

**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

PRELIMINARY OBJECTIONS

V-F Petroleum Inc. (“V-F Petroleum” or “V-F”), through its undersigned attorneys, files with the Oil Conservation Division (“Division” or “OCD”) certain preliminary objections in relation to the application and supporting exhibits submitted by XTO Energy, Inc. (“XTO”) and respectfully requests the Division’s due consideration of its objections as a preliminary matter to determine how they should bear on the proceedings, including whether XTO’ application should not be heard but dismissed on statutory and jurisdictional grounds as described herein and more thoroughly in V-F’s Prehearing Statement.

V-F’s objections are as follows:

1. As explained and stated in its Prehearing Statement, V-F objects to the nature and type of application XTO submitted to the Division. V-F does not consider the subject-matter and requests of the application to be appropriate for review and consideration by the Division because under the New Mexico Oil & Gas Act, NMSA 1978, Section 70-2-1 *et seq.* (“OGA”) the subject-matter, requests, and any relief to be granted pursuant to this type of application should be heard and acted upon by the Oil Conservation Commission (“Commission” or “OCC”) pursuant to NMSA 1978, Section 70-2-12.2 in order to maintain the integrity of proceedings under the OGA. Therefore, as a preliminary matter prior to the hearing, V-F requests the opportunity to present to the OCD tribunal a brief legal argument concerning the threshold issue of the Division’s authority

to grant the relief requested by XTO. V-F questions the propriety of XTO requesting such relief in the manner presented by its application when there are proper alternative avenues for seeking such relief or comparable solutions as proposed and described in V-F's Prehearing Statement.

2. In addition, V-F objects to XTO withholding and redacting certain exhibits, in particular Exhibit B-2, which XTO's land witness describes as including FEU tract numbers, legal descriptions, acreage amounts, royalty owner information, unit commitment status, lessee of record information, overriding royalty and percentage information, and working interest owners and percentages for each tract, all relevant and essential information for a proper public adjudication of record. According to its Hearing Packet, XTO submitted Exhibit B-2 directly to the Division without including its contents in the Hearing Packet that was sent to the parties of record; instead, XTO took it upon itself to redact this exhibit, without notice or explanation, resulting in parties of record, in particular V-F who had entered an objection and protest, not receiving the right to a full record that provides for informed cross-examination and informed defenses.

3. V-F, and parties of record, have a right to a fair hearing and opportunity to be heard, a right which is bound by fundamental principles of justice and due process. *See Valenzuela v. A.S. Horner, Inc.*, 2016-NMCA-031, ¶10; *Santa Fe Exploration Co. v. OCC*, 1992-NMSC-044, ¶¶14-16. Procedural due process requires that a party be given notice and opportunity to defend, which includes the right to be heard in a meaningful time and meaningful manner. Thus, when parties are precluded from reviewing evidence or making a complete record, their essential due process right to a meaningful opportunity to be heard is transgressed. *See TW Telecom of N.M., L.L.C. v. N.M. Pub. Regulation Comm'n*, 2011-NMSC-029, ¶17 Fundamental fairness in administrative hearings requires that a party have the opportunity to cross-examine witnesses and confront evidence

presented against them. *See Valenzuela v. A.S Horner, Inc.*, 2016-NMCA-031, ¶10.; *TW Telecom of N.M., L.L.C. v. N.M. Pub. Regulation Comm'n*, 2011-NMSC-029, ¶17. Introducing an exhibit, such as XTO's Exhibit 2, while redacting and withholding its content from a protesting party denies that party the opportunity to substantially address, analyze, or cross-examine witnesses regarding the evidence and data, which violates due process. *See id.* Furthermore, an administrative body is authorized to make its decision only upon the evidence adduced at the hearing and made part of the public record. *See TW Telecom of N.M., L.L.C. v. N.M. Pub. Regulation Comm'n*, 2011-NMSC-029, ¶20. Relying on redacted or withheld information that is kept secret from participating parties prevents the compilation of a proper, open record. *See id.*

4. At the time XTO submitted its exhibits, XTO counsel was aware that V-F is a party of record who had protested XTO's application and planned to present its opposing position. Nonetheless, XTO counsel failed to inform V-F that it would be redacting and withholding an essential exhibit from V-F and other parties of record prior to the deadline for exchanging exhibits and failed to inform V-F and provide valid reasons to the parties and the Division for redacting and withholding an essential exhibit from public review on which the evaluation of the merits of XTO's application rely. Not only has XTO's unjustified redaction deprived V-F of valuable time granted by the Division's Prehearing Order for V-F to review and evaluate XTO's exhibits, it has further prevented V-F from stating and submitting objections to Exhibit 2 and making sufficient preparations for the hearing that would have concerned the contents of Exhibit 2. XTO counsel was well aware that it planned to redact and withhold Exhibit 2 prior to submission and service of the Hearing Packet and thus should have made accommodations that would have preserved principles of fairness and due process.

5. Conclusion: V-F respectfully requests that the examiners give a considered review of the V-F's Prehearing Statement which provides a detailed overview of the legal basis and reasons for V-F's objections to and protest of XTO's application, as submitted.

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 10, 2026:

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