

**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  
Order No. R-14053-E**

**APPLICATION FOR REHEARING**

Jalapeno Corporation ("Jalapeno"), by and through counsel, and pursuant to NMSA 1978 § 70-2-25(A) and Rule 19.15.4.25 NMAC, requests that the New Mexico Oil Conservation Commission ("Commission") rehear this matter as to all issues raised by Jalapeno during the course of these proceedings and decided by Commission Order R-14053-E, signed on November 10, 2016.<sup>1</sup> As grounds for this Application, Jalapeno states as follows:

**Introduction**

1. Matador Production Company ("Matador") filed this force pooling application 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/2 W/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."

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<sup>1</sup> Jalapeno did not have an opportunity to comment on the Matador proposed order. Jalapeno believes the Order was actually entered after November 10. As of November 14, 2016, the Order was not posted online. Jalapeno counsel did not receive a copy until November 15, 2016. The Order was posted online shortly thereafter.

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

3. This case was before the Commission on the parties' applications for de novo hearing from orders R-14053 and R-14053-B entered by the Oil Conservation Division.

4. Jalapeno moved to dismiss Matador's application on the grounds that the Commission has no authority under statute or rule to enter a compulsory pooling order on Matador's application because the Commission's pooling authority under NMSA 1978 § 70-2-17 is limited to circumstances involving a single spacing unit. Jalapeno also raised challenges regarding Commission Rule 19.15.13.8(A) NMAC. The rule is contrary to Section 70-2-17 in creating a presumption of a 200% risk penalty, relieving the applicant of the burden of supporting its request, and imposing on a person responding to the application the burden to justify a different risk charge based on relevant geologic or technical evidence. Finally, Jalapeno challenged the Commission's definition of well costs in Rule 19.15.13.8(B) upon which a risk penalty can be assessed as contrary to and in excess of the Commission's authority as set forth in Section 70-2-17.

5. Matador's application was heard by the Commission on September 6, 2016 and October 17, 2016. The Commission entered its Order R-14053-E on November 10, 2016. The Commission denied Jalapeno's Motion to Dismiss and Declare the Rights and Obligations of Parties in a Pooling Application Under NMSA 1978 § 70-2-17. The Commission approved Matador's compulsory pooling application for the entire Wolfcamp formation even though Matador only presented evidence concerning the productive nature of the upper Wolfcamp (Wolfcamp A) well. The

Commission upheld Rule 19.15.13.8(A). The Commission approved a risk penalty of 150% of the "well costs," but stated that "in this case, well costs will not include equipping the well for production." The Commission's decision nevertheless affirms its definition of well costs in Rule 19.15.13.8(B).

## **ARGUMENT**

### **A. The Commission's Risk Penalty Assessment Is Arbitrary And Capricious And Not In Accordance With The Law.**

6. The Commission assessed a 150% risk penalty in this case, but failed to provide the parties with a cogent explanation for how it arrived at that figure. The Commission merely noted that there are risks involved in drilling and completing the well, that the risk should be reduced for operational and geologic reasons, and that the well was properly classified as a wildcat well. The Order does not reflect how the Commission arrived at the 150% penalty.

7. The Commission did not identify the evidence of risk or the methodology upon which it based that determination. No witness offered testimony supporting a 150% risk penalty. To the extent Matador witnesses supported a 200% risk penalty, the testimony was conclusory and untethered to any methodology. There was no geologic or technical evidence supporting a 150% risk penalty.

8. The Commission has statutory authority in its discretion to include a risk penalty "for the risk involved in drilling of such well." Section 70-2-17. The Commission has never adopted specific rules concerning the factors for determining risk except to provide that justification for a risk charge should be based on "relevant geologic or technical evidence." Rule 19.15.13.8(D). Consequently, the parties to a force pooling

proceeding where the risk penalty is challenged do not know what standard the Commission will employ.

9. Because the Commission has never clearly articulated what is "risk" nor a risk penalty standard, the parties provided various risk assessments. Jalapeno provided evidence based on a strict reading of Section 70-2-17 addressed to the risk in drilling the proposed well. That evidence showed that in a four township area surrounding the Airstrip 31 well, 102 horizontal wells were successfully drilled, with one dry hole and one well lost in drilling. That evidence supported a risk penalty of around 2%.

10. Jalapeno also presented evidence on the Stogner factors which the agency has used in past risk penalty assessments. That method divides risk into operational, geologic and reservoir categories. Jalapeno's expert assigned the risk at 20% to 30% using these factors.

11. Jalapeno finally presented evidence on payout as a determining risk factor. Payout is a factor used by the Texas Railroad Commission in risk assessment and has been cited as a factor the Commission considered in earlier years.<sup>2</sup> A force pooler has no remaining risk once payout is achieved.

