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

APPLICATION OF TAMAROA OPERATING LLC FOR FOR APPROVAL OF A NON-STANDARD SPACING AND PRORATION UNIT AND COMPULSORY POOLING, CHAVEZ COUNTY, NEW MEXICO

Case No. 21634

REPLY IN SUPPORT OF MOTION TO DISMISS

D. K. Boyd (Boyd) submits this Reply in support of his motion to dismiss this force pooling application filed by Tamaroa Operating LLC (Tamaroa). The Reply addresses arguments raised by Tamaroa in its Response filed February 3, 2021 (Response).

INTRODUCTION

Tamaroa seeks to force pool interests in the NE4/NE4 of Section 30 (40 acres) and the NW4/NW4 of Section 29 (40 acres), T9S, R29E, Chaves County, New Mexico. Tamaroa seeks approval of an 80-acre non-standard spacing unit to drill a vertical test well to the Devonian formation. Tamaroa seeks approval to drill the well virtually on the section line dividing Sections 29 and 30. It claims that because the unit will be 80 acres, the location is standard.

Tamaroa owns no working interests in either Section 29 or Section 30. The application merely states that Tamaroa "represents" 62.5% of the working interest ownership in the proposed unit. It apparently has a contract with Back Nine Properties LLC (Back Nine) to drill and operate the proposed well. Back Nine is a majority working interest owner in Section 30 and a minority working interest owner in Section 29. Boyd is a majority working interest owner in Section 29. He also owns executive leasing rights

in that section. Boyd owns no working interests in Section 30. Tamaroa's well location would be non-standard for a 40-acre spacing unit.

ARGUMENT

1. Tamaroa cannot satisfy the Section 70-2-17 requirements.

NMSA 1978 § 70-2-17(C) authorizes pooling under specific circumstances. First, the statute authorizes pooling where "two or more separately owned tracts of land are embraced **within a spacing or proration unit . . . ".** (Emphasis added). Here, Tamaroa seeks to pool two separate, existing and independent spacing units, not separately owned tracts within a spacing unit.

The applicable spacing for a Devonian oil well is forty (40) acres. Rule 19.15.15.9(A) NMAC. The NE4/NE4 of Section 30 comprises a standard 40-acre spacing unit for the Devonian. The NW4/N4 of Section 29 comprises a second standard 40-acre spacing unit for the Devonian.

Tamaroa claims that the Division's authority to establish non-standard spacing units supports its application. Response, p. 3. That is incorrect. The New Mexico Supreme Court held that the agency has the authority to pool separately owned tracts within an oversize non-standard spacing unit. *Rutter & Wilbanks Corp. v. Oil Conservation Comm'n,* 1975-NMSC-006, ¶ 15, 87 N.M. 286. There, the Commission was dealing with an out-sized survey section of a bit over 800 acres instead of 640 acres. Rutter & Wilbanks owned overriding royalty in the north half and opposed being diluted by adding the acreage in the south half of the section, thus exceeding the 320-acre Morrow gas pools spacing. The non-standard spacing unit was thus dictated by acreage considerations.

That is not the case here. Tamaroa has a forty-acre, standard spacing unit in Section 30 which will support its test well. It does not need the Section 29 acreage for that purpose. There is simply no statutory authority for the Division to pool separate, forty (40) acre oil spacing units to form a new, eighty (80) acre spacing unit where no acreage consideration requires the creation and approval of the non-standard unit.[1] Pooling under these facts is contrary to the letter and spirit of § 70-2-17. Pooling is intended to allow the joining of interests and acreage to support a spacing unit. Tamaroa already has a spacing unit comprised of Section 30 acreage. Where pooling is unnecessary for that purpose, the Division would act contrary to its statutory authorization if it approves the application. *Continental Oil Co. v. Oil Conservation Commission,* 1962-NMSC-062, ¶ 11, 70 N.M. 310 (Commission is a creature of statute limited by the laws creating it).

Second, the statute authorizes the Division to pool acreage within a spacing unit upon an application by "one such separate owner or owners who has the right to drill . . . on said unit." Tamaroa is an operator at best, not an owner. The Commission recognizes the difference in defining both terms separately. Rule 19.15.2.7 (O) (5) and (7) NMAC. Tamaroa has no right to pool the acreage at issue in its application.

