

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

**APPLICATION OF BTA OIL PRODUCERS, LLC TO
RESCIND APPROVAL OF FOUR APPLICATIONS FOR
PERMITS TO DRILL ISSUED TO TEXAS STANDARD
OPERATING NM LLC, LEA COUNTY, NEW MEXICO.**

CASE NO. 23426

BTA OIL PRODUCERS, LLC'S CLOSING STATEMENT

In accordance with the Hearing Examiner's request, BTA Oil Producers, LLC ("BTA") submits its Closing Statement.

I. INTRODUCTION

In this case, BTA seeks an order rescinding approval of Applications for Permits to Drill ("APDs") submitted by Texas Standard Operating NM LLC ("TSO") for the TSO State 9-16 No. 1H (API #30-025-51105), State 9-16 No. 2H (API #30-025-51128), State 9-16 No. 3H (API #30-025-51129), and State 9-16 No. 4H (API #30-025-51130) wells ("TSO Wells"). The TSO Wells are located in the W/2 of Section 16 and the SW/4 of Section 9, Township 17 South, Range 36 East and traverse the N/2 NW/4 of Section 21, Township 17 South, Range 36 East, which is included within BTA's Vindicator Canyon State Exploratory Unit ("Unit"). TSO's proposed well locations interfere with BTA's ability to efficiently develop the Unit and therefore violate BTA's correlative rights and result in waste. Further, TSO does not have the right to drill its wells because there is not a valid state lease for the SW/4 of Section 9, which is included in TSO's spacing units. For these reasons, and the reasons set out in more detail below, TSO's APDs should be rescinded.

II. ARGUMENT

A. TSO's APDs should be rescinded because the proposed well locations interfere with BTA's development of the Unit and thereby violate its correlative rights and result in waste.

The Oil Conservation Division ("Division") is charged with "the power and duty to prevent waste and protect correlative rights in the production or handling of crude petroleum oil or natural gas." *Jalapeno Corp. v. N.M. Oil Conservation Comm'n*, 2020 WL 5743659, *2, No. A-1-CA-37449 (Sept. 23, 2020) (citing NMSA 1978, §§ 70-2-2, -3, -11(A), -33(H)); *see also Cont. Oil Co. v. Oil Conservation Comm'n*, 1962-NMSC-062, ¶ 27, 70 N.M. 310 ("The prevention of waste is of paramount interest and protection of correlative rights is interrelated and inseparable from it."). This includes the power "to do whatever may be reasonably necessary to carry out the purpose of" the Oil and Gas Act. *See* NMSA 1978, § 70-2-11(A). Although TSO claims it can drill its wells at any location approved by the surface owner, that argument ignores these fundamental requirements of New Mexico law.¹

All three of BTA's witnesses testified that TSO's proposed well locations interfere with BTA's ability to efficiently develop the unit and thereby violate BTA's correlative rights and result in waste. *See* NMSA 1978, § 70-2-33(H) (defining "correlative rights" as the "opportunity afforded...to the owner of each property in a pool to produce without waste the owner's just and equitable share of the oil...in the pool..."). The proposed TSO Wells would interfere with BTA's existing pipeline rights-of-way, salt water disposal lines, access roads, and other surface facilities. *See* Findings of Fact ("FOF") Nos. 19-24. Interference with access roads and existing pipelines results in waste in violation of the Act, which prohibits "the production or handling of crude petroleum oil or natural gas of any type of in any form, or the handling of products thereof, in such

¹ *See generally*, TSO Pre-Hearing Statement.

a manner or under such conditions or in such amounts as to constitute or result in waste.” NMSA 1978, § 70-2-2; *see also* § 70-2-3 (defining “waste” under the Act). TSO admits to this surface interference and waste, which alone is sufficient grounds for rescinding the APDs. *See* FOF No. 24.

Even more detrimental to BTA’s development in the NW/4 of Section 21 is the substantial collision risk created by TSO’s proposed well locations. The Division is charged with requiring wells “to be drilled, operated and produced in such a manner as to prevent injury to neighboring leases or properties.” NMSA 1978, § 70-2-12(B)(7). TSO’s proposal will create a significant collision risk due to TSO’s failure to account for BTA’s currently producing vertical wells, as well as the proposed depth of TSO’s wells. *See* FOF No. 27. TSO’s engineering testimony claims there will be 400’ of vertical separation between its wells and BTA’s wells, but TSO’s APDs show that the vertical offset between the BTA and TSO wells is only about 30’. *Id.* The wells will be so close that TSO will have to temporarily plug its wells while BTA is fracking, and vice versa. *See* Tr. 280:11-14. The risk of collision is high, and a collision would be catastrophic for both operators and the interest owners because all of the wells could be lost. *See* FOF No. 28.

