MODRALL SPERLING

LAWYERS

RECEIVED OCD

2015 OCT 20 P 12: 50

Jennifer L. Bradfute
505.848.1845
Fax: 505.848.1882
jlb@modrall.com

October 20, 2015

Via Email & U.S. Mail
florene.davidson@state.nm.us
Florene Davidson
Oil Conservation Division
New Mexico Department of Energy, Minerals and Natural Resources
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

Re: Application of Matador Production Company, Case No. 15366

Dear Ms. Davidson:

Transmitted herewith for filing is Matador Production Company's Reply In Support of Its Motion to Quash Entry of Appearance in the above-referenced case. I am also sending the same to you today by First Class U.S. mail.

Thank you for your assistance. Please contact me if you have any questions.

Sincerely,

Jennifer L. Bradfute

Enclosures
cc w/encl.: J.E. Gallegos
Earl E. DeBrine, Jr.

Modrall Sperling
Roehl Harris & Sisk
P.A.

Bank of America
Centre
500 Fourth Street
NW
Suite 1000
Albuquerque,
New Mexico 87102

PO Box 2168
Albuquerque,
New Mexico
87103-2168

Tel: 505.848.1800
www.modrall.com

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

RECEIVED OCD
2015 OCT 20 P 12:50

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

CASE NO. 15366

MATADOR PRODUCTION COMPANY'S REPLY IN SUPPORT OF ITS MOTION TO QUASH ENTRY OF APPEARANCE

Matador Production Company ("Matador") submits this reply in support of its Motion to Quash the Entry of Appearance filed on September 25, 2015 by Amtex Energy, Inc. ("Amtex") and William Savage. In the Response to Motion to Quash filed by Amtex and Mr. Savage, Mr. Savage withdrew his entry of appearance and concedes that he is not an affected party that was entitled to notice under the NMOCD rules. *See* Response, 2 n.1.

INTRODUCTION

Amtex is an experienced operator in New Mexico, and has previously filed applications with the Division. As a result, Amtex is familiar with New Mexico's hearing and notice procedures. Nonetheless, Amtex failed to enter an appearance or request an appearance in Case No. 15366 before the Division's hearing. As a result, Amtex's Entry of Appearance should be stricken from the record and Amtex should not be allowed to seek an appeal of the Division's order.

Furthermore, Amtex's arguments concerning the substance of Matador's application are without merit. While Amtex contends that it is challenging Matador's application on purely legal grounds, and not technical issues, it has failed to point to any authority which actually

supports its objections. As discussed below, Matador followed the Davison's rules by properly filing an application for compulsory pooling. In doing so, Matador spent several months trying to communicate with Amtex about the well proposal for the Cimarron State 16-19S-34E RN #133H well. Amtex, however, did not response to any of these efforts and instead waited several weeks after the September 3rd hearing to file an Entry of Appearance. Now Amtex seeks to forum shop by completely circumventing the Division's hearing process in order to take its objections directly to the Commission in the first instance. This is not the appellate process contemplated by the Division's rules and Amtex's tactics will set a troubling precedent for future cases.

ARGUMENT

I. AMTEX'S ARGUMENTS AND WITHOUT MERIT AND SUPPORT THE GRANTING OF MATADOR'S MOTION

A. Matador is Properly Seeking Compulsory Pooling, Pursuant to NMSA (1978) § 70-2-17 and the Division's Rules

Amtex's argument that Matador is not entitled to compulsorily pool the W/2 E/2 of Section 16 without first obtaining voluntary agreements from party of working interest owners in the south half of the project area is without merit, and Amtex fails to cite any authority which supports this position. In *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 1975-NMSC-006, ¶ 15, 87 N.M. 286, 289, the New Mexico Supreme Court held that "it would be absurd to hold the Commission does not have authority to pool separately owned tracts within an oversize non-standard spacing unit."

Amtex also misrepresents the evidence and testimony in the record from the September 3rd hearing. At that hearing, Matador fully disclosed the ownership of the project area. Jonathan Filbert specifically testified that Matador is seeking to establish a project area, in which the north

half is currently owned by Matador and that the south half is owned by Amtex Energy, Stewart Royalty, Mark Trieb and Philp Vogel. *See* Hearing Transcript, 8:12-16. A summary of these working interests was also provided in Exhibit 2 presented at the hearing. Exhibit 2 clearly explains that Amtex owns 46.4% of the working interests in the proposed proration unit and would receive its share of production as a forced pooled working interest owner. Thus, it is unclear why Amtex is arguing that this information was not presented to the Division.

