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

APPLICATION OF TAMAROA OPERATING, LLC FOR APPROVAL OF A NON-STANDARD SPACING AND PRORATION UNIT AND COMPULSORY POOLING, CHAVES COUNTY, NEW MEXICO **CASE NO. 21634**

TAMAROA OPERATING, LLC'S RESPONSE IN OPPOSITION TO D.K. BOYD'S MOTION TO DISMISS

Tamaroa Operating, LLC ("Tamaroa"), by and through the undersigned counsel, files this Response in Opposition to D.K. Boyd's ("Boyd") Motion to Dismiss ("the Motion"). For the reasons explained below, the Motion lacks merit and should be denied.

Introduction

In his Pre-Hearing Statement, Boyd moves to dismiss Tamaroa's application, arguing that the Oil Conservation Division ("Division") lacks authority to approve Tamaroa's proposed 80-acre spacing unit because a vertical Devonian oil well must be dedicated to a 40-acre spacing unit. Boyd also claims that granting Tamaroa's application would violate his correlative rights and that the requested 200% risk penalty is "contrary to law."

Each of these arguments fails as a matter of law, and Boyd's Motion should be denied. Division rules allow for the creation of a non-standard spacing unit under these circumstances, and Boyd's conception of correlative rights is unworkable and contrary to New Mexico law. Finally, assessing a 200% risk penalty is both the usual practice of the Division and a power specifically granted to it by statute. For these reasons, the Motion is baseless and the case should proceed to a hearing on the merits.

Motion to Dismiss Standard

It is well-established that New Mexico law favors the resolution of disputes on their merits. *See, e.g., Romero v. Philip Morris,* 2010-NMSC-035, ¶ 8, 148 N.M. 713. Accordingly, in evaluating a motion to dismiss, all facts asserted by an applicant must be taken as true. *See e.g., Rio Grande Kennel Club v. City of Albuquerque,* 2008-NMCA-093, ¶ 10, 144 N.M. 636. Further, a motion to dismiss should be granted only when an applicant is not entitled to relief under *any* set of facts provable under the claim. *See, e.g., Las Luminarias v. Isengard,* 1978-NMCA-117, ¶ 3, 92 N.M. 297.

Argument

A. There is no basis for the Division to dismiss Tamaroa's application based on the location of the proposed well.

Tamaroa proposes an 80-acre spacing unit, consisting of two adjacent quarter-quarter sections, to effectively test and develop the Devonian formation underlying the subject lands. While the proposed well location is approximately 10 feet from *a property line,* the well location complies with the standard setbacks required by Division rules, which require oil wells to be located 330 feet or more from the "boundary of the *unit*." *See* 19.15.15.9 NMAC (emphasis added). Tamaroa's proposed well location is thus orthodox, not "extraordinarily unorthodox" as Boyd contends. *See* Motion, ¶ 1. And even if the well location was unorthodox, that would not require dismissal of Tamaroa's application. *See* 19.15.15.13 NMAC (authorizing the Division to approve unorthodox well locations).

At hearing, Tamaroa will establish that the proposed well location is appropriate based on the geology underlying the subject lands, which Boyd appears to concede by stating that the reserves are "geologically favorable." *Id.* Tamaroa will present geological evidence demonstrating

that the proposed well location is necessary for the prevention of waste, protection of correlative rights, and to avoid the drilling of unnecessary wells. There is no basis for Boyd's unsupported and inaccurate accusations that Tamaroa seeks "to accomplish drainage" and "avoid the setback requirements." Tamaroa's well location and its proposed spacing unit comports with Division rules. There is no reason, based on the well location, to dismiss Tamaroa's application. *See* Motion, ¶¶ 1-2.

