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

APPLICATION OF XTO ENERGY, INC., FOR SPACING WITHIN THE BIG EDDY FEDERAL EXPLORATORY UNIT, SPACING UNIT AND COMPULSORY POOLING, EDDY AND LEA COUNTIES, NEW MEXICO. **Case No. 26248**

PREHEARING STATEMENT

V-F Petroleum Inc. ("V-F Petroleum" or "V-F"), OGRID No. 24010, through its undersigned attorneys, submits the following Prehearing Statement pursuant to 19.15.4.13 NMAC and the Pre-Hearing Order entered on August 21, 2026, by the Hearing Examiner.

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V-F'S STATEMENT OF THE CASE

In Case No. 26248, XTO Energy, Inc. ("XTO") asks the Division to enter an order restructuring horizontal well spacing and location across the entire Big Eddy Federal Exploratory Unit ("Big Eddy FEU") — 133,444.29 acres in Eddy and Lea Counties. Prayer ¶A would deem "all standard horizontal spacing units that lie within the FEU" properly composed of tracts that align with the FEU boundaries, built from 10-acre "governmental quarter-quarter-quarter section" tracts, "regardless of whether such tracts would normally be included within standard horizontal spacing units established pursuant to 19.15.16.15 NMAC."

Prayer ¶B would authorize the completed interval of any horizontal well XTO drills within the FEU to be located anywhere, without unorthodox-location approval, subject only to setbacks measured from "the FEU boundaries."

V-F objects. The application is, in substance, a request to amend 19.15.16.15 NMAC for a 133,444-acre area, prospectively and permanently, through an adjudication at the Division. Under NMSA 1978, § 70-2-12.2, a rule — and "'rule' includes an amendment or repeal of a rule" — may be adopted only by the Oil Conservation Commission ("Commission"), following a Commission hearing, and through the rulemaking procedures of 19.15.3 NMAC. The Division has no rulemaking authority, and an adjudicatory order of this breadth — reaching roughly forty pools, every future well, and every future spacing unit within the Big Eddy FEU, without regard to the engineering or geologic conditions of any particular reservoir — is not an adjudication pursuant to proper criteria and subject-matter; Division adjudications, in contrast to Commission rulemakings, are reserved for "limited" application among "identifiable" persons. *See* Uhden v. N.M. Oil Conservation Comm'n, 1991-NMSC-089, ¶ 7, 112 N.M. 528, 817 P.2d 721. XTO's counsel acknowledged at the August 20, 2026, status conference that the Division has never granted an application of this kind and that it presents a "novel approach to deal with federal exploratory units in the state."[1] Transcript ("Tr.") Case No. 26248 dated Aug. 20, 2026, 26: 883-889. This express description and characterization by XTO's own counsel is significant: the relief XTO seeks is not merely an application of existing spacing rules to a particular well or tract, but a wholesale departure from the regulatory framework the Division is required to administer pursuant to the horizontal well rules in Title 19, Chapter 15, Part 16, adopted in 2018 specifically to codify the necessary requirements for the protection of correlative rights and prevention of waste in federal unitized units ("FEUs") where they interface with adjoining tracts and mineral rights outside the FEU and non-committed tracts inside the FEU. *See, e.g.,* 19.15.16.15(B) and –(B)(8) NMAC, mandating specific requirements for spacing units in FEUs, and 19.15.16.15(C)(7) NMAC, mandating specific requirements for well setbacks in FEUs.

The requested relief directly conflicts with and undermines the purpose and integrity of the existing rules. Under 19.15.16.15(B)(1)(a) NMAC, a standard horizontal oil spacing unit is constructed from 40-acre governmental quarter-quarter sections; under 19.15.16.15(B)(3)(a)

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[1] The statement, "…a novel approach to deal with federal exploratory units in the state," reveals XTO counsel's actual ambition not to limit the precedent of the application just to the Big Eddy FEU but to use the application as a model for dealing with federal exploratory units across the state. In short, the application undermines the procedural integrity of the Division's adjudication authority, the Commission's rulemaking authority, and the established purpose of the existing rules, and ultimately is a backdoor attempt to engage in unauthorized rulemaking in order to extinguish, amend, and alter existing rules that protect correlative rights.