Furthermore, Section 70-2-17 of the Oil and Gas Act specifically vests the Division with authority to establish "proration units" and issue compulsory pooling orders for development within lands located with a "spacing or proration unit." NMSA (1978), § 70-2-17. In doing so, Section 70-2-17 does not require operators to own an interest in every tract within the spacing unit or proration unit being pooled.

Rule 19.15.16.15(F) NMAC mirrors the requirements of Section 70-2-17(C) and states that "[i]f a horizontal well is dedicated to a project area in which there is more than one owner of any interest in the mineral estate, the operator of the horizontal well shall cause the project area to be consolidated by voluntary agreement or, if applicable, compulsory pooling before the division may approve a request for form C-104 for the horizontal well." Matador's application complies with these requirements because it is seeking to consolidate the project area for the Cimarron State 16-19S-34E RN #133H well.

Rule 19.15.16.15(A) also instructs that compulsory pooling is appropriate when an operator has not received consent from an owner or lessee in each tract where the horizontal well is located. That rule states:

> An operator shall not file an application for permit to drill nor commence drilling of a horizontal or directional well until the operator has either:
>
> (1) received the consent of at least one lessee or owner of an unleased mineral

interest in each tract (in the target pool or formation) in which any part of the well's completed interval will be located; or

(2) obtained a compulsory pooling order from the division.

Rule 19.15.16.15(A) (emphasis added). The above language indicates that pooling is the proper procedure to follow when an operator does not receive consent from at least one lessee or owner in each tract within a project area for a proposed horizontal well. As a result, Matador's application complies with the Division's rules.

B. The Division May Compulsorily Pool Interests for the Development of Horizontal Wells.

The Division and the Commission have both rejected Amtex's argument that the Division lacks authority to pool interests for the development of horizontal wells. *See* Division Order No. R-14053; Commission Order No. R-13708-A. In Commission Order No. R-13708-A, the Commission found that "[t]he 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 pooled. Commission Conclusions, ¶ 5. As a result, the Commission concluded in Order R-13708A that it was appropriate to pool interests when pooling would prevent waste and the drilling of unnecessary wells.

Furthermore, the primary responsibility of the Division is to prevent waste. *See, e.g.*, NMSA (1978), §§ 70-2-2, 11. The development of horizontal wells has significantly increased the recoverable reserves that would otherwise be left behind by vertical development, while reducing the number of wells needed to recover the resources and significantly reducing the environmental footprint created by oil and gas development. Furthermore, the Division has authorized compulsory pooling for numerous horizontal wells within the state. If compulsory pooling of horizontal wells on non-standard spacing units is determined to be improper by the

Commission, the results of those cases will be called into question, and significant legal uncertainty will exist within the New Mexico oil and gas industry.

In Sections 70-2-17 and 70-2-11, the Legislature vested Division with authority to create the rules for spacing and proration units. *Rutter & Wilbanks Corp.*, 1975-NMSC-006, ¶ 6. This authority is not limited to the creation of standard proration units for vertical wells. Instead, the Division is empowered generally to pool interests located in spacing and proration units, including non-standard spacing units and project areas for horizontal wells. *See* NMSA (1978) § 70-2-11 (empowering the Division with authority to "make and enforce rules, regulations and orders, and do whatever may be necessary to carry out the purpose of" the Oil and Gas Act.). In its application, Matador is seeking the establishment of a non-standard spacing unit for the well. As a result, in the event Matador's application is granted, the interests will be pooled in a single spacing unit.

C. The Commission has Determined that a 200% Risk Penalty is Proper.

Amtex presents an unsupported argument that the 200% risk penalty is inappropriate. In doing so, Amtex again misstates that Matador failed to provide testimony about an offset well – the Cimarron State 16-19S-34E RN 134H. A structure map showing the location of the 134H well was presented at the hearing in Exhibit 6. Jeron Williamson also testified for Matador about the production form the 134H well. While Matador did not present its actual production data filed with the Division for the 134H well, that information was not relevant to the application. In Rule 19.15.13.8(A), the Commission has already determined that a presumptive 200% risk penalty is appropriate unless a person who files a "timely pre-hearing statement" presents relevant geologic or technical evidence on the record at the Division hearing. *See* 19.15.13.8 NMAC. Amtex obviously did not file a timely pre-hearing statement and waived its opportunity

to object to a 200% risk penalty. More importantly, Amtex has not proffered any evidence in response to this motion which supports its position, and it has instead stated in the Response that it plans on raising purely legal positions before the Commission in a *de novo* appeal. Response, 6 ("Amtex is raising legal issues, not technical issues, concerning Matador's application"). As a result, it is clear that this argument is merely a red herring.

