

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

APPLICATION OF MATADOR PRODUCTION
COMPANY FOR A NON-STANDARD SPACING
AND PRORATION UNIT, COMPULSORY
POOLING, AND NON-STANDARD LOCATION
LEA COUNTY, NEW MEXICO.

Case No. 15366
Order No. R-14097

**AMTEX'S RESPONSE IN OPPOSITION TO
MATADOR'S MOTION TO DISMISS APPEAL**

Amtex Energy, Inc., ("Amtex") hereby submits its Response in Opposition to Matador Production Company's ("Matador") Motion to Dismiss Appeal. This matter is before the Commission for de novo hearing on Division Order R-14097. Matador's Motion asks summary dismissal of this de novo proceeding which would avoid hearing on the merits. Matador's argument for dismissal raises questions of law about Amtex's status as a "party" that are inextricable from other crucial questions of law and policy raised by Amtex's application to be decided in the de novo hearing. There is good cause to deny the motion and decide the merits in a hearing addressing all issues.

1. Amtex Energy Inc. is a Party of Record.

Matador's argument creates a standard for standing as a party that cannot be found in law or in rule. The Oil and Gas Act does not limit when one must be a party to have the right to a de novo hearing. NMSA 1978 § 70-2-13 reads in pertinent part:

[A]ny party of record adversely affected shall have the right to have the matter heard de novo before the commission upon application filed with the division within thirty days from the time any such decision is rendered.

Rule 19.15.4.10 Parties to Adjudication Proceedings provides:

NMOCC Case No. 15366
Hearing: FEB 11, 2016

A. *The parties to an adjudication proceeding shall include:*

(2) *a person to whom statute, rule or order requires notice . . . who has entered an appearance in the case.*

B. *A person entitled to notice may enter an appearance at any time by filing a written notice of appearance with the division . . .*

Rule 19.15.4.23 Hearing Before Commission and Stays of Division Orders states:

A. De novo applications. When the division enters an order pursuant to a hearing that a division examiner held, a party of record whom the order adversely affects has the right to have the matter heard de novo before the commission . . .

Matador's application named Amtex one of the "Parties to be Pooled." A copy of Exhibit A – Matador Production Company's Notice List, is Attachment 1 hereto. And as "a person whom statute, rule or order requires notice . . ." Amtex is a party to the proceeding and entitled to enter an appearance at any time, which it did. Rule 19.15.4.10(A) and (B). Matador makes much of having given notice to Amtex while overlooking the effect under the Rule that in doing so, as required by law, Matador made Amtex a "party" to the proceeding.

The Division simply adopted Matador's position and stated Amtex's Entry of Appearance "was not timely and should not be considered." R-14097, p.3. Thus, according to Matador's view "at any time" means something other than "at any time."

In its Motion to Dismiss, Matador's discussion of the Rules is limited to 19.15.4.10(C) which states that a party who has not entered an appearance a day prior to the filing of pre-hearing statements "shall not be allowed to present technical evidence at the hearing" unless the examiner for good cause permits. That is irrelevant to the standing of Amtex. Amtex's complaints, as discussed below, are not about presenting technical evidence.

Matador before the Division and in its Motion here relies on two inapplicable court decisions. In *Matter of Greig Will*, 1979-NMSC-014, ¶ 3, 92 N.M. 561, 562, 591 P.2d 1158 an appeal was rejected because an appellant “Did not enter an appearance or become a party below.” This standard rule regarding appeal from a trial court decision that for the question to reviewed it must have been raised below is repeated in *In re Norwest Bank of New Mexico, N.A.*, 2003-NMCA-128, ¶ 26, 134 N.M. 516, 525-526, 80 P.3d 98 (2003). Both cases were on the record review cases. Neither involved the *de novo* standard. *City of Farmington v. Pinon-Garcia*, 2012-NMCA-079, ¶ 10, 284 P.3d 1086 (“[T]he authorities [Matador] does cite in support of [its] position are inapplicable because they all relate to the standard of review when a court sits as an appellate court in review of proceedings from a court of record”).

This matter is before the Commission *de novo* therefore to be “tried anew in said [agency] on their merits, as if no [hearing] had been had below.” *Green v. Kase*, 1992-NMSC-004, ¶6, 113 N.M. 76, 77 fn. 2, 823 P.2d 318. A hearing *de novo* means the aggrieved party is entitled to a full hearing “not limited to or constrained by the transcript of the [division] hearing.” *Id.* 78. The *de novo* standard applies even though the decision below was one of dismissal rather than on the merits. *City of Farmington*, ¶ 11.

