

**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 TO
CONSIDER:**

**CASE NO. 20082
ORDER NO. R-20487**

**APPLICATION OF XTO ENERGY, INC. FOR COMPULSORY POOLING, EDDY
COUNTY, NEW MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on November 15, 2018, at Santa Fe, New Mexico, before Examiner Michael A. McMillan.

NOW, on this 30th day of April 2019, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT

(1) Due public notice has been given and the Division has jurisdiction of this case and the subject matter.

(2) Cases 20081 and 20082 were consolidated at the hearing for testimony; however, a separate order will be issued for each case.

(3) XTO Energy, Inc. (the "Applicant" or "XTO") seeks an order pooling all uncommitted interests, whatever they may be, in a 240-acre standard Horizontal Oil Spacing Unit for oil and gas production from the Bone Spring formation, Willow Lake; Bone Spring, Southeast Pool (Pool code 96217), comprising the W/2 SE/4 of Section 10, and the W/2 E/2 of Section 15, all in Township 25 South, Range 29 East, NMPM, Eddy County, New Mexico.

(4) The Unit will be dedicated to the Corral Canyon Federal Well No. 220H ("the Well": API No. 30-015-45592), a horizontal well to be drilled from a surface location, 1945 feet from the South line and 2080 feet from the East line (Unit J) of Section 10, to a terminus 50 feet from the South line and 1980 feet from the East line (Unit O) of Section 15, all in Township 25 South, Range 29 East. Per the application, the completed interval of the Proposed Well will be at an "orthodox location".

(5) The Well is within the Willow Lake; Bone Spring, Southeast Pool (Pool Code 96217), and is subject to Division Rule 19.15.15.9(A) NMAC, which provides for 330-foot setbacks from the unit boundaries and standard 40-acre units each comprising a governmental quarter-quarter section. The proposed Unit and project area consist of six adjacent quarter-quarter sections oriented north to south.

(6) No other party appeared or otherwise opposed this application.

(7) Applicant appeared through counsel and presented the following land and technical evidence by affidavit:

- (a) The Bone Spring formation in this area is suitable for development by horizontal drilling.
- (b) The proposed orientation of the horizontal Well(s) is appropriate for the Unit.
- (c) Applicant is seeking to compulsory pool working interest owners and overriding royalty interest owners;
- (d) Applicant is requesting Reasonable charges for supervision (combined fixed rates) of \$8500 per month, per well, while drilling and \$850 per month, per well, while producing, provided that these rates should be adjusted annually pursuant to the overhead adjustment provision of the COPAS form titled "*Accounting Procedure-Joint Operations*." However, Applicant stated it is aware that the Division is regularly approving combined fixed rates of \$8000 per month, per well, while drilling and \$800 per month while producing provided that these rates should be adjusted annually pursuant to the overhead adjustment provision of the COPAS form titled "*Accounting Procedure-Joint Operations*." Applicant will be willing to abide by those rates;
- (e) Notice by certified mail was provided to all uncommitted interest owners in the proposed Unit whose interests were evidenced by a conveyance instrument, either of record or known to Applicant when the Application was filed, and to heirs known to Applicant of deceased persons who appear as owners in such instruments.
- (f) Out of abundance of caution, those potentially affected parties whose whereabouts could not be ascertained were noticed by publication as provided in Rule 19.15.4.12.B NMAC.

The Division Concludes That

(8) The application in this case was filed, and the Well[s] were permitted, on or after the June 26, 2018 date on which amendments to 19.15.16.7 and 19.15.16.15 NMAC (prescribing new spacing rules for horizontal wells) became effective (see Order No. R-14689). Hence the Well[s] must be spaced, permitted and drilled pursuant 19.15.16.15 NMAC, as amended effective June 26, 2018.

(9) Provided that the Unit constitutes a standard horizontal spacing unit for each of the Well[s] under now effective rules, no non-standard spacing unit approval is needed. If, however, the Unit is not a standard horizontal spacing unit for any of the Well(s), the operator must obtain approval of a non-standard horizontal spacing unit pursuant to 19.15.16.15.B(5) prior to producing such well.

(10) If the location of any of the Well[s] is unorthodox when the well is completed under the spacing rules then in effect and applicable to the well, the operator must obtain a non-standard location approval prior to producing the well.

