

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

APPLICATION OF TITUS OIL & GAS PRODUCTION, LLC  
FOR APPROVAL OF PRODUCTION ALLOCATION,  
LEA COUNTY, NEW MEXICO

**Case No. 21872**

**APPLICANT’S PREHEARING STATEMENT AND  
BRIEF IN SUPPORT OF APPLICATION**

Pursuant to 19.15.4.13(B) and the motions approved by the Commission at hearing on September 18, 2021, Applicant Titus Oil & Gas Production, LLC (“Titus” or “Applicant”) hereby submits its pre-hearing statement and brief in support of the application.

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**PROPOSED EVIDENCE**

**APPLICANT:**<sup>1</sup>

WITNESSES	EST. TIME	EXHIBITS
Landman Walter Jones Geologist Allen Frierson Engineer Marshall Hickey	Supplemental Testimony Available for Cross-Examination Available for Cross-Examination	8-10

**OTHER PARTIES:**

WITNESSES	EST. TIME	EXHIBITS
TBD		

**STATEMENT OF THE CASE**

In this matter, Titus seeks an order from the Division approving the production allocation of minerals in the Wolfcamp formation (WC-025 G-09 S263619C; Wolfcamp [98234]) underlying a standard 280-acre, more or less, horizontal spacing and proration unit (“HSU”) comprised of the E/2 E/2 of Section 29 and the NE/4 NE/4 & Lot 1 of irregular Section 32, Township 26 South, Range 35 East, NMPM, in Lea County, New Mexico, and Lot 1 of irregular Section 25, Block C24, in Loving County, Texas. The HSU will be dedicated to the **El Campeon Fed Com 404H** well (“Well”), to be horizontally drilled from an approximate surface hole location 558’ FSL and 590’ FEL of Section 20, T26S-R35E, Lea County, New Mexico, to an approximate bottom hole location 10’ FSL and 1912’ FEL of Section 25, Block C24, Public School Land Survey, Abstract No. 701, Loving County, Texas. The Well will cross New Mexico’s interstate boundary into Texas, continuing to produce in the Wolfcamp formation (Phantom; Wolfcamp [Texas Field No. 71052900]).

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<sup>1</sup> Titus submitted several affidavits, numerous exhibits, and testimony from three witnesses in support of its application below. Titus requests that the Commission accept all of the filings and testimony before the Division as part of the record in this matter before the Commission.

The minerals proposed to be developed consist of state and federal minerals within the State of New Mexico and fee minerals within the State of Texas. Titus proposes that production be allocated to New Mexico and Texas mineral owners prorated on the basis of surface acreage in the proration unit or in any other manner mutually acceptable to the Division and to the Railroad Commission of Texas.

Both this Well, and other interstate wells within the same development plan, will have surface locations in New Mexico and traverse the interstate boundary to bottom holes in Texas. Titus has no plans to drill wells into New Mexico from a surface location in Texas.

### **FACTUAL BACKGROUND**

Titus first began working on its development plan for the El Campeon 404H interstate well (“Well”), among others, approximately one year ago. In November 2020, Titus began conferring with the New Mexico Oil Conservation Division (“Division”), at which time Titus was advised that it would need to request approval for allocation of production. At the same time, Titus began conferring with the Railroad Commission of Texas (“RRC”). In January of this year, Titus also began conferring with the New Mexico State Land Office (“SLO”) and the Bureau of Land Management (“BLM”). From the outset, for almost a year now, Titus has made every effort to confer with all interested parties and to proceed in a manner that would satisfy each agency’s requirements and resolve any concerns.<sup>2</sup>

### **PROCEDURAL BACKGROUND**

On February 22, 2021, Titus submitted an application for permit to drill to the RRC (“RRC APD”). *See* Part 1 of 2 (pdf 89).<sup>3</sup> The RRC APD was administratively denied because

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<sup>2</sup> At the upcoming hearing on September 28, Titus will present a witness to testify in this regard and sponsor exhibits of exemplar emails with persons at each agency.