2. Jurisdictional and Legal Issues are Raised.

That Amtex did not participate in the Division hearing is irrelevant because of the issues it presents to the Commission. Matador’s Motion argues that Amtex’s absence from the Division hearing gives it unfair benefit of knowing “all of the applicant’s materials and arguments . . .”. Motion, 3. It should be very clear Amtex is not raising questions about the technical evidence regarding the proposed Cimarron State #133H. The

geology and reservoir are already known and proven by the Bone Springs completed Cimarron State #134H in the E2E2 of subject Section 16.

Amtex's challenge is to the very nonexistence of agency authority under the Oil and Gas Act for linking 40 acre spacing units into a 160 acre project area as a supposed non-standard spacing unit. To have or have not participated at the Division hearing on that subject is not determinative. The challenge to creation of such 160 units has already been ruled upon and rejected by the Division in its Order R-14053-A, in Matador force pooling Case No. 15363. Likewise, Amtex's participating in the Division hearing would not change that the Division automatically applies a 200% risk penalty applying Rule 35 (19.15.3.8. NMAC).

a. Formation of “non-standard horizontal” spacing units

The Division in this Case No. 15366 by Order R-14097 approved the Matador application for the combining of four separate forty-acre oil spacing units consisting of the W2E2 of Section 16, Township 19 South, Range 34 East, Lea County. It did so on the grounds of creating “A non-standard 160-acre oil spacing and proration unit and project area (the “Unit”).” It ordered the pooling of all interests in the Bone Springs formation underlying the Unit. Order R-14097, pp. 4-5. Amtex contests the statutory authority of the Division and Commission to force such action given the terms of NMSA 1978 § 70-2-17(C). *Continental Oil Co. v. Oil Conservation Commission*, 1962-NMSC-062, ¶ 11, 70 N.M. 310, 318, 373 P.2d 809 (“The Oil Conservation Commission is a creature of statute, expressly defined, limited and empowered by the laws creating it.”) An objection testing the power to act goes to the absence or presence of jurisdiction of a judicial or

administrative tribunal and may be raised at any time. *El Castillo Retirement Residences v. Martinez*, 2015-NMCA-041, ¶ 14, 346 P.3d 1164.

Matador owns no interest in the south 80 acres of the subject east half of Section 16. Amtex owns 92.8% of the working interest in that acreage. It is entitled to develop wells and share in the oil from the Bone Springs formation on its two 40 acre existing oil spacing units. That property and the correlative rights to production is to be taken from Amtex for the benefit of Matador who owns no interest in the 80 acres. Force pooling the 40 acre units under the guise of forming a "Unit" is not authorized by the Oil and Gas Act. NMSA 1978 § 70-2-17(C) requires that an owner seeking pooling must have "the right to drill" on the acreage. Matador has no working interest and no such right to drill on the Amtex 80 acres. The Division has no authority to order compulsory pooling crossing spacing units. § 70-2-17. Statutory unitization does not apply to Matador's request. NMSA 1978 § 70-7-1 et seq.

The Commission previously recognized the legal vulnerability of its authority on this subject when it formulated Special Rules for Horizontal Wells (19.15.16.15(A) through (F)) by its Order No. R-13499 issued January 23, 2012. It established the concept of "project areas"¹ for horizontal wells whereby the owners link multiple standard oil spacing acreage by their voluntary agreement. But consolidation by a statutory compulsory pooling order where there is no agreement is a very different matter as the Commission recognized.

73. However, the extent of the Commission's and the Division's authority to establish non-standard spacing or proration units or special spacing or proration for horizontal wells has not been clearly delineated by either judicial or Commission precedent.

¹ There is no such creature as a project area to be found in the Oil and Gas Act.

74. Accordingly, the Commission concludes that it would be inappropriate to adopt a rule on this subject at this time.

75. In order to forestall any possibility that the rule amendments being adopted would be construed to authorize compulsory pooling of horizontal well "project areas" without regard to applicable statutory and regulatory limitations, the proposed 19.15.16.14F NMAC should not be adopted and the change discussed in paragraph 60 should be adopted.