NMAC, a standard gas spacing unit from 160-acre governmental quarter sections. The phrase "quarter-quarter-quarter section" appears nowhere in Part 15 or Part 16 of Chapter 19.15 NMAC. And the rules expressly provide that a unit failing to satisfy the applicable standard criteria "shall be considered a nonstandard horizontal spacing unit and must be approved" through the process prescribed by 19.15.16.15(B)(5) NMAC. *See* 19.15.16.15(A)(3) NMAC. The rules recognize standard units and non-standard units; they do not authorize a third category in which a unit that is non-standard under the rule is nevertheless deemed "standard" by adjudicatory order.

The practical consequence — and the heart of V-F's objection — is that XTO's requested order would eliminate substantive notice and objection rights the Commission deliberately afforded adjoining and excluded owners in the 2018 horizontal well rulemaking. Under the existing rules, an operator proposing a border unit that excludes an adjoining owner's tract must provide certified-mail notice to affected owners. 19.15.16.15(B)(5)(b) NMAC. Those owners then have twenty days to object and, by doing so, require a hearing. 19.15.15.11(B)(4) NMAC. If every border unit within the Big Eddy FEU is prospectively deemed "standard," those protections disappear by operation of 19.15.4.12(A)(1)(a) NMAC.

Prayer ¶B compounds the problem by eliminating the separate notice required for unorthodox well locations under of 19.15.4.12(A)(2) NMAC. The requested order would further undermine and erode existing protections. Rule 19.15.16.15(C)(7) NMAC measures setbacks from the boundary of "any uncommitted tract or partially committed tract" within a unitized area. The BLM serial register for the Big Eddy FEU identifies approximately 1,309 acres of uncommitted or partially committed tracts within the unit, all of which are privately owned fee tracts. Yet Prayer ¶B would permit completed intervals to be placed adjacent to those tracts without the setback otherwise required by the rule, without an application for unorthodox-location approval, and without notice to the affected owners. In practical effect, XTO asks the Division to extinguish, in a single adjudication, regulatory protections that the Commission adopted by proper rulemaking for the benefit of identifiable private property owners.

Nor can the statutory findings required to support XTO's requested relief be made on this record. NMSA 1978, § 70-2-17(A) requires that "[t]he rules, regulations or orders of the division shall…afford the owners of each property in a pool the opportunity to produce his just and equitable share of oil and gas." Emphasis added. The rules and regulations designed to protect the owners in a pool who adjoin and/or straddle the border of an FEU have been firmly established by the Commission, and the Division has a statutory obligation to issue orders adhering to the rules that evaluate and protect correlative rights of the owners by approving and establishing nonstandard spacing units a case-by-case, unit-by-unit basis through review and analysis of geological and engineering data and evidence to insure that the owners of each adjoining property in a pool underlying the border of the FEU are provided the opportunity to produce their just and equitable share of oil and gas. Furthermore, under NMSA 1978, § 70-2-17(C), a tract (and its owners) excluded from a unit receives no production from the unit's wells, whatever the amount produced and/or drained from the tract. Yet XTO's application sweeps across roughly forty Bone Spring and Wolfcamp pools — several of which XTO's own exhibits identify only as "proposed" or "pre-permitting" — without offering reservoir engineering evidence, drainage analysis, or other pool-specific evidence sufficient to support findings or provide a valid foundation for issuing a legitimate order.

The extraordinary relief XTO seeks is also unnecessary because the existing rules already provide mechanisms to address the development concerns identified in the application. Section 19.15.16.15(B)(8) NMAC exempts wells within a unitized area from the otherwise applicable rectangularity requirements; Section 19.15.16.15(C)(7) NMAC addresses setbacks within unitized areas; and Section 19.15.16.15(B)(6) NMAC, together with the communitization process, provides a mechanism for development that crosses tract or unit boundaries. Where a nonstandard unit is appropriate, the rules likewise provide an administrative approval process under which unopposed applications may be approved without hearing. XTO therefore does not lack a regulatory path for development. It instead seeks a blanket exemption from the very procedures the Commission adopted to govern that development.

XTO's counsel makes its intent clear by acknowledging that the circumvention of owners' existing rights granted by the rules is the reason for submitting this application, as XTO counsel has stated that seeking to establish nonstandard units "one-by-one," that is on a case-by-case basis, as currently required by the rules "tends to elicit objections" which XTO plans to bypass through the request in its application to extinguish and alter existing rules. *See* Tr. Case No. 26248 dated Aug. 20, 2026, 25: 858 – 859. In other words, under the established rules, a working interest or mineral owner is granted the opportunity to protect its correlative rights by exercising its right to object and obtain due process through a hearing if the parties cannot negotiate a resolution to the objection, and XTO through its application seeks to bypass statewide rules, prohibit the exercise of owners' rights by deeming all nonstandard units along the border to be "standard," and thereby exclude owners of oil and gas adjoining the boundary of the FEU who would otherwise be included in units along the FEU's border pursuant to existing law.

