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

APPLICATION OF MATADOR PRODUCTION COMPANY FOR A NON-STANDARD OIL SPACING AND PRORATION UNIT, COMPULSORY POOLING, AND NON-STANDARD LOCATION LEA COUNTY, NEW MEXICO. **Case No. 15366**

RESPONSE TO MOTION TO QUASH

Amtex Energy, Inc. ("Amtex") and William J. Savage submit this response in opposition to the Motion to Quash Entry of Appearance filed by Matador Production Company on October 5, 2015. The Entry of Appearance filed by Amtex on September 25, 2015 is valid and timely under Rule 19.15.4.10(B) NMAC. Amtex has a valid interest in preserving its de novo appeal rights under the Oil and Gas Act. Moreover, Amtex is concerned that Matador did not fully disclose all pertinent facts and legal issues to the Division in its application and evidentiary presentation at the September 3, 2015 hearing. The Motion to Quash is without merit and should be denied.

Amtex has important correlative property rights which are threatened by Matador's force pooling application. Matador can drill a horizontal oil well on the eighty acres comprising the northern half of the W/2 E/2 of Section 16, Township 19 South, Range 34 East, NMPM, Lea County, New Mexico where it owns working interests. Rule 19.15.15.9(A) (oil well spacing is 40 acres). However, Matador seeks approval of a 160 acre spacing and proration unit even though Matador owns no interest in the 80 acres which comprise the southern half of the affected acreage, thus has no right to drill that acreage. NMSA 1978 § 70-2-17(C) (owner must have right to drill on affected acreage

in order to request force pooling). Matador seeks to force pool Amtex and others in order to expropriate their working interests, and force Amtex to finance Matador's costs of drilling through imposition of a non-consent penalty.

1. Facts Supporting Denial of Matador's Motion.

Matador filed its force pooling application on August 3, 2015. Matador seeks to force pool all mineral interests in the Bone Spring formation underlying four proration units comprising the W/2 E/2 of Section 16, Township 19 South, Range 34 East, NMPM, Lea County, New Mexico. Matador has proposed a horizontal oil well that will traverse the entire W/2 E/2 of Section 16. Matador did not fully disclose the ownership interests in its application or hearing testimony. While Matador owns working interests in the units in the north half of the affected acreage, Matador owns no interest in the units comprising the south half of the acreage affected by Matador's application. Amtex owns 92.8% of the working interests in the southern units. Phil Vogel, Mark A. Trieb, Michelle P. Trieb and Stewart Royalty, Inc., own the remaining working interests in the southern part of the affected acreage. See Affidavit of William J. Savage, attached hereto as Exhibit A, ¶ 6.[1] Thus, by its application, Matador seeks to drill on acreage in which it owns no interest, and to gain ownership of acreage covering two forty acre oil spacing units in which it owns no interest.

The well Matador seeks to drill is an offset to a well previously drilled by Matador in the E/2 E/2 of Section 16. This offset well, the Cimarron 16 19 34 RN State Well No. 134H, was also a Bone Springs well which was the subject of Matador's force pooling

[1]Amtex is the proper party in this proceeding. The entry of appearance was filed on behalf of both Amtex and Mr. Savage pending confirmation of ownership of the mineral interests in the W/2 E/2 of Section 16. Amtex, not Mr. Savage owns the mineral interests in the affected acreage. Mr. Savage withdraws his entry of appearance in this proceeding.

application in Division Case No. 15243. Matador's application was approved by Order No. R-13960. That well was drilled in 2015 and successfully completed in the Bone Spring formation. The well has produced over 72,000 barrels of oil in four months of production. Ongard Production Data Report, attached as Exhibit B. These facts were not disclosed in Matador's application or in the hearing testimony.

Matador's application lists as parties to be force pooled Amtex, Mark Trieb, Philip Vogel, and Stewart Royalty. Sally Meader Roberts, who owns a 2% override in the acreage subject to this application, was not given notice. See Matador's Application and Exhibit B thereto. Attached as Exhibit C is the Roberts assignment.

