

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

ORIGINAL

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

CASE 15363
(Cont'd from 8/20/2015)

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

September 3, 2015

Santa Fe, New Mexico

BEFORE: PHILLIP GOETZE, CHIEF EXAMINER
GABRIEL WADE, LEGAL EXAMINER

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This matter came on for hearing before the
New Mexico Oil Conservation Division, Phillip Goetze,
Chief Examiner, and Gabriel Wade, Legal Examiner, on
September 3, 2015, at the New Mexico Energy, Minerals,
and Natural Resources Department, Wendell Chino
Building, 1220 South St. Francis Drive, Porter Hall,
Room 102, Santa Fe, New Mexico.

REPORTED BY: ELLEN H. ALLANIC
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Reporter's Certificate

PAGE
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1 (Time noted 8:55 a.m.)

2 EXAMINER GOETZE: We are back on docket,
3 September 3, 2015, Docket 25-15.

4 We will now go to case No. 15363,
5 Application of Matador Production Company for a
6 non-standard oil spacing and proration unit and
7 compulsory pooling, Lea County, New Mexico.

8 Call for appearances.

9 MR. GALLEGOS: Mr. Examiner, my name is Gene
10 Gallegos, Santa Fe, New Mexico. And I am appearing on
11 the motion to dismiss on behalf of Jalapeno and Yates
12 Energy.

13 MR. BRUCE: Mr. Examiner, Jim Bruce of Santa
14 Fe in association with Dana Arnold, in-house attorney
15 for Matador, representing Matador Production Company.

16 EXAMINER GOETZE: So for the record, we've
17 received motion for dismissals and a response. At this
18 point we will ask you to go ahead and present your case
19 for a motion of dismissal.

20 MR. GALLEGOS: Thank you, Mr. Examiner. I
21 think what we are dealing with here is an instance, not
22 unusual, where technology has moved out ahead of the law
23 because of the advent in the last several years of
24 horizontal drilling and completion of wells in
25 formations that previously would have only penetrated,

1 been productive on a vertical well basis.

2 In this case, we have an applicant who --
3 and I read from the application, briefly, "seeks to
4 dedicate the west half, west half of section 31 to the
5 well to form a non-standard 154.28 acre oil spacing and
6 proration unit, paren, (project area), end paren, for
7 any formation and/or pools developed on 40-acre spacing
8 within that vertical extent."

9 So this is one of those many applications
10 that frequently are before the Division without
11 opposition in which a party producer is actually
12 attempting to string together 40 well spacing units and
13 call it a project area. Essentially our contention is
14 there is no statutory authority for this Division to do
15 so.

16 Let me put in context a bit, the legal
17 circumstances that are behind this motion to dismiss,
18 and what I am going to do is I am going to read briefly
19 from a motion of a similar nature that was filed before
20 the Oil Conservation Commission and the Division by Bill
21 Carr, who I think is well known as sort of the dean of
22 practitioners before this regulatory body.

23 And in that motion --

24 EXAMINER WADE: If I could interrupt real
25 quickly, do you have a case number?

1 MR. GALLEGOS: Yes. Thank you. That was in
2 case 14418. It was an application of Cimarex. And I
3 will go forward, Mr. Wade, to talk about the disposition
4 of that case. That application, similar to this one,
5 ended up being denied by the Commission.

6 So that motion to dismiss says -- and this
7 basically states our situation -- first of all that the
8 Oil Conservation Commission is a creature of statute
9 expressly defined, limited, empowered by the laws
10 creating it.

11 The plain language of the Oil and Gas Act
12 authorizes compulsory pooling only -- and I quote --
13 "when two or more separately owned tracts of land are
14 embraced within a spacing or proration unit." And the
15 citation, of course, is to Section 70-2-17(C).

16 This statutory language is clear and
17 unambiguous and limits compulsory pooling to single
18 spacing units.

19 And finally before the Commission can
20 combine and then compulsory pool four complete
21 contiguous standard spacing units, it must obtain
22 authorization from the legislation to do so.

23 And, of course, until this time, as we sit
24 here today, that has not occurred. There is no such
25 authority. The only authority and it's -- the act, as I

1 say, has been on the books a long time and, of course,
2 did not anticipate what technology the industry's come
3 up with. But 70-2-17(C) is clearly speaking in the
4 singular when it comes to spacing units. And it does
5 not allow for this chain of spacing units in what has
6 been called a project area.

7 Now, in that case, as you asked about,
8 Mr. Wade, the Division decision went up to the Oil
9 Conservation Commission and was disposed of on
10 September 20th, 2010, in Order 13228-F.