2. The application, if approved, would violate Boyd's correlative rights.

Tamaroa complains that Boyd's correlative rights will be protected because it will share on a pro rata basis in the revenue resulting from the well Tamaroa plans to drill and operate. Response, p. 4. That argument is based on the false premise that correlative rights encompass only the right to passively receive revenue. Correlative rights are

[1] The Commission has adopted rules governing horizontal wells that allow for such pooling in order to accommodate the reality of drilling horizontal wells, including acreage considerations. Those rules have no application here. The Commission has not adopted similar rules for vertical wells.

defined by § 70-2-33(H) as the opportunity to produce without waste the owner's just and equitable share of the minerals. In other words, an owner's right to develop one's resources is at the heart of the correlative rights inquiry. *See Home-Stake Royalty Corp. v. Corporation Commission,* 594 P.2d 1207, 1210 (Okla. 1979) (measure of just and equitable share is the present market value of the right to drill on a tract of land); *Coleman v. Railroad Commission,* 445 S.W.2d 790, 797 (Tex.Civ.App.- Texarkana 1969) (proration based solely on acreage insufficient to ensure each party receives a just and equitable share of production).

As a majority working interest owner in Section 29, Boyd is the party who presumptively should drill and operate any well that seeks to produce minerals underlying Section 29. Boyd plans to develop that Section. That right would be denied if Tamaroa's application is granted.

Even if the Division ignores Boyd's right to drill on and develop the Section 29 acreage, the application threatens Boyd's correlative rights. Boyd owns no working interest in Section 30. The inclusion of Section 30 acreage in the spacing unit will dilute Boyd's interest in the production from Section 29. Boyd will be entitled to a much higher percentage of the revenue when he develops his Section 29 acreage, undiluted by Back Nine's Section 30 ownership.

Tamaroa offers a vague argument that the application and its proposed well location "is appropriate based on the geology underlying the subject lands." Response, p. 2. This double talk completely misses the point. If the geology underlying Section 30 supports the drilling of the well, Tamaroa has no need to include Boyd's Section 29 acreage. If the geology underlying Section 30 does not support the drilling of the well,

Tamaroa should not drill. In either case, the Section 29 acreage is unnecessary. The inclusion of Boyd's Section 29 acreage indicates that the geology underlying Section 30 is decidedly inferior to the geology underlying Section 29. It would violate Boyd's correlative rights to be required to financially support Back Nine/Tamaroa and where the Section 30 reserves alone are incapable of supporting the drilling of the test well.

Tamaroa's application, if granted, will promote waste and violate Boyd's correlative rights in violation of the Division's mandate under NMSA 1978 § 70-2-10; *Continental Oil, supra.* The Division should apply the presumptive rule that each party should be allowed to develop the reserves under its own acreage and deny this application.

3. Risk penalty issues are for a hearing on the merits.

Boyd argued in his Pre-Hearing Statement as an additional ground for denial of the application on the merits that the risk penalty requested by Tamaroa is not justified and should not be allowed. Tamaroa addressed this as a legal issue. Response, p. 5. Boyd's position, which he will establish if the case proceeds to hearing on the merits, is that (a) Tamaroa has the evidentiary burden to support its requested risk penalty, and (b) Tamaroa cannot justify a 200% risk penalty under the facts of this case.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.
By /s/ J. E. Gallegos
J.E. GALLEGOS
MICHAEL J. CONDON
460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505
(505) 983-6686
jeg@gallegoslawfirm.net
mjc@gallegoslawfim.net

Attorneys for D.K. Boyd

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on counsel of record by electronic mail this 11th day of February, 2021.

Dana S. Hardy
Dioscoro “Andy” Blanco
P.O. Box 2068
Santa Fe, NM 87504-2068
(505) 982-4554
dhardy@hinklelawfirm.com
dblanco@hinklelawfirm.com

Attorneys for Tamaroa Operating

/s/ J. E. Gallegos
J. E. Gallegos