Amtex does not contest that it received notice of Matador's application in this case prior to the September 3, 2015 hearing. As a Texas-based operator, Amtex has little experience with force pooling proceedings. Amtex first experienced the force pooling procedure when it was force pooled by Matador in Division Case No. 15243 referenced above. When Amtex received the notice letter in this case, it was inadvertently misplaced and Mr. Savage, Amtex president, was occupied with the press of other business. When Amtex learned of Matador's presentation at the hearing, and realized the extent to which its correlative rights would be adversely affected by Matador's application, it contacted counsel and filed its entry of appearance. Savage Affidavit, ¶ 9.

Amtex has several objections to Matador's application. First, Matador seeks to force pool and produce reserves from acreage in the south half of the W/2 E/2 of Section 16 in which Matador owns no interest. It thus has no right to drill its horizontal well on this part of the proposed spacing and proration unit under NMSA 1978 §70-2-

17. Matador is entitled to drill on the northern 80 acres of the proposed unit. Absent agreement with Amtex and other working interest owners in the southern 80 acres, Matador has no right to drill on Amtex's acreage and the Division should not aid in Matador's efforts to expropriate Amtex's mineral interests.

Amtex is an experienced operator which has drilled numerous horizontal wells in New Mexico. Savage Affidavit, ¶ 2, Amtex has the right to drill and develop reserves from the Bone Springs formation from existing spacing units covering the southern half of the affected acreage and could do so under current spacing rules. Matador's application seeks to appropriate Amtex's rights in this acreage. Such a result would violate Amtex's correlative rights.

Second, Matador asks the Division to pool a project area linking and crossing multiple, standard spacing units. While the Division has the authority to order compulsory pooling within spacing or proration units, it has no authority to order compulsory pooling crossing spacing units. NMSA 1978 § 70-2-17. This issue has been raised in Division Case No. 15363, another Matador application for compulsory pooling. The Division in that case denied Jalapeno Corporation's Motion to Dismiss. Undersigned counsel, who also represents Jalapeno, anticipates a de novo appeal to the Oil Conservation Commission for a decision on these far reaching policy issues in Case No. 15363.

Third, Amtex objects to Matador's request for a 200% non-consent penalty. The well Matador anticipates drilling is an offset in the same 320 acres where its proven producer is completed in the E/2 W/2 of Section 16. Matador has recognized that there is no geologic or reservoir risk, and only minimal operational risk. There is no

justification for a 200% non-consent penalty, which effectively expropriates Amtex's interest for an indefinite period while allowing Matador to realize profits disproportionate to the limited risk in drilling the well. Such a result would violate Amtex's correlative rights.

Matador has not given notice of this proceeding to all mineral owners entitled to notice. *See Uhden v. New Mexico Oil Conservation Com'n,* 1991-NMSC-089, ¶ 13, 112 N.M. 528 (royalty owner entitled to notice of spacing application); Rule 19.15.4.12(A)(1) (all owners of an interest in the mineral estate of any portion of lands to be pooled are entitled to notice of compulsory pooling application).

2. Amtex filed a Valid and Timely Entry of Appearance

Matador's Motion to Quash Amtex's Entry of Appearance should be denied for several reasons. First, the Entry of Appearance is valid under Rule 19.15.4.10(B) which provides: "A person entitled to notice may enter an appearance **at any time** by filing a written notice of appearance with the division or the commission clerk . . .". (Emphasis added). The language is unambiguous. "At any time" means just that. The rule does not require that an entry of appearance be filed prior to hearing or prior to a decision by the Division. While Matador's refusal to address the unambiguous language of the rule is understandable as a litigation tactic, the Division cannot and should not ignore it.

Amtex is a party entitled to notice, it has filed an entry of appearance, and is therefore a party of record in this proceeding.

Motions to quash are typically directed at indictments in the criminal context or subpoenas in the civil context. The party filing the motion has the burden of proof. *Allsup v. Space,* 1961-NMSC-175, ¶ 23, 69 N.M. 353 (party seeking affirmative relief

has the burden of proof); 81 Am.Jur.2d Witnesses, § 12 (2nd ed. 2015 update) (burden of persuasion in motion to quash subpoena in civil litigation borne by movant).

