

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

**APPLICATIONS OF MARATHON OIL
PERMIAN LLC FOR COMPULSORY
POOLING, EDDY COUNTY, NEW MEXICO**

Case Nos. 20865 and 20866

**BTA OIL PRODUCERS, LLC'S
MOTION TO STAY ORDER NO. R-21251**

In accordance with 19.15.4.23(B) NMAC, BTA Oil Producers, LLC ("BTA") moves the Oil Conservation Division ("the Division") for a stay of Order No. R-21251, which was issued on April 13, 2020. A proposed order is attached as Exhibit A. In support of this motion, BTA states the following.

INTRODUCTION

These consolidated cases concern two applications for compulsory pooling filed by Marathon Oil Permian, LLC ("Marathon"). In Case No. 20865, Marathon sought an order pooling all uncommitted mineral interests within a Bone Spring horizontal spacing unit underlying the S/2 N/2 of Section 12, Township 23 South, Range 28 East and Section 7, Township 23 South, Range 29 East in Eddy County and proposed to dedicate the 320-acre horizontal spacing unit to the Valkyrie 12 SB Federal Com 13H well. In Case No. 20866, Marathon requested an order pooling all uncommitted mineral interests within a Wolfcamp horizontal spacing unit underlying the N/2 of Section 12, Township 23 South, Range 28 East and Section 7, Township 23 South, Range 29 East in Eddy County and proposed to dedicate the 640-acre horizontal spacing unit to the Valkyrie 12 WXY Federal Com 1H, Valkyrie WA Federal Com 3H, Valkyrie 12 WXY Federal Com 5H,

Valkyrie 12 WD Federal Com 2H, Valkyrie 12 WD Federal Com 4H, and Valkyrie 12 WD Federal Com 6H wells.

Pursuant to a Joint Operating Agreement (“JOA”), BTA is the operator of the acreage comprising the N/2 of Section 7 and the NW/4 of Section 8, Township 23 South, Range 29 East. BTA expended considerable resources to acquire its rights under the JOA and has development plans for the JOA acreage. One hundred percent of the lands covered by the JOA are committed to the JOA, and BTA presently operates a producing well under the terms of the JOA.

Marathon’s applications sought to pool acreage in Section 7 that BTA controls under the JOA, and its proposal strands BTA’s acreage in the northwest quarter of Section 8. BTA opposed Marathon’s applications because granting them would result in waste and, in effect, void the JOA and unlawfully impair BTA’s correlative rights. BTA also presented evidence that Marathon failed to make a good-faith effort to secure BTA’s voluntary participation and that granting the applications would discourage and impair voluntary agreements in contravention of the Oil and Gas Act and New Mexico public policy. In addition, BTA argued that the reasonable expectations of the parties required denial of Marathon’s applications because Marathon acquired its acreage subsequent to BTA’s acquisition of the JOA.

The consolidated cases were heard by the Division on November 14-15, 2019, and the Division entered Order No. R-21251 granting Marathon’s applications on April 13, 2020. On April 24, 2020, BTA filed an Application for Hearing *De Novo* (“Application”) pursuant to NMSA 1978, Section 70-2-13 and 19.15.4.23(A) NMAC. Because BTA’s Application seeks to protect its correlative rights and avoid gross negative consequences, BTA requests a stay of Order No. R-21251 during the pendency of its Application. Further, on April 8, 2020, Marathon announced that

it would suspend further drilling operations in the Permian Basin.¹ Thus, a stay would not harm Marathon.

ARGUMENT

A. A stay of Order No. R-21251 is necessary to protect BTA's correlative rights.

The Division may stay an order to protect correlative rights or prevent gross negative consequences to an affected party. 19.15.4.23(B) NMAC. Here, BTA has asserted that Marathon's proposed horizontal spacing units, and thus Order No. R-21251, substantially harm BTA's correlative rights by depriving BTA of the ability to exercise its rights under the JOA. As mentioned above, BTA expended considerable resources to acquire its interest under the JOA, acquired its interest prior to Marathon's acquisition of the adjacent acreage, and has development plans for the JOA acreage.

As BTA explained in its post-hearing brief, New Mexico law 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..." 1978 NMSA, § 70-2-33(H). In determining what is meant by a "just and equitable share," courts generally agree that correlative rights include more than the right to simply receive a pro rata share of production. *See, e.g., Home-Stake Royalty Corp. v. Corporation Commission*, 594 P.2d 1207, 1210 (Okla. 1979) (the measure of a just and equitable share includes the right to drill on a tract of land); *see also, Coleman v. Railroad Commission*, 445 S.W.2d 790, 797 (Tx. Ct. App. 1969) (whether an offer meets the statutory test of being fair and reasonable ordinarily requires consideration of more than the acreage of the owners). Thus, BTA's Application raises important questions of statutory interpretation and public policy, including whether the loss of operating rights under a JOA impairs

¹ See Emily Patsy, Marathon Oil Suspends Permian Drilling with Deeper Capex Cuts, April 8, 2020 available at <https://www.hartenergy.com/exclusives/marathon-oil-suspends-permian-drilling-deeper-capex-cuts-186973>.

correlative rights and provides a basis to deny an application for compulsory pooling under New Mexico law.

A stay of Order No. R-21251 during the pendency of BTA's Application is necessary to protect BTA's correlative rights. In the absence of a stay, BTA's JOA acreage in Section 7 would be pooled and subject to development by Marathon prior to the Commission's determination on the issues raised by BTA's Application. And should the Commission ultimately reverse all or part of Order No. R-21251, BTA would suffer gross harm to its correlative rights without a stay maintaining the status quo.

