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

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

CASE NO. 15363

MATADOR PRODUCTION COMPANY'S MOTION TO PARTIALLY QUASH SUBPOENA ISSUED BY JALAPENO CORPORATION

Matador Production Company ("Matador") respectfully moves the Oil Conservation Division (the "Division") to quash portions of the subpoena issued at the request of Jalapeno Corporation ("Jalapeno") in this matter. Matador maintains that it has complied with its obligation under the Oil Conservation Commission's November 10, 2016 Order requiring Matador to provide Jalapeno and the Division with an itemized breakdown of the costs associated with drilling the Airstrip State Com 201H well. Jalapeno has obtained the subpoena based on a pretext of confusion as to whether Matador's submission represents actual or estimated costs. Rather than seeking clarification on that minor point, Jalapeno seeks a sweeping production of documents from Matador, including production of Matador's proprietary and trade secret information. This material would be of no benefit to Jalapeno in assessing the reasonableness of the costs incurred to drill the well, and would constitute a manifest business injury to Matador. Much of the information and many of the documents sought are "not pertinent" to the reasonable-well-cost issue now before the Division. *See* NMSA 1978, § 70-2-8. For these reasons, Matador makes this narrow motion to quash certain specific requests contained in the subpoena.

I. Background

On November 10, 2016, the Oil Conservation Commission granted Matador's Application for Approval of a Non-Standard Unit and for Compulsory Pooling. As a non-consenting working interest owner, Jalapeno's interest was pooled as a result of this Order. Jalapeno elected not to participate in the well and so chose not to share in the costs to drill, complete or equip it. Paragraph 11 of the Oil Conservation Commission's Order required Matador to "furnish the Division and each known working interest owner an itemized scheduled of actual well costs within 90 days following completion of the well." Pursuant to this Order, on April 21, 2017, Matador filed its Well Cost Notification setting forth a schedule of well costs as of that date. Jalapeno objected to this submission, citing a lack of detail, and further arguing that Jalapeno is "entitled to a detailed itemized schedule of costs to evaluate whether the reported costs are actual and reasonable." In response to this submission, Matador supplemented its earlier submission on June 28, 2017 with an itemized list of the actual costs incurred in drilling the well. A copy of that submission is attached as Exhibit A. Jalapeno claims that this too is insufficient to satisfy the Oil Conservation Commission's Order. On this basis, Jalapeno sought issuance of the subpoena, ostensibly in an effort to collect certain cost-related information.

II. Argument

A. Jalapeno's Complaints About Matador's Submission Are Unfounded.

Jalapeno's argument in support of the subpoena is based on manufactured complaints about the adequacy of Matador's June 28 submission. Specifically, Jalapeno's complaints are not based on the level of detail contained in Matador's June 28 submission. Rather, Jalapeno suggests that this submission is deficient because it is entitled "Estimate of Actual Well Costs."

Jalapeno argues that the submission fails to comply with the Oil Conservation Commission's Order "because it cannot determine whether the listed costs are actual or estimates based on Matador's self-reporting." Jalapeno continues by arguing that "[t]here is no excuse for Matador to provide an estimate of actual well costs, rather than a list of actual well costs."

Had Jalapeno sought clarification on this narrow point, Matador would have explained that the costs itemized in its June 28 submission are actual costs, not estimates. Matador would have further explained that the document was entitled "Estimate of Actual Costs" only because it was prepared on a form commonly used in support of an Authorization for Expenditure. Rather than seek such clarification directly from Matador, however, Jalapeno seeks to leverage this manufactured argument into an opportunity to rummage through Matador's proprietary business information for documents that relate to its challenge to the pooling order, now on appeal before district court, not whether the well costs are "actual and reasonable." This effort should be rejected. While Matador is willing to provide certain supplemental information in response to the subpoena, Matador maintains that it has complied with its obligations under the Oil Conservation Commission's Order and any perceived deficiency should not form the basis for such a broad and burdensome intrusion into Matador's business.

B. Matador's Contracts Contain Proprietary and Confidential Trade Secret Information Which Is Privileged From Discovery.

Jalapeno's subpoena requests production of, *inter alia*, a variety of contracts supporting the Actual Well costs in connection with the drilling of Airstrip State Com 201H well. *See* Subpoena ¶¶ 1-8. The contracts at issue are not necessary to provide Jalapeno with an accurate picture of the actual wells costs, and requiring production of these materials would represent a substantial invasion of Matador's proprietary business and trade secret information. Moreover,

Matador is contractually constrained from producing the contracts by confidentially provisions in the contracts requested.

