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

APPLICATION OF TAP ROCK RESOURCES, LLC, FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO	**CASE NO. 21609**
APPLICATION OF TAP ROCK RESOURCES, LLC, FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO	**CASE NO. 21610**
APPLICATION OF COG OPERATING, LLC FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO	**CASE NO. 21654**
APPLICATION OF COG OPERATING, LLC FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO	**CASE NO. 21655**
APPLICATION OF MATADOR PRODUCTION COMPANY FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO	**CASE NO. 21631**
APPLICATION OF MATADOR PRODUCTION COMPANY FOR COMPULSORY POOLING, LEA COUNTY, NEW MEXICO	**CASE NO. 21632**

TAP ROCK'S RESPONSE TO MATADOR'S MOTION TO VACATE SECOND AMENDED PRE-HEARING ORDER OR, IN THE ALTERNATIVE, TO HAVE CASE NOS. 22110 AND 22111 ADDED TO THE PRE-HEARING ORDER AND SET FOR HEARING ON AUGUST 20, 2021

Tap Rock hereby responds to Matador's Motion to Vacate Second Amended Pre-Hearing Order or, in the Alternative, to Have Case Nos. 22110 and 22111 Added to the Pre-Hearing Order and Set for Hearing on August 20, 2021 ("Motion to Vacate" or "Motion"). The Motion should be denied, and the hearing should proceed on August 20.

In the alternative, Matador Production Company's Case Nos. 21631 and 21632 should be dismissed. These cases are now moot in light of the applications filed by Matador on July 30, 2021, in Case Nos. 22110 and 22111, among other reasons. A motion to dismiss Case Nos. 21631 and 21632 will be filed concurrently with this response.

Background

Tap Rock Operating, LLC ("Tap Rock") proposed its 1.5 mile First Bone Spring Coonskin wells ("Coonskin Unit" or "Coonskin Development") on October 16, 2020. COG Operating, LLC, now Conoco Phillips, ("Conoco") and Matador proposed 2-mile wells in response on November 4, 2020 and January 12 2021, respectively. Subsequently, Tap Rock negotiated in good faith and acquired the Conoco interest. Accordingly, Conoco dismissed its Case Nos. 21654 and 21655 on July 20, 2021. Tap Rock or its affiliates now own 100% of the working interest, 100% of the surface estate and 83.25% of the revenue interest in its Coonskin Unit. The Coonskin Unit is entirely made of fee acreage that Tap Rock owns outright in the First Bone Spring formation.

The Coonskin Unit and Tap Rock's cases *no longer require force pooling*. Consequently, Tap Rock has commenced drilling operations on its Coonskin Development and expended an immense amount of capital to that effect. But since Matador refuses to dismiss its competing Case Nos. 21631 and 21632, which overlap the Coonskin Unit and in which Matador only owns 25% working interest, Tap Rock has not dismissed its cases. Matador's motion to vacate the second amended pre-hearing order so as to once again continue these Cases should be denied based on the following.

Matador Knowingly Misrepresents the Facts

i. Matador Agreed to the Currently Contemplated Hearing Date and the only new "Competing" Proposals are Proposals where Matador is Competing with Itself.

It would be an extreme injustice for the Division to allow a continuance merely because Matador cannot decide which of its proposals it wants to proceed with. Tap Rock's cases have been pending since December 8, 2020. They have been continued three times. At the May 25, 2021 hearing, Tap Rock sought to have these cases heard in June but, instead, they were set for August 20, *at Matador's request*. *See* Case No. 21609, 05/25/21 Tr. at 6:9-22. Subsequently, on July 30, 2021, Matador filed applications in Case Nos. 22110 and 22111, proposing 2.5 mile wells ("Matador's Later Applications"), which overlap its proposals in Case Nos. 21631 and 21632. Matador's Later Applications do not compete with Tap Rock's cases. Matador's Later Applications *compete only with its own cases* now set for hearing on August 20. As explained in the concurrently filed motion to dismiss, Case Nos. 21631 and 21632 should therefore be dismissed.[1]

ii. Matador's Own Applications in Case Nos. 22110 and 22111 Propose the Development that they claim would be made Impossible by Tap Rock's Coonskin Development

Matador's applications in Case Nos. 22110 and 22111 illustrate that Tap Rock's Coonskin Development does not "strand" Matador. The Coonskin Unit is comprised of the W/2 of Section 28 and the W/2 NW/4 of Section 33, T24S, R35E, whereas Matador's proposed spacing units in Case Nos. 22110 and 22111 are collectively comprised of the W/2 SW/4 of Section 33, T24S, R35E, and the W/2 of Section 4 and the W/2 of Section 9, T25S, R35E. Thus, no part of the parties' proposed units overlap, and no acreage is stranded. Further, Matador's proposals in Case Nos.

[1] Now that Tap Rock has closed on its acquisition of COG's interest and thereby acquired 100% of the interests in the Coonskin Unit, it will be dismissing its compulsory pooling applications in 21609 and 21610. *See* Exhibit D to Motion to Vacate.

