

**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:**

**APPLCIATION OF MATADOR PRODUCTION
COMPANY FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO.**

Case No. 21543

MOTION TO FOREGO RISK PENALTY

Flat Creek Resources, LLC, and its affiliate Stateline Operating (collectively referred to herein as “Flat Creek”), through its undersigned attorneys, hereby files its Motion to Forego Risk Penalty in Case No. 21543 with the Oil Conservation Division (“Division”).

In support of its Motion, Flat Creek states the following:

I. Procedural history and background:

1. Matador Resources Company (“Matador”) filed a pooling application in Case No. 21543, on November 3, 2020, for the Norris Thornton Com RB #204H Well (API No. 30-015-44659) (the “204H Well”), which Matador had drilled and completed in the S/2 S/2 of Section 23, Township 23 South, Range 27 East, Eddy County, New Mexico, on September 13, 2018, more than two years prior to the pooling application.

2. By drilling and completing the 204H Well prior to pooling the proposed unit, Matador assumed the entire risk of such commencement and operations.

3. On May 6, 2021, the Division conducted a hearing on Matador’s application for the proposed unit, in which the application was taken under consideration.

4. Currently, the Matador's application is being considered. The Division's order has not been issued, and the case remains open until filing of the final order.

5. Flat Creek is a party of record to the proceedings in Case No. 21543, and files this motion to complete the record, at the Division level, on the issue of the risk penalty requested in Matador's application.

II. Legal arguments:

A. The Division should forego the 200% risk penalty, and under the facts, should not impose it on, or assess it against, Flat Creek if the Division should decide to grant a final order in favor of Matador.

6. It is a common practice of the Division that when an operator drills and completes a well prior to pooling the uncommitted interests in the proposed unit, that the Division has discretion to, and often will, deem the operator to have assumed the risk of the drilling and completion of the well; thus, denying the request for a risk penalty.

7. The risk penalty is a discretionary provision, as stated in Section 70-2-17(C), that a pooling order "may include a charge for the risk involved in the drilling of such well." New Mexico case law shows that "the percentage risk charge to be assessed, *if any*, are determinations to be made by the Commission [as well as the Division] on a case-to-case basis and upon the particular facts in each case." Viking Petroleum, Inc., v. Oil Conservation Com'n, 1983-NMSC-091 ¶ 21, 100 N.M. 451. Accordingly, the Division has full discretion to exercise its power to exclude the risk penalty from the final order, and may exercise its power when warranted by the facts either *sua sponte* or at the request of a party of record at any time during the proceedings.

B. Matador drilled and completed the well when the BLM was the only other owner, besides Matador, in the Unit; therefore, Matador assumed the full risk of drilling and completion.

8. At the time of commencement and production of the 204H Well, Matador had entered into and was under the provisions of a Communitization Agreement with the BLM (NMNM 139002) (“CA”) as the sole signatory. Furthermore, not only was Matador the sole party to this CA involving the BLM’s unleased land at the time Matador drilled, completed and produced the 204H Well, but the CA was rescinded by the BLM as of May 5, 2021, emphasizing Matador’s sole responsibility for its actions.

9. Since the owner of the unleased federal lands in the unit was the BLM at the time of the drilling, completion and production of the well, in order to assess or impose a risk penalty that would date back to the drilling of the well, the Division would be required to impose such penalty on the BLM, which Flat Creek respectfully submits is an untenable proposition. Consequently, Matador assumed the full risk by deciding to drill and produce the well before the federal lands were leased.

III. Conclusion:

For the foregoing reasons, Flat Creek respectfully submits that Matador assumed the risk of drilling and completing the Norris Thornton Com RB #204H Well, and under the facts herein, requests that the Division exercise its authority, during its consideration of the application, to exclude the risk penalty for the drilling and completion of the well if the Division should decide to grant operatorship to Matador. In the alternative, should the Division question the timing of Flat Creek’s request, then Flat Creek respectfully submits that the Division’s review of Matador’s application and the facts and timing of the drilling and completion of the well should warrant, *sua sponte*, a finding that the imposition of any risk penalty is unjustified and should not be assessed.

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 July 16, 2021:

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