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

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION DIVISION FOR THE PURPOSE OF CONSIDERING:

APPLICATIONS OF FLAT CREEK RESOURCES, LLC FOR A HORIZONTAL SPACING UNIT AND COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO

Case Nos. 21560 & 21747

APPLICATIONS OF MATADOR PRODUCTION COMPANY FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO

Case Nos. 21543 & 21630

FLAT CREEK RESOURCES, LLC'S OBJECTIONS TO CLAIMS AND REPRSENATATIONS IN THE EXHIBITS AND PRE-HEARING STATEMENT OF MATADOR PRODUCTION COMPANY

Flat Creek Resources, LLC, ("Flat Creek") objects to certain claims and elements of the Exhibits and Pre-hearing Statement that Matador Production Company ("Matador") submitted to the Oil Conservation Division ("Division") pursuant to the Prehearing Order dated March 11, 2021. Furthermore, Flat Creek submits the following Objections to inform and provide additional context to Flat Creek's Motion for Continuance, filed the morning of May 4, 2021.

Objections Regarding Matador's Request to Dismiss Flat Creek's Application in Case No. 21560

Matador suggests that Flat Creek's Application in Case No. 21560 should be dismissed based on three reasons. As set forth in Objections ##1-3, there is no basis for Matador's request to dismiss this Application.

Objection # 1: First, Matador urges that the Application should be dismissed because of the manner in which Flat Creek's described (as standard) its proposed 480-acre unit covering the N/2 and N/2 S/2 of Section 23, Township 23 South, Range 31 East, NMPM, Eddy County, New Mexico ("Flat Creek's 480-acre Unit"). *See* Matador Prehearing Statement, p. 3. While Matador is correct that Flat Creek's 480-acre is a non-standard unit, there is no procedural or substantive basis to dismiss Flat Creek's Application because of this oversight.

The purpose of providing a description of the spacing unit in the pooling application is to ensure that all of the working interest owners understand the full nature of the application and proposed unit to be able to engage in good faith negotiations, to obtain a voluntary pooling agreement and/or to trade working interests, and to understand the proposed development of the unit in order to inform a decision whether to object to the proposed unit and/or to participate in any proposed wells.

In Case No. 21560, the only working interest owners in the 480-acre unit are Matador and Flat Creek. Hence, Matador is the only affected party both within the non-standard 480-acre unit and outside the unit in the lands that would be excluded by the non-standard unit. As a result, in order to justify dismissal, Matador must demonstrate that characterizing the proposed unit as a standard unit in the Application that Flat Creek filed on December 4, 2020, some five months ago, somehow prejudiced or harmed Matador or disrupted the administrative processing of the competing applications. Matador fails to claim any prejudice or harm because, as show below, there was none.

The current field rules for the Purple Sage; Wolfcamp were established by Order No. R-14262, issued effective February 1, 2017. Sara Hartsfield, Matador's Landman who is presenting written testimony for the hearing on the competing applications, has been pooling the Purple Sage

Wolfcamp before the Division at least since the emergence of the current field rules. *See, i.e.,* Case No. 15954 filed December 26, 2017. Furthermore, her current counsel has also been her counsel in many earlier applications, including the application in Case No. 15954. Therefore, Ms. Hartsfield and her counsel were aware of the oversight in Flat Creek's spacing description after reviewing Flat Creek's December 14, 2020 Application.

Ms. Hartsfield and Matador were fully aware that Flat Creek's proposed 480-acre unit was a non-standard unit, in spite of Matador's oversight, and knew all the administrative procedures and requirements involved in the approval of a non-standard spacing. Thus, Matador cannot claim that it suffered any disadvantage in negotiations, planning, and decisions on whether to participate in the unit.

In sum, Matador is seeking dismissal of a competing application based on a technical oversight. While dismissing Flat Creek's application would serve the private interests of Matador, it would harm the public interest since it would deprive the Division the opportunity to review and consider Flat Creek's development plan, which promises substantially higher production and a better prevention of waste and protection of correlative rights. Thus, the Division should deny Matador's claim that the Flat Creek's Application for the 480-acre Unit should be dismissed.

Objection # 2: The second alleged irregularity is that Flat Creek filed its Application prematurely, three weeks after submitting its November 12th well proposal. *See*, Matador's Prehearing Statement, at p. 3, and Exhibit No. A, at ¶ 8. There is no basis for dismissing Flat Creek's application based on the time of Flat Creek's well proposals.

First, there are no fixed timelines for submitting well proposals and applications in New Mexico Oil and Gas Act ("Act") or the Rules. The Rules only provide that there must be written evidence of "attempts" to reach a voluntary agreement prior to filing the application. *See* NMAC

19.15.4.12(A)(1)(b)(vi). Furthermore, in NMSA 1978 Sec. 70-2-17(C), the only precondition for a pooling application is evidence that the parties "have not agreed to pool their interests." Flat Creek's Exhibit A-4 in Case No. 21560 shows that Flat Creek made twenty-one (21) attempts to initiate and engage in commercial discussions with Matador to reach an agreement, which started in September 2019, and continued through April 2021, compared to three attempts to initiate commercial discussions made by Matador during this same timeframe.

