

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

**IN THE MATTER OF APPLICATION FOR
COMPULSORY POOLING SUBMITTED BY
MARATHON OIL PERMIAN, LLC**

**CASE NOS. 20865 & 20866
ORDER NO. R-21251**

ORDER

The Director of the New Mexico Oil Conservation Division (“OCD”), having heard this matter through a Hearing Examiner on November 14, 2019, and after considering the testimony, evidence, and recommendation of the Hearing Examiner, issues the following Order.

FINDINGS OF FACT

1. Marathon Oil Permian, LLC (“Marathon”) submitted applications (“Applications”) to compulsory pool the uncommitted oil and gas interests within the spacing units (“Unit(s)”) described in Exhibits A and B. The Units are expected to be standard horizontal spacing units. 19.15.16.15(B) NMAC. Marathon seeks to be designated the operator of the Units.
2. Marathon will dedicate the wells described in Exhibits A and B (“Well(s)”) to the Units.
3. Marathon proposes the supervision and risk charges for the Wells described in Exhibits A and B.
4. Marathon identified the owners of uncommitted interests in oil and gas minerals in the Units and provided evidence that notice was given.
5. The Applications were heard by the Hearing Examiner on the date specified above, during which Marathon and BTA Oil Producers, LLC (“BTA”) presented evidence through live witnesses regarding the Applications. No other party presented evidence at the hearing.
6. The Oil and Gas Act, NMSA 1978, §70-2-18(A), requires an operator to either obtain a voluntary agreement or an OCD order to dedicate lands to a spacing or proration unit:

Whenever the operator of any oil or gas well shall dedicate lands comprising a standard spacing or proration unit to an oil or gas well, it shall be the obligation of the operator, if two or more separately owned tracts of land are embraced within the spacing or proration unit, or where there are owners

of royalty interests or undivided interests in oil or gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit, to obtain voluntary agreements pooling said lands or interests or an order of the division pooling said lands, which agreement or order shall be effective from the first production.

7. The Oil and Gas Act, NMSA 1978, §70-2-17(C), requires OCD to pool lands and interests to a spacing or proration unit when the owners of such lands cannot agree to pool their interests:

When two or more separately owned tracts of land are embraced within a spacing or proration unit [and] such owner or owners have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit.

8. OCD in Order No. R-14140 held:

In the absence of an agreement as to how production from the proposed horizontal well is to be divided between the lands within and without the defined contract area, the JOA does not constitute an agreement of the parties to pool their interests in such production, and accordingly does not preclude compulsory pooling under the terms of the first paragraph of NMSA 1978 Section 70-20-17(C).

9. A Joint Operating Agreement (“JOA”), originally executed on January 1, 1987, applies to 480 acres in the N/2 of Section 7 and the NW/4 of Section 8, Township 23 South, Range 29 East, Eddy County, NM.
10. BTA acquired a seventy-three (73) percent interest in the JOA in November 2018.
11. Marathon is not a party to the JOA.
12. Marathon send letters to mineral interest owners offering to allow separate election into each of the seven (7) wells proposed in the Applications to pool the N/2 of Section 7 and the N/2 of Section 12, Township 23 South, Range 29 East.
13. Marathon met with BTA to discuss a voluntary agreement.
14. Marathon offered to trade BTA for its acreage covered by the JOA.

15. BTA did not accept Marathon's offer and did not propose a counteroffer.
16. The Oil and Gas Act, NMSA 1978, §70-2-11(A), states that OCD "is hereby empowered, and it is its duty, to prevent waste prohibited by this act and to protect correlative rights, as in this act provided."
17. The Oil and Gas Act, NMSA 1978, §70-2-33(H), defines "correlative rights":

[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 in the pool, being an amount, so far as can be practically determined and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas under the property bears to the total recoverable oil or gas in the pool, and for the purpose to use the owner's just and equitable share of the reservoir energy.
18. The Oil and Gas Act, NMSA 1978, §70-2-17(A), states:

