

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

APPLICATION OF XTO ENERGY INC. TO RESCIND EXTENSION OF ORDER NOS. R-20452 AND R-20454 OR, IN THE ALTERNATIVE, TO REQUIRE ASCENT TO AMEND ORDER NOS. R-20452 AND R-20454, AND TO STAY ORDER NOS. R-20452 AND 20454, LEA COUNTY, NEW MEXICO.

**CASE NO. _____
ORDER R-20452
ORDER R-20454**

APPLICATION

XTO Energy Inc. (“XTO” or “Applicant”) (OGRID No. 5380), through its undersigned attorneys, hereby files this application with the Oil Conservation Division, pursuant to the provisions of NMSA 1978, Sections 70-2-6 and 70-2-12 seeks an order rescinding the Division Director’s approvals to extend the deadline to commence drilling until April 30, 2022 under Order Nos. R-20452 and R-20454 or, in the alternative, to require Ascent to file applications to amend Order Nos. R-20454 and R-20452 to extend the drilling deadline and give notice to all affected parties. XTO also seeks an order for an order staying Order Nos. R-20454 and R-20452 until a decision is entered in this case. In support, XTO states:

1. In Case No. 16484, Ascent Energy, LLC applied for an order pooling all interests in the Bone Spring formation underlying a horizontal spacing unit comprised of the W/2 E/2 of Section 28 and the W/2 E/2 of Section 33, Township 20 South, Range 33 East, N.M.P.M., Lea County, New Mexico, forming a 320-acre horizontal well spacing unit, and dedicating the unit to the Gavilon Fed Com Well No. 506H and 604H wells.

2. In Case No. 16486, Ascent Energy, LLC applied for an order pooling all interests in the Wolfcamp formation underlying a horizontal spacing unit comprised of the W/2 E/2 of Section 28 and the W/2 E/2 of Section 33, Township 20 South, Range 33 East, N.M.P.M., Lea

County, New Mexico, forming a 320-acre horizontal well spacing unit, and dedicating the unit to the Gavilon Fed Com Well No. 707H and 708H.

3. Both cases were taken under advisement by the Division at the January 24, 2019 hearing. The Division approved Case No. 16484 in Order No. R-20452 and Case No. 16486 in Order No. R-20454.

4. XTO was a pooled working interest owner under both orders and owns. It owns approximately 12.5% interest in each of the pooled spacing units.

5. The orders set a one-year deadline to commence drilling the initial wells by April 30, 2020. *See* Order Nos. R-20454, R-20452 at ¶ 4.

6. The orders also provide that the operator may obtain an extension to the drilling deadlines by submitting “a written request stating its reasons for such extension and attaching satisfactory evidence[,]” and by providing notice of the request to pooled working interest owners who have elected to participate. *See* Order Nos. R-20454, R-20452 at ¶¶ 5, 7.

7. Pursuant to the orders, Ascent submitted written requests to obtain one-year extensions to the drilling deadline under both orders on April 20, 2020 and again on November 25, 2020, before it sent out well elections and cost estimates to pooled working interest owners. The Division Director granted Ascent’s first extension request on April 21, 2020 and its second extension request on December 14, 2020. The extensions delayed the deadline to commence drilling until April 30, 2021 under the first extension and until April 30, 2022 under the second extension.

8. However, XTO was never notified that Ascent had requested either extension under the orders and, therefore, never had an opportunity to object or participate before the extensions were requested or granted. Under the orders, Ascent was required to provide notice of

extension requests only to pooled working interest owners who elected participate. But the orders do not require Ascent to issue an election to participate at any particular time, let alone before requesting an extension to the deadline to drill. *See* Order Nos. R-20454, R-20452 at ¶ 10.

9. Consequently, Ascent was able to obtain extensions to its drilling deadlines under its pooling orders for two years without ever giving notice to XTO and without XTO ever having an opportunity to object.

10. Since Order Nos. R-20454 and R-20452 were issued, the Division changed the requirement for obtaining drilling extensions under compulsory pooling orders. Recognizing the unfairness inherent in such orders that allow operators to obtain extensions without providing notice, the Division now requires operators to amend pooling orders to obtain an extension of time to commence drilling. Amendment requires filing an application, giving notice to all parties subject to the original force-pooling proceeding, and going to hearing before a Division Examiner.

11. The Division implemented this change by updating the language of force-pooling orders before the Division Director approved Ascent's first extension requests on April 21, 2020. *See, e.g.*, Order No. R-21185 at ¶ 20, dated April 14, 2020 ("This Order shall terminate automatically if Operator fails to comply with Paragraph 19 unless Operator obtains an extension by an amendment of this Order for good cause shown.").

12. Because the Division's decision to extend Order Nos. R-20454 and R-20452 on April 20, 2020, and again on December 14, 2020, conflicts with its updated and revised force-pooling orders at the time Ascent submitted its extension requests, the Division should rescind the authorization extending the deadline to commence drilling under those orders. In the alternative, the Division should rescind the extensions and require Ascent to file an application to

amend Order Nos. R-20454 and R-20452 to extend the drilling deadline and give notice to all affected parties.

13. The Division has previously denied written pooling order extension requests and required operators to file applications to amend pooling orders to extend the drilling deadlines. There is no reasonable justification for refusing to require Ascent to do the same in this circumstance.

14. Ascent issued an election to participate and estimate of well costs under Order Nos. R-20454 and R-20452 on July 8, 2021. If XTO does not pay its share of well costs within the timeframes set out in the orders, it will be subject to a 200% risk charge on its 12.5% working interest. That is an unfair burden when XTO did not have the opportunity to object to the extension of Ascent's orders and will result in irreparable harm.

15. Ascent has delayed drilling its proposed wells under these orders for more than two years. A temporary stay pending the outcome of this case will not prejudice Ascent or other interested parties.

16. A stay will protect the public interest by ensuring parties with valuable mineral interests have a recourse against the issuance of pooling order extensions without the opportunity to be heard.

WHEREFORE, XTO respectfully requests that, after hearing and notice, the Division enter an order:

- A. Rescinding the Division's Director's approvals extending the deadline to commence drilling under Order Nos. R-20454 and R-20452 until April 30, 2022;
- B. Or, in the alternative, rescinding the Division's Director's approvals extending the deadline to commence drilling under Order Nos. R-20454 and R-20452 until

April 30, 2022 and requiring Ascent to file an application to amend Order Nos. R-20454 and R-20452 to extend the drilling deadline and give notice to all affected parties;

- C. Staying Order Nos. R-20454 and R-20452 until a Division order is issued in this case; and
- D. Granting such other relief as the Division deems just and proper.

Respectfully submitted,

HOLLAND & HART LLP

By: _____



Michael H. Feldewert
Adam G. Rankin
Julia Broggi
Kaitlyn A. Luck
Post Office Box 2208
Santa Fe, NM 87504
505-998-4421
505-983-6043 Facsimile
mfeldewert@hollandhart.com
agrarkin@hollandhart.com
jbroggi@hollandhart.com
kaluck@hollandhart.com

ATTORNEYS FOR XTO ENERGY INC.