The only regulatory authority that XTO cites (in Paragraph 2 of its application) in an effort to support its position that the Division can unilaterally alter existing rules and engage in rulemaking is Rule 19.15.20.14 NMAC, located in Part 20 of the rules that specifically addresses "Oil Proration and Allocation," not the criteria for approving spacing units and setback distances in federal units which are addressed solely in Part 16, Sections B and C; specifically, 19.15.16.15(B) and –(B)(8) NMAC provides the criteria and requirements for the spacing units of horizontal wells located along and boundaries and within "unitized areas" such as federal units; in the same manner, 19.15.16.15(C)(7) NMAC provides setback requirements for non-standard locations of horizontal wells when located wholly within the FEU and at the boundary of the FEU.

Rule 19.15.20.14 NMAC established in 2008, prior to the adoption of the horizontal well rules, has nothing to do with the Division's role in the unitization of federal exploratory units, which is addressed by the Statutory Unitization Act, NMSA, § 70-7-1, *et seq.* in coordination with BLM regulations (*see* BLM Handbook on Exploratory Units H-3180-1); has nothing to do with approving nonstandard spacing units for horizontal wells in unitized areas, which is directly governed by 19.15.16.15(B) NMAC; and has nothing to do with approving nonstandard well locations in federal units, which is governed by 19.15.16.15(C)(7). Thus, Rule 19.15.20.14 NMAC pertains specifically to the management and allocation of oil and gas within proration units, as it states that "the division may approve the combining of contiguous developed proration units into a unitized area." Because horizontal wells under the rules in Part 16 are dedicated to horizontal spacing units and not to proration units, this Rule (19.15.20.14 NMAC) governs and applies to proration units for vertical wells, typically 40-acre proration units for vertical oil wells (*see* 19.15.15.9 NMAC) and 160-acre proration units for vertical gas wells (*see* 19.15.15.10(C) NMAC) and typically does not apply to horizontal wells within a federal unit nor does it authorize the Division to extinguish, amend or alter rules that govern the boundaries of, and the spacing units and well locations within, an FEU.

Historically, once a number of individual but contiguous proration units for vertical wells have been established in an area, Rule 19.15.20.14 NMAC grants the Division authority to combine the proration units into one larger proration unit, which is the meaning of "the division may approve the combining of contiguous development proration units into a unitized area." The unitized area is not an FEU but the area that encompass the combined proration units. Thus, in no way does Rule 19.15.20.14 NMAC authorize the Division to override, undermine, and bypass the rules that govern the approval of nonstandard units along the boundary of a federal exploratory unit or change the rules for approving the nonstandard location of a horizontal well within a federal unit. Such assertions by XTO represent a misuse and misapplication of Rule 19.15.20.14 NMAC and its purpose.

Furthermore, it is improper for XTO to attempt to use the unqualified broad powers granted to the Division in NMSA 1978, § 70-2-11, as it does in Paragraph when there are specific statutes and rules in place that qualify and limit such powers under the circumstances of the present case. *See* Marbob Energy Corp. v. N.M. Oil Conservation Commission, 2009-NMSC-013, ¶ 14, 146 N.M. 24, 206 P.3d 135 (the New Mexico Supreme Court showing that the Commission's reading of Section 70-2-11 to expand its powers beyond an existing statute or rule would ignore the specific and express requirements of other statutes in the Oil & Gas Act that if transgressed or overridden by the broad powers of Section 70-2-11 would create impermissible contradictions and conflicts within the regulatory scheme). Applying the logic of the *Marbob* court in conjunction with the *Uhden* court, *supra,* if the Division acted upon and approved XTO's generalized application, it would contradict the role of the Commission, under Section 70-2-12.2, as the body authorized to implement binding rules (which the Division is obligated to uphold) for approving nonstandard units and nonstandard well locations in federal units, as the Commission did in 2018 when it adopted Rules 19.15.16.15(B), and –(B)(8) and –(C)(7) NMAC.

Thus, XTO's application with its misplaced citations to Section 70-2-11 and Rule 19.15.20.14 NMAC provides no relevant or applicable authority to support its requests.