The rules, regulations or orders of the division shall, so far as it is practicable to do so, afford to the owner of each property in a pool the opportunity to produce his just and equitable share of the oil or gas, or both, in the pool, being an amount, so far as can be practically determined, and so far as such can be practicably obtained without waste, substantially in the proportion that the quantity of the recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for this purpose to use his just and equitable share of the reservoir energy.
19. If OCD issues an order granting the Applications, BTA will be entitled to a just and equitable share of production from the wells authorized by the order.
20. If OCD issues the order granting the Applications, BTA's acreage in the NW/4 of Section 8 will not be stranded because that the oil and gas in that acreage will be produced and BTA will be entitled to a just and equitable share of that production from the wells authorized by the orders granting the applications filed by Novo Oil & Gas Northern Delaware, LLC. in Case Nos. 20916 and 20917.
21. The Oil and Gas Act, NMSA 1978, §70-2-11(A), requires OCD to prevent underground and surface waste.
22. The Oil and Gas Act, NMSA 1978, §70-2-3(A), defines "underground waste", *inter alia*, 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...."

23. The Oil and Gas Act, NMSA 1978, §70-2-3(B), defines “surface waste”, *inter alia*, as “the unnecessary or excessive surface loss or destruction without beneficial use, however caused...resulting from the manner of spacing, equipping, operating or producing, well or wells, or incident to or resulting from the use of inefficient storage....”
24. Marathon has a comprehensive development plan covering Sections 7 and 12, Township 23 South, Range 28 East and Section 7, Township 23 South, Range 29 East.
25. Marathon plans to drill six (6) wells per section in both the Upper and Lower Wolfcamp Formations and four (4) wells per section in the Second Bone Spring Formation.
26. The Upper and Lower Wolfcamp and Second Bone Spring Formations are expected to be productive and suitable for production by horizontal drilling.
27. Marathon intends to commence drilling in the Upper Wolfcamp Formation because it is less gassy than the Lower Wolfcamp and Second Bone Spring Formations.
28. Marathon intends to develop its wells to avoid the “parent-child effect”, which results when the first wells drilled in a formation reduce the recoverable oil and gas in subsequently drilled wells.
29. Marathon’s proposal to drill two (2) mile laterals avoids setbacks that reduce the recoverable oil and gas, minimizes surface disturbance, and avoids drilling unnecessary wells.
30. Marathon has third-party agreements in place for oil, gas, and water takeaway.
31. Marathon’s development plan is supported by Chevron, Novo, and Occidental Petroleum, and as a result, Marathon controls a majority of the ownership interests in the N/2 of Sections 7 and 12.
32. BTA has drilled one well and proposed either three (3) or four (4) additional wells in the Lower Wolfcamp Formation.
33. BTA has not proposed to drill wells in the Bone Spring or Upper Wolfcamp Formations.
34. The U.S. Bureau of Land Management (“BLM”) has not approved BTA’s development plan for the JOA acreage.
35. BTA cannot drill two (2) mile laterals unless it pools additional parties in Section 12.
36. BTA’s development plan may result in the parent-child effect.

37. BTA's development plan, if implemented, would result in waste because Marathon would have to drill shorter laterals and more wells than proposed in its application to produce the same amount of acreage.

38. BTA has not entered third-party agreements for oil, gas, or water takeaway.

CONCLUSIONS OF LAW

39. OCD has jurisdiction to issue this Order pursuant to NMSA 1978, Section 70-2-17.

40. Marathon is the owner of an oil and gas working interest within the Units.

41. Marathon satisfied the notice requirements for the Applications and the hearing as required by 19.15.4.12 NMAC.

42. OCD satisfied the notice requirements for the hearing as required by 19.15.4.9 NMAC.

43. Marathon has the right to drill the Wells to a common source of supply at the depth(s) and location(s) in the Units described in Exhibits A and B.

44. The Units contain separately owned uncommitted interests in oil and gas minerals.

45. Some of the owners of the uncommitted interests have not agreed to commit their interests to the Units.

46. The pooling of uncommitted interests in the Units will prevent waste and protect correlative rights, including the drilling of unnecessary wells.