D. Matador Properly Notified the Affected Parties.

Finally, Amtex misleadingly argues that Matador failed to give notice to an overriding royalty owner, Sally Meader Roberts. Rule 19.15.4.12(A)(1) and (3) NMAC contains the notice requirements for Matador's application. Neither of those rules state that Ms. Roberts was entitled to notice. In fact, 19.15.4.12(A)(1) specifically states that royalty owners are not entitled to notice of pooling applications when there is a pooling or unitization clause included in the instrument creating their interest. Exhibit B to Amtex's response clearly shows that Ms. Robert's overriding royalty contains a pooling clause. As a result, Ms. Roberts was not entitled to notice of the application.

II. MATADOR'S MOTION IS APPROPRIATE AND SHOULD BE GRANTED BY THE DIVISION

Amtex claims that Matador does not have authority to file a motion to quash in this case because there is not specific agency rule which addresses the filing of motions to quash. However, the Division's rules do not include information about a verity of motions which are typically filed and heard by the agency. For example, motions to dismiss are not addressed in the Division's rules. However, motions to dismiss have been filed by Amtex's counsel and heard by the Division. *See, e.g.*, Case No. 15363, Motion to Dismiss Application for Non-Standard Oil Spacing Project Area. There is no reason why Matador's motion should be treated differently.

More importantly, Amtex admits that it received proper notice of Matador's application and that it failed to participate in the hearing held on September 3, 2015. By its own admission, Amtex is an experienced operator in New Mexico which has previously filed applications with the Division and it is familiar with New Mexico's hearing and notice procedures. *See* Case Nos. 13189, 14618, and 14988. As a result, Amtex has failed to state a good cause for its failure to participate in the September 3rd hearing.

III. AMTEX IS NOT ENTITLED TO APPELLATE REVIEW OF THE DIVISION'S DECISION BECAUSE IT FAILED TO PARTICIPATE IN THE UNDERLYING HEARING

In the Response, Amtex fails to cite to a single Division or Commission Case in which a party was allowed to file a *de novo* appeal to the Commission without first participating in the underlying hearing being appealed. Instead, Amtex relies solely on Rule 19.15.4.10(B), which allows entries of appearance to be filed at any time. In doing so, Amtex completely overlooks the effect of Rule 19.15.4.10(C) NMAC, which states that a party who has not entered an appearance at least one business day prior to the pre-hearing statement filing date "shall not be allowed to present technical evidence at the hearing unless the commission chairman or the division examiner, for good cause, otherwise directs." 19.15.4.10(C) NMAC. The intent of Rule 19.15.4.10(C) NMAC would be completely circumvented if someone who received notice of the hearing fails to appear, but then shows up later and attempts to appeal the Division's order.

There is simply no point to having a deadline to present evidence at Division hearings if parties can circumvent this requirement by waiting to file and entry of appearance and then request *de novo* review. Indeed, the New Mexico Courts have long-held that statutory and regulatory provisions should not be construed in a way that would render one of the provisions superfluous. *See, e.g., Romero v. Laidlaw Transit Servs.*, 2015 N.M. App. LEXIS 85, *10-11

(N.M. Ct. App. July 31, 2015) (slip opinion). Furthermore, Amtex's tactics will merely encourage individuals to forum shop and when advantageous avoid Division hearings all together. Thus, allowing parties to circumvent the Division's hearing process by taking their argument directly to the Commission in the first instance. This is not the intent of the Division's rules.

Finally, Amtex argues that any party of record adversely affected by the decision of the Division may appeal to the Commission. Amtex, however, failed to preserve any arguments on the record and, as a result, Amtex has not made any showing under 70-2-13 that it is adversely affected by Matador's application. Matador, on the other hand, was unaware of Amtex's objections and incurred substantial expense in presenting its case to the Division and had begun working on scheduling rigs and drilling equipment for the proposed well. Amtex's purposefully delayed entry of appearance has already caused Matador to incur unnecessary expense and the Division should not enable Amtex to cause additional delay and unnecessary expense by recognizing it's Entry of Appearance.

CONCLUSION

For the foregoing reasons, Matador Production Company respectfully requests that the Division quash or strike the Entry of Appearance filed on September 25, 2015 by Amtex Energy, Inc.

Respectfully submitted,

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By: _____
Earl E. DeBrine, Jr.
Jennifer Bradfute
Post Office Box 2168
Bank of America Centre
500 Fourth Street NW, Suite 1000
Albuquerque, New Mexico 87103-2168
Telephone: 505.848.1800
Attorneys for Applicant

WE HEREBY CERTIFY that a true and correct copy of the foregoing pleading was mailed to the following counsel of record this 20th day of October, 2015:

J.E. Gallegos
Gallegos Law Firm PC
460 Saint Michaels Dr. #300
Santa Fe, NM 87505-7687

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By: _____
Jennifer L. Bradfute