12. Jalapeno presented evidence that the maximum risk penalty based on the risk of not achieving payout was approximately 33%, when considering the 104 horizontal wells drilled in the four surrounding townships. It presented further evidence that the risk of not achieving payout is between 12 ½ to 25% based on studies showing

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<sup>2</sup> 6 Williams & Meyers Oil and Gas Law, §905.2 p. 25 observes in an address to the Mineral Law Section of the Texas Bar Association in 1962, Daniel S. Nutter, then Chief Engineer of the New Mexico Oil Conservation Commission, which recognized that the statute originally authorized a 50% maximum risk penalty and affirmed that the Commission considered payout risk "judged by the Commission in terms of known reserves in the area, productivity of offsetting wells, current and expected demand as related to anticipated income from the well, and the time necessary to obtain a pay-out."

the successful completions by Matador and others in the Wolfcamp formation, often in wells distant from existing production, and the completion history of other horizontal Wolfcamp wells.<sup>3</sup>

13. Matador represented that its probability of success for the Airstrip well was only 9.375%. M. Ex 24. Success was defined as producing 400,000 barrels of oil. However, nothing in Section 70-2-17 or the Commission's rules provides that a risk penalty should be assessed based on a force pooling applicant's arbitrary determination of success based on an internal production standard. There was no evidence that it would actually take 400,000 barrels to achieve payout, and evidence actually demonstrated that payout would occur for an average Wolfcamp horizontal well at between 250,000 and 275,000 barrels.

14. The Commission has failed to provide guidance to the industry by way of workable standards. The presentations in this case highlight the problem caused by the Commission's failure to specify the risk for which it seeks to compensate a force pooler and the methodology it applies to assess that risk. The resulting assessment of a risk penalty untethered to geologic or technical data becomes subjective guess work, which amounts to arbitrary and capricious decision making.

**B. The Commission's Order Violates Jalapeno's Correlative Rights So Is Contrary To The Commission's Statutory Mandate.**

15. Jalapeno owns a 5.0005% working interest in the proposed spacing unit for development of the Airstrip well in the Wolfcamp formation. M Ex 4. The evidence introduced by Matador is that the cost to drill, complete and equip the well is estimated to be \$6,486,427. M Ex 16A. Matador expects the ultimate recovery from the well to be

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<sup>3</sup> Mr. Yates testified when asked that the 33% risk charge was appropriate, and that give proximity issues, he would not object to a 66% risk charge.

350,000 to 400,000 barrels of oil. Frost Tr. 138. Matador's criteria for a successful well is an EUR of 400,000 barrels of oil. M Ex 23.

16. The undisputed proof demonstrated that if Jalapeno's interest is subjected to a 150% risk penalty, Jalapeno will receive no share of revenue for its mineral interest. Its correlative rights will be permanently expropriated. Reference is made to J Ex 6<sup>4</sup> for cases assuming a net well cost of \$6 million and an estimated recovery of 441,384 BOEQ. The 150% risk penalty announced by the Commission more than guarantees Jalapeno will likely never receive any of its working interest share of the oil and gas produced by the subject well.

17. The entire purpose, function and duty of the Division and of the Commission is "to prevent waste . . . and to protect correlative rights . . .". NMSA §70-2-11(A). Correlative rights are defined by statute in Section 70-2-33:

H. "correlative rights" means the opportunity afforded, so far as to it is practicable to do so, to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas or both in the pool, being an amount, so far as can be practicably determined and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas or both under the property bears to the total recoverable oil or gas or both in the pool and, for such purpose, to use his just and equitable share of the reservoir energy;

18. The very authority of the Commission to act on the subject application depends on the exercise of its duty to protect the correlative rights of each interest owner. *Continental Oil Co. v Oil Conservation Commission*, 1962-NMSC-062, ¶¶ 11, 27, 70 NM 310, 373 P.2d 809 (1962).

The commission has jurisdiction over matters related to the conservation of oil and gas in New Mexico, but the basis of

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<sup>4</sup> A copy of Jalapeno Ex. 6 is attached hereto.

its powers is founded on the duty to prevent waste and to protect correlative rights.

...

Our legislature has explicitly defined both "waste" and "correlative rights" and placed upon the commission the duty of preventing one and protecting the other. . . . However, as we have said, certain basic findings must be made before correlative rights can be effectively protected.

19. In *Continental Oil*, the Court struck down the Commission's change of the Jalmat Gas Pool proration formula due to the lack of findings necessary to insure that correlative rights were protected. *Id.* at ¶ 11.

20. Legally and logically the Division's and Commission's authority under the force pooling statute to set a risk penalty is constrained by its duty to prevent waste and to protect correlative rights. The duty to protect correlative rights is mandatory. The award of a risk penalty is discretionary. The agency ". . . may include a charge for the risk involved in the drilling of such well . . ." 70-2-17(c). *Viking Petroleum v. Commission*, 1983-NMSC-091, ¶21, 100 NM 451, 455, 672 P.2d 280 (1983) ("[T]he percentage risk charge to be assessed, if any, are determinations to be made by the Commission on a case-to-case basis and upon the particular facts in each case.")

21. The policy behind the risk penalty assumes that a non-consenting party's realization of his correlative rights is not permanently lost, but postponed temporarily. As the Court noted in *Nearburg, Yates Petroleum Corp.*, 1997-NMCA-069 ¶¶ 16, 17, 123 N.M. 526, 533, 943 P.2d 560, reviewing operating agreement non-consent provisions:

The parties have agreed to reward risk-taking which benefits mutual interests by **temporarily reallocating interests in production** until the party electing to assume the risk has received an agreed-upon return on its investment.

\* \* \*

The covenant is the agreement by the non-consenting party to **temporarily relinquish the specified amount of its interest** in production in exchange for the consenting party bearing the risk of the operation.

Emphasis added.

22. The Commission Order does not even acknowledge the correlative rights issue in this case. The Commission offers only the conclusory statement that approval of the application "will not impair correlative rights." Substantive evidence is the contrary. The Order does not explain how Jalapeno's correlative rights are protected where Jalapeno permanently loses its right to produce its just and equitable share of hydrocarbons if it chooses to go non-consent. In fact those rights are violated by the Commission's Order.

