

**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 RESPONSE TO
MOTION TO DISMISS CASE NO. 21560**

Flat Creek Resources, LLC, ("Flat Creek") responds to the Motion to Dismiss Case No. 21560 filed by Matador Production Company ("Matador") by demonstrating herein that there is no material basis -- substantive, procedural or otherwise -- for the dismissal of Case No. 21560. In support, Flat Creek states the following:

Legal Argument

- I. Flat Creek applied in Case No. 21560 to pool a 480-acre unit in the Purple Sage Wolfcamp covering the N/2 and N/2 S/2 of Section 23-T23S-R27E, and approaches the May 6th hearing still seeking approval of this same unit; there is no material change in Flat Creek's request.**

1. Flat Creek filed its application in Case No. 21560 seeking to pool a horizontal spacing unit comprised of 480 acres in the Wolfcamp formation, covering the N/2 and N/2 S/2 of

Section 23. As an oversight, Flat Creek referred to this unit as a “standard” horizontal unit. Counsel for Flat Creek has acknowledged and candidly admitted this oversight to the OCD upon the discovery of the mislabeling.

2. However, despite the oversight, Flat Creek still seeks to pool the same Wolfcamp formation, with the same 480-acre unit in the same configuration, the N/2 and N/2 S/2 of Section 23. This request is consistent with the requirements of NMAC 19.15.4.8(A)(4) (describing “the general nature of the order sought”) (emphasis added). Flat Creek’s “general” request has not materially changed; it remains the same. The “specific” oversight of mislabeling the unit as “standard” does not undermine or invalidate the “general” descriptive nature of the request, when the “general” nature of the request remains the same pursuant to 19.15.4.8(A)(4); thus, Flat Creek’s request satisfies the requirements of an application in a substantive way under this Rule.

3. NMOCD Notice: Material Changes or Deficiencies in Applications Submitted to the OCD Engineering Bureau, effective June 11, 2020 (“OCD’s Notice of Material Changes effective June 11, 2020”), states that a change to the horizontal spacing unit would be considered a material change. Flat Creek respectfully submits that a material change to a spacing unit in the Purple Sage Wolfcamp formation would consist of, for example, the application seeking an order for a 480-acre horizontal spacing unit covering the W/2 of Section 23 and the NW/4 of Section 26, which would be a standard spacing unit, and then at the hearing or in the hearing packet, describing instead the unit as a 480-acre horizontal spacing unit covering the N/2 and the N/2 S/2 of Section 23, materially changing the unit to a non-standard spacing unit. Or, in the application, seeking an order for the S/2 of Section 23, and then at the hearing, changing it to the N/2 instead. Such examples would be material changes under OCD’s Notice of Material Changes effective June 11, 2020. A mislabeling or oversight of a spacing unit, when the general description of the spacing

unit has not changed, does not constitute a material change for purposes of dismissal, especially when the only other working interest owner in the unit, besides the applicant, recognized and understood the general nature of the spacing unit from the outset.

4. The substantive 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.

5. This purpose was accomplished by the general description of Flat Creek's 480-acre unit. Ms. Sara Hartsfield and Matador were immediately and fully aware that Flat Creek's proposed 480-acre unit, in its Application filed December 4, 2020, some five months ago, was a non-standard unit, in spite of Matador's oversight, and have shown they are familiar with the administrative procedures and requirements involved in the approval of a non-standard spacing unit. They established these substantive facts in their Prehearing Statement, Land Testimony, and pleadings. Thus, Matador cannot claim that it suffered any prejudice, harm or disadvantage (material or otherwise) in the negotiations, planning, and decisions on whether to participate in the unit.

II. Flat Creek satisfied proper public notice for its adjudicatory hearing by meeting the regulatory requirements of the OCD.

