

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

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

CASE NOS: 20918, 20919

APPLICATION OF XTO DELAWARE BASIN LLC  
TO AMEND ORDER R-20568 BY EXCLUDING  
FEDERAL UNIT ACREAGE FROM HORIZONTAL  
SPACING UNIT,  
EDDY COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

JANUARY 23, 2020

SANTA FE, NEW MEXICO

This matter came on for hearing before the New Mexico Oil Conservation Division, EXAMINERS FELICIA ORTH, LEONARD LOWE, PHILLIP GOETZE, and LEGAL EXAMINER ERIC AMES, on Thursday, January 23, 2020, 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: Irene Delgado, NMCCR 253  
PAUL BACA PROFESSIONAL COURT REPORTERS  
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Albuquerque, NM 87102  
505-843-9241

1 A P P E A R A N C E S

2 For the Respondent:

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6 For the Movant:

7 JAMES BRUCE  
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10 I N D E X

11	CASE NO. 20918, 20919 CALLED	03
12	MOTION TO DISMISS	03
13	REPORTER CERTIFICATE	09

15 E X H I B I T I N D E X

16 Admitted

17 (No exhibits.)

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1                   HEARING EXAMINER ORTH: Let's move to 20918 and  
2 20919, XTO arguments on a motion to dismiss. Appearances  
3 please.

4                   MR. CLOUTIER: Andrew Cloutier, Hinkle Shanor  
5 Roswell office on behalf of applicant XTO who is the  
6 respondent to the motion.

7                   MR. BRUCE: Jim Bruce of Santa Fe representing  
8 Novo Oil and Gas Northern Delaware LLC.

9                   HEARING EXAMINER ORTH: All right. If you would,  
10 please.

11                   MR. BRUCE: This will be pretty short.  
12 Examiners, Novo previously obtained two pooling orders from  
13 the Division, R-20568 in May of 2019, pooling all mineral  
14 interests in the Bone Spring formation below a certain depth  
15 in a unit comprised of the N/2 S/2 of Section 4 and the N/2  
16 S/2 of Section 5 in 23 South, 29 East. That's the subject  
17 of case 20918.

18                   Also they obtained Order 20249 in November of  
19 2018, pooling all mineral interests in the Wolfcamp  
20 formation in a horizontal spacing unit comprised of the S/2  
21 of 4 and the S/2 of 5 in the same township and range. This  
22 order is the subject of Case 20919.

23                   XTO, through its application for these cases,  
24 seeks to amend these orders to exclude the N/2 SE of Section  
25 4 which is in the Big Eddy. The remaining lands in the well

1 unit are not committed to the Big Eddy units.

2 XTO's application in Case 20919 would effectively  
3 create a 560 acre non-standard Wolfcamp horizontal spacing  
4 unit, as opposed to the unit originally approved by the  
5 Division, and this is in the Purple Sage Wolfcamp Gas Pool  
6 where well spacing is standard, it's 320 acres or multiples  
7 thereof.

8 The time line of events is as follows:

9 Novo began preparation to drill the wells which  
10 are the subject of these cases in November 2017 immediately  
11 after acquiring its leasehold interest, and they contacted  
12 XTO in November of 2017.

13 In January of 2018 Novo proposed a Salado  
14 development area to the BLM which covers the S/2 of Section  
15 4 and the S/2 of Section 5. XTO was given written notice of  
16 the development area and did not object.

17 Novo proposed the wells in May of 2018. Pooling  
18 applications were filed in June of 2018, and certified  
19 notice was mailed to XTO. XTO's representatives stated to  
20 Novo that XTO did not oppose the pooling application and did  
21 not enter its appearances at the multiple hearings held in  
22 this matter.

23 Novo has drilled its first Wolfcamp well and XTO  
24 elected not to participate in it. This record shows that  
25 XTO made a knowing and intentional decision not to enter

1 appearances in Novo's pooling cases, not to raise any issues  
2 regarding 80 acres of Big Eddy unit land being included in  
3 the well unit, and not to participate in the wells drilled  
4 under the pooling orders.

5           There is no mistake or inadvertence on XTO's  
6 part, they simply now regret, after a year and a half or two  
7 years, agreeing to the pooling. Although, as I will get to  
8 in a moment, XTO's Rule 60 argument is not on point, but I  
9 don't think you will need to go into that.

10           XTO also asked Novo to release 80 acres from the  
11 pooling orders voluntarily, but without telling Novo, they  
12 met with the BLM in Carlsbad to try to get the BLM to say  
13 the acreage could not be communitized with non-unit acreage.

14           That's odd to Novo since they are shown on  
15 Exhibit 2 attached to Novo's reply, XTO seeks to drill and  
16 thus communitize a non-unit acreage for a proposed  
17 development area in Sections 26 and 27 of 22 South, 29 East.

18           Also in December, Novo met with the BLM in  
19 Santa Fe, and the BLM state office personnel acknowledged  
20 that acreage in the unit could be and has been communitized  
21 with acreage outside the unit, but it was deferring to the  
22 OCD to see what the Division thought about the matter.