Second, by Order No. R-13165, issued September 15, 2009, the Division adopted a policy of requiring an applicant to submit a well proposal at least thirty days prior to filing a compulsory pooling application. The working interests subject to the compulsory pooling applications that were the subject of Order No. R-13165 sought the dismissal of the pooling applications for failing to provide adequate well proposals. The Division did not dismiss the applications, but instead re-set the hearing date at least thirty days from the date of the Order:

> . . . to allow the applicant to furnish Movants with a more specific proposal and with other documents Movants have requested and to afford the parties time for further negotiations.

Although Flat Creek submitted its well proposal for its 480-acre unit less than thirty days prior to filing its Application, Matador has had nearly six months before the hearing on Flat Creek's Application to review the well proposal and the parties have engaged in at least twenty-four (24) communications involving negotiations since the filing of the well proposal, thus satisfying the concerns raised in Order R-13165. *See* Exhibit A-4.

Moreover, this policy has a caveat: 30 days are required, but only *in the absence of extenuating circumstances*. *See* Order No. R-13165, ¶ 5a (emphasis added). The time constraints, conditions, and circumstances involved with competing applications have long been recognized by the Division as constituting "extenuating circumstances." In a competing scenario, once the

first application has been filed and docketed, as it was by Matador, the applicant has publicly formalized its decision to pursue its submitted development plan. After such an application is submitted, in order to ensure that Division receives in a timely manner all the available alternate plans in order to select the best plan for preventing waste and protecting correlative right, the competing applicants are extended the flexibility of "extenuating circumstances" and the policy and the timelines are allowed to be altered, even substantially truncated, as long as the prevailing requirements and principles of the governing statutes and rules are maintained.

Under extenuating circumstances of the competing applications herein, as contemplated by Order No. R-13165, Flat Creek satisfied all regulatory and statutory criteria of good-faith negotiations and attempts to reach an agreement prior to filing its application. Therefore, the Division should deny Matador's assertion that Flat Creek's application be dismissed.

Objection # 3: Finally, Matador notes that Flat Creek's November 12, 2020 well proposal only described one well, the Thirteen Seconds 23 Fed-Fee 703H Well, but that its December 3, 2020 Application identified two additional wells, the Thirteen Seconds 23 Fed-Fee 701H Well and the Thirteen Seconds 23 Fed-Fee 701H Well. *See*, Matador's Prehearing Statement, at pp. 3-4. Flat Creek well proposals for these two wells were mailed to Matador on December 14, 2020.

The fact that Flat Creek proposed two additional wells for its 480-acre Unit after filing its Application for that Unit cannot form the basis for dismissing the Application since it was complete as filed with a single well proposal. There is no requirement for proposing more than one well in a proposed pooling unit and there is no justification for dismissing a pooling application when an application sends additional well proposals after filing its application. If that were the case, then Matador's Application for the S/2 of Section 23 (Case No. 21543) would also have to

be dismissed because after filing that Application, Matador submitted a well proposal on February 4, 2021, for a second well (Norris Thornton Fed Com #203HWell) for the S/2 of Section 23.

As set forth above, the parties have had ample time to negotiate their competing proposals since the time that Flat Creek sent out its additional well proposals for the 480-acre unit and have used that time to negotiate. See Exhibit A-4.

Additional Objections:

Objection # 4: Flat Creek objects to Matador's well proposal, dated February 4, 2021, for the Norris Well Fed Com #203H Well, as being improper and defective under Division rules. Matador proposed and filed an application in Case No. 21543 for the single Norris Thornton Fed Com #204H Well in a 320-acre unit covering the S/2 of Section 23. Then, after filing this application, Matador proposed its #203H Well, claiming in its Testimony, but not in the well proposal, that the #203H Well was an infill well.

However, such proposal being subject to NMAC 19.15.13.9 - .10 is improper, irregular and not valid. Rule 19.15.13.9 only allows an operator to propose an infill well after completion of the initial well "provided in the pooling order." Matador completed its #204H Well in the S/2 S/2 of Section 23, but neither this well nor its spacing was provided for in a pooling order issued by the Division, and therefore the well proposal cannot qualify as a valid proposal for an infill well, and Matador's attempt to propose the well as such should fail.

Furthermore, in order to propose an infill well, the operator "shall notify each pooled working interest owner." See NMAC 19.15.13.10(A). Matador notified Flat Creek, but Flat Creek is not a pooled working interest, at least not yet, and certainly was not a pooled working interest owner at the time of Matador's well proposal for the #203H Well. Therefore, this well proposal is defective and fails.

Conclusion: Based on the foregoing, Flat Creek respectfully submits that there is no material basis for the dismissal of its Application in Case No. 21560. There are no fatal defects that should derail the hearing of any single application. All four applications should be heard at an appropriate time to ensure that the Division has for its consideration all available options for the prevention of waste and the protection of correlative rights.

Respectfully submitted,

ABADIE & SCHILL, PC

/s/ Darin C. Savage

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed with the New Mexico Oil Conservation Division and was served on counsel of record via electronic mail on May 4, 2021:

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