11 And basically what happened is the
12 Commission recognized what was happening, said that a
13 spacing unit is defined as the acreage assigned to a
14 well under a well spacing order or rule. And I'm
15 quoting from page 8 in the conclusory portion of the
16 order: "Cimarex's project area is a combination of
17 complete contiguous spacing units and not a non-standard
18 spacing unit. Combining complete spacing units is the
19 nature of unitization. With unitized lands for primary
20 production, voluntary agreement is required for an
21 interest owner to be included in the unit."

22 The application was denied.

23 I think that with that decision in 2010, the
24 Commission and probably the industry recognized that
25 there needed to be some rulemaking to deal with the

1 advent of numerous horizontal well developments in
2 northwest but in particularly southeast New Mexico, and
3 so there was a rulemaking case, which is case No. 14744,
4 which resulted in order No. R-13499, entered
5 January 23rd, 2012.

6 And at that time -- unless I am mistaken and
7 I think this is the last word of the Commission on this
8 issue -- the Commission said, "The extent of the
9 Commission's and the Division's authority to establish
10 non-standard spacing or proration units or special
11 spacing or proration for horizontal wells has not" --
12 and I emphasize "has not" -- "has not been clearly
13 delineated by either judicial or Commission precedent.

14 "Accordingly, the Commission concludes that
15 it would be inappropriate to adopt a rule on this
16 subject at this time. In order to forestall any
17 possibility that the rule amendments being adopted would
18 be construed to authorize compulsory pooling of
19 horizontal well 'project area' without regard to
20 applicable statutory and regulatory limitations, the
21 proposed" -- and it sites the rule -- "should not be
22 adopted and the change discussed in paragraph 60 should
23 be adopted."

24 And that results in that portion of the rule
25 that refers to horizontal wells on a voluntary

1 agreement, and then has language, Or on compulsory
2 pooling, quote, "if applicable," end quote.

3 So, basically, the situation, Mr. Examiner,
4 is that the time is ripe for recognizing that the Oil
5 and Gas Act is behind the times and legislation is
6 needed.

7 Our clients are not opposed obviously to
8 development of these formations as horizontal wells. It
9 is obviously a benefit for the state, a benefit
10 particularly for southeast New Mexico for employment --
11 for many reasons -- but it has to be done lawfully, not
12 simply by fiat.

13 I would just refer to the response of
14 Matador in this case to address two items. First of
15 all, as far as I see it, there are only two grounds of
16 opposition to this motion to dismiss. There's a
17 citation to the Rutter and Wilbanks versus Commission
18 case that's supposedly in support of an argument that a
19 non-standard spacing unit in that -- the right to do
20 that occupies this idea of stringing together already
21 existing spacing units.

22 The Rutter and Wilbanks case was one where
23 you had an unusual 800-acre section. And so the
24 Division and the Commission approved 400-acre spacing
25 units, because logically those are non-standard spacing

1 units. But, otherwise, as Rutter and Wilbanks contended
2 you were just going to have 320 acres and leave an
3 island in the south half of that section with -- not in
4 the spacing unit. So that's appropriate when you have
5 an east half 400 acres and a west half 400 acres,
6 because it was an unusual section. That certainly is
7 not authority for what is sought here by Matador.

8 The other citation or authority and the
9 response that I found is a reference to a Division or a
10 Commission case. It was 14966. And this was a case
11 where Cimarex was seeking an unusually lengthy
12 horizontal well lateral going from section 9 into
13 section 8 and having 240-acre spacing.

14 And, basically, the question really was when
15 you have a lateral that length and go from one section
16 to the other. And there was another party in the case,
17 but the other party in the case was not in opposition,
18 and, certainly, neither party raised the issue that we
19 are raising here today about the statutory authority.

20 COG came into that case basically to
21 support, to say, We like lengthy laterals and we think
22 the longer the laterals are the better chance of
23 recovering the resources.

24 So that case hardly stands to support or for
25 what is sought here by this application. And the

1 Commission -- it seems to me in that case in order to
2 approve it, even though there's no opposition to approve
3 the case, it was a denial below by the Division --
4 basically referred to it as "a unit."

5 The case, if you read the language, is not
6 really saying, We are approving this as a non-standard
7 spacing unit but a, quote, capital U, Unit, which of
8 course would bring into question -- and that was raised
9 in the earlier case, where I read from Bill Carr's
10 letter, What can you do with a unit, because our
11 statute, 70-7-1, Unitization, precludes primary recovery
12 exploratory units. Our Unitization Act only allows for
13 secondary recovery, tertiary recovery pressure
14 maintenance type units, not primary exploratory kind of
15 units.