<sup>3</sup> Citations are to the record made before the Division as it was submitted to the Commission by email from undersigned counsel to Florene Davidson on Tue 9/14/2021 4:21 PM and 4:22 PM.

no drilling permit had previously been issued for a horizontal well with perforations on both sides of the state line. *Id.* (pdf 92). Titus requested a hearing before a RRC hearing examiner on March 8, 2021. *Id.* Notice of the hearing was provided to the BLM local and New Mexico offices, the OCD, the New Mexico Energy, Minerals and Natural Resources Department, the New Mexico Taxation & Revenue Department, and the New Mexico State Land Office, among others. *Id.* (pdf 87). None of the foregoing agencies entered an appearance in the RRC matter.

Titus filed the instant application with the Division in this matter on April 6, 2021. *Id.* (pdf 4-6). Notice was provided by certified mail to the SLO, the BLM, the NM Taxation & Revenue Department, the RRC, and the Texas Comptroller of Public Accounts, among others. *Id.* (pdf 80-82); *see also id.* (pdf 156-78). All of the agencies received timely notice by certified mail. *See id.* (pdf 156-78). In addition, notice was timely published. *Id.* (pdf 179). The Division is the only agency that entered an appearance in this matter before the Division. *See generally* Part 1 of 2 and Part 2 of 2.

The Texas matter was heard by the RRC hearing examiner on April 13, 2021. *See id.* (pdf 120-30). After hearing, the record before the RRC remained open while Titus finalized a joint operating agreement (“JOA”) with the sole working interest owner for the Texas fee minerals, Oxy USA Inc. (“OXY”). *Id.* at 39:4-40:22 (pdf 129).

In the instant matter before the Division, the hearing was continued twice at the request of the Division. *See id.* (pdf 14, 33). The matter was ultimately heard by the Division on June 17, 2021, at which time Titus presented testimony from three witnesses. *See id.* (pdf 203-77);

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The documents were submitted in two parts, Part 1 of 2 and Part 2 of 2. References to “pdf” are to the page number reflected in the Adobe Acrobat software when the file is opened therein.

*see also id.* (pdf 205). *See generally* Part 1 of 2 at Tab 9. The case was continued to July 15, 2021, for a status conference. *Id.* (pdf 275).

Titus entered into a JOA with OXY as of July 8, 2021. *See* Part 2 of 2 (pdf 3-28). Upon receipt of the executed JOA, the RRC hearing examiner submitted the matter to the RRC on its consent agenda. Applicant's Status Report and Request for Order of Approval or, in the Alternative, Referral to the Commission, Exh. 1 attached thereto (pdf 110-12).

In the instant matter before the Division, a status conference was held on July 15, 2021. *See generally* Transcript, available at [https://ocdimage.emnrd.state.nm.us/Imaging/FileStore/santafeadmin/cf/20210913/21872\\_09\\_13\\_2021\\_11\\_42\\_31.pdf](https://ocdimage.emnrd.state.nm.us/Imaging/FileStore/santafeadmin/cf/20210913/21872_09_13_2021_11_42_31.pdf). The Division was informed that the JOA had been executed, that Titus expected the RRC to act shortly thereafter, and that Titus was preparing a draft MOU. The hearing examiner agreed that working on possible language for a MOU might be a good start and set the matter for another status conference on August 19. *Id.* at 4-6. On August 18, 2021, Titus filed a status report in preparation for the status conference on August 19. Titus informed the Division that it anticipated approval by the RRC on or about August 24, 2021, and that at that time, it would have all necessary approvals to drill into Texas. *See* Part 2 of 2 (pdf 107, ¶¶ 4-5). Titus further informed the Division that it had drafted a proposed MOU that had been circulated to Division counsel on July 15, 2021. Finally, Titus attached to the status report a draft proposed order. *Id.* (pdf 107-08, ¶¶ 7-8 and subsequent paragraph).

On or about August 24, without discussion, the RRC approved Titus's request to the RRC and issued a permit for the Well. *See id.* (pdf pages 144-45); *see also id.* (pdf 149-54, 156-59, 163-67). Titus understands that it now has authority to drill the Well into the State of Texas. *Id.* (pdf 144-45).