(11) XTO Energy, Inc. (OGRID 5380) should be designated the operator of the proposed well(s) and of the Unit.

(12) Two or more separately owned tracts are embraced within the Unit, and/or there are royalty interests and/or undivided interests in oil and gas minerals in one or more tracts included in the Unit that are separately owned.

(13) Applicant is owner of an oil and gas working interest within the Unit. Applicant has the right to drill and proposes to drill the proposed well to a common source of supply within the Unit at the described depths and location(s). Applicant should be allowed a one year period to complete at least one of the wells after commencing drilling of the well(s).

(14) There are interest owners in the Unit that have not agreed to pool their interests.

(15) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford to the owner of each interest in the Unit the opportunity to recover or receive without unnecessary expense a just and fair share of hydrocarbons, this application should be approved by pooling all uncommitted interests, whatever they may be, in the oil and gas in the Bone Spring formation within the Unit.

(16) To ensure protection of correlative rights, any pooled working interest owner whose address is known, and who has elected to participate under the terms of this order should be notified before the Division grants any extension of the time provided herein for commencing drilling. Any such owner may file an application, with notice to the operator, requesting that the extension be denied.

(17) Infill wells within the Unit should be subject to Division Rules 19.15.13.9 NMAC through 19.15.13.10 NMAC, and to the terms and conditions of this order.

(18) Any pooled working interest owner who does not pay its share of estimated well costs of any well should have withheld from production from such well its share of reasonable well costs plus an additional 200% thereof as a reasonable charge for the risk involved in drilling the proposed well.

(19) Reasonable charges for supervision (combined fixed rates) should be fixed at \$8000 per month, per well, while drilling and \$800 per month, per well, while producing, provided that these rates should be adjusted annually pursuant to the overhead adjustment provision of the COPAS form titled "*Accounting Procedure-Joint Operations*."

IT IS THEREFORE ORDERED THAT

(1) All uncommitted interests, whatever they may be, in the oil and gas in the Bone Spring formation underlying a 240-acre standard Horizontal Oil Spacing Unit (the "Unit") in the Willow Lake; Bone Spring, Southeast Pool (Pool code 96217), comprising the W/2 SE/4 of Section 10, and the W/2 E/2 of Section 15, Township 25 South, Range 29 East, NMPM, Eddy County, New Mexico, are hereby pooled.

(2) The Unit shall be dedicated to the Corral Canyon Federal Well No. 220H ("the Well(s)": API No. 30-015-45592), a horizontal well to be drilled from a surface location, 1945 feet from the South line and 2080 feet from the East line (Unit J) of Section 10, to a terminus 50 feet from the South line and 1980 feet from the East line (Unit O) of Section 15, all in Township 25 South, Range 29 East.

(3) XTO Energy, Inc. (OGRID 5380) is hereby designated the operator of the Well(s) and the Unit.

(4) If any of the Well(s) is completed at an unorthodox location under applicable rules in effect at the time such well is completed, the operator shall provide notice and apply administratively for a location exception prior to producing the well.

(5) The operator of the Unit shall commence drilling the proposed well on or before April 30, 2020 and shall thereafter continue drilling the proposed well with due diligence to test the Bone Spring formation at or about the proposed true vertical and measured depths.

(6) In the event the operator does not commence drilling the Well(s) on or before the date provided in the foregoing paragraph, the compulsory pooling provision of this order shall be of no effect, unless the operator obtains a written time extension from the Division Director pursuant to a written request stating its reasons for such extension and attaching satisfactory evidence.

(7) In the event the operator does not commence completion operations within one year after commencement of drilling operations pursuant to this order, then the compulsory pooling provisions of this order shall be of no effect unless operator obtains a written time extension from

the Division Director pursuant to a written request stating its reasons for such extension and attaching satisfactory evidence.

(8) The operator shall provide a copy of any request for extension of time to drill or complete any well filed with the Director pursuant to this order to each pooled working interest owner who has elected to participate in the drilling of any well that is the subject of the request. Such copy shall be sent at the same time the request is sent to the Director.

(9) Upon final plugging and abandonment of the well(s) and any other well drilled on the Unit pursuant to Division Rule 19.15.13.9 NMAC, the pooled Unit shall terminate, unless this Order has been amended to authorize further operations.

(10) Infill wells within the Unit shall be subject to Division Rule 19.15.13.9 NMAC and to the terms and conditions of this order.