23. This case highlights an ongoing issue with Division and Commission orders which rubberstamps a 200% risk penalty which permanently divests non-consenting working interest owners of their right to produce their just and equitable share of hydrocarbons. The Commission does not even deem it necessary to enter specific findings and conclusions on the issue. Even if the 150% risk penalty were justified by geologic or technical evidence, which is denied under these facts, the Commission's assessment of a 150% risk penalty which permanently divests Jalapeno of its working interest is contrary to its mandate to protect correlative rights, and is invalid.

#### **C. The Wildcat Designation Does Not Support The 150% Risk Penalty.**

24. Matador's witnesses repeatedly referred to the well as a "wildcat", and the Commission adopted that characterization and appears to have based its risk penalty on that characterization. Yet, the quantum of risk could have been substantially, if not



entirely eliminated had Matador drilled a pilot hole. Matador geologist Edmund Frost testified:

Q. Okay. And how do you normally, typically obtain the data so that you can deal with that screening criteria?

A. Yeah. So in -- in -- I'll present you two cases for that. One would be -- in the ideal case, you would drill a pilot hole. You would take rotary sidewalls. You would run advanced suite logs.

TR. 118:23 -- 119:4.

Q. Okay. You know that the areas that lack information, do not have answers, all of that could be addressed by a pilot hole and running a suite of modern logs; isn't that true?

A. It is. We feel like we have enough confidence in this that that is an additional capital expenditure that in this time of low cost, it's hard to justify.

TR 137:8 -- 14.

-- I'd love to have a pilot hole, but, honestly, that's not always the case. Out of all the wells that Matador drills, I can think of probably four or five pilot holes that we have drilled. Matador does a very good job of de-risking prospects without pilot holes.

TR 138:3-8

A. ... So we do drill them. A lot of times we feel we can de-risk and make pretty good wells without it. So, again, it's a give-and-take. I mean, I go into the president's office, and he knows I want a pilot hole at all times. So --

TR 152:18 -- 22

25. Matador reservoir engineer Bradley Robinson when asked about drilling a pilot hole testified:

I did not have opposition to that idea ... We made the decision, as a management team, to go ahead and drill the well instead of drilling the pilot hole and spending the money for the data, and I was part of that decision and agreed with it. Although I would have liked to have seen a pilot hole, I didn't think it was absolutely necessary.

26. Matador's testimony on this issue refutes the need for a risk penalty for two reasons. First, Matador has thereby conceded that its ability to identify good prospects and to "derisk" prospects is sufficiently developed that it has chosen to drill the Airstrip well without drilling a pilot hole despite its characterization of the well as a wildcat well. If Matador feels sufficiently secure in drilling the Airstrip well without taking an industry-recognized precaution, it should not be rewarded with a high risk penalty.

27. Second, Matador seeks a risk penalty even though it has the ability to eliminate that risk by drilling a pilot hole. By choosing not to take steps to eliminate the risk, Matador has failed its duty to mitigate its risk. Nevertheless, it asks the Commission to insure it through the risk penalty at Jalapeno's expense. An applicant should not be heard to seek a risk penalty where it fails to take industry-recognized steps which could reduce that risk.

28. Matador's strategy is to label the proposed well as high risk and seek the maximum 200% risk penalty. The alternative was to proceed prudently concerning a step-out well and prove the lack of risk. Matador is in fact confident the well will be successful but at the same time wants to functionally acquire Jalapeno's interest through the risk penalty device.

**D. Rule 19.15.13.8 NMCA Improperly Establishes A Presumptive 200% Penalty.**

29. The Commission erred in affirming Rule 19.15.13.8(A). The rule is invalid to the extent it creates a presumption of a 200% risk penalty without the need for an applicant to provide supporting evidence, and by reversing the burden of proof which should be on Matador as the force pooling applicant. This issue was raised by

Jalapeno's Motion to Dismiss and Declare the Rights and Obligations of Parties in a Pooling Application Under NMSA 1978 § 70-2-17 and its Reply in Support thereof.

30. The Commission by Rule 35 (19.15.13.8 NMCA) has transformed the statutory "may include a charge for the risk" to a mandatory shall do so and at the maximum 200%. The result is the party seeking to force pool is awarded the maximum 200% penalty without evidentiary justification. The rule also improperly puts the burden on a party opposing a force pooling application to support a risk penalty less than 200%.

31. The Division and the Commission have adopted a practice which provides a financial windfall to horizontal shale operators through imposition of the automatic 200% risk penalty while violating the correlative rights of nonconsenting owners like Jalapeno. The Commission's authority to process any force pooling application is two pronged: (1) Avoidance of waste. (2) Protection of correlative rights. The Airstrip well will be completed so there is no question of waste. But the Commission's other foundation of jurisdiction, protection of correlative rights, is absent. In *Continental Oil* the Supreme Court foresaw such a disregard for correlative rights as a threat that "the Commission would be performing a judicial function, i.e., determining property rights, and grave constitutional problems would arise." 1962-NMSC-062, ¶ 28, 70 N.M. at 324.

32. The order assessing a 150% risk penalty does not cure the invalidity of the rule. The issue of the invalidity of Rule 19.15.13.8 remains viable and justiciable even though Jalapeno submitted evidence on the proposed risk penalty, and the Commission decided under the facts of this case to award a risk charge of less than 200%.