In the past, prior to the Commission's adoption of the horizontal-well rules that now address unit and setback requirements for federal unitized areas, certain operators made efforts, necessary at the time, to accommodate the need to properly locate horizonal wells and units within federal unitized areas. One example of this effort is Order R-14600 (Bell Lake), which arose from an uncontested special-pool-rules proceeding decided under the pre-2018 project-area framework. It created a new Bone Spring pool in a federal unit where a pool for the Bone Spring had not previously existed; established 480-acre units composed of legitimate government-recognized tracts of quarter-quarter sections within the pool, and preserved offset-setback protections, all of which supported and upheld the protection of correlative rights under rules in place at the time. More importantly, when the Commission adopted the current horizontal-well rules in 2018, it expressly preserved only one pre-existing special pool order — Order R-14262 (Purple Sage), as XTO itself acknowledges at Paragraph 6 of its application. It did not preserve Order R-14600 or similar orders to be applied to or referenced for future development of FEUs, as development of federal unitized areas are now governed by the horizontal-well rules established by the Commission. Thus, XTO cannot use an adjudicatory proceeding to create and dramatically expand superseded regulatory provisions that the Commission chose not to carry forward.

V-F therefore asks the Division to deny the application and require XTO to proceed through the mechanisms the Commission's rules already provide: case-by-case approval of non-standard horizontal spacing units, communitization, consent of the Commissioner of Public Lands where required, a special pool order supported by pool-specific evidence, or a rulemaking petition to the Commission under 19.15.3.8 NMAC, where affected operators and owners throughout the FEU may participate and be heard.

At a minimum, any order granting relief must preserve the substantive protections embedded in the existing rules. Any such order should: (1) preserve the notice and objection rights of adjoining and excluded owners; (2) treat units formed under the order as non-standard for purposes of 19.15.4.12(A)(1)(a) NMAC; (3) preserve the setbacks applicable to uncommitted and partially committed tracts under 19.15.16.15(C)(7) NMAC; (4) deny Prayer ¶B; (5) reject the proposed 10-acre "quarter-quarter-quarter" tract as a permissible building block for standard horizontal spacing units; (6) limit any relief to the pools specifically identified on XTO's Exhibit A-2 and supported by competent evidence; and (7) impose a defined term, together with appropriate reporting requirements, rather than granting permanent, prospective relief across the Big Eddy FEU.

ALTERNATIVE APPROACH FOR ACHIEVING GREATER EFFICIENCY IN THE APPROVAL PROCESS FOR NONSTANDARD UNITS

At the previous status conference, V-F counsel stated that there may be alternative approaches that would allow for more efficient development of oil and gas along the boundary of the Big Eddy FEU and other FEUs, which appears to be XTO's ultimate goal, but approaches that would preserve, not undermine, the integrity and purpose of the existing rules that protect owners' correlative rights. Currently, when an operator seeks to develop a nonrectangular-shaped unit along the border of an FEU, the operator must submit an application for approval of the nonstandard ("NSP") unit, which is usually evaluated administratively. Upon approval of the NSP application, the operator receives an order authorizing the spacing unit which allows for further development of the nonstandard unit. Unlike a pooling order or drilling permit that have prescribed deadlines for development (typically two years), an order approving a nonstandard unit usually does not specify a hard deadline, as they are applied to and acted upon within the timeline prescribed by the drilling permit and/or pooling order.

Therefore, it is conceivable, at least theoretically, that a more efficient administrative procedure could be considered and devised that would allow for the submission of a batch NSP application, that is, submission of multiple nonstandard units in a single application to be evaluated and approved simultaneously. Under such batch approach, an FEU operator could identify a number of areas along the FEU's border that are irregular in shape, and therefore problematic, that the operator would want to develop at some future date as nonstandard units. The operator could submit an application packet that identified problematic areas and proposed a number of nonstandard units to be approved and primed for future development. The application packet could provide the Division with relevant information such as estimated timelines for development, overall development plans that place the proposed units in the larger context of the FEU's development, and geological and reservoir data relevant to the set of units proposed, in effect, provide sufficient information and notice that would allow offset owners to make an informed, initial determination whether to agree to a unit or exercise its right to object under the rules that protect correlative rights, thereby upholding principles of due process. Under such an approach, an FEU operator would likely secure approval for at least some, in not most or perhaps even all, of the nonstandard units through a single batch application and would be made aware of the owners with which the operator would need to further negotiate to resolve any remaining objections as required and contemplated by the rules. If the Division were to consider such an approach, the technical examiners might find additional ways to streamline the batch-application process in order to uphold and preserve the principles and purpose of the existing rules, that is, to provide the offset owners due process, opportunity to protect their correlative rights, and preserve the rights granted owners under the rules.