Order R-13499, p. 11. Having concluded the Commission's and the Division's authority for creating special spacing for horizontal wells "has not been clearly delineated by either judicial or Commission precedent" the Commission nonetheless turned the Division loose to do what it does not have the authority to do.

78. Since the Division has the mandatory duty to compulsory pool a spacing or proration unit upon the appropriate application where the prescribed predicate facts are shown, the Commission lacks the power to limit by rule the Division's authority to pool spacing units or to require the consent of particular owners to compulsory pooling.

The reference in paragraph 75 to adoption of the change in paragraph 60 results in Section F of the horizontal well rule reading:

F. Consolidation of project area. If a horizontal well is dedicated to a project area in which there is more than one owner of any interest in the mineral estate, the operator of the horizontal well shall cause the project area to be consolidated by voluntary agreement *or, if applicable, compulsory pooling* before the division may approve a request for form C-104 for the horizontal well. [19.15.16.15 NMAC – Rp. 19.15.3.112 NMAC, 12/1/08; 19.15.16.15 NMAC – N, 2/15/21] Emphasis added.

Paragraph 59 of the subject Order stated:

59. Proposed rule 19.115.16.15F entitled "Compulsory pooling" should not be adopted in order to remove any suggestion that all project areas are subject to compulsory pooling." Id. p. 9

The jurisdictional infirmity recognized by the Commission is to be faced head on in this proceeding.

b. Automatic 200% risk penalty

Compulsory pooling statutes are based on the proposition that each owner shall receive his just and equitable share of production. B. Kramer and P. Martin, *Law of Pooling and Unitization* (3rd ed.) § 10.01.

Matador's proposal for the Bone Springs formation Cimarron State 16-19S-34E RN #133H in the W2E2 of Section 16 is sited just 183' from the boundary with the Bone Springs productive E2E2 of the section. In 2015 Matador successfully completed the Cimarron #134H in the E2E2 in precisely the same lower Bone Spring's target of the #133H. See exhibit plat Attachment 2. The proven #134H well has produced 102,787 barrels of oil and 43,122 Mcf of gas as of November 2015. There is no geological or reservoir risk for the #133H well.

With no supporting evidence whatsoever the Division Order R-14097 specified Matador can withhold from a non-consenting working interest owner the well cost plus "as a charge for the risk involved in drilling the well 200% of the above costs." This result follows by reason of adherence to Commission Rule 35 (Rule 19.15.1.35, Order No. R-1199). The rule adopted in 2003 provides that compulsory pooling orders will specify a risk charge of 200 percent of well costs without the applicant providing any evidence to justify the charge. Under Rule 35 should a party seek a different risk charge it "shall have the burden to prove justification for the risk charge sought by relevant geologic or technical evidence." Rule 35(D). In other words, the operator who applies for a force pooling order and has the geological and engineering information about the proposed well has no evidentiary burden to justify a grant of the maximum statutory limit risk charge.

The effect of the Rule as applied by the Division in this case means Amtex loses its correlative rights to production from its lease and Matador enjoys a multi-million dollar windfall profit.

AFE Well #133H	6,800,827
Amtex WI proposed 160 Ac.	<u>x 46.4%</u>
	\$3,155,584
	<u>x 3</u>
	\$9,466,752

Rule 35 is in conflict with the principle that "the percentage risk charge to be assessed, if any, are determinations to be made by the Commission on a case-to-case basis and upon the particular facts in each case." *Viking Petroleum Inc. v. Oil Conservation Com'n of State of N.M.*, 1983-NMSC-091, ¶ 21, 100 N.M. 451, 455, 672 P.2d 280. Rule 35 violates the rule that a Division or Commission order cannot stand without "findings supported by evidence" to show that correlative rights of all owners are protected. *Continental Oil v. Oil Cons. Comm.*, *supra* at 319-321; *App. Cimarex Energy Co.*, De Novo Cases Nos. 14418 and 14480, Order R-13228-F. A compulsory pooling order granting the automatic 200% risk charge violates NMSA § 70-2-17(C) in failing to "afford 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." Lastly, it is a fundamental principle in any adjudicatory proceeding that "the burden of proof in any cause rests upon the [applicant that] asserts the affirmative of an issue and remains there. . . ." *Pentecost v. Hudson*, 1953-NMSC-001, ¶ 6, 57 N.M. 7, 9, 252 P.2d 511.