Matador does not cite any on-point authority for its request that the Division quash or strike a valid entry of appearance. The Division rules do not expressly authorize the motion. Matador cites Rule 19.15.4.10(C), but that rule actually supports Amtex's status as a party of record. It provides that a party who has not entered an appearance at least one day prior to the pre-hearing filing date cannot present technical evidence at the hearing unless authorized by the Division. The rule expressly recognizes that a party can be a party of record even if it does not participate in the Division hearing. It is not inconsistent with the applicable rule, 19.15.4.10(B), which authorizes an entry of appearance at any time.

Moreover, Matador's argument is a red herring. Amtex has not requested to present technical evidence at the hearing, which Amtex understands has already concluded. Amtex understands that Matador introduced evidence that supports the drilling of the proposed well geologically and structurally. Amtex is raising legal issues, not technical issues, concerning Matador's application. These are important policy issues that deserve consideration.

3. Amtex is Entitled to De Novo Review of Any Adverse Division Decision.

Matador's true motivation in filing its motion is to deprive Amtex of its right to request a de novo hearing before the Oil Conservation Commission from any adverse ruling by the Division. By virtue of filing an entry of appearance, Amtex is now a party of record in this proceeding. NMSA 1978 § 70-2-13 provides that any party of record adversely affected by a decision by the Division "shall have the right to have the matter

heard de novo before the Commission." The statute does not require that a party of record adversely affected have participated in the hearing before the Division. Rule 19.15.4.10 does not require that a party entering an appearance participate in the hearing. The statute and rule confirm Amtex's status as a party of record, and confirm Amtex's right to de novo review before the Commission of any adverse decision by the Division. This is particularly true where the issues are very different from the routine questions addressed in force pooling applications about whether a well should be drilled and interests pooled in a standard spacing unit.

If Matador is unhappy with § 70-2-13, its remedy is to seek amendment of the statute. If Matador is unhappy with Rule 19.15.4.10, its remedy is to seek amendment of the rule. Matador is not entitled to a ruling by the Division which fails to give effect to either the statute or the rule as written.

In order to avoid the logical consequence of the application of § 70-2-13 and Rule 19.15.4.10, Matador cites to cases decided under the rules of civil procedure. None of those cases involve Rule 19.15.4.10 or § 70-2-13, so they have no bearing on this motion. Matador's citation to *Rueckhaus v. Catron (matter of Greig's Will),* 1979-NMSC-014, ¶ 3, 92 N.M. 561, 562 is notable because that case actually supports Amtex's status as a party of record. In *Rueckhaus,* the Court held that a party who never entered an appearance below was not a party to an appeal. Here, Amtex has entered an appearance.

Matador complains about having to present its case again to the Commission upon de novo review. It cites to cases which hold a party is not entitled to raise an issue on appeal that was not raised below. Motion, p. 4. The rule has no bearing here.

In civil litigation, trial courts are fact finders. Many trial court decisions are reviewed for abuse of discretion. Thus, the record made in the trial court is in most cases the record which an appellate court reviews to render its decision. Very few trial or evidentiary decisions are subject to de novo review.

The procedure for adjudicatory decisions under the Oil and Gas Act is entirely different. The Legislature has determined that Division decisions are heard de novo upon application made to the Commission. The de novo hearing is a new hearing on the merits. When a case is heard de novo, it is as if no trial had been held in the matter below. *State v. Hoffman,* 1992-NMCA-098, ¶ 4, 114 N.M. 445. No deference is given the Division's decision. The Commission does not review the Division's decisions for abuse of discretion. The Commission is not limited to the record made before the Division or the issues raised in the Division hearing.

Matador will suffer no prejudice if it has to present its case again to the Commission, because that is exactly what § 70-2-13 requires. A false claim of prejudice is no basis for striking a valid entry of appearance. Matador will have an opportunity to fully present its case to the Commission and give the Commission the opportunity to decide if Matador is entitled to use the force pooling rules and regulations to expropriate the mineral interests of third parties and profit at their expense.

