

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

FEB 08 2018 PM 03:47

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

CASE NO. 15900

POST-HEARING REPLY

Caza Petroleum, Inc. ("Caza"), provides this Post-Hearing Reply to Matador Production Company's Response to Caza's Memorandum supporting its request that the order to be issued in this matter include *inter alia* a provision for the operator to make well data available to Caza.

To support its opposition to providing Caza with its well data, Matador relies on Order No. R-13156, *Application of XTO Energy, Inc.*, (August 12, 2009) and Order No. R-13357-A, *Application of Cimarex Energy Co. of Colorado*, (April 30, 2012). Notably, the Order in *XTO* was premised on the assertion of the privilege afforded trade secrets. Similarly, in *Cimarex*, the operator asserted that the data sought was confidential. Matador has invoked neither a trade secrets privilege nor has it asserted confidentiality in this matter. But, Caza does not seek any such analytical materials from Matador. It seeks only those types of materials outlined on the attached Exhibit A. Indeed, Caza has property rights to these materials and information and Matador has an obligation to provide them. As was established in *Nearburg v. Yates Petroleum Corporation*, a party electing to go non-consent does not forfeit its property rights. Instead, when force-pooled the non-consenting party will only "temporarily relinquish the specified amount of its interest *in production* in exchange for the consenting party bearing the risk of the operation." 1997-NMCA-069 ¶ 17, 123 N.M. 526, 943 P.2d 560 (emphasis added).

As has been pointed out previously, both Matador and Caza own leases within the designated unit. Each company could reasonably be said to be a co-tenant to the other and each had operating rights or the "right to drill" within the meaning of NMSA 1978 § 70-2-17. This relationship was fundamentally changed when Matador force pooled the W/2 W/2 of Section 33 and had itself designated as the operator of the unit. By doing so, Matador appropriated exclusively to itself the right to drill and operate on the W/2 W/2, effectively precluding Caza from obtaining any data on its own. Consequently, the co-tenancy relationship was altered: one co-tenant has appropriated an outstanding *adversarial* or superior interest of claim to one element of the co-tenancy property that it seeks to assert exclusively for itself: the operating rights. Under such circumstances, courts have determined that a fiduciary relationship will arise under the co-tenancy. *See generally*, 2 The American Law of Property § 6.16 at 67 – 69 (A. Casner, ed. 1952).

Now in a superior position, the withholding of well information by Matador is inconsistent with the fiduciary duties that Matador may have to its disadvantaged co-tenant. At a minimum, withholding the data would also be inconsistent with the duties of "utmost" good faith and fair dealing that the owner of the executive rights or the operating rights would owe its co-owners. When a superior or paramount right exists, one co-tenant cannot make an *adversary* claim to the common estate and assert it for his exclusive benefit, to the injury and prejudice of the other co-tenants. *Sharples Corp. v. Sinclair Wyoming Co.*, 167 P.2d 29, 37, 62 Wyo. 341, 360 (Wyo. 1946).

A fiduciary duty arises not from any contract between them, but from the *relationship* of the parties, which requires that the holder of the executive right acquire for the non-executive party every benefit that he exacts for himself. *Manges v. Guerra*, 673 S.W.2d 180, 183 (Tex. 1984).

The Court in *Manges* held that the possessor of an executive right owes to the co-mineral owners a duty to use the "utmost good faith and fair dealing" as to the interest of the non-executive

mineral interest owners. The Court went on to say that while a contract or deed may create the relationship, the duty of the executive arises from the relationship and not from express or implied terms of the contract or deed. "That duty requires the holder of the executive right . . . to acquire for the non-executive every benefit that he exacts for himself." *Id.* at 184 citing to R. Hemmingway, *The Law of Oil & Gas*, 2.2(D) (2d ed. 1983). In other words, the benefits must be shared and this should by logic apply to well information.

In consideration of all the factors discussed, Caza's request for well data and information should be provided for in the Division's pooling order in this matter.

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 on February 8, 2018:

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J. Scott Hall

For the Bill Alexander State Com 33-22S-35E AR No. 111H Well; W/2 W/2 Section 33, T-22-S, R-35-W, NMPM, Lea County, New Mexico:

1. All open-hole and cased-hole logs from surface to total depth.
2. All mud logs from the surface to total depth.
3. All DST reports, including pressure charts, fluid recovery data and observed flow rates, together with service company reports thereof with respect to reservoir parameters.
4. All daily drilling reports from commencement through completion of the well.
5. All data and reports for cores and side-wall cores.
6. All completion reports as such become available.
8. All Pay-out progress reports.

**EXHIBIT A**