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

APPLICATION OF EOG RESOURCES, INC. FOR A NON-STANDARDSPACING AND PRORATION UNIT AND COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO. **Case No. 16221**

PRE-HEARING STATEMENT

Jalapeno Corporation ("Jalapeno") provides this Pre-Hearing Statement for the Division hearing as required by Rule 19.15.4.13B NMAC.

APPEARANCES

APPLICANT	ATTORNEY
EOG Resources, Inc.	Michael H. Feldewert Jordan L. Kessler Adam G. Rankin Julia Broggi Holland and Hart, LLP P.O. Box 2208 Santa Fe, NM 87504 mfeldewert@hollandhart.com agrankin@hollandhart.com jbroggi@hollandhart.com jlkessler@hollandhart.com
OPPONENTS	ATTORNEY
Jalapeno Corporation	J.E. Gallegos Michael J. Condon Gallegos Law Firm, P.C. 460 St. Michael's Drive, Bldg. 300 Santa Fe, NM 87505 jeg@gallegoslawfirm.net mjc@gallegoslawfirm.net

Matador Resources Co.	Kyle Perkins Matador Resources Company 5400 Lyndon B. Johnson Freeway, Suite 1500 Dallas, TX 75240 kperkins@matadorresources.com
Marathon Oil Permian LLC	Earl DeBrine Jennifer L. Bradfute Modrall Sperling 500 Fourth St. NW, Ste. 100 Albuquerque, NM 87103 jennifer.bradfute@modrall.com
Mewbourne Oil Co.	James Bruce P.O. Box 1056 Santa Fe, NM 87504 jamesbruc@aol.com

STATEMENT OF THE CASE

EOG Resources, Inc. ("EOG") applies for an order from the Division pooling all the uncommitted interests of Jalapeno and others across separate existing 40 acre oil spacing units into a 320 acre project area or spacing unit being the N/2/S2 of Section 24 and the N/2/S2 of Section 23 Township 18 South, Range 30 East, NMPM, in Eddy County, New Mexico. The applicant proposes to drill the Spork 24 Fed Com No. 301H Well and Spork 24 Fed Com. No. 501H well to test the Bone Spring formation. Both wells will be horizontal wells with surface locations in Section 24 and a terminus in Section 23.

Jalapeno's Pre-Hearing Statement is provided based on the Amended Application filed by EOG on September 4, 2018, and the relief requested therein. Jalapeno reserves the right to supplement its response to the Amended Application if EOG seeks relief at the hearing beyond that requested in the application.

MOTION TO DISMISS

Jalapeno moves to dismiss the application to force pool it on the grounds:

Statutory force pooling is not available or authorized against an owner in a spacing unit who has voluntarily agreed to pool its interest and to participate in its pro rata share of the cost of drilling and completing the subject well. NMSA 1978 § 70-2-17(C). Division orders pooling interests in force pooling applications routinely pool "all uncommitted interests.," See Order No. R-14053-B, application of Matador Production Co.; Case No. 15038, Application of Mewbourne, and Order R-13751, limiting the force pooling order to "all uncommitted interests." To allow a party to force pool committed interest owners would subvert the rule requiring an applicant to seek voluntary agreement as a condition of prosecuting a force pooling application.

Jalapeno and the applicant have been in communication for some time regarding EOG's proposed Bone Spring wells in subject Sections 23 and 24. Jalapeno has signed and mailed to EOG executed AFEs including covering the two wells at issue in this application. Jalapeno has also agreed to EOG's proposed overhead rates. Jalapeno has agreed to pool its interests and participate in the well.

Since agreement between the parties exists there is no basis for force pooling Jalapeno. The application should be dismissed as to Jalapeno.

EOG seeks to force pool Jalapeno because Jalapeno will not agree to EOG's proposed JOA. The proposed JOA, like many presented by large companies to independents, is an adhesion contract. It includes provisions inserted by EOG in the standard Model Form JOA which are oppressive and unacceptable. EOG's position reflects bad faith negotiations where EOG attempts to use the threat of force pooling to

coerce Jalapeno to either sign the JOA or assign its interests to EOG, even though Jalapeno has agreed to participate in the well. The force pooling procedure should not be used as a bludgeon, and the Division should deny the application for failure of EOG to engage in good faith negotiations.

JALAPENO CONTENDS THE APPLICATION SHOULD BE DENIED

Jalapeno contends the application should be denied for the following reasons:

1. The Division lacks the authority under the current powers granted to it by the New Mexico Legislature to approve EOG's compulsory pooling application for a requested project area, non-standard oil spacing and proration unit that comprises eight (8) complete, contiguous and existing 40 acre oil spacing units for horizontal wells in the Bone Spring formation. If the application were granted owners of the separate existing spacing units will be precluded from operating and developing their leases and suffer loss of their correlative rights.