47. This Order affords to the owner of an uncommitted interest the opportunity to produce his just and equitable share of the oil or gas in the pool.

48. Marathon was not obligated to negotiate a voluntary agreement with BTA.

49. Marathon made a good faith effort to negotiate a voluntary agreement with BTA.

50. OCD may issue compulsory pooling orders to Marathon that include BTA's JOA acreage.

51. OCD's decision to issue compulsory pooling orders to Marathon does not violate New Mexico's policy regarding voluntary agreements.

52. OCD does not consider the "reasonable expectations" of parties when reviewing an application for a compulsory pooling order.

53. BTA's correlative rights will be protected by OCD's order granting the Applications because BTA is entitled to a just and equitable share of production from the pool, not the right to be an operator or to drill a well.
54. The Applications will not cause waste by stranding BTA's acreage and will result in less surface and underground waste than BTA's plan, which is not well-defined and has not been approved by the BLM.

ORDER

55. The uncommitted interests in the Units are pooled as set forth in Exhibits A and B.
56. The Units shall be dedicated to the Wells set forth in Exhibits A and B.
57. Marathon is designated as operator of the Units and the Wells.
58. If the location of a Well will be unorthodox under the spacing rules in effect at the time of completion, Marathon shall obtain the OCD's approval for a non-standard location in accordance with 19.15.16.15(C) NMAC.
59. Marathon shall commence drilling the Wells within one year after the date of this Order, and complete each Well no later than one (1) year after the commencement of drilling the Well.
60. This Order shall terminate automatically if Marathon fails to comply with Paragraph 59 unless Marathon obtains an extension by an amendment of this Order for good cause shown.
61. The infill well requirements in 19.15.13.9 NMAC through 19.15.13.12 NMAC shall be applicable.
62. Marathon shall submit to each owner of an uncommitted working interest in the pool ("Pooled Working Interest") an itemized schedule of estimated costs to drill, complete, and equip the well ("Estimated Well Costs").
63. No later than thirty (30) days after Marathon submits the Estimated Well Costs, the owner of a Pooled Working Interest shall elect whether to pay its share of the Estimated Well Costs or its share of the actual costs to drill, complete and equip the well ("Actual Well Costs") out of production from the well. An owner of a Pooled Working Interest who elects to pay its share of the Estimated Well Costs shall render payment to Marathon no later than thirty (30) days after the expiration of the election period, and shall be liable for operating costs, but not risk charges, for the well. An owner of a Pooled Working Interest who fails to pay its share of the Estimated Well Costs or who

- elects to pay its share of the Actual Well Costs out of production from the well shall be considered to be a "Non-Consenting Pooled Working Interest."
64. No later than one hundred eighty (180) days after Marathon submits a Form C-105 for a well, Marathon shall submit to OCD and each owner of a Pooled Working Interest an itemized schedule of the Actual Well Costs. The Actual Well Costs shall be considered to be the Reasonable Well Costs unless OCD or an owner of a Pooled Working Interest files a written objection no later than forty-five (45) days after receipt of the schedule. If OCD or an owner of a Pooled Working Interest files a timely written objection, OCD shall determine the Reasonable Well Costs after public notice and hearing.
 65. No later than sixty (60) days after the expiration of the period to file a written objection to the Actual Well Costs or OCD's order determining the Reasonable Well Costs, whichever is later, each owner of a Pooled Working Interest who paid its share of the Estimated Well Costs shall pay to Marathon its share of the Reasonable Well Costs that exceed the Estimated Well Costs, or Marathon shall pay to each owner of a Pooled Working Interest who paid its share of the Estimated Well Costs its share of the Estimated Well Costs that exceed the Reasonable Well Costs.
 66. The reasonable charges for supervision to drill and produce a well ("Supervision Charges") shall not exceed the rates specified in Exhibits A and B, provided however that the rates shall be adjusted annually pursuant to the COPAS form entitled "Accounting Procedure-Joint Operations."
 67. No later than within ninety (90) days after Marathon submits a Form C-105 for a well, Marathon shall submit to OCD and each owner of a Pooled Working Interest an itemized schedule of the reasonable charges for operating and maintaining the well ("Operating Charges"), provided however that Operating Charges shall not include the Reasonable Well Costs or Supervision Charges. The Operating Charges shall be considered final unless OCD or an owner of a Pooled Working Interest files a written objection no later than forty-five (45) days after receipt of the schedule. If OCD or an owner of a Pooled Working Interest files a timely written objection, OCD shall determine the Operating Charges after public notice and hearing.
 68. Marathon may withhold the following costs and charges from the share of production due to each owner of a Pooled Working Interest who paid its share of the Estimated Well Costs: (a) the proportionate share of the Supervision Charges; and (b) the proportionate share of the Operating Charges.
 69. Marathon may withhold the following costs and charges from the share of production due to each owner of a Non-Consenting Pooled Working Interest: (a) the proportionate share of the Reasonable Well Costs; (b) the proportionate share of the Supervision and Operating Charges; and (c) the percentage of the Reasonable Well Costs specified as the charge for risk described in Exhibits A and B.