The Division's statutory directive to prevent waste and protect correlative rights will be advanced by denial of Matador's motion. The case presents important policy questions concerning the Division's authority to approve force pooling and a non-consent penalty under these facts. Some of these issues have already been raised in Division Case No. 15363, another Matador force pooling application, so Matador is well

aware that interest owners are challenging its force pooling requests. This case raises important issues of Amtex's correlative rights where Matador seeks a force pooling order which will expropriate property owned by Amtex, in which Matador owns no interest, and which Amtex has the right to drill and develop itself.

Even if the Division had the discretion to quash or strike Amtex's Entry of Appearance, which it does not, it should decline to do so given the important issues implicated by Matador's application. Amtex requests that the Division deny Matador's Motion.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

By _____

J.E. GALLEGOS
MICHAEL J. CONDON
460 St. Michael's Drive, Bldg. 300
Santa Fe, New Mexico 87505
(505) 983-6686

Attorneys for Amtex Energy, Inc. and William J. Savage

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 13th of October, 2015.

Earl E. DeBrine, Jr.
Jennifer Bradfute
P.O. Box 2168
Bank of America Centre
500 Fourth Street NW, Suite 1000
Albuquerque, NM 87103-2168

_____
Michael J. Condon

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

APPLICATION OF MATADOR PRODUCTION COMPANY FOR A NON-STANDARD OIL SPACING AND PRORATION UNIT, COMPULSORY POOLING, AND NON-STANDARD LOCATION LEA COUNTY, NEW MEXICO. **Case No. 15366**

AFFIDAVIT OF WILLIAM J. SAVAGE

STATE OF TEXAS)
)ss.
COUNTY OF MIDLAND)

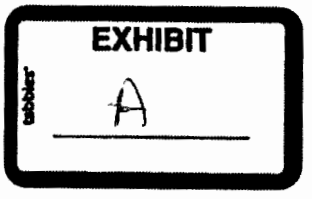
Being first duly sworn on oath the undersigned states and declares:

1. My name is William J. Savage. I am the owner and president of Amtex Energy, Inc. ("Amtex"), whose business address is P.O. Box 3418, Midland, Texas 79702. The statements made in this affidavit are based on my own personal knowledge.

2. Amtex has been operating in Texas since 1987 and operating in New Mexico since 1988. Our New Mexico operator number is 000785. Amtex has successfully drilled numerous wells in New Mexico, including horizontal oil wells.

3. As a Texas-based operator, I have not had prior experience with force pooling proceedings. Texas does not have such a procedure. Amtex has never filed a force pooling application.

4. My first experience was MRC Permian Company ("MRC"), force pooling application in Case No. 15243 involving the E/2 E/2 of Section 16, Township 19 South, Range 34 East, NMPM, Lea County, New Mexico. That proceeding involved the



Matador Production Company ("Matador") Cimarron 16-19-34 RN State Well No. 134H. Amtex made several proposals to MRC after we received their notice regarding the 134H well, including a property exchange and a term assignment. Our efforts to work out a deal in that case were not agreeable to MRC. I believe MRC used the force pooling procedure as leverage to force me to accept a deal on terms unfavorable to Amtex. When negotiations broke down, MRC went forward with its force pooling proceeding which was approved by Division Order No. R-13960.

5. The Cimarron 16-19-34 RN State 134H well was drilled in early 2015 and has produced over 72,000 barrels of oil since April, and through August 31, 2015. Amtex has received no final statement of well costs for the Cimarron 16-19-34 RN State 134H well. Amtex has not received any payout statement from Matador on that well.

6. The Cimarron 16-19-34 RN State 133H well Matador proposes in this proceeding is a direct offset to the Cimarron 16-19-34 RN State 134H well. Matador seeks to force pool our mineral interests in the W/2 E/2 of Section 16 in this proceeding. Matador owns working interests in the 80 acres comprising the northern half of the acreage at issue here. However, Matador owns no interest in the 80 acres comprising the southern half. The Amtex operated ownership of working interests in the southern half, which is subject to State Lease No. E0-7824-0002, is: Amtex 92.8%, Mark A. Trieb, 1.6%, Michelle Trieb, 1.6%, Philip C. Vogel, 3.2%, and Stewart Royalty, Inc., .8%. Amtex geologist Sally Meader Roberts owns a 2% override in the Amtex operated acreage at issue in Matador's application.

