

**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:**

**APPLICATION OF XTO DELAWARE BASIN, LLC
TO AMEND ORDER NO. R-20568, *ETC.*, EDDY
COUNTY, NEW MEXICO.**

Case No. 20918

**APPLICATION OF XTO DELAWARE BASIN, LLC
TO AMEND ORDER NO. R-20249, *ETC.*, EDDY
COUNTY, NEW MEXICO.**

Case No. 20919

**REPLY OF NOVO OIL & GAS NORTHERN DELAWARE LLC
TO RESPONSE OF XTO DELAWARE BASIN, LLC TO
MOTION TO DISMISS APPLICATIONS**

Novo Oil & Gas Northern Delaware LLC (“Novo”), for its reply to the response of XTO Delaware Basin, LLC (“XTO”) to Novo’s motion to dismiss, states:

1. Novo will not repeat the facts set forth in its motion.
2. XTO bases its response on the following assertions:
 - (i) XTO should be allowed to collaterally attack the Division’s final orders due to mistake or inadvertence;
 - (ii) Novo is allegedly attempting to prevent XTO from presenting evidence of the position of the Bureau of Land Management (“BLM”); and
 - (iii) Novo’s well units will cause waste and impair XTO’s correlative rights.

None of these arguments have merit.

XTO May Not Use Mistake Or Inadvertence As Grounds For Amending The Division’s Orders.

3. A motion to alter or amend a judgment under NMRA 1-060 cannot be filed after the period permitted for a direct appeal has lapsed, as a substitute for appeal or a means of circumventing the appeals process. *See Wells Fargo Bank, NA v. City of Gallup*, 2011-NMCA-106, ¶8, 265 P. 3d 1279, 1281. It is undisputed that XTO was provided notice of Novo’s

applications and hearing dates, and could have entered appearances at any time before or at the hearings to voice any of its objections. See NMAC 19.15.4.9 (B). Its failure to do so has legal consequences. See Commission Order No. R-14097-A (dismissing an appeal to the Commission of a compulsory pooling order brought by a pooled working interest owner who attempted to enter an appearance *after* the Division held its hearing). If XTO had any objection to the Division establishing horizontal spacing units for the subject wells and the pooling of its interest, it was required by the Oil and Gas Act and the Division's rules to enter appearances and file *de novo* appeals to the Commission. See NMSA 1978, §70-2-13 ("When any matter or proceeding is referred to an examiner and a decision is rendered thereon, any party of record adversely affected shall have the right to have the matter heard *de novo* before the commission upon application filed with the division within thirty days from the time any such decision is rendered."); NMAC 19.15.4.23(B).

Because XTO had notice of the hearings before the Division, but chose not to appear and pursue its statutory remedy for an appeal to the Commission, it should not be allowed to bring a collateral attack on the Division's orders. See *Bogan v. Sandoval City Planning & Zoning Comm'n*, 119 N.M. 334, 340-41, 890 P.2d 395, 401-02 (Ct. App. 1994). In reliance on the Division's orders, Novo drilled, completed, and is producing the first (Wolfcamp) well. Under these circumstances, there is no legal basis for altering the Division's orders.

There Was No Mistake Or Inadvertence On XTO's Part.

4. The record shows that XTO made a knowing, conscious, intentional decision to (i) not enter appearances in Novo's pooling cases, (ii) not raise any issues regarding 80 acres of unitized land being included in the subject well units, and (iii) not participate in wells drilled under the pooling orders. There was no mistake or inadvertence on XTO's part; they simply now regret (after two years) not appearing at the several pooling hearings and asserting a position different from their original decision in 2018 to accept compulsory pooling.

5. Again, there were *three (3) hearings* for Case Nos. 16283 and 16286. XTO had notice of each hearing but chose not to enter appearances.

There Was No Mistake Or Inadvertence On The Division's Part.

6. XTO asserts that Novo did not adequately inform the Division that the proposed horizontal spacing units would include 80 acres of XTO's Big Eddy Unit acreage. The Division, with Michael McMillan as the Chief Examiner in these cases, conducted *three (3) separate hearings* for Case Nos. 16283 and 16286. The Big Eddy Unit was clearly labeled and shown on ten (10) maps, and mentioned multiple other times in the exhibits and testimony for these cases. If there was confusion, questions would have been asked by the Division or the parties in attendance (Marathon Oil Permian LLC, BTA Oil Producers, LLC, TDY Industries, LLC, and EOG Resources, Inc.). But there were no such questions because there was no confusion. XTO's desperation has led them to boldly imply that the Division, despite the Examiners' careful analysis of the exhibits and testimony at *three (3) separate hearings*, was somehow unaware that Big Eddy Unit acreage was included in Novo's proposed spacing units. This implication is not believable.