70. Marathon shall distribute a proportionate share of the costs and charges withheld pursuant to paragraph 69 to each Pooled Working Interest that paid its share of the Estimated Well Costs.
71. Each year on the anniversary of this Order, and no later than ninety (90) days after each payout, Marathon shall provide to OCD and each owner of a Non-Consenting Pooled Working Interest a schedule of the revenue attributable to a well and the Supervision and Operating Costs charged against that revenue.
72. Any cost or charge that is paid out of production shall be withheld only from the share due to an owner of a Pooled Working Interest. No cost or charge shall be withheld from the share due to an owner of a royalty interests. For the purpose of this Order, an unleased mineral interest shall consist of a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest.
73. Except as provided above, Marathon shall hold the revenue attributable to a well that is not disbursed for any reason for the account of the person(s) entitled to the revenue as provided in the Oil and Gas Proceeds Payment Act, NMSA 1978, Sections 70-10-1 *et seq.*, and relinquish such revenue as provided in the Uniform Unclaimed Property Act, NMSA 1978, Sections 7-8A-1 *et seq.*
74. The Units shall terminate if (a) the owners of all Pooled Working Interests reach a voluntary agreement; or (b) the well(s) drilled on the Units are plugged and abandoned in accordance with the applicable rules. Marathon shall inform OCD no later than thirty (30) days after such occurrence.
75. OCD retains jurisdiction of this matter for the entry of such orders as may be deemed necessary.

**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**



**ADRIENNE SANDOVAL
DIRECTOR**

Date: 4/13/2020

Exhibit "A" Case 20865

Applicant: Marathon Oil Permian, LLC
Operator: Marathon Oil Permian, LLC (OGRID 372098)

Spacing Unit: Horizontal oil
Building Blocks: quarter-quarter sections
Spacing Unit Size: 317.13 acres, more or less
Orientation of Unit: West to East

Spacing Unit Description:
S/2 N/2 of Section 12, Township 23 South, Range 28 East; and
S/2 N/2 of Section 7 Township 23 South Range 29 East,
NMPM, Eddy County, New Mexico

Pooling this Vertical Extent: Bone Spring Formation
Depth Severance? (Yes/No): No

Pool: Culebra Bluff, South Bone Spring (Pool code 15011)
Pool Spacing Unit Size: Quarter-Quarter Sections
Governing Well Setbacks: Horizontal Oil Well Rules
Pool Rules: Latest Horizontal Rules Apply

Proximity Tracts: None Included

Monthly charge for supervision: While drilling: \$7000, While producing: \$700
As the charge for risk, 200 percent of reasonable well costs

Proposed Wells:

Valkyrie 12 SB Federal Com 13H

SHL: 1649 feet from the North line and 1087 feet from the West line
(Unit E) of Section 12, Township 23 South, Range 28 East, NMPM

BHL: 1980 feet from the North line and 100 feet from the East line
(Unit H) of Section 7, Township 23 South, Range 29 East, NMPM