On September 1, 2021, Titus filed its Second Status Report and Request for Order of Approval. *Id.* (pdf 144-48). Therein, Titus informed the Division of the RRC approval and permit. *Id.* (pdf 144, ¶¶ 2-3). Titus explained that Texas believes the MOU between Texas and New Mexico would be for the purpose of streamlining approval of other similar wells in the future and that the approval by Texas is sufficient to allow drilling in Texas at this time. *Id.* (pdf 146-47, ¶ 10). Titus also provided additional information about interstate wells drilled between other states, which had been requested by the Division. *Id.* (pdf 145-46, ¶¶ 5-8); *see id.* pdf 168-78 (Supp. Aff. of Walt Jones, Titus’s landman & materials relating to interstate wells in other states). Two days later, on September 3, 2021, the Division Director entered Order No. R-21831, referring the instant matter to the Commission pursuant NMSA 1978, Section 70-2-6(B) and 19.15.4.20(B) NMAC. *See id.* (pdf 245).

#### **AUTHORITY TO ACT**

In Section 70-2-6 of the Oil and Gas Act (“Act”), the legislature delegated jurisdiction and authority to the oil conservation division and the oil conservation commission over all matters relating to the conservation of oil and gas. NMSA 1978, Section 70-2-6(1979) (providing that the division and the commission “shall have jurisdiction, authority and control of and over all persons, matters or things necessary or proper to enforce effectively the provisions of this act or any other law of this state relating to the conservation of oil and gas,” among other things). The commission is empowered and obligated to prevent waste and to protect correlative rights, in accordance with the Act. NMSA 1978, Section 70-2-11 (1977).

The division and, by extension the commission, have a broad list of enumerated powers that enable the commission to exercise its authority and satisfy its obligations under the Act. *See, e.g.,* NMSA 1978, Section 70-2-12. For example, Section 70-2-12(B)(7) provides that the division “may make rules and orders . . . to require wells to be drilled, operated and produced in

such manner as to prevent injury to neighboring leases or properties.” Perhaps more pertinent here, Section 70-2-17(B) provides that the division may establish proration units and, in doing so, “shall consider the economic loss caused by the drilling of unnecessary wells, the protection of correlative rights, . . . the prevention of waste, the avoidance of the augmentation of risks from the drilling of an excessive number of wells, and the prevention of reduced recovery which might result from the drilling of too few wells.”

In review of the Oil and Gas Act, undersigned counsel has not discovered any provision of the Oil and Gas Act that would preclude the division or the commission from approving the allocation of production for the proposed proration unit in this application.

#### **ARGUMENT IN SUPPORT OF THE APPLICATION**

##### **I. A Memorandum of Understanding Is Not Required to Protect New Mexico’s Interests Relating to the Instant Application.**

Titus recognizes that the Well will be subject to all New Mexico regulations relating to oil and gas wells because the surface location of the Well is located in New Mexico. *See* Part 2 of 2 (pdf 114, ¶ 17). In addition, Titus proposes to allocate production based on surface acreage, which is the manner in which production is commonly allocated in New Mexico. *Id.* ¶ 15. For these reasons, among others, a memorandum of understanding is not required before issuing an order in the instant matter. Any other concerns that New Mexico may have can be addressed in conditions of approval.

When the State of Texas issued an order approving the location of the El Campeon 404H and the related permit, it recognized that a memorandum of understanding is not necessary for approval of this particular spacing unit and well. *See id.* (pdf pages 144-45). New Mexico’s interests, in particular, will be protected because the surface hole will be located in New Mexico.



In addition, Texas has approved the allocation of production on either alternative basis proposed by Titus. *Id.* (pdf 151, ¶¶ 20-22). The main concern raised by the RRC hearing examiner was Titus's right to drill in Texas. The RRC approved Titus's request without discussion, through its consent agenda, after Titus provided the RRC with the fully executed joint operating agreement between Titus and the sole working interest owner in Texas, OXY. New Mexico has previously agreed to and approved allocation of production among sovereigns. Such allocation has previously occurred among the State of New Mexico, the Bureau of Land Management, private fee owners, and tribal government (Jicarilla).

**II. If the Commission Determines that a MOU Is Necessary, the MOU Should Only Address Drilling from New Mexico into Texas in Order to Protect New Mexico's Interests Relating to the Instant Application.**

As noted, Titus does not believe that a MOU is necessary before an order is entered for this application. Nonetheless, it attaches hereto, as Exhibit A, a draft proposed MOU for the Commission's consideration. