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 SPACING UNITS, LEA COUNTY, NEW MEXICO.	**CASE NOS. 25541 – 25542**
APPLICATION OF TUMBLER OPERATING PARTNERS, LLC FOR APPROVAL OF NON-STANDARD UNIT AND FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.	**CASE NO. 25466**
APPLICATIONS OF TUMBLER OPERATING PARTNERS, LLC, FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.	**CASE NOS. 25462 – 25465**

MARATHON OIL PERMIAN LLC'S RESPONSE TO TUMBLER OPERATING PARTNERS, LLC'S MOTION FOR INVOLUNTARY DISMISSAL

In accordance with the deadline set by the Hearing Examiner in the above-captioned matter, Marathon Oil Permian LLC ("Marathon") submits the following Response in Opposition to Tumbler Operating Partners LLC's ("Tumbler") Motion for Involuntary Dismissal. As demonstrated below, Tumbler's motion is not well taken and should be denied.

I. INTRODUCTION

This matter involves competing compulsory pooling applications for the Bone Spring and Wolfcamp formations underlying Sections 24, 25, and irregular Section 36, Township 26 South, Range 34 East, Lea County, New Mexico. The parties initially presented evidence at hearing on September 16-17, 2025. On the last day of the hearing, the Technical Examiner asked Marathon to provide additional information. 09/17 Tr. 643:10-644:22. The parties agreed to 10-page closing argument briefs due on or before October 17, 2025. *Id.*, 658:1-661:6.

Marathon submitted its supplemental exhibits on October 7, 2025. Thereafter, Tumbler filed objections to the exhibits requested by the Technical Examiner, claiming that it had no

opportunity to cross-examine the witnesses regarding the supplemental exhibits or offer rebuttal evidence. As a result, a third hearing day was scheduled on October 22, 2025, and the deadline to file closing statements was extended to November 5, 2025.

On the eve of the deadline for closing arguments, Tumbler filed its Motion for Involuntary Dismissal ("Motion"), asserting that Marathon's application should be dismissed because its geologist's testimony was "inconsistent" and because Marathon did not "prove" the "fundamental question of whether tracts within a proposed unit will contribute more or less equally to production." Motion at 1. Tumbler's Motion is improper and should be stricken as it subverts the Division's directive limiting post-hearing briefs to 10-page closing arguments by the parties. Alternatively, the Motion should be denied as it misapplies the applicable law and misstates the facts. Rather, the Division should assess the evidence on its merits as applied to the seven factors identified in Order No. R-20223.

II. ARGUMENT

A. Tumbler's Motion should be stricken because it is an end-run around the Division's directive regarding post-hearing briefs.

As outlined above, the parties were limited to 10-page closing briefs following the hearing. Tumbler's counsel agreed to that limitation and did not request additional briefing on "fundamental questions" or a page limit extension to address such issues in its closing brief. These concerns should have been raised by Tumbler at hearing. And Tumbler fails to explain why it chose not to address an alleged failure of proof in its closing brief—clearly it could have done so. Tumbler's failure constitutes an ongoing attempt to obfuscate the issues before the Division in an effort to overcome the profound weaknesses of its position, including the facts that it owns less than 10% of the working interest in this acreage, has not drilled a single well in New Mexico (or Texas), provides a production analysis that includes wells up to 15 miles away, seeks to develop unproven

intervals, and has significantly higher well costs.[1] Because the Motion was improperly filed, it should not be considered by the Division and should be stricken from the record.

It is well recognized that litigants may not avoid page limits imposed for briefing by filing separate motions or briefs. *See, e.g.*, *Polk v. Hirko*, No. CV-23-00058-PHX-JJT, 2023 WL 1966411, at *2 (D. Ariz. Feb. 13, 2023); *Garrison v. Nevada Dep't of Corr.*, No. 317CV00391, 2020 WL 7074174, at *4 n.1 (D. Nev. Nov. 16, 2020); *see also United States ex rel. Savage v. Washington Closure Hanford LLC*, No. 2:10-CV-05051-SMJ, 2019 WL 13169887, at *1 (E.D. Wash. Aug. 27, 2019) (striking filing which appeared "to nothing more than an attempted end-run around this already increased page limit in an effort to put forth further substantive arguments"). Tumbler's improper attempt to double the size of its post-hearing brief by filing a separate motion to dismiss should not permitted, and the Motion should be stricken.

Moreover, the arguments raised in Tumbler's Motion are unquestionably related to the seven factors analyzed by both parties in their closing arguments, which further highlights the impropriety of this separate motion to dismiss. Tumbler's attempts to distinguish these arguments by creating some sort of preliminary or prima facie showing required by compulsory pooling applicants is not supported by the law. Relying on cases involving how to allocate or prorate gas production from a pool,[2] Tumbler seeks to inject a new standard into compulsory pooling applications that is unsupported by Division or Commission precedent.