**E. Rule 19.15.13.8 Is Invalid In Approving A Risk Penalty On Costs Of Equipping A Well For Production.**

33. The Commission erred in approving the continued validity of Rule 19.15.13.8 in authorizing a risk penalty to be charged on "well costs," which includes "the reasonable costs of . . . equipping the well for production." By authorizing a risk penalty on the costs of equipping the well for production, the Commission exceeded the authority granted by the Legislature in § 70-2-17. The grounds for this challenge are set forth in Jalapeno's Motion to Dismiss and Reply Brief in Support of Motion to Dismiss filed in this case.

34. The issue of the invalidity of Rule 19.15.13.8 remains viable and justiciable even though the Commission determined "for this well" not to assess the risk penalty on the cost of equipping the well for production. Jalapeno, as a party affected by the rule, has standing to challenge the validity of the rule notwithstanding the result in this proceeding.

35. Rule 19.15.13.8 refers to cost of equipping a well for production. When the Commission announced its decision at the conclusion of the hearing, it held that "And in this case, well costs will not include equipping the well for production for this well." October 17, 2016 hearing transcript, p. 219.

36. However, the Order submitted by Matador, and signed by the Commission, provides that the risk penalty shall not apply "as to surface equipment." To the extent the reference to surface equipment may be interpreted to allow Matador to assess the risk penalty on some costs of equipping the well for production, it is contrary to the Commission's announced decision in addition to being contrary to § 70-2-17.

**F. The Commission's Decision To Force Pool The Entire Wolfcamp Formation Is Arbitrary And Capricious, Unsupported By Substantial Evidence, And Not In Accordance With The Law.**

37. The Commission's decision to force pool the entire Wolfcamp formation under Matador's application is not supported by substantial evidence. Matador only presented evidence as to the geology and probability of success and risk for an upper Wolfcamp (Wolfcamp A) formation well. The Wolfcamp is an extensive formation with several potentially productive horizons. Matador presented no evidence as to any other target in the Wolfcamp formation in this area, and no justification for pooling any other Wolfcamp horizon. Absent any evidence in the record, the Commission had no basis for its decision to force pool the entire Wolfcamp formation.

**G. Matador's Project Area Cannot Be Pooled Under Section 70-2-27**

38. The Commission should rehear this case and determine that § 70-2-17 does not authorize compulsory pooling of project areas linking and crossing multiple, standard spacing units. Matador's application should be denied. The factual and legal basis for this challenge is set forth in Jalapeno's Motion to Dismiss and Reply Brief in Support of Motion to Dismiss filed in this case.

**H. The Commission Abused Its Discretion In Excluding Jalapeno's Evidence And Exhibits Bearing On The Issues In This Proceeding.**

39. Matador presented its testimony and exhibits at the September 6, 2016 hearing. On October 13, 2016, Jalapeno provided the Commission and Matador with additional rebuttal exhibits it intended to introduce through its expert witness Mr. Gaddis. On motion by Matador, the Commission excluded the evidence. Copies of the exhibits are attached hereto as Exhibit A.

40. The exhibits reflect evidence that rebuts Matador's risk penalty analysis and highlights the fact that the risk penalty sought by Matador would result in a taking of Jalapeno's interest. The exhibits did not seek to introduce any new issue into the proceeding. They merely support the opinion evidence provided by Mr. Gaddis at the hearing without objection by Matador.

41. The Commission rules provide that proceedings are to be conducted without rigid formality. Rule 19.15.4.14(A). The Commission's discretionary determination to admit or exclude exhibits that were not filed with the pre-hearing statement should be made in furtherance of the goal of allowing each party to fully present its case, admitting all evidence that bears on the issues presented. The Commission abused its discretion in excluding the exhibits.

WHEREFORE, Jalapeno requests that the Commission rehear this case, and enter an Order consistent with the points and authorities set out in this pleading.

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 30<sup>th</sup> day of November, 2016.

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J. E. GALLEGOS

- "Cash flow" after payout
- 1-15 wells revenue for financial realization by forced pooled owners subject to 200% penalty
- 35 wells will not payout (34%)

