

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

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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 (de novo)  
Order No. R-14053  
Order No. R-14053-B

**PRE-HEARING STATEMENT**

Jalapeno Corporation ("Jalapeno") provides this Pre-Hearing Statement for the  
de novo Commission hearing as required by the rules of the Commission.

**APPEARANCES**

**APPLICANT**

Matador Production Co.

**ATTORNEY**

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**OPPONENT**

Jalapeno Corporation

**ATTORNEY**

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### STATEMENT OF THE CASE

Matador obtained an order from the Division pooling all the uncommitted interests of Jalapeno and others in four separate existing 40 acre oil units into a 154.28 acre project area being the W/2 W/2 of Section 31 Township 18 South, Range 35 East, NMPM, in Lea County. By division Order R-14053-B the non-standard spacing unit will be dedicated to the Airstrip 31 18 35 RN State Com No. 20H. The project area consists of the Wolfcamp formation.

Pursuant to NMSA §70-2-13 Jalapeno exercises its rights to have the matter heard *de novo*. The application should be denied.

1. The Commission 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. Owners of the separate existing spacing units will be precluded from operating and developing their leases and suffer loss of correlative rights.

2. True good faith effort to obtain voluntary agreement did not take place in this case and typically does not occur as a matter of routine for small interest owners in horizontal well completion pooling applications. Operator applicants' economics are benefited at the cost of the nonconsenting owners by reason of the 200% risk charge, so applicants have a disincentive to obtain agreement.

3. Matador cannot meet its burden to support its request for a 200% risk penalty under the facts concerning geology, operations and the reservoir. Matador technical evidence in behalf of seeking approval of compulsory pooling and the

evidence to be presented by Jalapeno demonstrates there is no risk, or minimal risk, associated with the proposed well.

4. Application of a 200% risk penalty will mean that the correlative rights of Jalapeno and other working interest owners are unprotected and their interest in the proposed well will never be returned (payout) if they are force pooled and subject to such penalty.

5. The Permian Basin nonconventional shale plays developed by horizontal wells present a dependable low risk, reasonable return investment. The economics of the majority owner-operator are enhanced by the revenue attributable to the interests of the pooled nonconsent owners.

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 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.

7. Installation of surface production facilities occurs after an operator has completed a producing well. There is no risk assignable to such construction. Industry standard Joint Operating Agreements ordinarily place no risk penalty on non-consent owners for the cost of such facilities. Imposition of a risk penalty on such charges is not authorized by NMSA 1978 § 70-2-17(C).

### **PROPOSED EVIDENCE**

Jalapeno will present evidence that combines evidence presented by Matador at the Division hearing with that of witnesses and exhibits in its own behalf on the subject of the violation of non-consent owners' correlative rights and the lack of risk associated with drilling the subject well as more specifically described above. The evidence will include information from Matador's public presentations. The evidence to be presented is more fully demonstrated by Jalapeno's exhibits served with this Pre-Hearing Statement.

### **OPPONENT**

<u>WITNESSES</u>	<u>EST. TIME</u>	<u>EXHIBITS</u>
Harvey Yates (operator/(landman)	1 hour	5 approx.
Emmons Yates (practical oil man/landman)	1 hour	5 approx.
Maurice P. Gaddis, Jr., P.E.	1 hour	10 approx.

### **PROCEDURAL MATTERS**

Jalapeno reserves and reasserts the subject of its Motion to Dismiss challenging the Division's authority under NMSA 1978 § 70-2-17 to enter a force pooling order in this proceeding and seeking a declaration of the operation of the risk penalty provisions of § 70-2-17(C). That motion was heard by the Commission on August 25, 2016.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

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*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 30<sup>th</sup> day of August, 2016.

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