As BTA’s witnesses explained, there is also a risk of formation damage created by TSO’s proposed wellbore locations. The TSO wells are located immediately south of the BTA Vindicator well surface locations and, when drilled, will penetrate the Pennsylvanian Shale reservoir on BTA’s lease. *See* Tr. 224:21-23. This penetration will create a potential for formation damage, which would prohibit BTA from recovering all possible reserves from the Pennsylvanian Shale formation on its lease and would result in waste. Tr. 225:1-6, 229:8-13.

BTA’s evidence demonstrates there is a real—not hypothetical—risk of collision. This interference and risk would be avoided if TSO located its wells on its own (now terminated) lease,

instead of within BTA's Vindicator Unit. TSO would be able to efficiently produce its acreage within legal take points from a surface location on its own leasehold if it back-built from surface locations on its lease. *See* FOF Nos. 31, 32. Allowing TSO to drill its wells as permitted will create too great a risk, and would result in significant waste for BTA, TSO, the interest owners, and the State of New Mexico.

B. TSO's APDs should be rescinded because TSO did not comply with the requirements of Order No. R-22435.

TSO failed to comply with Order No. R-22435, which granted TSO pooling authorization for the State 9-16 No. 1H well and designated the well as a proximity tract well that would hold the 480-acre standard spacing unit. *See* BTA Exhibit A-8 at p. 5. To begin with, the locations of TSO's permitted wells are different from the location for the TSO State 9-16 No. 1H identified in Order No. R-22435. *See* FOF No. 12. The permitted wells are not within 330' of the quarter-quarter section line and do not satisfy the Division's requirement for a proximity tract well. FOF No. 12. Without a proximity tract well, TSO is required to form two 240-acre horizontal spacing units instead of the 480-acre unit approved in Order No. R-22435. *See* FOF No. 13. Further, Order No. R-22435 states that TSO's well must be drilled at a TVD of 11,350' to 11,725', while the APD identifies the TVD as 11,952'. *See* FOF No. 14.

Finally, TSO's witness testified that the pooling order was no longer necessary due to acquiring a lease from Exxon. *See* Tr. 274:13-25. However, Paragraph 34 of Order No. R-22435 requires TSO to notify the Division if the owners of all pooled working interests reached a voluntary agreement, resulting in termination of the order. No such notice is contained in the record of Case No. 23005. *See* FOF No. 15. TSO's failure to comply with the pooling order is further grounds for the Division to rescind the APDs.

C. TSO's APDs should be rescinded because TSO does not have the right to drill its proposed wells due to the expiration of Lease BO-0042-1.

Lease No. B0-0042-1 (comprised of the SW/4 of Section 9), which is included within TSO's proposed State 9-16 horizontal spacing units, terminated on November 28, 2022. *See* BTA Exhibit A-12; BTA Exhibit A-13; Tr. 210:11-25, 211:1-16. The Division's regulations require that to obtain an APD, an operator must certify it has the right to drill on each tract. *See* 19.15.14.9 NMAC; BTA's Exhibit A-9. TSO does not have the right to drill on each tract in its proposed units because part of the acreage is now unleased. Even more troubling is the fact that TSO certified it had the right to drill on each tract when it knew the lease had been terminated. *See* Tr. 283:2-25, 284:1-7. As a result of the lease termination, TSO does not have the right to drill its proposed wells and the APDs should be rescinded.

III. CONCLUSION

For the reasons discussed above and based on BTA's evidence, BTA's application should be granted and TSO's APDs should be rescinded.

Respectfully submitted,

HINKLE SHANOR LLP

/s/ Dana S. Hardy

Dana S. Hardy

Jaclyn M. McLean

Yarithza Peña

P.O. Box 2068

Santa Fe, NM 87504-2068

Phone: (505) 982-4554

Facsimile: (505) 982-8623

dhardy@hinklelawfirm.com

jmclean@hinklelawfirm.com

ypena@hinklelawfirm.com

Counsel for BTA Oil Producers, LLC

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2023, I caused a true and correct copy of the foregoing pleading to be electronically served on the following counsel of record:

James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043
jamesbruc@aol.com
Attorneys for Texas Standard Operating NM LLC

/s/ Dana S. Hardy
Dana S. Hardy