The BLM Has Not Denied Approval Of Novo's Communitization Agreements.

7. XTO flatly asserts that the BLM will not approve communitization agreements which include unitized and non-unitized lands. That is incorrect. Novo personnel met with BLM personnel from the State Office and the Carlsbad Field Office in Santa Fe on December 2, 2019 to discuss these issues. The BLM simply took a neutral position and said it would let the Division's process move forward before a decision was made. This is made clear in an e-mail from James Glover of the BLM to Novo, attached hereto as Exhibit A.

8. Moreover, the BLM, which certainly knew Big Eddy Unit acreage was involved, approved Novo's Rana Salada potash Development Area as well as the APDs for the subject Wolfcamp¹ and 3rd Bone Spring wells. In particular the BLM has issued an approved APD for a 3rd Bone Spring well that traverses the Big Eddy Unit acreage. The spacing unit for the well is the N/2S/2 of Section 4 and the N/2S/2 of Section 5, Township 23 South, Range 29 East, NMPM (the Rana Salada Fed. Com. 0504 Well No. 133H; API No. 30-015-46086).

And, if that's not enough, as recently as *one month ago* XTO proposed a 1,280-acre potash Development Area that would communitize 640 acres of land in the Big Eddy Unit with 640 acres of non-unit acreage. A portion of XTO's Development Area proposal is attached hereto as Exhibit B. Clearly, XTO recognizes that Big Eddy Unit acreage can be communitized and pooled with non-unit acreage. What hypocrisy.

9. Compulsory pooling or voluntary communitization of unit and non-unit acreage is permissible, and is specifically contemplated by the Division's Rules. See NMAC 19.15.15.11(B)(6). Compulsory pooling of well units comprised of unit and non-unit acreage has been approved by Division Order Nos. R-8680, R-8831, R-10802, R-12990, and R-12749, among others. In addition, voluntary communitization agreements of unit and non-unit acreage have been approved by (BLM Serial Nos.) NM 119071, NM 116548, NM 072185, NM 104044, NM 127137, NM 116378, NM 135041, and NM 134732. All of these orders and agreements involve Big Eddy Unit or James Ranch Unit acreage (both operated by an XTO entity).

10. XTO could have appeared at the OCD in 2018 to present its concerns to the Division. It knowingly did not do so.

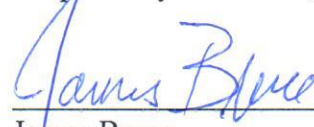
Novo's Applications Do Not Cause Waste Nor Impair Correlative Rights.

11. XTO claims that including its acreage in producing well units will cause waste and impair correlative rights. This argument is makes no sense: How can inclusion of acreage in producing well units cause waste or impair correlative rights? This is contrary to the statutory definition of correlative rights.

WHEREFORE, Novo requests that XTO's applications be dismissed without the necessity of a hearing.

¹ The Wolfcamp well is in the Purple Sage-Wolfcamp Gas Pool, and the subject well unit is standard under those rules. XTO's application does not request approval of a non-standard well unit.

Respectfully submitted,



James Bruce
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jamesbruc@aol.com

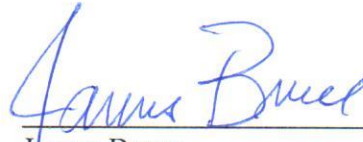
Attorney for Novo Oil & Gas Northern
Delaware LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 27th day of December, 2019 by e-mail:

Dana Hardy
dhardy@hinklelawfirm.com

Gary Larson
glarson@hinklelawfirm.com



James Bruce

From: Glover, James <jglover@blm.gov>
Sent: Wednesday, November 13, 2019 11:38 AM
To: Ken Gray <KGray@novoog.com>
Cc: Marjorie Dupre <mdupre@blm.gov>; Brandon Patrick <bpatrick@novoog.com>; Larry Patrick <LPatrick@novoog.com>
Subject: Re: [EXTERNAL] Com Agreement Rana Salada 0605 Fed Com 231H

THIS EMAIL IS FROM AN EXTERNAL SENDER. USE CAUTION WITH LINKS AND ATTACHMENTS!

