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

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**APPLICATION OF MATADOR PRODUCTION COMPANY FOR A NON-STANDARD SPACING AND PRORATION UNIT AND COMPULSORY POOLING, LEA COUNTY, NEW MEXICO.**

**Case No. 15363**
**Order No. R-14053**
**Order No. R-14053-B**

## MOTION TO STRIKE NOTICES OF INTERVENTION, OR ALTERNATIVELY, FOR RECUSAL

Jalapeno Corporation ("Jalapeno"), by and through counsel the Gallegos Law Firm, P.C., requests that the New Mexico Oil Conservation Commission strike the Notices of Intervention filed by the Oil Conservation Division's ("Division") and New Mexico Oil and Gas Association ("NMOGA"), and prohibit the intervenors from appearing and presenting evidence at the September 6, 2016 Commission hearing on the merits of Matador's force pooling application. The Division and NMOGA have no standing with respect to the scheduled adjudicatory hearing. The Division's Pre-Hearing Statement and email from Mr. Brooks indicates the Division's intent to present evidence on the jurisdictional issue of the power to force pool across contiguous spacing units. That issue has already been decided. It is not relevant to the merits of Matador's force pooling application. If the Commission allows the Division to appear and participate, Jalapeno respectfully requests that Commission Chairman David Catanach recuse himself from presiding over the merits hearing. Mr. Catanach, as the Director of the Division, should not urge himself as Commission Chairman to approve Matador's application.

As grounds for this Motion, Jalapeno states as follows:

1. Matador seeks approval of a non-standard oil spacing unit in the Wolfcamp formation comprised of four separate 40 acre oil spacing units comprising the W/2 W/2 of Section 31, T-18-S, R-35-E, Lea County, New Mexico. Jalapeno owns working interests affected by the compulsory pooling application and opposes this application.

2. This is a de novo proceeding under NMSA 1978 § 70-2-13. Matador's application was heard on the merits by the Division on September 29, 2015. The Division entered its Order R-14053-B on April 25, 2016, signed by Director Catanach, approving Matador's compulsory pooling application and approving a risk penalty of 133% on well costs in the event any party goes non-consent.

3. Jalapeno filed a Motion to Dismiss challenging the Commission's jurisdiction to consider Matador's application and seeking a declaration of the procedure that should apply to any risk penalty authorized under NMSA 1978 § 70-2-17. The Division filed a notice of intervention one day prior to the hearing on Jalapeno's Motion, appeared at the hearing, and presented arguments in favor of jurisdiction. The Commission announced that it would deny the Motion.

4. A hearing on the merits of Matador's application is scheduled for September 6, 2016. This is an adjudicatory proceeding, not a rulemaking proceeding. Adjudication is the resolution of particular disputes involving specific parties and specific problems. *Earthworks' Oil & Gas Accountability Project v. New Mexico Oil Conservation Commission,* 2016-NMCA-055, ¶ 5, 374 P.3d 710; *Uhden v. N.M. Oil Conservation Commission,* 1991-NMSC-089, ¶ 7, 112 N.M. 528, 817 P.2d 721.

5. The particular dispute now pending before the Commission is whether Matador's force pooling application should be granted on the merits, and if so, whether

any risk penalty should be authorized and on what costs the risk penalty may be assessed. Neither the Division nor NMOGA own mineral interests that are affected by the force pooling application. Neither will be impacted by a decision regarding a risk penalty.

6. On August 30, 2016, the Division filed a Pre-Hearing Statement which states that the Division supports the issuance of the Order Matador seeks. The Statement indicates that the Division intends to appear and argue the jurisdictional issue at the September 6 hearing. In an email communication, Division counsel stated the Division intends to address the "non-standard unit issue" at the September 6 hearing.

7. To the extent the "non-standard unit issue" refers to the jurisdictional argument, that issue is not the subject of the upcoming hearing. The Commission has already decided the issue, so there is no need to hear the Division again or entertain testimony and evidence on that issue. To allow the Division a second bite at the apple will only cause waste and delay.

8. The intervenors are not applicants or persons entitled to notice of the Commission hearing. Thus, their only claim to participate in the hearing on the merits of Matador's application is as an intervenor. Rule 19.15.4.10(A).

9. Rule 19.15.4.11 rules authorizes intervention, though it contemplates that an intervenor will typically "oppose issuance of the order applicant seeks." Rule 19.15.4.11(A)(4). The Commission Chairman may strike a notice of intervention if the intervenor fails to show that it has standing. The rule does not establish criteria for standing. Rule 19.15.4.11.

10. Standing typically means that a party has a sufficient stake in a controversy to justify the party's involvement in the proceeding. In New Mexico, a litigant must typically establish an injury causally related to challenged conduct which is likely to be redressed by a favorable decision. *ACLU of New Mexico v. City of Albuquerque,* 2008-NMSC-045, ¶ 7, 144 N.M. 471.

11. While the exact parameters of the "stake in the controversy" requirement are not clearly defined, what is clear is that the Division and NMOGA do not have a sufficient stake in the adjudication of the merits of Matador's force pooling application to justify any attempt to inject themselves into the September 6 hearing. They own no interest that will be affected by the decision. They will not be subject to any risk penalty based on the Commission's order.

12. Matador is experienced in force pooling proceedings and has competent counsel to present its case. Even if the Division wanted to address the merits of the application, its presentation and evidence would simply be cumulative and duplicative and should be precluded on that basis.

13. It is unseemly for the Division to insert itself as an intervenor in a Commission adjudicatory proceeding. The Division is an inferior tribunal vis-à-vis the Commission. The Commission will make a determination in this case on the merits of Matador's application, and the Division will be bound by the Commission's decision. It makes no sense to allow the Division to petition the Commission for a specific result in this adjudicatory proceeding.

14. Moreover, the Division's intervention creates a conflict of interest. David Catanach is the Division Director who signed the Division Order approving Matador's application. Mr. Catanach is also the Commission Chair. Thus, by virtue of the

Division's intervention to support Matador's application, Mr. Catanach is in effect urging himself to grant Matador's application. This is not proper in an adjudicatory proceeding. While Jalapeno has great respect for Mr. Catanach, the Division intervention creates at a minimum the appearance of a conflict, which should be avoided.

15. Every litigant is entitled to a fair and impartial trial. Due process considerations require that the person responsible for making decisions in an adjudicatory proceeding be disinterested, impartial and free of bias. If the Commission allows the Division to participate in the September 6 hearing on the merits of the Matador application, Jalapeno respectfully requests that Mr. Catanach recuse himself from presiding over the hearing and participating in the decision.

16. NMOGA states it does not anticipate offering any witness testimony or exhibits at the hearing. It is unclear then why it has intervened. Any attempt by NMOGA to intervene on the merits of Matador's application should be rejected on the same grounds as set forth above. NMOGA has no interests that will be affected by a determination of the merits of the application.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following counsel of record by electronic mail this 2nd day of September, 2016.

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