

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

RESPONSE TO MATADOR'S MOTION TO STRIKE

Jalapeno Corporation files this Response in opposition to the Motion to Strike filed December 8, 2016 by Matador Production Company. The Motion is without merit and should be denied in its entirety. As grounds for this Response, Jalapeno states as follows:

1. Matador's motion is directed at six exhibits Jalapeno tendered in connection with the continued de novo hearing on October 17, 2016 on the merits of Matador's force pooling application. Matador asks the Commission to strike the exhibits and physically remove them from the file in this case.

2. The Commission granted Matador's Motion to exclude the exhibits. Consequently, the exhibits were not considered by the Commission in this de novo proceeding.

3. Jalapeno attached the exhibits to its Application for Rehearing and has raised the exclusion of those exhibits as an issue in the Application for Rehearing. Jalapeno has an absolute right to ask the Commission to reconsider its evidentiary ruling in its Application for Rehearing. The Commission should review the exhibits in ruling on this issue.

4. Matador's request that the Commission strike the exhibits and remove them from the file is without merit and should be summarily denied. There is no provision in the governing statutes or the Commission's rules supporting such action. Matador does not cite any authority for its request. Matador's request that the Commission rule on the Application without reviewing the exhibits themselves invites further error by the Commission.

5. Assuming the Commission denies Jalapeno's Application for Rehearing, Jalapeno intends to challenge the Commission's evidentiary ruling when it appeals to the district court. The district court cannot properly rule on such an evidentiary challenge without reviewing the exhibits, and it cannot review the exhibits if they are not in the record.

6. The six exhibits are now properly part of the record in this case. Matador has no right to control the record in this Commission proceeding. In any adjudicatory proceeding, a party has the right to make a record with respect to evidence and exhibits it submits for the tribunal's consideration, even if the tribunal determines not to consider them. The Commission should not aid and abet Matador's attempt to control what records or pleadings Jalapeno properly makes part of the record in this case.

WHEREFORE, Jalapeno requests that the Commission deny Matador's Motion to Strike in its entirety.

Respectfully submitted,

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By 

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CERTIFICATE OF SERVICE

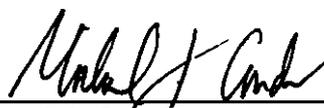
I hereby certify that a true and correct copy of the foregoing was served on counsel of record by electronic mail this 9th day of December, 2016.

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