7. The ownership interests set forth in paragraph 5 also apply to the E/2 E/2 of Section 16 that was at issue in Division Case No. 15243. In that case, MRC only

listed Amtex as a party to be pooled. Trieb, Vogel, Stewart Royalty and Roberts were not given notice in Case No. 15243.

8. Sally Meader Roberts did not receive notice of the force pooling application in this case.

9. I do not recall any efforts by Matador to get voluntary agreement for the Cimarron 16-19-34 RN State 133H well at issue in this case other than sending a copy of the proposed AFE. The notice of this force pooling application had been misplaced in our office. Based on my experience with MRC in the prior case, I believe we would not have been able to reach voluntary agreement.

10. Once I learned of Matador's presentation to the Division, and now that I have had a chance to see and understand the consequences of force pooling based on Case No. 15243, I believe that an order granting Matador's force pooling application in this case would violate Amtex's correlative rights. Amtex has the right to drill one or more Bone Springs wells in the spacing units comprising the SE/4 of Section 16, and that right would be extinguished by the granting of Matador's application. Matador owns no interest in the southern half of the W/2 E/2 of Section 16.

11. I am also opposed to Matador's request for a 200% non-consent penalty, where the proposed Cimarron 16-19-34 RN State 133H well is a direct offset to the 134H well, which has been drilled and is a proven productive well. There is no risk and no justification for any non-consent penalty here.

12. I believe that Matador has no authority to impose its will to drill across acreage which it does not have any ownership interest. Consequently, if allowed to drill

the hydrocarbon leasehold assets of Amtex, et al., the non-consent penalty value of those reserves will become losses to Amtex, et al.

FURTHER AFFIANT SAYETH NOT.

William J. Savage

SUBSCRIBED AND SWORN before me this 13th day of October 2015 by William J. Savage.

KAROL ANN EADS
Notary Public, State of Texas
My Commission Expires
January 28, 2018

Karol Ann Eads
Notary Public

My Commission Expires:
1/28/18

View Production Data

In Internet Explorer, right click and select[Save Target As...]
In Netscape, right click and select [Save Link As...]

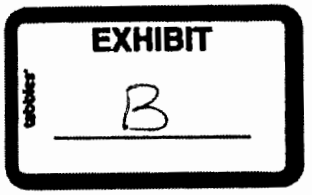
Download: API_NO_3002542352.csv

API #: 3002542352 **Well_Name:** CIMARRON 16 19 34 RN STATE # 134H
Location: A-16-19.0S-34E , 250 FNL, 985 FEL **Lat:**32.666841212 **Long:**-103.55997483
Operator Name: MATADOR PRODUCTION COMPANY [Operator and Lessee Info] **County:** Lea
Land Type: State **Well Type:** Oil **Spud Date:**2/5/2015 1 **Plug Date:**
Elevation GL: 3825 **Depth TVD:** 10736
Pools associated:

- QUAIL RIDGE;BONE SPRING **Total Acreage:** 160.00 **Completion:** 1 Summary of Production
- Show All

Year: 2015
Pool Name: QUAIL RIDGE;BONE SPRING

Month	Oil(BBLS)	Gas(MCF)	Water(BBLS)	Days Produced
January	0	0	0	0
February	0	0	0	0
March	0	0	0	0
April	974	0	17262	4
May	20370	9740	20864	30
June	22783	11696	15851	29
July	16540	6655	9346	31
August	0	0	0	0
September	0	0	0	0
October	0	0	0	0
November	0	0	0	0
December	0	0	0	0



MISC 610 PAGE 328

80764

ASSIGNMENT OF OVERRIDING ROYALTY INTEREST

THE STATE OF NEW MEXICO X
X
COUNTY OF LEA X

REFERENCE is here made for all purposes to the oil and gas lease ("Subject Lease") and the lands ("Subject Lands") described on Exhibit "A", attached hereto and made a part hereof.