# Horizontal Bone Spring - 4 Township Study Area

		Cash Flow
1	PERLA NEGRA FEDERAL COM 1H	34,808.419
2	SUPER COBRA STATE COM 1H	26,368.195
3	PICKARD STATE 1H	24,711.852
4	KING COBRA 2 STATE 1H	16,960.040
5	AIRCOBRA 12 STATE 2H	15,765.013
6	QUAIL 11 STATE 1H	15,465.825
7	CHAPARRAL 33 FEDERAL COM 3H	15,460.211
8	CIMARRON 16 19 34 RN STATE 134H	14,077.328
9	SCHARB 10 PA STATE 1H	13,460.938
10	SCHARB 10 B30B STATE 1H	13,064.872
11	AIRSTRIPE 6 STATE COM 2H	12,520.633
12	SCHARB 10 B3NC STATE 1H	11,444.915
13	PERLA NEGRA FEDERAL COM 3H	11,096.913
14	RAPTOR WEST 3 STATE 4H	11,044.401
15	TEAL 12 STATE COM 2H	10,640.854
16	SCHARB 10 B3MD STATE 1H	9,950.172
17	TUSK FEDERAL 2H	9,589.881
18	DOS ABUELOS FEE 1H	9,324.639
19	PERLA VERDE 31 STATE 4H	9,170.896
20	QUAIL 11 STATE 3H	8,628.306
21	QUAIL 11 STATE 2H	8,399.314
22	KING COBRA 2 STATE 2H	7,944.012
23	CORDONIZ 28 FEDERAL COM 4H	7,761.836
24	WEST PEARL 36 STATE COM 6H	7,541.756
25	MALLON 34 FEDERAL COM 18H	7,157.399
26	PERLA NEGRA FEDERAL COM 2H	7,068.554
27	QUAIL 11 STATE 4H	6,502.285
28	IRONHOUSE 24 STATE COM 1H	6,413.255
29	AIRCOBRA 12 STATE 1H	5,745.598
30	MALLON 34 FEDERAL 20H	5,379.101
31	IGGLES STATE COM 1H	4,956.507
32	CHAPARRAL 33 FEDERAL COM 5H	4,780.071
33	RAPTOR WEST 3 STATE 2H	4,603.435
34	IRONHOUSE 19 STATE COM 2H	4,227.904
35	PERLA NEGRA FEDERAL COM 4H	3,887.387
36	TRES PRIMOS 3 STATE 2H	3,644.796
37	CONDOR STATE 2H 2	3,625.456
38	PICKARD 20 18 34 RN STATE 124H	3,506.622
39	PICKARD STATE 2H	3,357.436
40	TEAPOT 2H	3,278.939
41	IRONHOUSE 24 STATE COM 3H	3,039.889
42	CONDOR STATE 1H	3,032.496
43	IRONHOUSE 19 STATE COM 3H	3,027.448
44	MALLON 34 FEDERAL 19H	2,951.263
45	PLAYA 2 STATE 2H	2,738.895
46	TUSK FEDERAL 4H	2,418.307
47	IRONHOUSE 20 STATE 2H	2,280.360
48	ALBATROSS STATE COM 2H	2,189.962
49	WILD COBRA 1 STATE 2H	1,864.556
50	IRONHOUSE 19 STATE COM 1H	1,741.252
51	MONGOOSE FEE 1H	1,684.081

NMOCC Case No. 15363

Hearing: SEP 6, 2016

Continued: OCT 17, 2016

Jalapeno EX 5A

EXHIBIT

A



52	Dos Abuelos Fee 2H	1,282.256
53	WEST PEARL 36 STATE COM 4H	1,133.581
54	HIBISCUS 08 19 35 RN STATE COM 124H	1,112.656
55	BUTTER CUP 36 STATE COM 1H	958.470
56	PERLA VERDE 31 STATE 3H	744.018
57	TUSK FEDERAL 5H	708.685
58	TOMCAT FEE 1H	672.605
59	AIRSTRIP FEE COM 1H	665.087
60	CUATRO HIJOS FEE 3H	618.049
61	WILD COBRA 1 STATE 1h	564.307
62	BUTTER CUP 36 STATE COM 2H	516.574
63	PERLA VERDE 31 STATE 1H	331.167
64	PLAYA 2 STATE 1H	314.084
65	NIGHTHAWK STATE COM 1H	225.096
66	CUATRO HIJOS FEE 8H	219.933
67	IRONHOUSE 20 STATE COM 1H	47.418
68	TRES PRIMOS 3 STATE 1H	-160.421
69	BUTTER CUP 36 STATE COM 3H	-313.110
70	IRONHOUSE 19 STATE COM 4H	-333.401
71	WEST PEARL 36 STATE COM 3H	-749.904
72	JIM ROLFE 22 18 34 RN STATE 131Y	-857.640
73	ALBATROSS STATE COM 1H	-947.554
74	MALLON 35 FEDERAL 7H	-954.491
75	CHAPARRAL 33 FEDERAL COM 4H	-1,106.158
76	PERLA VERDE 31 STATE 2H	-1,113.411
77	TUSK FEDERAL 3H	-1,436.053
78	WEST PEARL 36 STATE COM 5H	-1,459.684
79	IRONHOUSE 24 STATE COM 2H	-1,758.829
80	MALLON 35 FEDERAL 4H	-1,819.085
81	IRONHOUSE 33 NC STATE COM 1H	-2,200.238
82	MERIT 32 DM STATE COM 1H	-2,214.538
83	QUAIL RIDGE 32 STATE 4H	-2,679.081
84	CUATRO HIJOS FEE 4H	-2,789.439
85	BUTTER CUP 35 STATE COM 2H	-2,925.079
86	IRONHOUSE 24 STATE COM 4H	-3,029.125
87	WEST PEARL 36 STATE 2H	-3,080.732
88	KINGFISHER STATE COM 5H	-3,103.316
89	ORIOLE STATE 1H	-3,154.287
90	QUAIL RIDGE 32 STATE 3H	-3,415.543
91	BUTTER CUP 35 STATE COM 1H	-3,617.178
92	CAPROCK 27 STATE FEDERAL COM 1H	-3,771.386
93	TIN CUP 36 STATE COM 2H	-4,205.306
94	CONDOR STATE 2H	-4,206.087
95	MERIT 6 EH STATE COM 1H	-4,340.339
96	KINGFISHER STATE COM 1H	-4,350.225
97	NIGHTHAWK STATE COM 3H	-4,993.509
98	KLEIN 16 STATE 2H	-5,012.981
99	MAGPIE STATE 1H	-5,187.506
100	HAUMEA STATE 2H	-5,286.123
101	KINGFISHER STATE COM 2H	-5,386.690
102	GATEWAY 2 STATE COM 2H	-5,476.01

