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

AMENDED APPLICATION AND APPLICATION OF APACHE CORPORATION FOR COMPULSORY POOLING AND APPROVAL OF A HORTIZONAL SPACING UNIT, AND POTASH DEVELOPMENT AREA, EDDY COUNTY, NEW MEXICO.

Case Nos. 20171 and 20202

PRE-HEARING STATEMENT

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

APPEARANCES

APPLICANT	ATTORNEY
Apache Corporation	Earl E. DeBrine, Jr. Zoe E. Lees Modrall, Sperling, Roehl, Harris & Sisk, P.A. P.O. Box 2168 Albuquerque, NM 87103-2168 edebrine@modrall.com sel@modrall.com
OPPONENT	**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

STATEMENT OF THE CASE

Apache Corporation ("Apache") applies for an order from the Division in OCD Case No. 20171 pooling all the uncommitted interests of Jalapeno and others to dedicate the N/2 of Sections 28 and 29 and the NE/4 of Section 3, T20S, R30E to create a standard 800-acre horizontal spacing unit, more or less, NMPM, in Eddy County, New Mexico. The applicant proposes to drill the Taco 28-30 Fed Com #201H, #202H, #301H, #302H and #303H to test the Bone Spring formation.

Apache Corp. ("Apache") also applies for an order from the Division in OCD Case No. 20202 pooling all the uncommitted interests of Jalapeno and others to dedicate the N/2 of Sections 28 and 29 and the NE/4 of Section 3, T20S, R30E to create a standard 800-acre horizontal spacing unit, more or less, NMPM, in Eddy County, New Mexico. The applicant proposes to drill the Taco 28-30 Fed Com #401H, #402Hand #403H to test the Wolfcamp formation.

Even though Jalapeno has not had the 30 days to evaluate such well proposals and the AFEs for such Taco 28-30 Fed Com wells prior to the filing of such compulsory pooling applications (see Procedural Matter below), Jalapeno will sign such AFEs for such Taco 28-30 Fed Com wells to evidence its agreement to pool its interest and to participate in its pro rata share of the cost of drilling and completing the subject wells and will request a copy of the JOA. The JOA must be satisfactory to Jalapeno. However, even if the JOA is not satisfactory to Jalapeno, 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). Jalapeno should be dismissed from these force pooling applications.

JALAPENO CONTENDS THE APPLICATION SHOULD BE DENIED

If Division determines that Apache may still force pool Jalapeno notwithstanding Jalapeno's willingness to sign the AFEs, Jalapeno contends the applications 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 Apache's compulsory pooling applications for a requested spacing and proration units that each comprise ten (10) complete, contiguous and existing 40 acre oil spacing units for such horizontal wells in the Bone Spring or Wolfcamp formations. If the applications 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 Apache's applications 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. Apache 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 and Wolfcamp wells 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 did not have 30 days to evaluate Apache's well proposals and AFEs prior to Apache filing such applications for compulsory pooling in these two cases. However, Jalapeno will sign such AFEs for such Taco 28-30 Fed Com wells to evidence its agreement to pool its interest and to participate in its pro rata share of the cost of drilling and completing the subject wells and will request a copy of the JOA. The JOA must be satisfactory to Jalapeno. However, even if the JOA is not satisfactory to Jalapeno, 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) and Jalapeno should be dismissed from such applications. Jalapeno's evidence will include data establishing that drilling of the proposed wells 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.

PROCEDURAL MATTERS

On December 14, 2018 (the date of the postmark on the envelope with a cover letter dated December 13, 2018) Apache mailed to Jalapeno well proposals and AFEs for Apache's Taco wells. For good faith negotiations Order No. R-13165 requires that such well proposals and AFEs be sent at least 30 days prior to filing a compulsory

pooling application. The amended compulsory pooling application in OCD Case No. 20171 was filed on or about December 12, 2018 based on the OCD website posting date. The compulsory pooling application in OCD Case No. 20202 has not been posted on the OCD website as of January 3, 2019 but a copy of it was mailed to Jalapeno on December 17, 2018 (the date of the postmark on the envelope with a cover letter dated December 17, 2018).

Therefore, Jalapeno requests a continuance of these two cases to a later date to allow it sufficient time to evaluate such well proposals and AFEs.

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 3rd day of January, 2019:

Earl E. DeBrine, Jr.
Zoe E. Lees
Modrall, Sperling, Roehl, Harris & Sisk, P.A.
P.O. Box 2168
Albuquerque, NM 87103-2168
edebrine@modrall.com
sel@modrall.com

Attorneys for Apache Corporation

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