

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

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

Case No. 15363

PRE-HEARING STATEMENT

Jalapeno Corporation and Yates Energy Corporation ("Jalapeno") provide this  
Pre-Hearing Statement as required by the rules of the Division.

APPEARANCES

APPLICANT

Matador Production Co.

ATTORNEY

James Bruce  
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Santa Fe, NM 87504  
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OPPONENT

Jalapeno Corporation  
Yates Energy Corp.

ATTORNEY

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Michael J. Condon  
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### STATEMENT OF THE CASE

Matador seeks an order pooling the interests of Jalapeno and others in four separate existing units the W/2 W/2 of Section 31 Township 18 South, Range 35 East, NMPM, in Lea County. Matador seeks to drill a horizontal oil well across the existing units in the Wolfcamp formation.

Jalapeno objects to the application on the following grounds:

- (a) Matador has not made a reasonable, good faith and sufficient effort to secure voluntary participation vis-à-vis Jalapeno;
- (b) Matador's AFE was compiled in March 2015. The market rates for drilling, for service companies, for completions and all related well costs have significantly decreased since that time. Matador's proposed costs for drilling the well are not market and are unreasonably excessive;
- (c) Matador's proposal is not economic in light of the drop in oil prices, and given the proposed well cost;
- (d) Matador cannot meet its burden to support its request for a 200% risk penalty under the facts;
- (e) Application of a 200% risk penalty will mean that the correlative rights of Jalapeno and other working interest owners will not be protected because they would forfeit their interest in the proposed well if they are force pooled;
- (f) By statute, §70-2-17, the Legislature has provided that the maximum risk penalty, i.e., the amount consenting owners can recover from nonconsenting owners, is 200%, which means the nonconsenting owner will relinquish his or her right to receive his or her share of production revenue until the consenting parties recover two times the

nonconsenting owner's share of expenses, and any order assessing a risk penalty should so stipulate;

(g) 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 applications and unlawfully imposed the burden of proof on an opponent of a compulsory pooling application to justify a different risk factor, 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;

(h) The Division lacks the authority under the current statutes, rules and regulations to approve Matador's compulsory pooling application for a requested project area non-standard oil spacing and proration unit that comprises four (4) complete, contiguous and existing 40 acre oil spacing units for a horizontal well in the Wolfcamp formation;

#### PROPOSED EVIDENCE

Jalapeno has requested voluntary production from Matador and has served a subpoena on Matador for documents related to the application. Undersigned counsel received some documents at approximately 2:45 p.m. on August 27 but Jalapeno has not had an opportunity to review them. Jalapeno reserves the right to amend and supplement this Statement once it has an opportunity to review Matador documents.

#### OPPONENT

##### WITNESSES

Harvey E. Yates III (landman)  
Harvey E. Yates, Jr.  
Mike Stewart (engineer)

##### EST. TIME

30 minutes  
1 hour  
1 hour

##### EXHIBITS

10 approx.  
10 approx.  
5 approx.

APPLICANT

WITNESSES

EST. TIME

EXHIBITS

**PROCEDURAL MATTERS**

Jalapeno will file a Motion to Dismiss challenging the Division's authority under NMSA 1978 § 70-2-17 to enter a force pooling order in this proceeding.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

By 

J.E. GALLEGOS

MICHAEL J. CONDON

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(505) 983-6686

*Attorneys for Jalapeno Corporation and Yates  
Energy 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 27<sup>th</sup> day of August, 2015.

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J.E. Gallegos