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

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

CASE NO. 15433

APPLICANT'S RESPONSE TO NEARBURG'S MOTION TO DISMISS

Applicant, Matador Production Company ("Matador"), seeks an order creating a non-standard spacing unit comprised of the W/2 E/2 of Section 32, Township 18 South, Range 33 East, NMPM, Lea County, New Mexico, and pooling all uncommitted mineral interests therein. Nearburg Exploration Company, LLC and Nearburg Producing Company (collectively "Nearburg") is a working interest owner in the W/2 SE/4 of Section 32. Nearburg moved to dismiss this application on the grounds that a voluntary agreement exists between Nearburg and Matador, rendering Nearburg's interest "not available" to be force pooled. *Motion*, p.1.

Nearburg's motion to dismiss fails for three reasons. First, Matador seeks to pool multiple uncommitted interest owners within the proposed spacing unit. Thus, a pooling order is required for parties independent of Nearburg and dismissal of Matador's application is baseless. Second, the Joint Operating Agreement referenced by Nearburg only covers a portion of the lands within the proposed non-standard spacing unit; no voluntary agreement governs the aggregated lands within the proposed spacing unit. Third, granting Nearburg's motion would impair correlative rights and impede development. For these reasons, Nearburg's motion to dismiss should be denied.

I. Matador seeks to pool multiple parties.

Pooling is authorized by the Oil and Gas Act to aggregate two or more separately owned tracts of land within a spacing unit, absent a voluntary agreement. *See* NMSA 1978, § 70-2-17(C). The litmus test for determining whether a pooling application is appropriate, as set forth as standard language in orders of the Oil Conservation Division, is as follows: "There are interest owners in the Unit that have not agreed to pool their interests." *See, e.g.*, Order No. R-13763, ¶ 9, Order No. R-13910, ¶ 10, Order No. R-13995, ¶ 10.

Matador has not reached a voluntary agreement with multiple interest owners in the proposed non-standard spacing unit. Despite good faith efforts to reach an agreement, as of the date of filing this motion, the following interest owners remain uncommitted to the proposed non-standard spacing unit: Rohoel, Inc., Sybil Blackman Carney, Dr. Robert B. Cahahn and Bernice A. Cahan, and Nearburg Exploration Company, LLC. Matador requires a pooling order irrespective of Nearburg's interest, thus, Nearburg's motion to dismiss must be denied.

II. No voluntary agreement exists for the proposed spacing unit.

Nearburg contends that because a JOA exists between Matador and Nearburg governing the S/2 of Section 32 (the "S/2 JOA"), a voluntary agreement is in place as to the entire proposed spacing unit. Matador does not dispute that the S/2 of Section 32 is governed by the S/2 JOA between Matador and Nearburg. However, Nearburg fails to mention that there is *also* a JOA that governs the N/2 of Section 32 with diverse ownership and terms from the S/2 JOA. Matador has no authority to unilaterally pool the two contract areas to form the proposed spacing unit absent voluntary agreement by

all the interest owners in both JOAs. Matador believes that a north-south well orientation is the best method to efficiently develop the minerals in this area and prevent waste. Accordingly, it proposes to drill the Eland State 32-18S-33E RN #123 well with a spacing unit comprised of the W/2 E/2 of Section 32.

Nearburg cites authority that is easily distinguishable from the facts at hand. The non-standard spacing unit proposed by Matador encompasses two tracts of land: the W/2 NE/4 and the W/2 SE/4. An agreement exists between Matador and Nearburg *only* as to the W/2 SE/4. Nearburg has "not agreed to pool their interests" in the W/2 SE/4 with Matador's interests in the W/2 NE/4 under any agreement. The Division Order cited in Nearburg's motion, Order R-9841, is distinguishable in that the decision hinged on the fact that the party being pooled was willing to stipulate that the proposed well would be drilled under the terms of the existing operating agreement.[1] *See* Transcript of Case No. 10658, p. 22-24, 26, 28. Here, the proposed well cannot be drilled under the terms of the existing JOA.

The Oil and Gas Act provides:

> When two or more separately owned tracts of land are embraced within a spacing or proration unit...the owner or owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owner or owners have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such

[1] The two remaining orders cited by Nearburg are related to the Division's authority to pool only in the absence of a voluntary agreement. As set forth above, Matador does dispute that the Division may pool only in the absence of a voluntary agreement. Rather, Matador's position is that no voluntary agreement exists as to the non-standard spacing unit.

lands or interests or both in the spacing or proration unit as a unit. NMSA 1978, § 70-2-17(C) (emphasis added).[2]

Therefore, pursuant to the terms of NMSA 1978, § 70-2-17(C), the interests "shall" be pooled because no voluntary agreement exists pooling the acreage necessary to create the non-standard spacing unit.[3]

III. Granting Nearburg's motion would impair correlative rights and impede development.

The primary duty of the Commission and the Division is to prevent waste and protect correlative rights. NMSA 1978, § 70-2-2; § 70-2-11. Should Nearburg's motion to dismiss be granted, operators in New Mexico will be left with limited options to protect correlative rights and prevent waste through horizontal development with geologically proven and preferred well orientations. Because no voluntary agreement exists covering the proposed non-standard spacing unit, Matador's geologic preference to drill a north-south well will be impeded and therefore its correlative rights will be harmed absent a Division-authorized pooling order.

WHEREFORE Matador respectfully requests that the Division deny the Motion to Dismiss filed by Nearburg.

---

[2] The New Mexico Supreme Court has held that the Division's authority to pool extends to non-standard spacing units. *See Rutter & Wilbanks Corp. v. Oil Conservation Comm'n*, 1975-NMSC-006, ¶ 15, 87 N.M. 286, 532 P.2d 582.

[3] The Division Orders cited by Nearburg do not hold to the contrary. They merely reflect that the Division's authority to pool exists only in the absence of a voluntary agreement. Nearburg points to no agreement under which the parties have agreed to combine the acreage in the W/2 SE/4 with the acreage in the W/2 NE/4 for development.

Respectfully submitted,

By: _____

Michael H. Feldewert
Jordan L. Kessler
HOLLAND & HART LLP
Post Office Box 2208
Santa Fe, New Mexico 87504-2208
(505) 988-4421
(505) 983-6043 Facsimile
mfeldewert@hollandhart.com
jlkessler@hollandhart.com

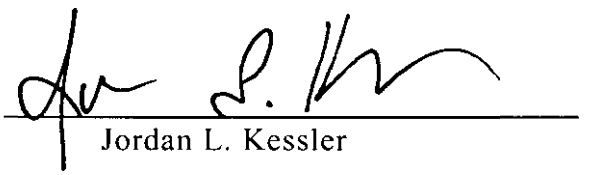
Dana R. Arnold
Matador Resources Company
5400 Lyndon B. Johnson Freeway, Suite 1500
Dallas, TX 75240
(972) 371-5284
darnold@matadorresources.com

ATTORNEYS FOR
MATADOR PRODUCTION COMPANY

CERTIFICATE OF SERVICE

I certify that on January 19, 2016, I served a copy of the foregoing document to the following counsel of record via electronic mail:

Scott Hall
Post Office Box 2307
Santa Fe, New Mexico 87504-2307
(505) 982-3873
jshall@montand.com



Jordan L. Kessler