- "Cash flow" after payout
- 1-4 wells revenue for financial realization by forced pooled owners subject to 200% penalty
- All wells payout

**Horizontal Wolfcamp - Eddy and Lea Counties, NM**  
**Operated by Matador**

		Cash Flow
Asset		WFS
1	TIGER 14 24S 28E RB 204H	28,844.58
2	GUITAR 10 24 28 RB 202H	26,323.94
3	TIGER 14 24S 28E RB 224H	21,872.02
4	JANIE CONNER 13 24S 28E RB 224	16,033.07
5	DR K 24 23S 27E RB 203H	10,629.15
6	RUSTLER BREAKS 12 24 27 1H	7,725.79
7	SCOTT WALKER STATE 36 22S 27E RB 204H	3,538.49
8	PICKARD STATE 2H	3,357.44

NMOCC Case No. 15363  
Hearing: SEP 6, 2016  
Continued: OCT 17, 2016

Jalapeno EX 5B

## PROFIT MADE BY FORCE POOLER ON

### WOLFCAMP HORIZONTAL WELLS IN DELAWARE BASIN, SE NEW MEXICO

Economic Input Parameters Based on a 10% Non Consent Interest in a \$6,500,000 well

WI = 10% & NRI = 8% until designated risk penalty payouts are achieved and then any additional

income that may be generated reverts to the forced pooled party

Money put up by operator for Force Pooled Party's Share of the well= \$650,000

Pricing = Bank of Oklahoma September 2016 Price Deck

\* Figures are not discounted

#### Wolfcamp EUR = 350 MBOE

<u>NON- CONSENT PENALTY</u>	<u>MONEY FORCE POOLER MAKES FROM FORCE POOLED PARTIES INTEREST</u>	<u>FORCE POOLING PARTY'S RETURN ON INVESTMENT</u>	<u>MONEY MADE BY FORCED POOLED PARTY</u>
200%	\$256,083.00	39%	\$0.00
133%	\$256,083.00	39%	\$0.00
66%	\$256,083.00	39%	\$0.00
34%	\$220,998.00	34%	\$35,085.00

#### Wolfcamp EUR = 500 MBOE

<u>NON- CONSENT PENALTY</u>	<u>MONEY FORCE POOLER MAKES FROM FORCE POOLED PARTIES INTEREST</u>	<u>FORCE POOLING PARTY'S RETURN ON INVESTMENT</u>	<u>MONEY MADE BY FORCED POOLED PARTY</u>
200%	\$769,499.00	118%	\$0.00
133%	\$769,499.00	118%	\$0.00
66%	\$428,907.00	66%	\$340,592.00
34%	\$221,023.00	34%	\$548,476.00

#### Wolfcamp EUR = 700 MBOE

<u>NON- CONSENT PENALTY</u>	<u>MONEY FORCE POOLER MAKES FROM FORCE POOLED PARTIES INTEREST</u>	<u>FORCE POOLING PARTY'S RETURN ON INVESTMENT</u>	<u>MONEY MADE BY FORCED POOLED PARTY</u>
200%	\$1,299,957.00	200%	\$149,723.00
133%	\$864,561.00	133%	\$585,119.00
66%	\$429,027.00	66%	\$1,020,653.00
34%	\$221,037.00	34%	\$1,228,643.00

NMOCC Case No. 15363

Hearing: SEP 6, 2016

Continued: OCT 17, 2016

Jalapeno EX

6A

**FOUR TOWNSHIP AREA BASED ON PRIOR WELLS DRILLED  
BASED ON PRIOR WELLS DRILLED**

*Pricing at Bank of Oklahoma September 2016 Price Deck  
Undiscounted Revenue Figures  
Assumes each well is drilled for \$5,250,000  
Assumed AFE Cost of \$5,250,000 for Bone Spring*

Profit/Loss Breakdown	No Wells	% of Total	Average Profit or Loss	Expected Results
\$10.5 Million +	15	0.1442308	\$ 16,459,360	\$ 2,373,946.15
\$5.25 M to \$10.5 Million	15	0.1442308	\$ 7,771,789	\$ 1,120,931.11
\$3 M to \$5.2 Million	13	0.1250000	\$ 3,862,949	\$ 482,868.63
\$1 M to \$3 Million	11	0.1057692	\$ 1,945,197	\$ 205,741.99
\$1 to \$1 Million Profit	13	0.1250000	\$ 506,576	\$ 63,322.00
Producing/Not Payout	35	0.3365385	\$ (2,645,326)	\$ (890,253.94)
Dry Holes or Lost	2	0.0192308	\$ (5,250,000)	\$ (100,961.54)
	<b>104</b>	<b>1</b>		<b>\$ 3,255,594.39</b>

Expected Results in Four Township Area Considering all Wells: Invest	\$ 5,250,000.00
and expect this approximate return on investment :	62%
which means this approximate amount of profit after payout:	\$ 3,255,594.39