3. Conclusion

Amtex is a party to the proceedings by virtue of being entitled to notice and "at any time" filing its entry of appearance. That conclusion follows from the plain language of Rule 19.15.4.10. The *de novo* proceeding before the Commission writes on a blank slate. There is nothing in the legislation (§ 70-2-13) intended to limit an aggrieved party to less than a full Commission hearing "not limited or constrained by the transcript of the [division] hearing." *Green v. Kase*, at 78.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

By



J.E. GALLEGOS

MICHAEL J. CONDON

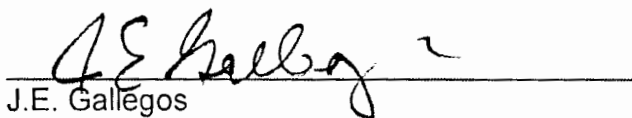
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Attorneys for Amtex Energy, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on counsel of record by electronic mail this 2nd of February, 2016.

Earl E. DeBrine, Jr.
Jennifer Bradfute
P.O. Box 2168
Bank of America Centre
500 Fourth Street NW, Suite 1000
Albuquerque, NM 87103-2168



J.E. Gallegos

EXHIBIT A
MATADOR PRODUCTION COMPANY'S NOTICE LIST

PARTIES TO BE POOLED:

Phil C. Vogel 1.6%
5611 Glen Pines Drive
Houston, Texas 77069

Mark A. Trieb 1.6%
1717 Art Plz Ste 2001
Dallas, Texas 75201

Amtex Energy 46.4%
P.O. Box 3418
Midland, Texas 79702

Stewart Royalty 0.40%
P.O. Box 50690
Midland, Texas 79710

OFFSETS:

Seely Oil Co.
815 W. 10th St.
Ft. Worth, TX 76102

Magnum Hunter Production, Inc.
- 909 Lake Carolyn Pkwy, Suite 600
Irving, TX 75039

- 600 N. Marienfeld Street
Suite 600
Midland, TX 79701

Apache Corp:
303 Veterans Airpark Lane
Suite 3000.
Midland, TX 79705

United States Department of the Interior
Bureau of Land Management
P.O. Box 27115
Santa Fe, NM 87502-0115

Amtex Energy
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Midland, Texas 79702

Stewart Royalty
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Phil C. Vogel
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Houston, Texas 77069

XTO Energy
382 Road 3100
Aztec, NM 87410

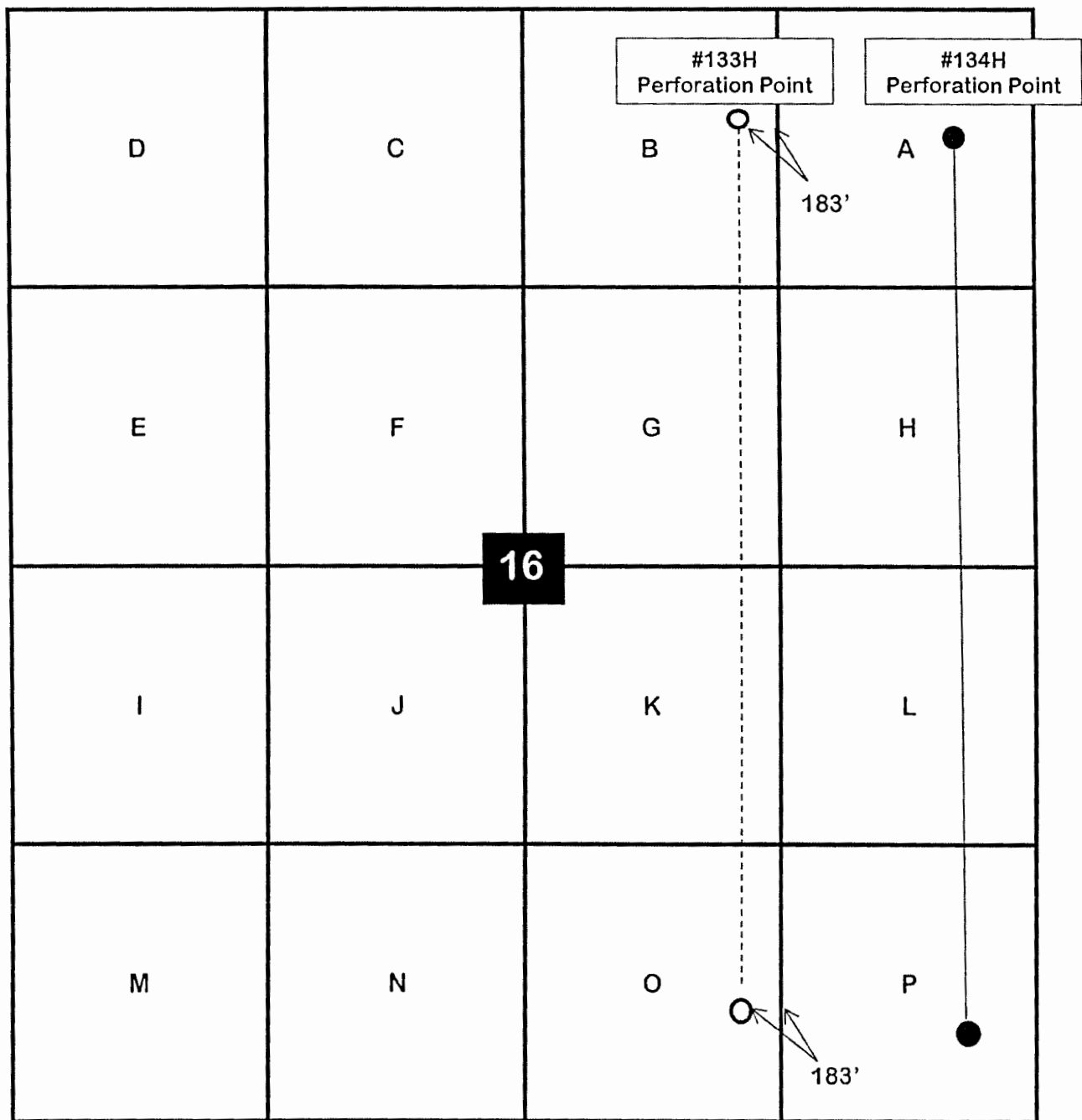
Devon Energy Production Company, LP
333 W. Sheridan Ave.
Oklahoma City, OK 73102