B. The Division may approve an 80-acre non-standard spacing unit for the proposed well under 19.15.15.11(B) NMAC.

Boyd argues that the Division lacks authority to approve Tamaroa's application for an 80-acre non-standard spacing unit because NMAC 19.15.15.9(A) provides that standard spacing for a Devonian oil well is 40-acres. *See* Motion at 2. This assertion is incorrect and ignores that the Division's regulations expressly authorize the approval of non-standard spacing units. Specifically, NMAC 19.15.15.11(B) provides: "An operator shall not produce a well that does not have the required amount of acreage dedicated to it for the pool or formation in which it is completed *until the division has formed and dedicated a standard spacing unit for the well or approved a non-standard spacing unit*." NMAC 19.15.15.11(B) (emphasis added). Boyd's argument that the Division lacks jurisdiction to approve an 80-acre spacing unit for an oil well, when the applicant establishes that the proposed spacing unit will avoid the drilling of unnecessary wells, prevent waste, and protect correlative rights, is incorrect and would impair the Division's ability to implement the Oil and Gas Act. *See, e.g.,* NMSA 1978 § 70-2-11. In accordance with the Oil and Gas Act and the Division's regulations, the Division is fully empowered to grant Tamaroa's application after a hearing on the merits. Boyd's argument ignores the Division's authority and must be rejected.

C. Boyd offers an unworkable definition of correlative rights and should submit a competing pooling application if he wishes to pursue the right to drill.

As a separate basis for dismissal, Boyd contends that granting the application "would constitute a violation of NMSA 1978 § 70-2-17(A)" because it would allegedly vitiate Boyd's correlative rights. *See* Motion, ¶ 3. Boyd offers no authority in support of this interpretation, and he essentially argues that compulsory pooling *per se* is contrary to the Oil and Gas Act, an absurd result that cannot be accepted by the Division. *See generally*, *Stanley v. Raton Bd. of Educ.*, 1994-NMSC-059, 117 N.M. 717 (statutes must not be interpreted to lead to absurd results). As Boyd himself recognizes, the statute defines correlative rights as "*the opportunity* to produce [a] just and equitable share" of the oil and gas underlying the subject lands. *See* § 70-2-17(A) (emphasis added). Boyd fails to explain how he has lost his opportunity to receive his just and equitable share of the oil underlying the subject lands, or how he has lost the right to pursue his own development plan. And even if he had, the issue would need to be addressed at a hearing on the merits.

If the Division grants Tamaroa's application, Boyd will be paid his proportionate share of the proceeds, in accordance with the Oil and Gas Act and Division rules, thus protecting his correlative rights. Further, Boyd does not suggest that he has present plans to develop the acreage. If he did have present plans to develop the acreage, the Division has longstanding standards to determine the merits of competing pooling applications. *See, e.g.,* Order No. R-20223. Boyd ignores that he would need to file a compulsory pooling application to develop his acreage because he does not own or control 100% of the working interest in the NW/4 NW/4 of Section 29, which his Motion references as the "Boyd land." In fact, Tamaroa controls 62.5% of the working interest in the proposed unit – 100% in the NE/4 NE/4 of Section 30 and 25% in the NW/4 NW/4 of Section

29. Boyd's argument that granting Tamaroa's application would harm his correlative rights lacks merit and does not provide a basis to dismiss Tamaroa's application.

D. The 200% risk penalty is specifically authorized by statute and is in accordance with Division practice.

Boyd's assertion that a 200% risk penalty "is contrary to law" is, again, simply incorrect. The Division's rules set a 200% risk penalty as the default charge for risk in compulsory pooling cases. *See* 19.15.13.8(A) NMAC. And the Division is fully empowered to adopt this regulation as stated in NMSA 1978, § 70-2-17(C). Tamaroa's requested risk penalty is proper and it is Boyd's unsupported position that is contrary to the law of this state.

Conclusion

For the reasons stated above, Boyd's Motion to Dismiss is baseless and should be denied. Tamaroa's application comports with Division rules and should proceed to a hearing on the merits.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of February, 2021, I served a true and correct copy of the foregoing pleading on the following counsel of record by electronic mail:

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