NMOCC Case No. 15363  
Hearing: SEP 6, 2016  
Continued: OCT 17, 2016

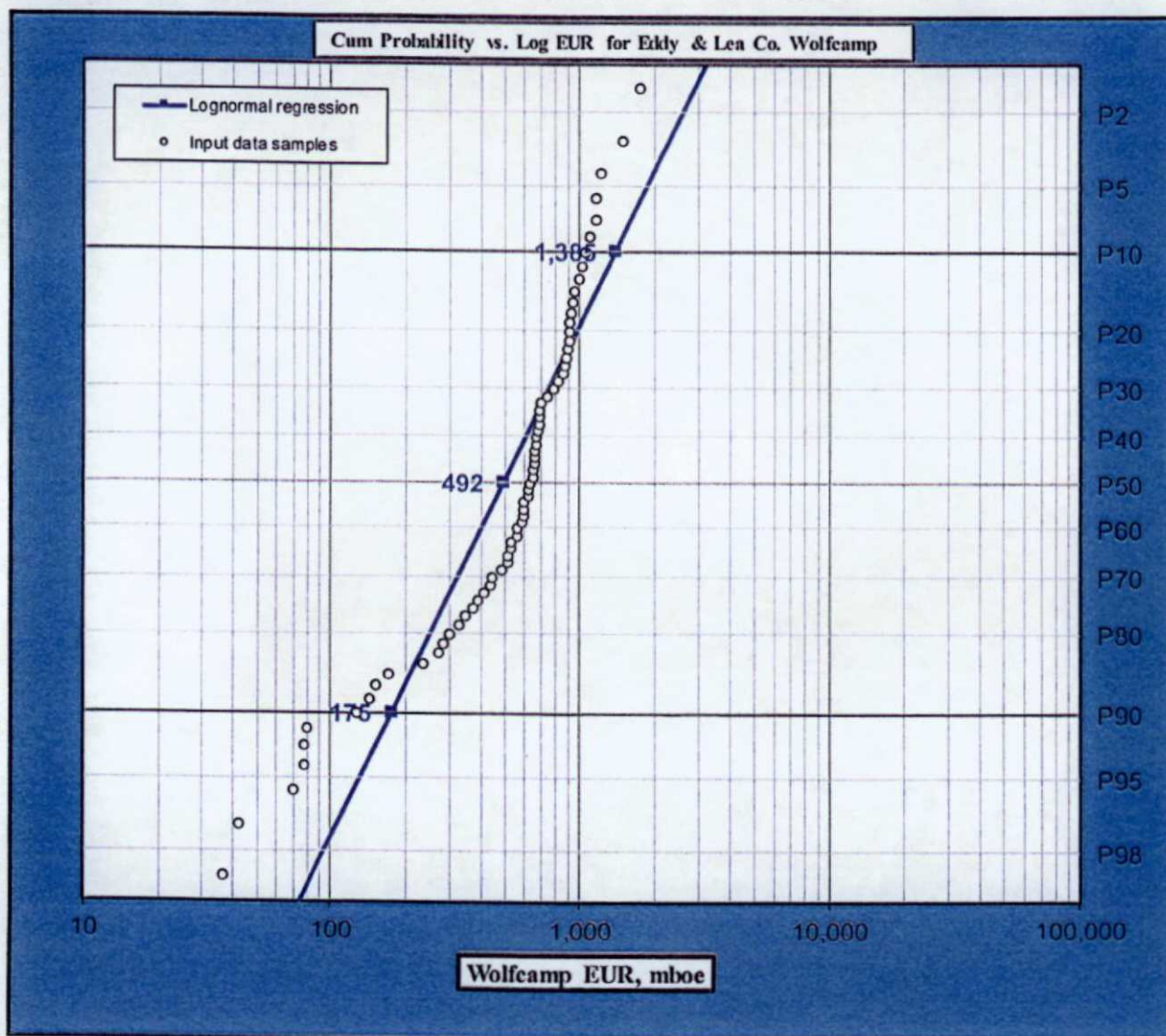
Jalapeno EX 6B

**ALL MATADOR WC WELLS IN EDDY & LEA BASED ON PRIOR WELLS DRILLED  
BASED ON WELLS FOR WHICH PRODUCTION AVAILABLE FROM OCD**

*Pricing at Bank of Oklahoma September 2016 Price Deck  
Undiscounted Revenue Figures  
Assumes each well is drilled for \$6,500,000 (Matador's AFE)  
Assumes One Well Lost in Drilling Process  
Data from Matador WC Wells Drilled in Eddy and Lea Countie*

