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. 15900

MATADOR'S RESPONSE TO CAZA'S POST-HEARING MEMORANDUM

Matador Production Company ("Matador"), the applicant in the above-referenced matter, provides this response to the post-hearing request by Caza Petroleum, Inc. ("Caza") that the Division add a provision to its standard pooling order obligating Matador to provide (a) "periodic pay-out status reports," and (b) "make well data available to Caza."

As is customary Matador will provide pay-out reports to Caza and any other non-consenting party in the normal course of business. Matador provides such reports annually beginning approximately one year after first production, and provides more frequently reports as the well(s) near pay-out plus any applicable risk charge.

Regarding Caza's additional request for a free look at unspecified "well data," Division precedent firmly establishes that an interest owner under a compulsory pooling order is not entitled to well-specific data unless it has (a) demonstrated a need for specific information to address an issue pending before the Division, and/or (b) participated in the well and elected to pay its proportionate share of the costs incurred to obtain the information:

(6) The Division concludes that the well specific data, if not technically "trade secret," constitutes confidential business information of a character that is typically closely guarded in the industry. The Division has recognized the confidential and sensitive nature of this information by adopting Rule 7.16(C), providing that the Division will preserve the confidentiality of well logs for a period of 90 days after completion of a well. Due to the confidential and sensitive character of this information, the production of the well-specific data should not be ordered in the absence of a clearly articulated demonstration of its relevance to an issue that will actually be controverted at the hearing.

(7) SG has not demonstrated how the well-specific data will be relevant to any issue that will, or even may, arise at the hearing. SG has suggested that the data could have a bearing on the amount of the risk penalty to be allowed the operator. This contention is not persuasive because XTO made its decision to incur the risks associated with drilling the well prior to commencement thereof, at a time when it did not have the well-specific data. The fact that XTO chose, as it was legally entitled to do [*see* NMSA 1978 Section 70-2-17.C], to defer applying for compulsory pooling until after drilling the well reduced neither the risk XTO incurred in drilling the well nor the benefit thereby conferred on SG or other non-joining owners.

(8) SG also contends that it is entitled to the well-specific data as a co-owner of the land to which the data relates. XTO contends that SG is not entitled to data as a co-owner unless and until it pays its share of the costs associated with the data's acquisition.

(9) Neither party has cited, and the Division has not found, any decision from any jurisdiction that addresses this specific issue. However, the law of co-tenancy generally provides that a co-tenant may recover its share of *net* proceeds of exploitation of the common property. Accordingly, the Division concludes that a co-tenant does not have a right to compel disclosure of information regarding the jointly owned property acquired by the efforts of another co-tenant, when it has not reimbursed, or offered to reimburse, the other co-tenant for a prorata share of the costs the other co-tenant incurred in acquiring the information.

Order R-13156 at p. 2 (Application of XTO Energy, Inc) issued on August 12, 2009. This 2009 Order has been cited and followed in at least one other case, wherein the Division concluded a non-consenting interest owner is not entitled to "well-specific data" until it has paid "all well costs, and the entire risk charge, for the existing well." *See* Order R-13357-A (Application of Cimarex Energy Co.) issued on April 30, 2012.[1]

[1] The listed Division Examiners under both of these Orders are David K. Brooks and Richard Ezeanyim.

The authorities cited by Caza predate the governing Division Orders cited above and are easily distinguishable on the grounds that the requesting party in each case issued a subpoena for specific well information and established a need for that information to address an issue pending before the Division. *See* Order R-12343-A at ¶(23) (Application of Mewbourne Oil Company) (subpoenaed information shown necessary "to resolve issues related to unit configuration" in case involving competing spacing units); Order R-12511 (Applications of Devon Energy and LCX Energy for compulsory pooling) at ¶(9) and ¶(13) (subpoenaed information shown necessary to address competing pooling applications). In contrast, Caza has not identified what specific information it seeks, has not identified any independent issue pending before the Division to which the information might be relevant, or otherwise attempted to meet its burden of establishing a need for specific information. Instead, Caza vaguely seeks free access to future "well data" even if it does not participate in the well or otherwise pay its share of the costs to obtain that "well data."

Caza's assertion that it has a property right to free "well data" is a gross mischaracterization of its right to explore and, as set forth above, is directly contrary to Division precedent. *See* Order R-13156 at p. 2 (Application of XTO Energy, Inc). The Division cases cited by Caza do not stand for this proposition and further involve situations where an operator drilled a well before obtaining a voluntary agreement or a compulsory pooling order, thus depriving that interest owner of the option to participate in the well and gain access to the well data from the start. Here, the Division's standard pooling order affords Caza the opportunity to participate in the well (and thereby share in any applicable data collection) or elect to conduct its own exploration work on its property. To allow Caza free access to well data is not only contrary to Division precedent, but would also be a

significant departure from longstanding industry practice that will unjustifiably create an unfair competitive advantage for Caza.[2]

It is well settled that Caza's vague request that the Division include a provision in the compulsory pooling order obligating Matador to provide "well data" to non-consenting parties must be denied. Matador respectfully requests that the Division enter its standard pooling order at its earliest convenience to accommodate upcoming lease obligations.

Respectfully submitted,

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ATTORNEYS FOR MATADOR PRODUCTION COMPANY

[2] Caza grossly mischaracterizes the testimony of Matador's landman. As shown in the hearing transcript, Matador's landman testified the Joint Operating Agreement does not restrict the sharing of well data with "parties who have only tendered their shared costs up front." TR. at p. 11, lines 9-14. The JOA, a copy of which was provided to Caza, is clear that only participating working interest owners are entitled to well data, as is customary in the industry.

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2018, I served a copy of the foregoing document to the following counsel of record via Electronic Mail to:

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