22110 and 22111 make more sense than Matador's proposals in Case Nos. 21631 and 21632 because the former will be federal *regardless*, but Tap Rock's Coonskin Unit contains 100% fee acreage owned entirely by Tap Rock.

iii. All of the Wells in the Contract Area that currently exist are in the Wolfbone Formation and therefore the Existing Contract Area is Not at Issue Here.

The COG Fez development in the lands that Matador denotes on its Exhibit A as a COG "Contract Area", is expressly limited to the Wolfbone formation. Matador either purposely omits this fact or else grossly misunderstands the geology of the area. All of the currently contemplated proposals are in the First Bone Formation *almost* two thousand feet above the Wolfbone formation; and the current development and contract areas have no impact on it. Regardless, it is clear under Rule 19.15.16.15(A)(4) NMAC that overlapping units are not prohibited. In fact, the rules of the Division clearly set forth the procedure in which to propose such overlapping development areas. *See generally* 19.15.16.15 NMAC.

iv. All of the Wells Currently Contemplated from the "Competing" development plans are in the First Bone Spring Formation [98294] WC-025 G-07 S243517D; MIDDLE BONE SP pool, approximately 1,900 vertical feet Above any Existing Wellbores in the Competing Proposal Lands.

The map that Matador attaches in its Exhibit A only shows pre-existing *Wolfbone* wellbores and contract areas to the north and the south. Its suggestion that the pre-existing development leaves them stranded clearly omits the fact that Tap Rock's ownership is in an entirely different formation. There is no current development, including Tap Rock's Coonskin Development, that would limit Matador's ability to develop its acreage in the depths contemplated in Matador's development plans, as demonstrated by their new applications. *See In re Hearing on Application of Novo Oil & Gas Northern Delaware, LLC for Compulsory Pooling*, Nos. 21275 and 21276, OCC Order No. R-21420-A at 8, ¶ 8 (Sept. 17, 2020) (concluding that BTA's proposed

development protected correlative rights by presenting the best opportunity for each party to develop its own acreage).

v. The Letter Agreement referenced is wholly inapplicable, and Tap Rock is not bound by such an agreement.

Matador asserts that Tap Rock is bound by a letter agreement between Matador and COG Operating dated February 10, 2021 ("Letter Agreement"). *See* Motion at 2-3. Matador provides no support for this assertion. *See generally id.* The terms of the Letter Agreement reveal otherwise. The Letter Agreement was entered into by and between COG and Matador only; Tap Rock was not a party. The Letter Agreement contains no covenant that the Agreement runs with the land. *See generally* Motion, Exhibit C attached thereto. It does not contain a provision binding successors and assigns, notwithstanding its express recognition that neither COG nor Matador was prevented from assigning its interest in the lands. *See id.* ¶ 5. Moreover, Tap Rock did not agree to take its assignment of the lands from Conoco subject to the Letter Agreement. Tap Rock therefore is not subject to the Letter Agreement.

Even if the Letter Agreement applied to the lands that Tap Rock acquired from Conoco, it expressly states that it was "for the sole purpose of filing APDs." *Id.* at 1. Regardless, given that Tap Rock owns the fee surface (and owned said surface before it acquired the Conoco lands), Tap Rock has not and will not grant Matador permission to file permits and trespass on Tap Rock's acreage. In fact, Tap Rock has contacted the BLM to notify them that Tap Rock was not notified prior to staking for the BLM onsite as is required by BLM regulation, that Matador has not attempted to negotiate any form of surface use agreement with Tap Rock, and that Matador's permits may have been illegally filed on its land without its permission.

vi. Matador Created Its Own Attorney Conflict and Should Not Be Excused from Presenting Its Cases as a Result.

Matador admits that it created a conflict for its own counsel when it proposed the alternative spacing units reflected in Case Nos. 22110 and 22111. Motion to Vacate at 3. Moreover, it knew or should have known of this potential conflict when it first sent out well proposals, which would have been 30 days prior to filing the Later Applications, that is, June 30. Yet, Matador waited until August 5, 2021, to file its motion to vacate and its counsel waited until August 6, 2021 to withdraw. Matador's intentional conduct and neglect in ensuring that it had counsel without a conflict does not justify vacating the hearing at such a late date.

Closing

Tap Rock's Coonskin Development *has no prejudicial effect on* Matador's acreage, does not impact Matador's correlative rights, and does not cause waste. By contrast, allowing Matador yet another continuance to put cases that are only competing to the extent that Matador is competing with itself is a waste of everyone's time and a deprivation of Tap Rock's correlative rights to a gross degree. Tap Rock has made extensive arrangements and is prepared to put on its cases on the previously agreed date of August 20, 2021. Further, as noted, Tap Rock has commenced drilling operations on its Coonskin Development and expended an immense amount of capital to that effect. Finally, the proposals in Matador's Case Nos. 22110 and 22111 do not compete with Tap Rock's cases.

For all of the reasons stated herein, the Motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2021, a true and correct copy of the foregoing pleading was served by electronic mail on counsel of record as follows:

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