Record in Case 12034

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

**APPLICATION OF MATADOR PETROLEUM CORPORATION FOR APPROVAL OF AN UNORTHODOX GAS WELL LOCATION AND TO AMEND ORDER NO. R-10872-b TO APPROVE A STANDARD 600.01-ACRE GAS SPACING AND PRORATION UNIT, EDDY COUNTY NEW MEXICO.**

**CASE NO. 12034**

**APPLICATION OF TEXACO EXPLORATION AND PRODUCTION INC. FOR COMPULSORY POOLING, AN UNORTHODOX GAS WELL LOCATION, AND NON-STANDARD SPACING AND PRORATION UNIT, EDDY COUNTY, NEW MEXICO.**

**CASE NO. 12051**

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OIL CONSERVATION DIV.

**RESPONSE TO MOTION TO STRIKE AND MOTION FOR CONTINUANCE**

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Texaco Exploration and Production Inc. ("Texaco"), by and through its attorneys, Campbell, Carr, Berge & Sheridan, P.A., respond to the Motion to Strike filed by Matador Petroleum Corporation ("Matador") on November 25, 1998, and Move the New Mexico Oil Conservation Division ("the Division") to continue the hearing currently scheduled in these cases for December 3, 1998, until January 7, 1999. The Motion to Strike should be denied because it incorrectly states the process of proposing a spacing unit required by NMSA 1978, Section 70-2-17(C), and incorrectly states that Texaco has not complied with those requirements. Similarly, the December 3, 1998 hearing should be continued to allow Texaco time to assess the information produced by Matador on November 25, 1998 and December

1, 1998, in response to subpoenas which Texaco caused to be issued on October 28, 1998. If the Motion to Strike is granted, or if this Motion for Continuance is denied, the result will be multiple hearings on the same issues, and Texaco's correlative rights may be impaired.

## I. THE DIVISION SHOULD DENY MATADOR'S MOTION TO STRIKE

On November 25, 1998, Texaco filed its Amended Application in Division case number 12051. Texaco's original Application, filed August 25, 1998, sought compulsory pooling of the northern third and middle third of irregular Section 1, Township 21 South, Range 25 East, NMPM, Eddy County, New Mexico, to be dedicated to Texaco's proposed Rocky Arroyo Federal Com Well No. 1. Subsequently, Texaco determined that in 1970, the Morrow formation in irregular Section 1 was originally developed as an 853.62-acre non-standard spacing and proration unit, including all of irregular Section 1. *See* Division Order No. R-4042, October 14, 1970. To conform the current development of irregular Section 1 to that originally approved by the Division, Texaco filed its Amended Application on November 25, 1998, in which it seeks all of irregular Section 1 in a single spacing and proration unit.

Matador moves the Division to strike Texaco's Amended Application because Texaco did not propose to the working interest owners in the proposed spacing unit the entire 853.62 acre non-standard spacing unit which Texaco asks the Division to approve. Matador overstates the requirements of proposing a spacing unit as set forth in NMSA 1978, Section 70-2-17(C), which Texaco has complied with, Texaco will present evidence of such

compliance in the hearing on the merits in this case.

Even if the facts as alleged by Matador are true, Texaco's Amended Application should not be stricken. Matador complains that, prior to filing its application, Texaco did not submit its proposal to the owners in the spacing unit proposed in the Amended Application. Matador contends that such failure to propose violates "the custom and practice before the division and . . . Section 70-2-17(C) NMSA (1978) [sic]." Matador's argument fails for two reasons.

First, as Matador's counsel well knows, it is common practice and custom for the Division to continue, rather than dismiss, cases when a party requires additional time to cure a notice or other procedural defect. In this case, Texaco is submitting a letter, to all interest owners in the proposed spacing unit, which proposes the pooling requested in Texaco's Amended Application. That letter will be presented to the Division at the hearing on the merits of Texaco's Amended Application.

As will be proven by Texaco at the hearing on the merits in this case, all parties who own interests in irregular Section 1 have been attempting since August, 1998 to reach a voluntary agreement for pooling of the interests in irregular Section 1. The parties have submitted proposals and counterproposals which encompass every tract in irregular Section 1. Every owner of interests in irregular Section 1 has been involved in these negotiations.

Texaco has previously proposed the well referenced in its Amended Application. *See* Exhibit B to Matador's Motion to Dismiss. To the extent that they had not previously known

of Texaco's proposal by a letter from Texaco of this date, all interest owners represented in the spacing unit proposed in Texaco's Amended Application have been notified of the proposed well. Texaco's initial proposal, and initial Application, included the proposed drilling of the Rocky Arroyo Federal Com Well No. 1. Texaco's initial proposal, and initial Application, included in the acreage to be dedicated to the well both the middle and northern thirds of irregular Section 1. The only difference between Texaco's initial Application and Amended Application is the inclusion of the southern third of the section in the proposed spacing unit. As will be proved at the Division hearing on the merits, Texaco represents a majority interest in the northern one-third of the Section. Texaco is submitting a letter, to all interest owners in the proposed spacing unit, which proposes the pooling requested in Texaco's Amended Application. Matador's objections to the timing and merits of that proposal are to be addressed at the hearing on the merits of this case.