23           Moreover, as set forth in Novo's reply brief, the  
24 Oil & Gas Act, the Division rules and Division orders all  
25 allow the pooling of unit and non-unit acreage. As to the

1 orders that were cited in Novo's briefs, I was aware of that  
2 because virtually every case cited in there regarding unit  
3 and non-unit acreage I was involved in.

4 Novo worked in good faith with XTO to pool and  
5 develop this acreage and also made a number of proposals to  
6 settle this matter with XTO over the past several months.

7 However, over the last six months XTO has been  
8 backtracking on its original, and we do not believe its  
9 actions are in good faith. Novo simply wants to drill its  
10 wells and has a rig available so it can commence its second  
11 well. But Novo came to the realization that, regardless of  
12 what would happen, if it pursued this matter, it would be  
13 tied up for at least another six months at the Division and  
14 Commission. This will delay the drilling of its proposed  
15 wells, and it will detrimentally affect the ultimate  
16 recovery from the well units. It will cause waste and  
17 impair the correlative rights of the interest owners.

18 As a result, to avoid the loss of reserves caused  
19 by XTO's challenge to the Division orders, Novo withdraws  
20 its motion to dismiss and agrees the N/2 SE/4 of Section 4  
21 may be eliminated from the two well units.

22 Therefore, Novo stipulates we leave requested in  
23 XTO's application be granted. Although Novo disagrees with  
24 certain allegations in the applications, it requests that  
25 the Division, without the need for further proceedings, to

1 go ahead and amend Order 20568 so that the pooled acreage in  
2 the N/2 S/2 of Section 4 and N/2 SW/4 of Section 5, this is  
3 a standard horizontal spacing unit in the Bone Spring  
4 formation.

5 We also stipulate to amend Order R-20249 so that  
6 the pooled acreage is the S/2 of Section 5 as well as the  
7 SW/4 of S/2 SE of Section 4. This is non-standard, as I  
8 said, under the Purple Sage Pool.

9 Novo also withdraws all of its prior settlement  
10 offers made to XTO, but for clarity, they do make two  
11 requests as part of the amendment of the Wolfcamp Order  
12 R-20249, Novo requests the order should explicitly recognize  
13 the Division's approval of the 560 acre non-standard unit  
14 due to the exclusion of the 80 acres of Big Eddy unit land.  
15 The only affected acreage is XTO's N/2 SE/4 of Section 4,  
16 and they are the party requesting a non-standard unit, even  
17 though the application did not specifically make that  
18 request, but it is certainly part and parcel of XTO's  
19 requested relief.

20 Also, we would request that the Division expedite  
21 the issuance of the orders in these cases, and Novo is going  
22 to submit proposed orders to the Division after passing them  
23 by Mr. Cloutier to facilitate these requests.

24 With, that Novo withdraws any objection to the  
25 cases and would ask that both cases be taken under

1     advisement.

2                   HEARING EXAMINER ORTH:   Thank you, Mr. Bruce.

3                   MR. CLOUTIER:   Thank you, Madam Hearing Examiner.

4     I disagree with some of Mr. Bruce's factual recitation, but  
5     the fact is is that they are stipulating to the relief we  
6     have requested, and we will work with him on expediting the  
7     orders to get to you and get the relief.

8                   HEARING EXAMINER ORTH:   Mr. Ames, do you have  
9     questions?

10                  MR. AMES:   Not anymore.   Thank you.

11                  HEARING EXAMINER ORTH:   Any questions.

12                  EXAMINER GOETZE:   Other than the fact that that  
13     has brought to our attention conflicts with existing  
14     exploratory units, communitization and PAs and beneficial  
15     things the Division has been more open to discussion with  
16     the BLM in coordination.   We would also ask that if your  
17     landmen do see these things, they bring them forward at  
18     hearings so we don't have to go down this road again.

19                  Okay?   Thank you.

20                  MR. BRUCE:   Appreciate that.

21                  HEARING EXAMINER ORTH:   Thank you, gentlemen.

22                  (Adjourned.)

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1 STATE OF NEW MEXICO  
2 COUNTY OF BERNALILLO

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4 REPORTER'S CERTIFICATE

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6 I, IRENE DELGADO, New Mexico Certified Court  
7 Reporter, CCR 253, do hereby certify that I reported the  
8 foregoing proceedings in stenographic shorthand and that the  
9 foregoing pages are a true and correct transcript of those  
10 proceedings that were reduced to printed form by me to the  
11 best of my ability.

12 I FURTHER CERTIFY that the Reporter's Record of  
13 the proceedings truly and accurately reflects the exhibits,  
14 if any, offered by the respective parties.

15 I FURTHER CERTIFY that I am neither employed by  
16 nor related to any of the parties or attorneys in this case  
17 and that I have no interest in the final disposition of this  
18 case.

19 Dated this 23rd day of January 2020.

20

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Irene Delgado, NMCCR 253  
License Expires: 12-31-20

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