2. An order granting EOG's application with a 200% risk penalty would likely have the effect of taking some non-consenting owners' property in violation of their constitutional rights afforded by the 5th and 14th Amendments to the United States Constitution. Many parties lack any effective means to protect those rights in this proceeding. As nonconsenting and force pooled mineral owners their property and correlative rights will be expropriated by the order that applicant requests.

3. EOG cannot meet its burden to support its request for a 200% risk penalty. The Division is obligated to take administrative notice of the relative absence of risk in developing the proposed Bone Spring well in the Delaware Basin of Eddy County. There is no rationale or factual justification for rewarding applicant with a risk

penalty to be collected from the share of revenue to which nonconsenting parties are entitled.

4. The Delaware Basin shale play is a resource play extensively developed by horizontal wells and presents a dependable low risk, highly favorable return on investment. In addition, the economics of the majority owner-operator are unfairly enhanced by the revenue attributable to the risk charged interests of the pooled nonconsent owners.

5. The OCD and OCC lack authorization to impose any risk penalty in force pooling proceedings because there is no objective standard for the imposition of risk penalties. *Gadeco, LLC v. Industrial Comm*., 812 N.W.2d 405, 2012 ND 33 (2012) ("The Commission's decision … does not explain how it reached the conclusion that the risk penalty could be assessed … a reviewing court needs to know the reasons …") As Commission Chariman Catanach observed in Case No. 15363 (de novo) "If there is a method other than just the automatic imposition of 200 percent, I mean a definition of risk, what we're talking about, I would appreciate being guided to that. I haven't found it." Consequently, any assessment of a risk penalty by the Division is arbitrary and capricious.

6. OCD Order No. R-11992, which adopted Rule 19.15.1.35 NMAC (now Rule 19.15.13.8—Charge for Risks), and which in turn adopted a blanket 200% risk factor in compulsory pooling application, unlawfully (a) allows assessment of a risk penalty without requiring the applicant to support the requested penalty with evidence supporting the penalty, and (b) imposes the burden of proof on an opponent of a compulsory pooling application to justify a different risk factor. This is in violation of the

legislative mandate set forth in NMSA 1978 § 70-2-17 and contrary to the standard burden of proof rules imposed on the movant in any proceeding.

PROPOSED EVIDENCE

Jalapeno will present evidence that it has agreed to participate to the extent of its working interest share in the cost of drilling the proposed Bone Spring wells. It cannot be ordered force pooled. Jalapeno's evidence will include data establishing that drilling of the proposed well presents minimal risk which does not justify the requested risk penalty.

WITNESSES	EST. TIME	EXHIBITS
Harvey Yates (operator/landman)	1 hour	5 approx.
Emmons Yates (practical oil man/landman)	45 min.	5 approx.

JALAPENO'S POSITION ON THE COMPETING APPLICATIONS

EOG's application in this case is in direct competition with the application of Mewbourne Oil Company in Case No. 16184. Both Mewbourne and EOG seek a force pooling order and designation as operator of a 320 acre spacing and proration unit comprising the N2S2 of Sections 23 and 24.

Jalapeno supports Mewbourne as the operator of any spacing unit in the N2S2 of Sections 23 and 24.

PROCEDURAL MATTERS

Jalapeno requests that the Division consolidate this case with Case No. 16184.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

By ___/s/ J. E. Gallegos___
J.E. GALLEGOS
MICHAEL J. CONDON
460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505
(505) 983-6686
jeg@gallegoslawfirm.net
mjc@gallegoslawfim.net

Attorneys for Jalapeno Corporation

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 11th day of October, 2018:

Michael H. Feldewert
Jordan L. Kessler
Adam G. Rankin
Julia Broggi
Holland and Hart, LLP
Santa Fe, NM 87504
mfeldewert@hollandhart.com
agrankin@hollandhart.com
jbroggi@hollandhart.com
jlkessler@hollandhart.com

Attorneys for EOG Resources, Inc.

Kyle Perkins
Matador Resources Company
5400 Lyndon B. Johnson Freeway, Ste. 1500
Dallas, TX 75240
kperkins@matadorresources.com

Attorney for MRC Delaware Resources, LLC

James Bruce
P.O. Box 1056
Santa Fe, NM 87504
jamesbruc@aol.com

Attorney for Mewbourne Oil Company

Earl E. Debrine, Jr.
Jennifer L. Bradfute
Modrall, Sperling, Roehl, Harris & Sisk, PA
P.O. Box 2168
Albuquerque, NM 87103-2168
jln@modrall.com

Attorneys for Marathon Oil Permian LLC

/s/ J. E. Gallegos
J. E. Gallegos