Sorry for just now getting back to you. Yes, we are still waiting to hear from NMOCD on how they would like to proceed in this case.

It is my understanding that Larry Patrick suggested a meeting in Santa Fe the first week of December? I am currently available that week if you are still interested in meeting.

Thanks

James

James Glover

Geologist

New Mexico State Office

505-954-2139

jglover@blm.gov

EXHIBIT

A



Kelly Kardos
Regulatory Coordinator
XTO Permian Operating, LLC.
6401 Holiday Hill Road, Bldg 5
Midland, Texas 79707
(432) 620-4374

11/21/2019

To: Affected Parties of Big Eddy Unit DI 38 Drill Island
Affected Parties of the Big Eddy Unit DI 38 Development Area

Re: Designation of Development Area for Big Eddy Unit DI 38
Section 28-T22S-R29E, NMPM, Eddy County, New Mexico

To Whom It May Concern:

XTO Permian Operating, LLC. has proposed a Development Area in the Secretary's Potash Area that may affect your leasehold and/or surface estate/permit. Please see the enclosed plat for the location of the Section 28-T22S-R29E, NMPM, Eddy County, New Mexico proposed Development Area ("BEU DI 38") and XTO Permian Operating, LLC.'s existing and proposed development wells. Enclosed with this letter is XTO Permian Operating, LLC.'s drill island overlay and associated well list for anticipated development wells.

This letter serves as notice of the proposed action. You have thirty (30) calendar days from receipt of this letter to contact the BLM/NMSLO if you would like to express interest in collaborating or protesting the proposal. If you would like to collaborate with or protest the establishment of the BEU DI 38 Development Area, please respond to James Rutley (jrutley@blm.gov) at the BLM, Carlsbad Field Office, 620 E. Greene St., Carlsbad, NM 88220.

Please be aware that once a Development Area has been established it could affect your operating rights. Your timely participation in this process is required. If you have any questions or concerns, please contact Kelly Kardos, Regulatory Coordinator, with XTO Permian Operating, LLC. at the information listed at the top of the letterhead or below.

Sincerely,

A handwritten signature in black ink that reads "Kelly Kardos".

Kelly Kardos
XTO Permian Operating, LLC
6401 Holiday Hill Road, Bldg 5
Midland, Texas 79707
432-620-4374
kelly_kardos@xtoenergy.com

EXHIBIT

A large, bold, red handwritten letter 'B'.



Kelly Kardos
Regulatory Coordinator
XTO Permian Operating, LLC.
6401 Holiday Hill Road, Bldg 5
Midland, Texas 79707
(432) 620-4374

11/21/2019

Re: Designation of Development Area for Big Eddy Unit DI 38
Section 28-T22S-R29E, NMPM, Eddy County, New Mexico

Development Plan:

XTO Permian Operating, LLC has onsited and staked Big Eddy Unit DI 38 with seventy-four wells (74) wells planned for a twenty-year (20 year) development in the Bone Spring and Wolfcamp formations in Sections 26 & 27 of T22S-R29E, NMPM, Eddy County, New Mexico. These wells will be drilled east. This drill island was onsited September 29, 2018 with Jeff Robertson, Bureau of Land Management Natural Resource Specialist, and Jim Rutley in attendance.

The following documents are attached:

1. Drill Island Overview with Slot Designations
2. Proposed Development Area
3. 2-Mile Notification Area
4. Combined Overview

Sincerely,

A handwritten signature in cursive script that reads 'Kelly Kardos'.

Kelly Kardos
XTO Permian Operating, LLC
6401 Holiday Hill Road, Bldg 5
Midland, Texas 79707
432-620-4374
kelly_kardos@xtoenergy.com

Big Eddy Unit DI 38 Deep and Shallow Depths
Proposed Development Area Map

Drill Island Location: Section 28-T22S-R29E

Anticipated Development Areas:

2-Mile Bone Spring & Wolfcamp Laterals East: Section 26 & 27-T22S-R29E

Red Boundary = Big Eddy Unit Boundary
Blue = Proposed Development Area