EOG Resources
P.O. Box 2267
Midland, TX 79702

Wainoco Oil & Gas Company
2828 N. Harwood, Suite 1300
Dallas, TX 75201

Harvey E. Yates Co.
P.O. Box 1933
Roswell, NM 88202

Nadel and Gussman, LLC,
P.O. Box 1933
Roswell, NM 88202



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1625 N. French Dr., Hobbs, NM 88240
Phone: (575) 393-6161 Fax: (575) 393-0720
District II
S. First St., Artesia, NM 88210
Phone: (575) 748-1283 Fax: (575) 748-9720
District III
1000 Rio Brazos Road, Aztec, NM 87410
Phone: (505) 334-6178 Fax: (505) 334-6170
District IV
1220 S. St. Francis Dr., Santa Fe, NM 87505
Phone: (505) 476-3460 Fax: (505) 476-3462

State of New Mexico
Energy, Minerals & Natural Resources
Department
OIL CONSERVATION DIVISION
1220 South St. Francis Dr.
Santa Fe, NM 87505

FORM C-102
Revised August 1, 2011
HOBBS OGD Submit one copy to appropriate
District Office

JUN 24 2015

☐ AMENDED REPORT

RECEIVED

WELL LOCATION AND ACREAGE DEDICATION PLAT

¹ API Number		² Pool Code		³ Pool Name	
⁴ Property Code		⁵ Property Name CIMARRON 16 19 34 STATE RN			⁶ Well Number #134H
⁷ GRID No.		⁸ Operator Name MATADOR PRODUCTION COMPANY			⁹ Elevation 3825'

¹⁰ Surface Location									
UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
A	16	19-S	34-E	-	250'	NORTH	985'	EAST	LEA

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
P	16	19-S	34-E	-	350'	SOUTH	404'	EAST	LEA

¹² Dedicated Acres	¹³ Joint or Infill	¹⁴ Consolidation Code	¹⁵ Order No.
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No allowable will be assigned to this completion until all interests have been consolidated or a non-standard unit has been approved by the division.