To the contrary, Division and Commission precedent is clear that, in a contested compulsory pooling case, seven factors are evaluated to determine which applicant's development plan will best prevent waste and protect correlative rights. *See* Commission Order No. R-10731-

[1] *See* Marathon's Closing Brief at 3-9.
[2] Motion at 3 (citing *Grace v. Oil Conservation Comm'n*, 1975-NMSC-001, ¶¶ 26-31, 87 N.M. 205, 531 P.2d 939 (analyzing how to prorate a gas pool); *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, ¶ 12, 70 N.M. 310, 373 P.2d 809 (same)).

B; Division Order No. R-14847. In Division Order No. R-20233, for example, the Division recognized that its task "is to determine which development plan . . . will most efficiently develop the subject acreage, prevent waste and protect correlative rights" and that it accomplishes that task by applying the following factors to proposed, competing development plans:

> 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;
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> 2) A comparison of the risk associated with the parties' respective proposal[s] for the exploration and development of the property;
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> 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 proposal;
>
> 6) An evaluation of the mineral interest ownership held by each party at the time the application was heard; [and]
>
> 7) A comparison of the ability of the applicants to timely locate well sites and to operate on the surface.

Id., ¶¶ 26-28. Here, to the extent that Tumbler maintains that Marathon's geological evidence is "inconsistent" or otherwise insufficient to weigh the foregoing factors in Marathon's favor, the argument clearly falls within the scope of the first factor. Tumbler's decision to instead increase Marathon's and the Division's burden by filing additional, unnecessary and improper filings should be rejected.

The absurdity of Tumbler's attempt to shoehorn new standards or requirements into a compulsory pooling proceeding is further highlighted by the fact that Tumbler's own evidence

fails to quantify the relative contribution of each tract to production from the well—a requirement that Tumbler apparently believes the parties must make as a preliminary showing before the Division can evaluate development plans. Tumbler's position that Marathon's application should be dismissed for that reason similarly dooms its own application. For these reasons, Marathon urges the Division to strike Tumbler's improper filing and consider each party's respective development plan on its merits through evaluation of the seven factors identified above.

B. Alternatively, Tumbler's Motion should be denied on its merits.

As noted above, Tumbler's manufacturing of a new standard is not supported by Commission or Division precedent and is an improper end run around the post-hearing briefing requirements set by the Hearing Examiner on September 17, 2025. The Motion can simply be denied or stricken on that basis. To the extent the Division is inclined to indulge Tumbler's arguments, however, the evidence cited by Tumbler controverts its position.

In its Motion, Tumbler claims that Marathon's geological evidence is fatally inconsistent. However, Tumbler's own recitation of the hearing testimony of Marathon's geologist, Tyler Patrick, belies that argument. As pointed out by Tumbler in its Motion, Mr. Patrick identified porosity and oil in place saturations as factors that could impact well production. Motion at 7; 09/17 Tr. 625:7-627:23. And, as also identified by Tumbler in its Motion, Mr. Patrick testified that despite variability within the unit regarding these factors, it was nonetheless his expert opinion that the tracts comprising the unit will contribute more or less equally to the production of the wells. Motion at 7; 09/17 Tr. 627:12-23. That Tumbler may not like the opinion does not make it a basis for dismissal nor does it make it "inconsistent." Although porosity and oil in place may vary within acreage, that does not mean each tract will not contribute more or less equally to production. Here, again, Tumbler's attempt at cleverness gets the better of it—to the extent

Tumbler believes the variability identified by Mr. Patrick somehow means that the tracts comprising the unit will *not* contribute more or less equally to the production of the wells, would necessarily mean its own compulsory pooling applications fail, as Tumbler seeks to pool the same acreage.

III. CONCLUSION

Tumbler's efforts to distract the Division from the issues at hand—and the weaknesses of its position—should be rejected as an improper end run around the Division's post-hearing briefing requirements and because it is contrary to the law and the facts. The Division has a voluminous evidentiary record to evaluate the parties' competing development plans through assessment of the seven factors, which assist the Division in identifying the development plan that best prevents waste and protects correlative rights and weigh heavily in favor of Marathon. The Division should rule on the issues at hand in accordance with Commission and Division precedent. Tumbler's Motion should be stricken or otherwise denied.

Respectfully submitted,

/s/ Dana S. Hardy

HARDY MCLEAN LLC
Dana S. Hardy
Jaclyn M. McLean
Jaime R. Kennedy
Yarithza Peña
125 Lincoln Ave., Suite 223
Santa Fe, NM 87501
505-230-4410
dhardy@hardymclean.com
jmclean@hardymclean.com
jkennedy@hardymclean.com
ypena@hardymclean.com
Attorneys for Marathon Oil Permian LLC

CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading was sent to the following counsel of record on this 17th day of November, 2025.

Sharon T. Shaheen
SPENCER FANE, LLP
Post Office Box 2307
Santa Fe, NM 87504-2307
(505) 986-2678
sshaheen@spencerfane.com
ec: dortiz@spencerface.com
Attorney for Tumbler Operating Partners, LLC

Jennifer Bradfute
Matthias Sayer
BRADFUTE SAYER, P.C.
P.O. Box 90233
Albuquerque, NM 87199
(505) 264-8740
matthias@bradfutelaw.com
jennifer@bradfutelaw.com
Attorneys for EOG Resources, Inc.

/s/ Dana S. Hardy
Dana S. Hardy