6. NMAC 19.15.4.9 governs public notice for an adjudicatory hearing, not NMAC 19.15.16.15.B(5)(b) or 19.15.15.11.B(4), as claimed by Matador. Flat Creek satisfied the provisions of this Rule, which requires the applicant to provide a "brief description of the hearing's purpose" and "a reasonable identification of the adjudication's subject matter." *See* NMAC

19.15.4.9A(5)-(6). Even the Rule's specific requirement regarding non-standard units in 19.15.4.9A(7) Flat Creek satisfied, for the minimum requirement under requirement (7) is that "the notice shall specify each pool or common source of supply that the division or commission's granting the application may affect." Flat Creek described a horizontal spacing unit as covering 480-acres in the N/2 and N/2 S/2 of Section 23, a general description that constitutes in actuality a non-standard unit, and Flat Creek specified the Wolfcamp pool for this unit. The Division published Flat Creek's public notice for Case No. 21560 as part of the application process. Notably, Flat Creek has never deviated from this request.

7. Flat Creek should still have intact, at this stage in the proceedings, the option under NMAC 19.15.16.15B(5) to apply administratively for approval of the 480-acre unit; the general nature of the unit has not changed from the time it was first described in the application in spite of the oversight and mislabeling. Under this Rule, "[t]he division may approve non-standard horizontal spacing units for horizontal oil and gas wells after notice and opportunity for hearing...." *See* NMAC 19.15.15B(4)(a) (emphasis added). Thus, the OCD has full discretion to allow Flat Creek to proceed with an administrative NSP application after completion of the pooling hearing. The provisions for proper notice and hearing are clearly provided for independently in the NSP application process, and this Rule does not require the original pooling application to be free from oversights or mistakes before a NSP application can be initiated; such option "may" be provided to Flat Creek at the OCD's sole discretion. Thus, the administrative NSP application would allow Flat Creek "to completely and accurately notice" in satisfaction of the OCD's Notice of Material Changes effective June 11, 2020.

III. Flat Creek’s November 12, 2020 well proposal for the Thirteen Seconds 23 Fed-Fee 703H Well is a valid and effective proposal for the application in Case No. 21560.

8. 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 4, 2020 Application identified two additional wells, the Thirteen Seconds 23 Fed-Fee 701H Well and the Thirteen Seconds 23 Fed-Fee 702H Well. *See*, Matador’s Prehearing Statement, at pp. 3-4. Flat Creek’s well proposals for these two wells were mailed to Matador on December 14, 2020.

9. 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.

10. 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* Flat Creek’s Hearing Exhibit A-4.

11. Finally, the consequence to the applicant for dismissal is not to lose by default in a hearing among competing applications, but as specifically stated by OCD’s Notice of Material Changes dated June 11, 2020: ***“If OCD denies an application, the applicant may refile through the fee portal.”*** (emphasis added). Based on the directive from the OCD Engineering Bureau, the

OCD provides Flat Creek, in no uncertain terms, the opportunity to refile its competing application, and a dismissal would result in a delay of the hearing. Thus, if there is a means under the regulations and statutes to maintain Flat Creek's status as an applicant in the May 6 hearing for Case No. 21560, then the OCD should make the effort to do so for the sake of efficiency and preserving administrative resources. Flat Creek respectfully submits that it has demonstrated herein, through a careful review of the rules and regulations, that there are sufficient grounds for proceeding with Case No. 21560 at the hearing.

Conclusion

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. The BLM has informed Flat Creek that, given Flat Creek's Appeal, included in Exhibit A-5 of the Hearing Packet, the BLM has rescinded approval of Matador's Communitization Agreement ("CA") covering the S/2 of Section 23, which will allow the OCD to review Flat Creek's proposed 480-acre unit and give it due consideration without impedance from the CA. The BLM has also informed Matador that it has rescinded approval of Matador's CA, meaning that it is no longer valid and binding on the S/2, and the OCD has full discretion to determine the best development plan for Section 23. *See* Matador's Response to Flat Creek's Motion to Continuance, at Attachment 2. Thus, Flat Creek respectfully requests that the Division deny Matador's Motion to Dismiss Case No. 21560 and allow Flat Creek to proceed with its competing application.

Respectfully submitted,

ABADIE & SCHILL, PC

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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 5, 2021:

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