The second reason Matador's argument fails is that Texaco has not violated NMSA 1978, Section 70-2-17. That Section requires the Division to pool separately owned tracts within a spacing unit "where . . . such owner or owners have not agreed to pool their interests, and where one such 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 statute merely requires the Division to find that the owners have not agreed to pool their interests. As is reflected by the competing Applications submitted by Texaco and Matador, the interest owners in irregular Section 1 have clearly not agreed to pool their interests in that Section.

Texaco will submit further evidence in support of that fact at the hearing on the merits in this case. Matador's Motion to Strike, however, fails to set forth a ground for striking Texaco's Amended Application. Since August, Texaco and Matador have disagreed on how irregular Section 1 should be developed, and what acreage should be dedicated to the wells in that Section. That disagreement, in itself, is sufficient to satisfy Section 70-2-17(B). Matador's Motion to Strike should be denied.

## II. THESE CASES SHOULD BE CONTINUED

In addition to requiring the Division to find that the interest owners in a proposed spacing unit have not agreed to pool their interests, Section 70-2-17(B) directs the Division to forcibly pool acreage and dedicate it to a well in order to "avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste." In this case, both parties have proposed a well in the southern two thirds of irregular Section 1. Texaco owns interest in the northern third of irregular Section 1. As Texaco will prove at the hearing on the merits in this case, the geologic features and placement of hydrocarbons underlying the northern third of irregular Section 1 illustrate that the optimum location for a well to drain those reserves is in the middle third of irregular Section 1.

The Division's statutory duty is to "prevent waste and protect correlative rights." NMSA 1978, Section 70-2-11(A). "Correlative rights" is "the opportunity afforded . . . to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas or both in the pool, being an amount . . . substantially in the proportion that

the quantity of recoverable oil or gas or both under the property bears to the total recoverable oil or gas or both in a pool." NMSA 1978. Section 70-2-33(H).

Because the best place to drill a well is in the middle third of Section 1. Texaco will be denied the opportunity to effectively and efficiently develop the minerals in the northern third, unless that acreage is dedicated to a commercially viable well. If the acreage is pooled under Matador's Application, the northern third of the section will be isolated, no standard location will be available to the owners thereof from which their reserves can be produced, and any reserves underlying that acreage will be drained by the well to the South.

The southern third of irregular Section 1 was compulsory pooled and dedicated to the Catclaw Draw "1" Federal Well No. 1 in Order No. R-10872, on September 12, 1997. At the hearing which resulted in Order No. R-10872, all parties presented evidence concerning their interpretation of the production and geologic data developed as of that date, and their projections of the hydrocarbons underlying irregular Section 1. Since Order No. R-10872 was entered, the Catclaw Draw "1" Federal Well No. 1 has been drilled, and a wealth of production and pressure data has become available.

On October 28, 1998, Texaco caused three subpoenas to be issued in this case, one each directed to Matador, to Mewbourne Oil Company, and to Devon Energy Corporation. On November 24, 1998, the day before Thanksgiving and one week before the scheduled hearing in these cases, Matador produced to Texaco production information from the newly-drilled Catclaw Draw "1" Federal Well No. 1. On December 1, 1998, two days before

the scheduled hearing in this case, additional data was produced by Matador. Texaco is in the process of obtaining, but has not yet obtained, additional production and pressure information on that well.

At the hearing on the merits in this case, Texaco anticipates that the parties will have different interpretations of the data relating to the hydrocarbons underlying irregular Section 1. Texaco also anticipates that those interpretations will in turn differ from the interpretations offered at the hearing which led to Order No. R-10872. Texaco has not yet obtained all of the relevant information, or had time to interpret it in a manner which will assist the Division in discharging its statutory duty of protecting correlative rights in the context of compulsory pooling the subject lands. This case should be continued to allow Texaco the opportunity to obtain and review the production and pressure information from the newly-drilled Catclaw Draw "1" Federal Well No. 1.

## III. CONCLUSION

Therefore, because the parties disagree on whether all of the acreage in irregular Section 1 should be pooled and dedicated to Texaco's Rocky Arroyo Federal Com Well No. 1, the statutory precedent to compulsory pooling has been satisfied, and Texaco's Amended Application should not be stricken. The extent of that disagreement should be explored by the Division through the factual presentation of the parties in the hearing on the merits in this case. That hearing on the merits should only be held after all parties have had the opportunity to review all technical data which might shed light on the extent of the

hydrocarbon reserves underlying irregular Section 1, specifically including the pressure and production information from the newly-drilled Catclaw Draw "1" Federal Well No. 1. Because Texaco has not yet had the opportunity to obtain, review or interpret that information, the hearing on the merits in these cases should be continued until January 7, 1999.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of December, 1998, I have caused to be hand-delivered and/or faxed and mailed via First class a copy of the Response to Motion to Strike and Motion for Continuance in the above-referenced case to the following named counsel:

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