Matador has already provided Jalapeno with an itemized list of the actual costs incurred in drilling the Airstrip State Com 201H well. This list includes line–by-line expenditures accurately reflecting the total costs associated with drilling the well. Nonetheless, in light of issuance of the subpoena, Matador has no objection to producing certain items set forth in numerous paragraphs of the subpoena, including "invoices, bills [and] charges" relating to the drilling of Airstrip State Com 201H. These items are more than sufficient to afford Jalapeno a full picture of the costs associated with the well.

But Jalapeno has not, and cannot, explain why it also needs the full contracts between Matador and its vendors. Requiring production of Matador's contracts with its vendors would be of no additional benefit Jalapeno as it seeks to assess the reasonableness of costs incurred in drilling the Airstrip State Com 201H well. By contrast, production of these contracts would require Matador to disclose business information that is highly proprietary and goes well beyond the drilling costs of this particular well. In many cases, the terms of Matador's contracts with vendors are the product of extensive negotiations and reflect terms applicable beyond the drilling of this particular well. These contractual terms are closely guarded, and afford Matador a distinct competitive advantage. As such, the terms of these contracts represent a trade secret under New Mexico law. *See* NMSA 1978, Section 57-3A-2(D) (defining a trade secret as "information, including a formula, pattern, compilation, program, device, method, technique or process, that: (1) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use."). Matador should not be required to disclose them to Jalapeno, a

direct competitor to Matador, when Matador is already providing the invoices, bills, and statements, which reflect the actual costs incurred in drilling and equipping the well.

New Mexico law recognizes that trade secrets constitute a privileged category of information. *See* Rule 11-508 NMRA ("a person or entity owning a trade secret has a privilege to refuse to disclose . . . the trade secret."). Consistent with this recognition, the New Mexico Supreme Court has adopted strong protections against the abusive discovery of trade secrets. *See Pincheira v. Allstate Ins. Co.*, 2008-NMSC-049, ¶¶ 29, 144 N.M. 601. Under the Rules of Civil Procedure, trade secrets are not discoverable and courts may issue orders precluding discovery of such materials. *See id.* ("trade secrets also receive dual protection from discovery under Rule 1-026(B) and (C).")

Here, Jalapeno has not shown any need for the contracts sought by the subpoena, and requiring production of those materials would require Matador to divulge trade secret information that is expressly protected by New Mexico law. The Division should, therefore, quash the portion of the subpoena calling for production of these documents. In the alternative, the Division should hold this portion of the subpoena in abeyance until Matador has produced the remaining items in order to determine whether additional production is required at that time.

C. Matador Should Not Be Compelled to Produce Daily Drilling Logs.

The subpoena also calls for Matador to produce "[t]he complete well file for the Airstrip State Com 201H well from the date the well was spud to the present." Subpoena ¶ 9. Matador objects to this request, and Jalapeno's motion provides no explanation as to its relevance. First, the request is overly broad. Second, the well file contains information that is only tangentially related to the costs associated with drilling the well. Like the contracts discussed above, the well file contains substantial proprietary and trade secret information that is central to Matador's

competitive position in the industry. In particular, Matador objects to production of the daily drilling log for the well, as that log contains proprietary and trade secret information including Matador's assessment of productive target zones. Such information enjoys broad protection from discovery, as discussed above. The Division should not require Matador to produce information to a direct competitor that has elected not to pay its share of the costs of the well and therefore is not and should not be entitled to detailed well information outside of the bounds of what is absolutely necessary to determine the reasonableness of the costs. Moreover, the well file, including the daily drilling log, is of limited relevance in determining the reasonableness of the costs associated with drilling the well. This is especially true in light of the information that Matador has already produced, and the additional information it will produce in accordance with the subpoena.

D. Matador Should Not Be Compelled to Produce Charges to Consenting Non-Operators.

Finally, Matador objects to the request contained in Paragraph 10 of the subpoena, which calls for production of "[a]ll documents which reflect any charges or costs Matador has charged to consenting non-operators for the Airstrip State Com 201H well." (emphasis added). This information is irrelevant to a determination of the actual and reasonable costs associated with drilling the well. Jalapeno is *not* a consenting non-operator, and unlike Jalapeno, consenting non-operators are responsible for a wider range of costs in addition to drilling and equipping the well. Moreover, any information concerning charges to consenting non-operators would be cumulative and duplicative of the information already provided by Matador, as well as the additional information that will be forthcoming under the subpoena.

CONCLUSION

For the foregoing reasons, Matador respectfully requests that the Division quash those portions of the subpoena described herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2017, I served a copy of the foregoing document to the following counsel of record via electronic mail:

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