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

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION DIVISION 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**

MATADOR PRODUCTION COMPANY'S RESPONSE TO STATEMENT OF SUPPLEMENTAL AUTHORITY

Matador Production Company ("Matador") submits this response to the Statement of Supplemental Authority filed by Jalapeno Corporation ("Jalapeno") and Yates Energy Corporation ("Yates").

I. INTRODUCTION.

Jalapeno and Yates filed a motion to dismiss, asserting that the Division does not have authority under NMSA 1978 §70-2-17 to enter a forced pooling order for a non-standard unit comprised of four lots or quarter-quarter sections. As pointed out in Matador's response, and at oral argument on September 3rd, the Division has both the statutory and legal authority questioned by Jalapeno and Yates. Jalapeno and Yates have now submitted to the Division the case of *Johnson vs. New Mexico Oil Conservation Commission, 127 N.M. 120 (1999)* as support for their position. This case does not support their position, and again ignores the Division's authority to form and force pool non-standard units.

II. ARGUMENT.

In *Uhden vs. Oil Conservation Commission, 112 N.M. 528 (1991),* the Supreme Court applied Fifth Amendment due process principles to decide that Virginia Uhden was not subject to a Commission order increasing spacing in a gas pool in San Juan County, because she had not been given notice of the spacing application despite the fact that the applicant, Amoco Production Company ("Amoco"), knew her address. In fact, Amoco had been paying royalties to Mrs. Uhden for years. The net effect of the spacing increase on Mrs. Uhden was to reduce her royalty income by 50%.

After the *Uhden* decision the Commission adopted notice regulations, including giving notice of applications to increase spacing. In *Johnson* the Court held that under the new notice regulations the plaintiffs were entitled to notice of a spacing increase application filed by Burlington Resources Oil & Gas Company ("Burlington"). Because their addresses were known to Burlington, but they were not so notified, the Court held that the plaintiffs were not subject to the Commission's spacing increase order.

Although based on notice regulations rather than due process, the result in *Johnson* is the same as in *Uhden*: Spacing increases are invalid as to an affected person who is not given notice of the application. However, these cases have nothing to do with forming and pooling non-standard units. Such cases, including the present case, are controlled by NMSA 1978 §70-2-18.C, *Rutter & Wilbanks vs. Oil Conservation Commission, 87 N.M. 286, 532 P.2d 582 (1975),* and Commission Order No. R-13708-A, which expressly allow formation and pooling of non-standard well units.

Finally, Matador notes that in the present case Jalapeno, Yates, and all other affected parties have received notice of the pooling and non-standard unit application. Thus, *Uhden* and *Johnson* are inapplicable.

III. Conclusion.

Creation of non-standard spacing units for the purpose of drilling horizontal wells, and compulsory pooling of interest owners in a unit, are authorized by statute, court cases, Division regulations, and Division and Commission case law. The motion to dismiss has no statutory or legal basis and must be denied.

WHEREFORE, Matador requests the Division to enter an order denying Jalapeno's and Yates' motion to dismiss.

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 22nd day of September, 2015 via e-mail.

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