

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

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IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION DIVISION FOR
THE PURPOSE OF CONSIDERING:

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

Case No. 15,363

MATADOR PRODUCTION COMPANY'S
RESPONSE IN OPPOSITION TO MOTION TO DISMISS

Matador Production Company ("Matador") submits this response in opposition to the Motion to Dismiss filed by Jalapeno Corporation ("Jalapeno") and Yates Energy Corporation ("Yates").

I. INTRODUCTION

Matador filed an application in this case seeking an order approving a 154.28-acre non-standard oil spacing and proration unit in the Wolfcamp formation comprised of Lots 1-4 (the W/2W/2) of Section 31, Township 18 South, Range 35 East, NMPM. Applicant further seeks the pooling of all mineral interests in the Wolfcamp formation (Airstrip-Wolfcamp Pool) underlying the non-standard spacing and proration unit for all Wolfcamp pools or formations developed on 40 acre spacing. The unit is to be dedicated to the Airstrip 31 18 35 RN State Com. Well No. 201H, a horizontal well with a surface location in Lot 4, and a terminus in Lot 1, of Section 31. Jalapeno owns a 2.76% working interest, and Yates owns a 4.48% working interest, in the non-standard unit.

Jalapeno and Yates have filed a motion to dismiss, asserting that the Division does not have authority under NMSA 1978 §70-2-17 to enter a forced pooling order for a non-standard unit comprised of four lots or quarter-quarter sections. The position of Jalapeno and Yates is completely without merit. The Division has both the statutory and legal authority questioned by Jalapeno and Yates, and furthermore to deny such authority would cause waste and impair correlative rights.

II. ARGUMENT.

A. The Division Has Statutory Authority To Compulsory Pool A Non-Standard Unit.

The New Mexico Legislature empowered the Division to "make and enforce rules, regulations and orders, and do whatever may be necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof." NMSA 1978 §70-2-11.A. The two corollary duties of the Division set forth in the statute are to "prevent waste" and "protect correlative rights," and to that end the Division has adopted rules regarding non-standard spacing units, horizontal wells, and compulsory pooling.

Jalapeno and Yates correctly cite NMSA 1978 §70-2-17.C, which allows compulsory pooling of a spacing or proration unit. In fact, the statute *requires* the Division to pool a well unit where all interest owners have not voluntarily joined in the well. The Legislature, in NMSA 1978 §70-2-17.A required the Division to, "as far as practicable to do so, afford the owner of *each* property, in a pool the opportunity to produce his just and equitable share of the oil and gas."

In addition, NMSA 1978 §70-2-18.C specifically grants the Division the authority to establish non-standard spacing units. Jalapeno and Yates incorrectly cite NMAC

19.15.15.11(B)(1), claiming that the regulation only allows non-standard units with acreage 70% to 130% of the size of a standard unit. However, in reality, that regulation clearly applies *only* to the authority of a Division district office to administratively approve a non-standard unit due to acreage variations in the public survey, and thus it is inapplicable.

B. New Mexico Courts Confirmed The Division's Authority.

Moreover, Jalapeno and Yates fail to cite current case law to shore up their motion. The relevant case law is set forth below.

First, the New Mexico Supreme Court held, in *Rutter & Wilbanks vs. Oil Conservation Commission*, 87 N.M. 286, 532 P.2d 582 (1975), that the Division has the authority to create non-standard spacing units larger than the standard unit for a particular pool, and pool all interests in the non-standard unit.

This ruling was first applied to horizontal well units in Case No. 13777, Division Order No. R-12682-A, entered on August 8, 2007, cited *Rutter & Wilbanks* to permit the formation of a non-standard spacing unit (comprised of 80 acres) for a horizontal well located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 21, Township 15 South, Range 36 East, NMPM, in Lea County. It also pooled all uncommitted interests in the non-standard unit. The Division and the Commission (with one exception) have followed that precedent for eight years, creating and pooling hundreds, if not more, horizontal non-standard spacing units.