Completion Target: Bone Spring at approx. 8255 feet TVD

Well Orientation: West to East

Completion Location expected to be: standard

Exhibit "B" Case 20866

Applicant: Marathon Oil Permian, LLC
Operator: Marathon Oil Permian, LLC (OGRID 372098)

Spacing Unit: Horizontal Gas
Building Blocks: Half sections
Spacing Unit Size: 634.11 acres, more or less
Orientation of Unit: West to East

Spacing Unit Description:
N/2 of Section 12, Township 23 South, Range 28 East; and
N/2 of Section 7 Township 23 South Range 29 East,
NMPM, Eddy County, New Mexico

Pooling this Vertical Extent: Wolfcamp Formation
Depth Severance? (Yes/No): No

Pool: Purple Sage; Wolfcamp (Pool code 98220)
Pool Spacing Unit Size: Half Sections
Governing Well Setbacks: Special Rules for the Purple Sage Gas Pool Apply
Pool Rules: Purple Sage and Horizontal Well Rules

Proximity Tracts: Yes, The Valkyrie 12 WA Federal Com 3H is less than 330 feet from the adjoining tracts.

Monthly charge for supervision: While drilling: \$7000, While producing: \$700
As the charge for risk, 200 percent of reasonable well costs

Proposed Wells:

Valkyrie 12 WXY Federal Com 1H

SHL: 1590 feet from the North line and 1099 feet from the West line (Unit E) of Section 12, Township 23 South, Range 28 East, NMPM
BHL: 330 feet from the North line and 100 feet from the East line (Unit A) of Section 7, Township 23 South, Range 29 East, NMPM

Completion Target: Wolfcamp at approx. 9676 feet TVD
Well Orientation: West to East
Completion Location expected to be: Non-standard

Valkyrie 12 WA Federal Com 3H

SHL: 1619 feet from the North line and 1093 feet from the West line (Unit E) of Section 12, Township 23 South, Range 28 East, NMPM
BHL: 1254 feet from the North line and 100 feet from the East line

(Unit A) of Section 7, Township 23 South, Range 29 East, NMPM

Completion Target: Wolfcamp at approx. 9866 feet TVD

Well Orientation: West to East

Completion Location expected to be: Non-standard

Valkyrie 12 WXY Federal Com 5H

SHL: 1678 feet from the North line and 1081 feet from the West line
(Unit E) of Section 12, Township 23 South, Range 28 East, NMPM

BHL: 2178 feet from the North line and 100 feet from the East line
(Unit H) of Section 7, Township 23 South, Range 29 East, NMPM

Completion Target: Wolfcamp at approx. 9676 feet TVD

Well Orientation: West to East

Completion Location expected to be: Non-standard

Valkyrie 12 WD Federal Com 2H

SHL: 1556 feet from the North line and 880 feet from the West line
(Unit E) of Section 12, Township 23 South, Range 28 East, NMPM

BHL: 330 feet from the North line and 100 feet from the East line
(Unit A) of Section 7, Township 23 South, Range 29 East, NMPM

Completion Target: Wolfcamp at approx. 10357 feet TVD

Well Orientation: West to East

Completion Location expected to be: Non-standard

Valkyrie 12 WD Federal Com 4H

SHL: 1585 feet from the North line and 874 feet from the West line
(Unit E) of Section 12, Township 23 South, Range 28 East, NMPM

BHL: 1254 feet from the North line and 100 feet from the East line
(Unit A) of Section 7, Township 23 South, Range 29 East, NMPM

Completion Target: Wolfcamp at approx. 10547 feet TVD

Well Orientation: West to East

Completion Location expected to be: Non-standard

Valkyrie 12 WD Federal Com 6H

SHL: 1614 feet from the North line and 868 feet from the West line
(Unit E) of Section 12, Township 23 South, Range 28 East, NMPM

BHL: 2178 feet from the North line and 100 feet from the East line
(Unit H) of Section 7, Township 23 South, Range 29 East, NMPM

Completion Target: Wolfcamp at approx. 10357 feet TVD

Well Orientation: West to East

Completion Location expected to be: Non-standard