B. A stay of Order No. R-21251 is necessary to prevent gross negative consequences to BTA.

BTA has also opposed Marathon's applications for compulsory pooling based on the injustice and inequity that would result from allowing an operator to acquire interests under a JOA, only for another operator to later purchase neighboring interests – which are incapable of development without compulsory pooling – and insist that the first operator abandon its development plans and investments. BTA's position accords with the reasonable expectations of the parties and the strong public policy – embodied in the Oil and Gas Act and New Mexico law in general – favoring voluntary agreements. BTA will suffer gross negative consequences in the absence of a stay because its rights under the JOA will be rendered meaningless.

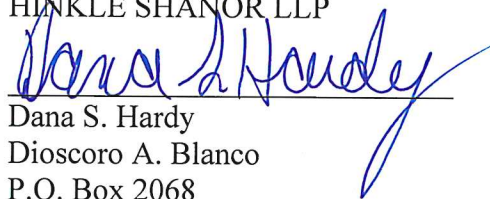
Further, 19.15.4.23(A) NMAC affords BTA the right to present its arguments *de novo* to the Commission. Without a stay, BTA's right of *de novo* review will be effectively lost because its JOA acreage will be pooled and subject to development by Marathon prior to a Commission ruling. BTA should be allowed a meaningful opportunity to present its position to the Commission without the fear that its right of *de novo* review will be mooted in the interim.

CONCLUSION

For the foregoing reasons, the Division should enter an order staying Order No. 21251 during the pendency of BTA's Application. A stay is necessary to protect BTA's correlative rights, prevent gross negative consequences to BTA, and permit BTA a meaningful opportunity to present its position to the Commission.

Respectfully submitted,

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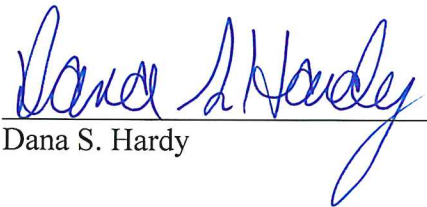
CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April, 2020 I served a true and correct copy of the foregoing pleading on the following counsel of record by electronic mail.

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ORDER

The New Mexico Oil Conservation Division (“Division”), having considered the Motion to Stay Order No. R-21251 filed by BTA Oil Producers, LLC (“BTA”) and the responses thereto, finds and concludes the following.

1. In Case No. 20865, Marathon requested an order pooling all uncommitted mineral interests within a Bone Spring horizontal spacing unit underlying the S/2 N/2 of Section 12, Township 23 South, Range 28 East and Section 7, Township 23 South, Range 29 East in Eddy County and proposed to dedicate the 320-acre horizontal spacing unit to the Valkyrie 12 SB Federal Com 13H well. In Case No. 20866, Marathon requested an order pooling all uncommitted mineral interests within a Wolfcamp horizontal spacing unit underlying the N/2 of Section 12, Township 23 South, Range 28 East and Section 7, Township 23 South, Range 29 East in Eddy County and proposed to dedicate the 640-acre horizontal spacing unit to the Valkyrie 12 WXY Federal Com 1H, Valkyrie WA Federal Com 3H, Valkyrie 12 WXY Federal Com 5H, Valkyrie 12 WD Federal Com 2H, Valkyrie 12 WD Federal Com 4H, and Valkyrie 12 WD Federal Com 6H wells.

2. The Division entered Order No. R-21251 on April 13, 2020, granting the above-referenced applications for compulsory pooling.

EXHIBIT A

3. Pursuant to a Joint Operating Agreement (“JOA”), BTA is the operator of acreage comprising the N/2 of Section 7 and the NW/4 of Section 8, Township 23 South, Range 29 East. Marathon’s applications sought to pool BTA’s acreage in Section 7.

4. BTA opposed Marathon’s applications on the basis that granting the applications would impair BTA’s correlative rights, as established by the JOA, and result in waste by stranding BTA’s acreage in the northwest quarter of Section 8. BTA also argued that Marathon failed to make a good-faith effort to secure BTA’s voluntary participation in the proposed wells; that granting Marathon’s applications would discourage and impair voluntary agreements in contravention of the Oil and Gas Act and New Mexico public policy; and that the reasonable expectations of the parties required denial of the applications.

5. On April 24, 2020, BTA filed an Application for Hearing *De Novo* (“Application”) with the Commission pursuant to 19.15.4.23(A) NMAC.

6. In accordance with 19.15.4.23(B) NMAC, BTA has requested a stay of Order No. R-21251 during the pendency of its Application to protect BTA’s correlative rights and prevent gross negative consequences to BTA. Without a stay during the pendency of the Application, BTA’s right of *de novo* review would effectively be lost because BTA’s acreage in Section 7 would be pooled and subject to development by Marathon. And in the event that the Commission ultimately reverses all or part of Order No. R-21251, BTA would suffer gross harm to its correlative rights and economic interests without a stay maintaining the status quo.

7. Pursuant to 19.15.4.23(B) NMAC, a stay during the pendency of the Application is necessary to protect BTA’s correlative rights and prevent gross negative consequences to BTA.

IT IS THEREFORE ORDERED that Order No. R-21251 is stayed during the pendency of BTA’s Application for Hearing *De Novo*.

**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**

DATE: _____