16 So that would be a misuse. And that
17 formation, if we are going to call that a unit, that
18 would have been in violation of the statutory authority
19 regarding unitization under our New Mexico law.

20 As I say, this is a situation where
21 technology simply exceeds the law but the law has to be
22 followed. This Division and this Commission exist only
23 because of the legislation, the Oil and Gas Act. That's
24 the authority you have. And to allow this application
25 would be excess -- an action in excess of that

1 authority. And for that reason, we think the
2 application should be dismissed.

3 Thank you.

4 I stand for any questions.

5 EXAMINATION BY EXAMINER WADE

6 EXAMINER WADE: You read from OCC Order
7 R-13499, and that was the rulemaking?

8 MR. GALLEGOS: That's the rulemaking, yes.

9 EXAMINER WADE: What paragraph specifically
10 was that?

11 MR. GALLEGOS: I was reading from page 11,
12 paragraph 73, 74, and 75. And the rule that was adopted
13 for horizontal wells is attached to that order.

14 EXAMINER WADE: So you are arguing that both
15 the statutory authority and the rule as written do not
16 allow for the formation of this project area?

17 MR. GALLEGOS: Well, the rule as written I
18 think is the kind of language that sort of says, You can
19 have these project areas by agreement, maybe you can
20 have them by compulsory pooling, and, then, in commas,
21 "if applicable."

22 So, obviously, the Commission order itself
23 says, We think we have to have legislative authority.

24 So the statute 70-1-17(C) does not allow
25 this. That is not to say you can't have project areas

1 and wells done on voluntary agreement. In fact, many,
2 many, many of the wells are done -- we are talking about
3 forced pooling.

4 And so, Mr. Wade, I think both existing
5 regulations don't allow it, and, of course, the statute
6 does not allow this under the guise of the formation of
7 a non-standard spacing unit.

8 EXAMINER WADE: I don't have any further
9 questions.

10 EXAMINER GOETZE: I do not have any
11 questions for you. Thank you very much.

12 Mr. Bruce.

13 MR. BRUCE: Mr. Examiner, the Oil and Gas
14 Act was adopted in the mid 1930s, and it has adapted
15 very well to changing conditions in the oil and gas
16 business over the last 80 years. And that's what it's
17 doing again, it's adapting to changing conditions.

18 Insofar as authority, obviously 70-2-17 is
19 the pooling statute but Jalapeno and Yates kind of gloss
20 over 70-2-18 that allows the formation of non-standard
21 units and the forced pooling of non-standard units.

22 And then you come to Rutter and Wilbanks. I
23 think that case was directly on point. Yeah, they had a
24 section of 800 acres and normally that would have been
25 200- to 320-acre units and then another one of about 180

1 acres.

2 What they did was they took that extra
3 180 acres and tacked it onto the two, allowed a
4 rearrangement to make 400-acre units. That's exactly
5 what is being done day after day in the oil and gas
6 business.

7 Insofar as statutory authority goes, of
8 course one of the primary statutes is 70-2-11 which
9 allows the Division or the Commission to adopt any
10 regulations or orders that are necessary to prevent
11 waste, whether or not it is specified in any other
12 section of the Oil and Gas Act. And that's what the
13 Division and the Commission have done.

14 Now let me get to Mr. Gallegos' arguments in
15 a little more detail. First of all, the order in the
16 special pool rules case for horizontal wells, 13499,
17 Jalapeno did appear in that case and made the same
18 argument it's making today. And the Commission said,
19 Jalapeno Corporation's proposal to limit pooling for
20 horizontal wells to spacing units already established
21 for vertical wells should not be adopted; Conclusion of
22 law 79 at pages 11 and 12.

23 Frankly, we think there is collateral
24 estoppel here. Their argument has already been
25 rejected.

1 Furthermore, Mr. Gallegos said, That's the
2 last statement on this issue. And he read some findings
3 from the order. And that is not the last statement on
4 this issue. It is a subsequent order of the Commission,
5 R-13708-A, which permitted a 240-acre non-standard oil
6 and gas spacing unit and forced pool interest into that
7 unit. Mr. Gallegos said it only referred to it as a
8 unit.

9 But let me read you from page 5 of that
10 order, Ordering paragraph one: "A non-standard 240-acre
11 oil spacing and proration unit is hereby established for
12 oil and gas production from the Avo/Wolfcamp Formation
13 consisting of the north half, northeast of section 8 and
14 north half, north half of section 9, 15 South, 31 East,
15 Chaves County, New Mexico."

