proration of allowable production, the New Mexico Supreme Court has held that the Division must make four "foundationary" findings to protect correlative rights: (1) the amount of recoverable hydrocarbons under each tract, (2) the total amount in the pool, (3) the proportion that (1) bears to (2), and (4) the portion that may be recovered without waste. *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, ¶ 12, 70 N.M. 310. This principle in allocating production from a pool is analogous here. Because correlative rights are inherently quantitative, the Division cannot protect them in the abstract; it must determine, so far as practicable, the relative contribution of each tract to production from the well. *See id.* ¶ 20.

These are basic findings that must be "supported by evidence" and sufficiently detailed to show "the basis of the commission's order." *Id.* In *Grace v. Oil Conservation Comm'n*, 1975-NMSC-001, ¶¶ 26-31, 87 N.M. 205, the Court clarified that if practicable, these findings are required, but that alternative methods may be used if there is substantial evidence in the record affirmatively detailing the impracticability of determining the findings. *Id.*

New Mexico courts have long held that administrative findings must not only rely on the record but must also be supported by substantial evidence within the record. *Rutter & Wilbanks*

Corp. v. Oil Conservation Comm'n, 1975-NMSC-006, ¶ 20, 87 N.M. 286. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* The whole record is reviewed when determining whether an administrative agency decision was supported by substantial evidence. *Santa Fe Exploration Co. v. Oil Conservation Comm'n*, 1992-NMSC-044, ¶ 35, 114 N.M. 103. This standard ensures that Division orders rest on credible, consistent, and competent proof—not mere assertions or contradictory testimony.

B. Procedural Standard

This Motion is procedurally analogous to an involuntary dismissal under Rule 1-041(B), which provides as follows:

> After the plaintiff, in an action tried by the court without a jury, has completed the presentation of evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 1-052 NMRA. Unless the court in its order for dismissal otherwise specifies, a dismissal under this paragraph and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 1-019 NMRA, operates as an adjudication upon the merits.

Thus, Rule 1-041(B) allows the factfinder to dismiss a case after the applicant has rested if, upon the facts and the law, the applicant has failed to establish a right to relief. *Camino Real Mobile Home Park P'ship v. Wolfe*, 1995-NMSC-013, ¶¶ 12-13, 119 N.M. 436, *rev'd on other grounds by Sunnyland Farms, Inc. v. Cent. N.M. Elec. Co-op., Inc.*, 2013-NMSC-017, 301 P.3d 387.

When considering a motion to dismiss under Rule 1-041(B), the factfinder evaluates the credibility and weight of the evidence to determine whether the plaintiff has proven the facts necessary to justify the relief requested. *Panhandle Pipe & Steel, Inc. v. Jesko*, 1969-NMSC-098,

¶ 12, 80 N.M. 457. The factfinder is not required to view the evidence in the light most favorable to the plaintiff but rather weighs the testimony and applies its judgment. *Frederick v. Younger Van Lines*, 1964-NMSC-156, ¶ 5, 74 N.M. 320.

Thus, the Division—acting as factfinder under Section 70-2-13—may weigh the credibility, consistency, and sufficiency of an applicant's proof and determine that, upon the facts and the law, the applicant has failed to meet the initial burden of proof to establish a prima facie case for compulsory pooling.

C. Application to the Present Motion

Applying these standards, the Division must determine whether Marathon's evidence supports the findings required by Section 70-2-17(C) to establish that the pooling sought by Marathon will satisfy the Division's duty to prevent waste and protect correlative rights. The record shows that Marathon's own geological testimony is self-contradictory on critical points related to the protection of correlative rights and is unsupported by quantitative analysis. As a result, Marathon has failed to meet its burden of proof for a compulsory pooling application because the Division lacks substantial evidence in the record to make the statutory findings required by Sections 70-2-11(A) and 70-2-17(C). Under Section 70-2-13 and the procedural standards set forth in *Panhandle Pipe* and *Camino Real*, involuntary dismissal of Marathon's applications is therefore proper.

ARGUMENT

Marathon's Applications for Compulsory Pooling Under Section 70-2-17 Cannot Be Granted.