<p>SURFACE LOCATION NEW MEXICO EAST NAD 1927 X=738164 Y=607129 LAT.: N 32.6667123 LONG.: W 103.5594071</p> <p>PENETRATION POINT NEW MEXICO EAST NAD 1927 X=738739 Y=606802 LAT.: N 32.6658010 LONG.: W 103.5575476 MD = 11003'</p> <p>FIRST TAKE POINT NEW MEXICO EAST NAD 1927 X=738777 Y=606540 LAT.: N 32.6650806 LONG.: W 103.5574290 MD = 11271'</p> <p>LAST TAKE POINT NEW MEXICO EAST NAD 1927 X=738785 Y=602582 LAT.: N 32.6542023 LONG.: W 103.5574979 MD = 15231'</p> <p>BOTTOM HOLE LOCATION NEW MEXICO EAST NAD 1927 X=738786 Y=602455 LAT.: N 32.6538517 LONG.: W 103.5574965 MD = 15359'</p>	<p>¹⁷OPERATOR CERTIFICATION I hereby certify that the information contained herein is true and complete to the best of my knowledge and belief, and that this organization either owns a working interest or undivided mineral interest in the land including the proposed bottom hole location or has a right to drill this well at this location pursuant to a contract with an owner of such a mineral or working interest, or to a voluntary pooling agreement or a compulsory pooling order heretofore entered by the division.</p> <p><i>Chris Carleton</i> 6/18/15 Signature Date Chris Carleton Printed Name ccarleton@matadorresources.com E-mail Address</p> <p>¹⁸SURVEYOR CERTIFICATION I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervision, and that the same is true to the best of my belief.</p> <p>12/21/2014 Date of Survey Signature and Seal of Professional Surveyor MICHAEL B. BROWN NEW MEXICO 18329 PROFESSIONAL SURVEYOR Certificate Number</p>
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1625 N. French Dr., Hobbs, NM 88240
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State of New Mexico
Energy, Minerals & Natural Resources
Department
OIL CONSERVATION DIVISION
1220 South St. Francis Dr.
Santa Fe, NM 87505

FORM C-102
Revised August 1, 2011
Submit one copy to appropriate
District Office

☐ AMENDED REPORT

WELL LOCATION AND ACREAGE DEDICATION PLAT

¹ API Number	² Pool Code 50460	³ Pool Name QUAIL RIDGE; BONE SPRING
⁴ Property Code	⁵ Property Name CIMARRON STATE 16-19S-34E RN	⁶ Well Number #133H
⁷ OGRID No. 228937	⁸ Operator Name MATADOR PRODUCTION COMPANY	⁹ Elevation 3825'

¹⁰Surface Location

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
A	16	19-S	34-E	-	250'	NORTH	1015'	EAST	LEA

UL or lot no.	Section	Township	Range	Lot Idn	Feet from the	North/South line	Feet from the	East/West line	County
0	16	19-S	34-E	-	240'	SOUTH	1506'	EAST	LEA

¹¹ Dedicated Acres	¹² Joint or Infill	¹³ Consolidation Code	¹⁴ Order No.
160.00			

No allowable will be assigned to this completion until all interests have been consolidated or a non-standard unit has been approved by the division.

	FIRST PERFORATION POINT NEW MEXICO EAST NAD 1927 X=737844 Y=607044 LAT.: N 32.6664892 LONG.: W 103.5610993	SURFACE LOCATION NEW MEXICO EAST NAD 1927 X=738134 Y=607129 LAT.: N 32.6667122 LONG.: W 103.5595044	¹⁷ OPERATOR CERTIFICATION I hereby certify that the information contained herein is true and complete to the best of my knowledge and belief, and that this organization either owns a working interest or leased mineral interest in the land including the proposed bottom hole location or has a right to drill this well at this location pursuant to a contract with an owner of such a mineral or working interest, or to a voluntary pooling agreement or a compulsory pooling order heretofore entered by the division. Signature: <i>Jeffrey M. Lierly</i> Date: 12-16-15 Printed Name: JEFFREY M. LIERLY E-mail Address: jliery@matadorresources.com
	LAST PERFORATION POINT NEW MEXICO EAST NAD 1927 X=737685 Y=602424 LAT.: N 32.6537887 LONG.: W 103.5610750	¹⁸ SURVEYOR CERTIFICATION I hereby certify that the well location shown on this plat was plotted from field notes of actual surveys made by me or under my supervision, and that the same is true to the best of my belief. Date of Survey: 08/16/2015 Signature and Seal of Professional Surveyor: <i>Michael P. Brown</i> Certificate Number: 18329	
	BOTTOM HOLE LOCATION NEW MEXICO EAST NAD 1927 X=737686 Y=602334 LAT.: N 32.6535414 LONG.: W 103.5610746		