

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

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

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

Case No. 15,363 (*de novo*)

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**MATADOR PRODUCTION COMPANY'S
MOTION TO STRIKE**

Matador Production Company ("Matador") submits this motion to strike the six additional exhibits attached to Jalapeno Corporation's ("Jalapeno") Application for Rehearing filed with the Commission on November 30, 2016, and also moves to remove the exhibits from the record in this case.

1. The evidentiary testimony before the Commission in Case No. 15,636 was split over several days with a gap of over one month leading up to the final day of evidentiary testimony in this matter (October 17, 2016). Jalapeno, in the interim time period between the hearing days and just one day before the final day of evidentiary testimony, filed six additional proposed new exhibits with the Commission.

2. Matador filed a Motion to Exclude the additional exhibits because (a) the exhibits were not timely filed with the Commission nor provided to Matador as required by Commission procedural rules, and thus were not legally proper nor admissible, and (b) Matador did not have sufficient time to review and respond to the additional exhibits, and thus was prejudiced by them.

3. The Commission properly granted Matador's Motion to Exclude. Although Jalapeno claims the Commission abused its discretion in excluding the six exhibits, the fact is the Commission had several sound reasons to exclude them, as noted in Paragraph 2 above.

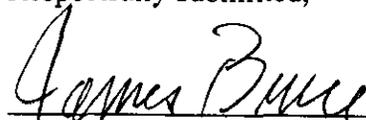
4. Jalapeno has now attached the six excluded exhibits to its Application for Rehearing, in a backdoor attempt to get the exhibits into the record in the event the matter is appealed to the courts. Jalapeno should not be allowed to do an end-run around the Commission's rulings on the admission of these exhibits through an application for rehearing.

5. Because the review by a court in such an appeal would be based on the record before the Commission, Matador will be prejudiced if the six exhibits are not stricken from the record. If Jalapeno were allowed to insert these untimely exhibits into the record through an

application for rehearing, Matador would have no ability to address or respond to them. Allowing these late-filed exhibits into evidence is therefore improper and patently unfair.

WHEREFORE, Matador requests that Jalapeno's proposed additional exhibits (Nos. 5A, 5B, 6A, 6B, 7, and 22) be stricken from the record, and be physically removed from Jalapeno's Application for Rehearing so that they are not part of the record in any subsequent appeal.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served on the following counsel of record this 8th day of December, 2016 via e-mail.

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