Jalapeno and Yates cite Commission Order No. R-13499, entered on January 23, 2012, as support for the proposition that creation and pooling of horizontal non-standard spacing units is not allowed. That assertion is incorrect, for the following reasons:

1. Jalapeno appeared in Case No. 14744, resulting in Order No. R-13499, which adopted amended horizontal well rules. Jalapeno requested that compulsory pooling be

limited to spacing units for vertical wells. The Commission, in Conclusion of Law 79, stated:

Jalapeno Corporation's proposal to limit compulsory pooling for horizontal wells to spacing units already established for vertical wells, and only, and in all circumstances, should not be adopted.

Therefore, the primary case cited by Jalapeno and Yates does not support their position.

2. Subsequently, Commission Order No. R-13708-A, entered in Case No. 14966 on November 21, 2013, essentially adopted the reasoning in Division Order No. R-12682-A, and approved the creation and pooling of a 240 acre non-standard spacing unit. The Commission held in Conclusion 5 that:

The amended horizontal well rules do not restrict the lateral length of a horizontal well that may be drilled, or the size of a non-standard spacing unit for a horizontal well which may be compulsory pooled.

See also Division Order No. R-13425-A.

3. NMAC 19.15.16.15, the special rules for horizontal wells, specifically permit compulsory pooling of horizontal well units.

Jalapeno and Yates rely on an order that is both *sui generis* and easily distinguishable from the facts of Matador's case. Commission Order No. R-13228-F, entered in Case Nos. 14418 and 14480 on December 20, 2010, denied the pooling of two 160 acre horizontal well units; "under the facts," namely, evidence that each quarter-quarter section would not be equally productive and would therefore impair correlative rights. Jalapeno and Yates cannot rely on this order because it is *sui generis*, or "the only one of its own kind." **Black's Law Dictionary, 4th Rev. Ed.** Furthermore, the facts in the case at hand are easily distinguishable, and the evidence will show that each quarter-quarter section will be equally productive. The reasoning in Order No. R-13228-F was never used by the Division, and has been superseded by subsequent

Commission Order No. R-13708-A, which concluded, as noted above, that "the amended horizontal well rules do *not* restrict the lateral length of a horizontal well that may be drilled, or the size of a non-standard spacing unit for a horizontal well which may be compulsory pooled.

C. Preventing Waste.

The primary duty of the Commission and the Division is to prevent waste. NMSA 1978 §§70-2-2, 1J. Horizontal drilling has been a boon to the oil and gas industry and the economy. Although horizontal wells are more expensive than vertical wells, horizontal drilling enables interest owners to increase recovery from a reservoir and thereby prevent waste. Other than, possibly, re-completions of deeper wells, few, if any, vertical Wolfcamp wells are being drilled in New Mexico. If compulsory pooling of horizontal non-standard spacing units is denied, horizontal drilling to test the Wolfcamp and several other formations will be stifled, and reserves will be left in the ground. The effect of agreeing with Jalapeno's and Yates' argument would be to inhibit horizontal drilling and cause waste.

D. Protecting Correlative Rights.

Jalapeno and Yates ask that the Division dismiss Matador's application, and therefore inhibit its ability to drill and complete horizontal wells testing the Wolfcamp formation. To grant their request would impair the correlative rights of other interest owners in the spacing unit and impair development of natural resources.

III. Conclusion.

Creation of non-standard spacing units for the purpose of drilling horizontal wells, and compulsory pooling of interest owners in the unit, are authorized by statute, court cases, Division regulations, and Division and Commission case law. The motion to dismiss has no statutory or legal basis and must be denied.

WHEREFORE, Matador requests the Division to enter an order denying Jalapeno's and
Yaies' motion to dismiss.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served on the following
counsel of record this 21st day of August, 2015 via e-mail.

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