Creating such an alternative option might allow operators of FEUs a more efficient approach for processing in a timely manner a larger number of nonstandard units that would still allow owners to exercise their rights granted by the rules on a unit-basis if and when necessary, thus respecting and preserving the integrity of the existing law and its purpose. It may take the Division additional time and energy to devise an efficient administrative approval process of this scope and scale for FEUs that harmonizes with and upholds the existing rules, but it might be time and energy well spent to preserve the rights of owners and operators, both large and small.

V-F'S STANDING TO OBJECT

V-F is a party of record and has standing to object on multiple, independent grounds. First, V-F owns mineral interests in Township 20 South, Range 30 East, NMPM, Eddy County, New Mexico, including 480 acres in Section 21, 480 acres in Section 22, and 80 acres in Section 29. Sections 21 and 22 directly adjoin the northern boundary of the FEU in that township; the FEU includes Sections 25 through 27 and 34 through 36, and Section 22 lies immediately north of FEU Section 27. V-F therefore owns interests directly adjacent to acreage that would be affected by the sweeping relief XTO seeks. XTO itself identified V-F as an affected person and provided V-F notice of the application. V-F timely entered its appearance on August 5, 2026. Under 19.15.4.10(A) NMAC, a person entitled to notice who enters an appearance is a party to the proceeding. Second, 19.15.16.15(B)(11) NMAC expressly recognizes the interests of "an owner of a tract that adjoins a proposed or existing horizontal spacing unit but is not included therein" and affords that owner protection of its correlative rights. V-F falls squarely within that category. Third, V-F's participation satisfies 19.15.4.11(C) NMAC because it will substantially contribute to the protection of correlative rights and to the Division's consideration of the broader consequences of XTO's requested relief. V-F is uniquely situated to address how the proposed order would affect adjoining owners not only along the boundary of this FEU, but potentially at federal exploratory unit boundaries throughout the state of New Mexico. Fourth, V-F's threshold objection challenges the Division's legal authority to grant the relief requested at all. That jurisdictional issue is not dependent on the extent of V-F's ownership interests; it is a question the Division must resolve before reaching the merits of XTO's application.

Finally, at the August 20, 2026 status conference, the Hearing Examiner denied XTO's request to dismiss V-F's objection and recognized V-F as a party entitled to participate and object in this proceeding.

V-F'S PROPOSED EVIDENCE

WITNESS	**ESTIMATED TIME**	**EXHIBITS**
N/A	N/A	N/A

V-F anticipates being able to cross-examination of XTO's witnesses (expecting to need approximately 45 minutes, depending on the scope of XTO's direct testimony). In addition, because the basis of V-F's request that XTO's application be denied is mainly a matter of law, V-F does not see a need to expend the Division's time with witness testimony and asks that the Division give close consideration to the existing law and rules that prohibit the approval of the kind of application XTO has submitted. Accordingly, V-F requests the opportunity to present a brief legal argument concerning the threshold issue of the Division's authority to grant the relief requested. Because the issues bear directly on whether the Division may reach the merits of XTO's application, V-F respectfully requests that they be addressed as a preliminary matter when the case is called. Should the Division decide to hear the merits of XTO's case, V-F requests that it be allowed to submit closing arguments for the Division's review and consideration during the Division's post-hearing evaluation of XTO's application.

PROCEDURAL MATTERS

V-F entered its appearance and objected to a hearing by affidavit on August 5, 2026. At the August 20, 2026, status conference, the Hearing Examiner declined XTO's request to dismiss V-F's objection and set the matter for a contested hearing commencing September 15, 2026, at 8:30 a.m., with the hearing to continue on September 16, 2026, if necessary. The Pre-Hearing Order was entered on August 21, 2026. V-F has not withdrawn its objection and intends to participate in and proceed with the contested hearing through counsel's representation. Accordingly, V-F counsel seeks to cross-examine XTO witnesses and establish for the Division's review a record of XTO's responses. At the conclusion of the hearing, V-F requests opportunity to submit a closing argument so the record can reflect the basis of V-F's concerns and objections.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed with the New Mexico Oil Conservation Division and was served on counsel of record via electronic mail on September 8, 2026:

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QUESTIONS

Action 622793

QUESTIONS

Operator: V-F PETROLEUM INC P.O. Box 1889 Midland, TX 79702	OGRID: 24010
	Action Number: 622793
	Action Type: [HEAR] Prehearing Statement (PREHEARING)

QUESTIONS

Testimony

Please assist us by provide the following information about your testimony.

Number of witnesses	0
Testimony time (in minutes)	0