Marathon's evidence fails to support the findings necessary to satisfy the requirement to protect correlative rights inherent in Section 70-2-17(C), a necessary element of an applicant's prima facie case for compulsory pooling. Marathon's geologic testimony is internally

contradictory, its exhibits do not reconcile those inconsistencies, and its record contains no quantitative or engineering data from which the Division could determine the recoverable hydrocarbons under each tract, the total in the pool, or the proportion each bears to the whole. Marathon's own evidence thus deprives the Division of the factual foundation necessary to make the findings required by NMSA 1978, §§ 70-2-11(A) and -17(C). *See, e.g.*, Div. Order No. R-12343-B at 17, ¶ (J)) (recognizing that an applicant for compulsory pooling "bears the burden of proving, by appropriate geological and engineering evidence," that pooling is necessary to satisfy one or more of the statutory requirements of Section 70-2-17(C), that is, to avoid the drilling of unnecessary wells, to protect correlative rights, or to prevent waste).

A. Marathon's Statement of Equal Contribution and Consistent Geology Cannot Substitute for a Proper Correlative Rights Showing.

The Division cannot approve a pooling application when the applicant's testimony and evidence fail to demonstrate that pooling will prevent waste and protect correlative rights. *See* Section 70-2-17(C) (requiring that pooling orders be entered "upon such terms and conditions as are just and reasonable and will afford to the owner or owners of each tract or interest in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil or gas, or both"); *Viking Petroleum v. Oil Conservation Comm'n*, 1983-NMSC-091, ¶¶ 11-12, 19 (discussing specific findings supported by substantial evidence that pooling will both prevent waste and protect correlative rights); *Rutter*, 1975-NMSC-006, ¶ 20 (recognizing that the Commission's decision must be supported by substantial evidence in the record). When the applicant's testimony and record contain substantial evidence that all tracts contribute equally to the production in a spacing unit and the reservoir is uniform within the unit, correlative rights may be protected by a surface acreage allocation formula. *See* Section 70-2-17 ("For the purpose of determining the portions of production owned by the persons owning interests in the pooled oil or

gas, or both, such production shall be allocated to the respective tracts within the unit in the proportion that the number of surface acres included within each tract bears to the number of surface acres included in the entire unit.").

As noted, "substantial evidence" means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Rutter*, 1975-NMSC-006, ¶ 20. When an applicant's own testimony conflicts with its exhibits or prior statements, the Division, acting as factfinder, may find that the applicant has failed to carry its evidentiary burden. *See Panhandle Pipe*, 1969-NMSC-098, ¶¶ 12-13.

Having established the Division's obligation to base its decision on substantial evidence, the inquiry turns to Marathon's proof. The record reveals that Marathon's geological evidence—rather than substantiating uniform tract contribution—undermines the factual basis for such a finding. Marathon's geologist, Tyler Patrick, affirmed under penalty of perjury that the rock properties underlying the proposed Unit are "consistent . . . throughout the Unit" and that "the tracts comprising the Unit will contribute more or less equally to the production." Case No. 25541, Marathon Notice of Second Amended Exhibit Packet ("Marathon 25541 Ex.") at pdf 145, ¶ 9; Case No. 25542, Marathon Notice of Second Amended Exhibit Package ("Marathon 25542 Ex.") at pdf 149, ¶¶ 8-9 (Oct. 24, 2025).

However, on cross-examination, Mr. Patrick contradicted his written statement when he opined that key reservoir parameters—including porosity and oil in place—vary significantly within the Unit. Tr. Day 2 (9/17/25) at 625:18–626:1 (pdf pages 273-274). He stated that "you do see pretty tremendous porosity swings over only … just over 5,000 feet" and that the Madera 25 well log (southern log) used in Marathon's stratigraphic cross-section displays "much higher porosity" and therefore "more oil and water" than the Madera 24 well. *Id.*; *see* Marathon 25541

Ex. B-4 (pdf page 150); Marathon 25542 Ex. B-4 (pdf page 154). These internal inconsistencies defeat the premise of uniform contribution and consistent reservoir properties.