FOR AND IN CONSIDERATION of the sum of Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **AMTEX ENERGY, INC.** ("Assignor"), whose mailing address is P. O. Box 3418, Midland, Texas 79702, does hereby GRANT, BARGAIN, SELL, TRANSFER, ASSIGN AND CONVEY unto **SALLY MEADER ROBERTS** ("Assignee"), whose mailing address is 704 Delmar, Midland, Texas 79703, an overriding royalty interest equal to 2.0% of 8/8ths of all oil and/or gas, including casinghead gas and other gaseous substances, which may be produced and saved or sold from the Subject Lands under and by virtue of the Subject Lease and all extensions thereof.

Said overriding royalty interest to be free and clear of all cost and expense of development operation and maintenance, but subject to applicable taxes and costs of transporting, treating, processing, gathering and compression charges necessary to make production from the Subject Lands marketable. Said overriding royalty interest shall be computed and paid in the same manner as royalty under the Subject Lease.

In the event that the Subject Lease covers less than the entire mineral estate in and under the Subject Lands, or in the event that Assignor owns less than the entire working interest created by the Subject Lease, either or both, then the overriding royalty interest conveyed herein shall be reduced proportionately.

Assignor and Assignee agree that operations on the Subject Lands, as well as preservation of the Subject Lease by payment of delay rentals, annual rentals, or otherwise, shall be solely at the will and discretion of Assignor, its successors and assigns.

Assignor hereby reserves the right and power for itself, its successors and assigns, to pool or combine the Subject Lease as it relates to the Subject Lands, or any portion thereof, as to the oil and gas, or either of them, with other lands or leases in the vicinity thereof to the extent desired by Assignor, when, in Assignor's judgment, it is necessary or desirable to do so in order to properly develop and operate said premises in compliance with the rules and regulations of applicable governmental authorities, or when to do so would, in the judgment of Assignor, promote the conservation of oil or gas from such premises. If a unit now exists or is hereafter formed so as to include the Subject Lands or any portion thereof, the overriding royalty interest conveyed by this instrument shall be reduced in the proportion that the portion of the Subject Lands placed in such unit bears to the entirety of the acreage comprising the particular unit involved.

This Assignment of Overriding Royalty Interest is executed without warranty, either express or implied.

IN WITNESS WHEREOF this instrument is dated this 14th day of September, 1995, effective for all purposes as of 7:00 a.m. local time on August 1, 1995.

AMTEX ENERGY, INC.

William J. Savage

William J. Savage
President

EXHIBIT
tabbies
C

ACKNOWLEDGEMENT

STATE OF TEXAS X
X
COUNTY OF MIDLAND X

BEFORE ME, the undersigned authority, on this day personally appeared WILLIAM J. SAVAGE, President of AMTEX ENERGY, INC., on behalf of such corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same, for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 14th day of September, 1995.

SUSAN E. HOWARD
Notary Public, State of Texas
My Commission Expires 8-17-96

Susan E. Howard
Notary Public, State of Texas

C:\WP51\1995\SMRORRI.ASM

EXHIBIT "A"

Attached hereto and made a part hereof of that certain Assignment of Overriding Royalty between AMTEX ENERGY, INC., Assignor, and SALLY MEADER ROBERTS, Assignee executed this 14th day of September, 1995.

Lease No.	Lessor/Lessee Information	Description
1007520-00	Lessor: St. NM #E-7824 Lessee: Gulf Oil Corp. Lease Date: 2/16/54	Insofar as said lease covers the S/2 Sec. 16, T-19-S, R-34-E Lea County, New Mexico

Well Information

Well/Unit Name	Location
Lea ED State #1	T19S-R34E-Sec. 16:S/2
Lea ED State #2	T19S-R34E-Sec. 16:S/2

STATE OF NEW MEXICO
COUNTY OF LEA
FILED

80764

OCT 6 1995

at 10:19 o'clock A M
and recorded in Book 610
Page 330
Bar Chappelle, Lea County Clerk
By [illegible] Deputy