

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

JUL 11 2013

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

Case No 15721

PRE-HEARING STATEMENT

Jalapeno Corporation (Jalapeno) provides this Pre-Hearing Statement as required by the rules of the Division. Jalapeno and Matador are engaged in discussions which may result in a voluntary agreement but because no agreement has been finalized Jalapeno files this Statement out of an abundance of caution.

APPEARANCES

APPLICANT

Matador Production Co

ATTORNEY

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OPPONENT

Jalapeno Corporation

ATTORNEY

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STATEMENT OF THE CASE

Matador seeks an order pooling the interests of Jalapeno and others in four separate existing units in the E/2 W/2 of Section 31 Township 18 South Range 35 East NMPM in Lea County. Matador seeks to drill a horizontal oil well across the existing units in the Bone Springs formation.

Jalapeno objects to the application on the following grounds:

(a) The Division lacks jurisdiction under NMSA 1978 Section 70-2-17 to force pool acreage across separate contiguous oil spacing units.

(b) Matador seeks a risk penalty on costs in excess of those authorized by Section 70-2-17.

(c) Matador cannot meet its burden to support its request for a 200% risk penalty under the facts.

(d) Application of any substantial risk penalty, but particularly the 200% risk penalty Matador requests, will mean that the correlative rights of Jalapeno and other working interest owners will be forfeited if they are force pooled, and any such assessment would violate the Division's obligation to protect correlative rights.

(e) This proceeding will be decided under Rule 19-15-13-8 NMAC—Charge for Risks. The Rule is in violation of § 70-2-17 because it unlawfully creates a presumptive 200% risk penalty and imposes the burden of proof on an opponent of a compulsory pooling application to justify a risk factor other than 200%. The Rule is in violation of the statute by authorizing a risk penalty on well costs, which the Rule defines to include costs in excess of costs to drill and complete the well.

(f) The Division lacks the authority to consider any force pooling application which includes a request for a risk penalty. The Division and the Commission have failed to establish an objective discernable standard for evaluating risk penalty requests. Consequently parties like Jalapeno do not have adequate notice of the standard that will be applied and cannot adequately prepare for a hearing where the Commission has imposed on them the burden of proof to support a risk penalty.

PROPOSED EVIDENCE

JALAPENO

| <u>WITNESSES</u> | <u>EST. TIME</u> | <u>EXHIBITS</u> |
|-------------------------------|-------------------------|------------------------|
| Harvey E. Yates III (landman) | 30 minutes | 10 approx |
| Harvey E. Yates Jr | 1 hour | 10 approx |
| Mo Gaddis (engineer) | 1.5 hours | 5 approx |

APPLICANT

| <u>WITNESSES</u> | <u>EST. TIME</u> | <u>EXHIBITS</u> |
|-------------------------|-------------------------|------------------------|
| Unknown to Jalapeno | | |

PROCEDURAL MATTERS

Jalapeno will file a Motion to Dismiss raising the issues identified in the Statement of the Case above.

Respectfully submitted

GALLEGOS LAW FIRM P C

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Attorneys for Jalapeno Corporation

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 15th day of June 2017

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