16 That subsequent order is the order that
17 governs the case today. And that's not the only case
18 that came out discussing that. As mentioned in my
19 brief, there's Division Order R-12682-A, which was
20 adopted over eight years ago and Division Order
21 R-13425-A adopted right about the time -- right before
22 Order R-13499 was adopted. And the Division and the
23 Commission have been following that for eight years.

24 And I did a little calculation. The first
25 Division order on that, R-12682-A, that was Case 13777.

1 The case we are here for today is 15363. So in other
2 words, since that order was adopted, 1,586 cases have
3 been filed before the Division. And I would guess the
4 majority of those are forced pooling cases for
5 non-standard units.

6 The precedent has been established. The
7 Commission's orders allow it. The Division's orders
8 allow it. The statutes allow it. And Rutter and
9 Wilbanks allows it.

10 When you come to Order R-13228-F, that's the
11 only order sitting out there, the facts are different,
12 and it is not the last word on the subject. As I said,
13 it is Order R-13708-A.

14 And by the way, the special rules for
15 horizontal wells adopted by Order 13499 specifically
16 reference compulsory pooling of horizontal wellbores, so
17 there is also regulatory authority. 1915, 1615-A-2 and
18 subpart F specifically reference compulsory pooling of
19 horizontal wellbores.

20 And the Division's statutory mandate is to
21 prevent waste. And if the Division grants Jalapeno's
22 and Yates' motion, it will cause waste; and drilling of
23 wells to the Wolfcamp, Bone Spring, Delaware, and
24 perhaps other formations will come to a grinding halt
25 causing waste and impairing the correlative rights of

1 thousands of interest owners.

2 The Division has enforced fully non-standard
3 units for over eight years to the benefit of everyone
4 and the motion should be denied.

5 EXAMINER GOETZE: Questions, Counselor?

6 EXAMINER WADE: I don't think I have any
7 questions at this time.

8 MR. GALLEGOS: If I may reply.

9 EXAMINER GOETZE: You may reply.

10 MR. GALLEGOS: Thank you.

11 I don't know how many of those 1,500 cases
12 were these what I call project area cases. But I only
13 know of two in which there's been an opposition. And we
14 know what happened in Case number 14418 and 14480. That
15 resulted in the denial of the Commission, as I said,
16 back in December 2010, in order 13228-F.

17 Now, Counsel refers to this order 1376-A as
18 being some sort of authority and some sort of new
19 rulemaking. Well, that's simply not the case, and that,
20 of course, as the Commission concludes and states, No
21 offset interest owners objected to the, quote, capital
22 U, Unit.

23 This is not a case that stands for approval
24 of project areas under the rule allowing non-standard
25 spacing units. Of course 70-2-18 allows for

1 non-standard spacing units. That's a whole different
2 thing from project areas.

3 But if you go to this case that Counsel says
4 is the new rule, it doesn't support this application at
5 all and basically what happens there is the
6 Commission -- and this is their conclusion --
7 Accordingly the Unit -- capital "U" -- should be
8 approved and pooling of the uncommitted interest in the
9 unit should be approved. Approval of the unit will
10 enable applicant to drill a horizontal well that will
11 efficiently produce the reserves underlying the units
12 thereby preventing waste in the drilling of an unlisted
13 well. So what it did was it punted and it didn't follow
14 this idea of non-standard spacing. It turned the case
15 into a unit case, no objection to the outcome, two
16 parties who both wanted to drill the over-length
17 lateral. And it referred to the unitization, which, of
18 course, had there been another party, that could have
19 been contested to for the reasons that I said before
20 about the authority under 70-7-1 in following of that
21 formation of units.

22 So there simply is no authority. The
23 Commission itself, back in 2012, has raised the
24 question. Why the industry has not gone to the
25 Legislature for an amendment of the Gas Act, I don't

1 know, except because, typically, they can come before
2 this Division without opposition and get what they want.

3 But we are talking here about the formation
4 of a non-standard spacing unit. Here's what the Rutter
5 and Wilbanks case says: A non-standard spacing unit is
6 a spacing unit which deviates in acreage or conformation
7 from the standard units established by the Division.
8 Instead of 320, geography, conformation of the section,
9 may justify a 400-acre spacing unit or a 40-acre spacing
10 unit may be 42 acres or 35 acres because of topography,
11 survey anomaly, or whatever.

12 That's the proper use of the non-standard
13 spacing authority of this Commission. And it is a
14 misuse of it to attempt to take existing spacing units,
15 string them together under this idea of project area.
16 The law simply does not permit it.