Despite opining on the existence of variability in porosity and oil in place, including "tremendous porosity swings," Mr. Patrick affirmed that the two wells were representative of a uniform reservoir and reiterated that all tracts would contribute equally to production. (Tr. Day 2 (9/17/25) at 627:12–23 (pdf page 275). Yet in later testimony, when attempting to describe Tumbler's Upper Avalon target as geologically risky, Mr. Patrick came to a completely different conclusion regarding differences in porosity, acknowledging that porosity "quantifies the amount of fluid that could be available in the stratigraphy," and that "we do see the porosity drop-off in the Madera 24 Federal No. 1 and … so we think we would have… lower reservoir quality," finally concluding that "we do see pretty significant variability in the production numbers" of the other wells landed in the Upper Avalon wells he referenced. OCD Special Docket October 22, 2025 PART 2 Video Tr. at 14:00-14:48; OCD Special Docket October 22, 2025 PART 1 Video Tr. at 25:45–26:02.

These opposing statements cannot be reconciled: Mr. Patrick's written testimony asserts uniform reservoir properties and equal tract contribution, while his oral testimony acknowledges "tremendous porosity swings"—and directly links such variability to differing amounts of oil in place. The Division, acting as factfinder, must weigh such inconsistencies in determining whether the applicant has met its burden. *See Duke City Lumber Co. v. New Mexico Envtl. Improvement Bd.*, 1984-NMSC-042, ¶ 14, 101 N.M. 291. Marathon's proof either invites speculation as to tract contribution or presents irreconcilable positions that prevent the Division from making the basic factual findings necessary to protect correlative rights, as required by the Oil and Gas Act.

B. Protection of Correlative Rights Requires the Types of Findings Identified in *Continental Oil* and *Grace*, and Marathon Provided Neither a Quantitative Basis for Such Findings Nor Any Evidence That Such an Analysis Would Be Impracticable.

Given Marathon's contradictory geological testimony regarding whether tracts contribute equally to production, Marathon compounded this deficiency by producing neither an engineer nor a petrophysicist; it presented no volumetrics, reserve studies, isopachs, or tract-by-tract engineering analyses capable of quantifying tract-by-tract contribution. Finally, Marathon never offered any testimony or evidence that conducting the work to establish these basic findings would be impracticable.

Without quantitative measurements—or any showing on the record that such calculations or determinations were impracticable—Marathon has failed to provide substantial evidence sufficient for the Division to find that the correlative rights of all interested parties will be protected, as required by Section 70-2-17(C), if Marathon's applications are approved. Apart from Marathon's contradictory testimony and exhibits regarding geology and production contribution, Marathon offers no technical evidence sufficient to support the foundational findings necessary to ensure that the correlative rights of all pooled parties are protected.

C. Involuntary Dismissal Is the Appropriate Remedy Under Rule 1-041(B) and Section 70-2-13.

As discussed, in ruling on a Rule 1-041(B) motion, the factfinder may weigh credibility, assess consistency, and determine whether the plaintiff's evidence establishes the necessary facts to warrant the relief sought. *Panhandle Pipe*, 1969-NMSC-098, ¶¶ 12-13. The Division, acting as factfinder under Section 70-2-13, therefore has full authority to evaluate the credibility and internal consistency of the applicant's proof and to deny the application when the record, taken as a whole,

shows that the applicant has not carried its burden of proof in establishing a prima facie case for compulsory pooling.

Here, Marathon's own record—comprised of internally inconsistent geological testimony, unsupported assertions of equal contribution, and the absence of quantitative or engineering evidence—fails to establish any factual basis upon which the Division could reasonably find that Marathon's application for pooling would protect correlative rights, a requisite for the issuance of a pooling order. Therefore, the Division should grant Tumbler's Motion for Involuntary Dismissal under Rule 1-041(B), concluding that Marathon has shown no right to relief, and dismiss the applications.

CONCLUSION

Marathon's own evidence eliminates any factual basis for the Division to find that Marathon's pooling applications will protect correlative rights. Mr. Patrick's sworn testimony is internally contradictory on the fundamental question of whether tracts contribute equally to production, and Marathon offered no quantitative analysis to reconcile these contradictions or establish the necessary findings required by Sections 70-2-13 and 70-2-17(C). Without substantial evidence supporting the statutory prerequisites for pooling, the Division must not approve Marathon's applications. This Motion should therefore be granted.

CERTIFICATE OF SERVICE

I hereby certify that counsel for all parties of record were served with the foregoing motion on November 4, 2025:

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