

STATE OF NEW MEXICO RECEIVED OGD
ENERGY, MINERALS AND NATURAL RESOURCES DIVISION
OIL CONSERVATION DIVISION 2015 AUG 28 P 3: 22

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

Case No. 15363

MOTION TO DISMISS APPLICATION FOR
NON-STANDARD OIL SPACING PROJECT AREA

Jalapeno Corporation and Yates Energy Corporation ("Jalapeno") by and through counsel the Gallegos Law Firm, P.C., requests that the New Mexico Oil Conservation Division enter its order dismissing this proceeding on the grounds that the Division has no authority under statute or rule to enter a force pooling order on Matador's application. The application seeks approval of a non-standard oil spacing unit comprised of four separate forty acre oil spacing units for a horizontal oil well testing the Wolfcamp formation. As grounds for this Motion, Jalapeno states as follows:

1. This case was filed by applicant Matador Production Company on July 21, 2015. Matador seeks approval of a non-standard oil spacing unit in the Wolfcamp formation comprised of four separate 40 acre oil spacing units comprising the W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 31, T-18-S, R-35-E, Lea County, New Mexico. Matador seeks to pool all mineral interest owners in order to drill the Airstrip 31 18 35 RN State Com. Well No. 201H to "a depth sufficient to test the Wolfcamp formation." However, Matador also seeks an order pooling "all mineral interests underlying the W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 33."

2. Jalapeno owns working interests affected by the compulsory pooling application and opposes this application.

3. As creatures of statute the Division and the Oil Conservation Commission are established by and their authority is limited to the enabling legislation as set forth in the New Mexico Oil and Gas Act, NMSA 1978 §70-2-1 et seq.; *Continental Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-1962, ¶ 11, 70 N.M. 301, 373 P.2d 809; *Marbob v. Oil Conservation Comm'n*, 2009-NMSC-13, ¶ 23, 146 N.M. 24.

4. While the New Mexico Legislature in NMSA 1978 § 70-2-17 has authorized compulsory pooling *within spacing or proration units*, it has not authorized compulsory pooling of project areas linking and crossing multiple, standard spacing units. The Division authority to allow force pooling reads as follows:

When two or more separately owned tracts of land are embraced within a spacing or proration unit, or where there are owners of royalty interests or undivided interest in oil and gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit, the owner or owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owner or owners have not agreed to pool their interests and where one such separate owner or owners, who has the right to drill, has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, shall pool all or any part of such lands or interests or both *in the spacing or proration unit as a unit*.

Emphasis added.

5. The lawful authority of the Division is related to pooling of interests in a spacing unit, be it a 320 acre gas unit or a 40 acre oil unit. Rule 19.15.15.11(B)(1) permits a non-standard spacing unit that is not less than 70 percent or more than 130 percent of a standard spacing unit.

6. A practice has arisen before the Division to consider force pooling applications seeking to combine four forty (40) acre oil spacing units into a 160 acre "project area." This practice has been entertained by the Division under the Special Rules for Horizontal Wells. Rule 19.15.16.15 NMAC. The Oil and Gas Act makes no

mention of or allowance for what the Division has entitled a "project area." There is no legislative grant of authority to create project areas for a horizontal well comprised of a combination of complete, contiguous spacing units. The Commission has previously ruled that combining complete, contiguous spacing units is in the nature of unitization and is not properly considered in the creation of a non-standard spacing unit. See Order No. R-13228-F (November 4, 2010).

7. The stacking of 40 acre oil spacing units implicates multiple complex issues of ownership, of reservoir inconsistencies, of royalty responsibilities, of conflicts in the owner or owner who has the right to drill, and other factors that must be systematically and thoroughly analyzed in order for the legislature to consider the industry and public interest in determining whether authorizing legislation should be enacted. The Division is and has been exceeding its statutory authority by its *ad hoc* approach to this highly important subject.

8. The Commission has adopted and required observance by the industry of its Rules establishing spacing units. In the case of a well in a defined oil pool the spacing unit shall consist "of approximately 40 contiguous surface areas substantially in the form of a square . . . ". Rule 19.15.15.9(A) NMAC. NMSA 1978 § 70-2-18(C) provides authority for the Division to establish nonstandard spacing units. The Commission has adopted and required observance of Rules governing nonstandard spacing units limiting, for example, a 40 acre oil spacing unit to a configuration of not less than 70 percent nor more than 130 percent of a standard spacing unit. Rule 19.15.15.11(B)(1) NMAC. The Special Rules for Horizontal Wells relied upon by Matador in this proceeding (19.15.16.15) are in conflict with the rules and procedures

set forth above governing spacing units and the provisions controlling nonstandard spacing units.

9. Moreover, the Commission has previously entertained an application by the Division to amend Rule 19.15.14.8 NMAC and Rule 19.15.16 NMAC to address and allow for non-standard spacing or proration units or special spacing or proration for horizontal wells. The Commission properly declined to do so because its authority "has not been clearly delineated by either judicial or Commission precedent." See Order No. R-13499 (January 23, 2012).

WHEREFORE, Jalapeno requests that the Division dismiss Matador's Application in this proceeding and for such further relief as it deems appropriate.

Respectfully submitted,

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By


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following counsel of record by electronic mail this 20th day of August, 2015.

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