(11) After pooling, uncommitted working interest owners are referred to as pooled working interest owners. ("Pooled working interest owners" are owners of working interests in the Unit, including unleased mineral interests, who are not parties to an operating agreement governing the Unit.) After the effective date of this order, the operator shall furnish the Division and each known pooled working interest owner in the Unit separate itemized schedules of estimated costs of drilling, completing and equipping each of the Well[s] ("well costs").

(12) Within 30 days from the date the schedule of estimated well costs for any well is furnished, any pooled working interest owner shall have the right to elect to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production as hereinafter provided. Payment shall be rendered within 90 days after expiration of the 30-day election period and any such owner who pays its share of estimated well costs as provided above for any well shall remain liable for operating costs but shall not be liable for risk charges to the extent computed based on costs of such well. Pooled working interest owners who do not elect to pay their share of estimated well costs, or who do not render timely payment to the operator, as provided in this paragraph shall thereafter be referred to as "non-consenting working interest owners."

(13) The operator shall furnish the Division and each known pooled working interest owner (including non-consenting working interest owners) an itemized schedule of actual well costs of each well within 180 days following completion of the proposed well. If no objection to the actual well costs for any well is received by the Division, and the Division has not objected, within 45 days following receipt of the schedule for such well, the actual well costs shall be deemed to be the reasonable well costs. If there is an objection to actual well costs within the 45-day period, the Division will determine reasonable well costs for such well after public notice and hearing.

(14) Within 60 days following determination of reasonable well costs for any well, any pooled working interest owner who has paid its share of estimated costs of such well in advance as provided above shall pay to the operator its share of the amount that reasonable well costs

exceed estimated well costs and shall receive from the operator the amount, if any, that the estimated well costs it has paid for such well exceed its share of reasonable well costs.

(15) The operator is hereby authorized to withhold the following costs and charges from each non-consenting working interest owner's share of production from each well:

- (a) the proportionate share of reasonable well costs attributable to the non-consenting working interest owner; and
- (b) as a charge for the risk involved in drilling the well, 200% of the above costs.

(16) During the cost recovery period, the operator shall furnish to the Division and to each known non-consenting pooled working interest owner, annually, and within 90 days after payout occurs, a schedule of all revenues attributable to each proposed well, and all charges for supervision and operating costs charged against such revenues. Operating costs shall include all reasonable costs incurred for the maintenance and operation of the well, except for "well costs" reported pursuant to prior ordering paragraphs, that are properly chargeable to the joint account pursuant to COPAS procedures. If no objection to the operating costs is received by the Division, and the Division has not objected, within 45 days following receipt of any schedule, the costs shall be deemed to be the reasonable operating costs. If there is an objection to the accuracy or reasonableness of operating costs reported within the 45-day period, the Division will determine reasonable operating costs after public notice and hearing.

(17) The operator shall distribute the costs and charges withheld from production, proportionately, to the parties who advanced the well costs for such well.

(18) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$8000 per month, per well, while drilling and \$800 per month, per well, while producing, provided that these rates shall be adjusted annually pursuant to the COPAS form titled "Accounting Procedure-Joint Operations." The operator is authorized to withhold from production from each well the proportionate share of both the supervision charges and the actual expenditures required for operating of such well, not more than what are reasonable, attributable to pooled working interest owners.

(19) Except as provided in the foregoing paragraphs, all proceeds from production from the well that are not disbursed for any reason shall be held for the account of the person or persons entitled thereto pursuant to the Oil and Gas Proceeds Payment Act (NMSA 1978 Sections 70-10-1 through 70-10-6, as amended). If not sooner disbursed, such proceeds shall be turned over to the appropriate authority as and when required by the Uniform Unclaimed Property Act (NMSA 1978 Sections 7-8A-1 through 70-8A-31, as amended).

(20) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for allocating costs and charges under this order. Any costs that are to be paid out of production shall be withheld only from the working interests'

share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(21) Should all the parties to this compulsory pooling order reach voluntary agreement after entry of this order, this order shall thereafter be of no further effect.

(22) The operator of the wells and Unit shall notify the Division in writing of the subsequent voluntary agreement of any party subject to the compulsory pooling provisions of this order.


(23) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



S E A L

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION



ADRIENNE SANDOVAL
Director