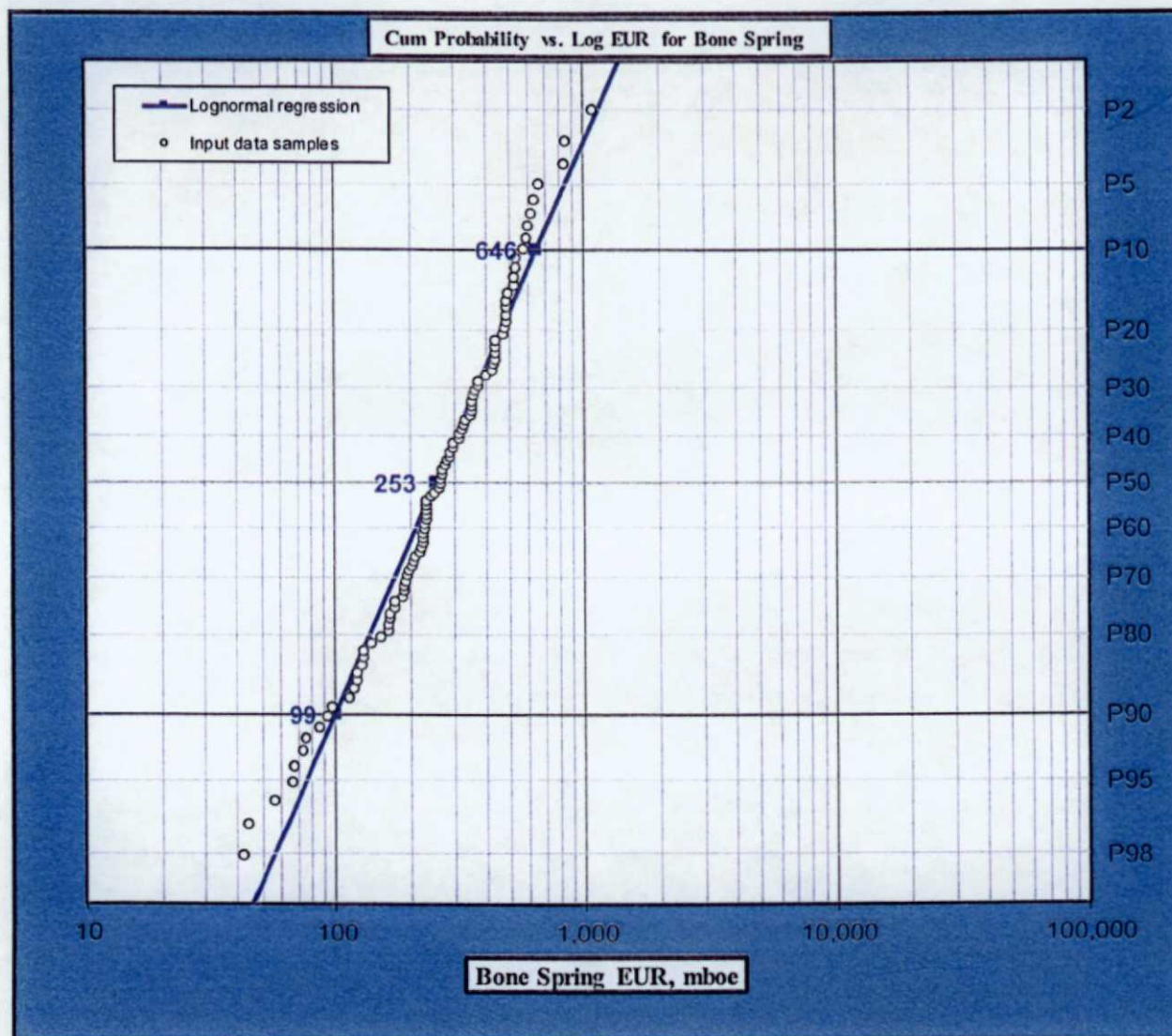
Profit/Loss Breakdown	No Wells	% of Total	Average Profit or Loss	Expected Results
\$20 Million +	3	0.3333333	\$ 25,680,180	\$ 8,560,060.00
\$10 M to \$20 Million	2	0.2222222	\$ 13,331,110	\$ 2,962,468.89
\$5 M to 10 Million	1	0.1111111	\$ 7,725,790	\$ 858,421.11
\$1 to \$5 Million	2	0.2222222	\$ 3,447,965	\$ 766,214.44
				\$ -
Producing/Not Payout	0	0.0000000	\$ -	\$ -
Dry Holes or Lost	1	0.1111111	\$ (6,500,000)	\$ (722,222.22)
	9	1		\$ 12,424,942.22

Expected Results Considering all WC Wells Available on OCD: Invest	\$ 6,500,000.00
and expect this approximate return on Investment :	191%
which means this approximate amount of profit after payout:	\$ 12,424,942.22



NMOCC Case No. 15363  
Hearing: SEP 6, 2016  
Continued: OCT 17, 2016  
Jalapeno EX 7





## **Sample Matador Compulsory Pooling Cases - Wolfcamp**

### **Case No. 15302 filed April 12, 2015**

Seeks a nonstandard 320 acre spacing for horizontal out well in a Gas Pool.

Hearing May 28, 2015

Evidence in support of risk penalty:

Trey Goodwin, Matador landman:

"Q. Are you also asking the Division to incorporate a 200 percent charge for risk for any owners that go non-consent with regard to the proposed well?"

A. Yes." Tr. 11

### **ORDER R-13997, JUNE 8, 2015**

Approves subject to 160 acres on proof of actual production for well costs.  
Orders 200% risk charge. pp. 3-4

### **Case No. 15372 filed August 18, 2015**

Seeks a nonstandard 160 acre unit for a horizontal well Wolfcamp formation.

Hearing November 12, 2015

Evidence in support of risk penalty:

Trey Goodwin, Matador landman:

"Q. Does Matador request the maximum cost plus 200 percent risk charge in the event a working interest owners goes nonconsent in a well?"

A. Yes" Tr. 8

### **ORDER R-14083, DECEMBER 8, 2015**

Grants application.

Provides (13) 200% of well costs for the risk in drilling well.

### **Case No. 15444 filed February 2, 2016**

Seeks a 320 acre spacing unit in a gas pool for a horizontal Wolfcamp formation well.



Hearing March 3, 2016

Evidence concerning risk penalty:

Trey Goodwin, Matador landman:

"Q. Do you request the maximum cost plus 200 percent risk charge if a party goes nonconsent in the well?

A. Yes" Tr. 11

**ORDER R-14139, MARCH 31, 2016**

Grants application.

(13) Any pooled working interest owner . . . reasonable well costs plus an additional 200% . . . for the risk . . . "