17 It's time to go the Legislature and amend --
18 and I agree with Counsel -- it's an old act and times
19 have changed and we need to update the law. But we have
20 to operate in this Division; the Commission has to
21 operate under the authority which the Legislature has
22 granted to it. There is no authority to allow this
23 application.

24 MR. BRUCE: If I may have a little leeway,
25 Mr. Examiner?

1 EXAMINER GOETZE: Well, it's an open
2 session. Let's go ahead. You've gone beyond your one
3 minute, though.

4 MR. BRUCE: Mr. Gallegos refers to it in
5 order R-13708-A as simply being a unit, capital U. All
6 you have to do is to go to page 1 of that order, finding
7 paragraph No. 2 where it says, Cimarex Energy Company
8 seeks an order approving a 240-acre non-standard oil
9 spacing proration unit and project area, parentheses,
10 quote, ("The unit"), capital U.

11 They are just simply using that as
12 shorthand. They are not saying it is a unit area. They
13 are saying it's a non-standard unit. And they are simply
14 using that as shorthand.

15 And then you go to the conclusion in 5 on
16 page 4 of the Order, where the Commission states
17 clearly, The amended horizontal well rules do not
18 restrict the lateral length of a horizontal well that
19 may be drilled or the size of a non-standard spacing and
20 proration unit for a horizontal well which may be
21 compulsory pooled.

22 That is the last word of the Commission and
23 the Legislature again gave broad authority to the
24 Division to adopt regulations or orders to prevent waste
25 under 70-2-11.

1 And I don't really think it matters whether
2 a case is uncontested or contested. Frankly, I've been
3 involved in virtually all of these cases, and my big
4 opposition has come from the Division or the Commission,
5 not the opponents, not the parties being pooled.

6 Thank you.

7 EXAMINER GOETZE: We are going to go off the
8 record for a moment. We will take a five-minute break
9 and then we will come back in.

10 (Brief recess.)

11 EXAMINER GOETZE: Let's get back on the
12 record. We have heard testimony from both sides of this
13 argument. We did ask you in the preconference hearing
14 to come up with a possible date for continuance. At
15 this point, we would ask you what options you have.

16 MR. GALLEGOS: On our part, Mr. Examiner,
17 we've cleared September 21st, September 23rd, September
18 28th, September 29th and 30th.

19 EXAMINER GOETZE: You folks?

20 MS. ARNOLD: We propose the following dates,
21 the 14th, 15th, 16th, 28th, or 29th of September.

22 EXAMINER WADE: The 28th and the 29th seem
23 to be the consensus dates.

24 EXAMINER GOETZE: Well, seeing how the 28th
25 is a Monday, how about we set up for the 29th? Is that

1 agreeable with all parties?

2 MR. GALLEGOS: That's agreeable on our part,
3 Mr. Examiner.

4 EXAMINER WADE: So we have asked the court
5 reporter, and we can get the transcript from today
6 expedited. And we will hope to have a decision on the
7 motion to dismiss well before the hearing date or
8 whether to review.

9 MR. GALLEGOS: Okay.

10 EXAMINER GOETZE: Do you have anything else
11 you would like to add?

12 (No response.)

13 EXAMINER GOETZE: So at this point we will
14 take Case 15363 under advisement and set up for a
15 special off docket hearing on September 29th. And this
16 ends this day's hearing docket.

17 Thank you very much.

18 MR. GALLEGOS: Thank you.

19 (Time noted 9:35 a.m.)

20

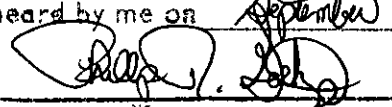
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I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. 15363.
heard by me on September 3 2015.
 , Examiner
Oil Conservation Division

1 STATE OF NEW MEXICO)
) ss.
 2 COUNTY OF BERNALILLO)
 3
 4
 5

6 REPORTER'S CERTIFICATE
 7

8 I, ELLEN H. ALLANIC, New Mexico Reporter CCR
 No. 100, DO HEREBY CERTIFY that on Thursday, September
 9 3, 2015, the proceedings in the above-captioned matter
 were taken before me, that I did report in stenographic
 10 shorthand the proceedings set forth herein, and the
 foregoing pages are a true and correct transcription to
 11 the best of my ability and control.
 12

13 I FURTHER CERTIFY that I am neither employed by
 nor related to nor contracted with (unless excepted by
 14 the rules) any of the parties or attorneys in this case,
 and that I have no interest whatsoever in the final
 15 disposition of this case in any court.
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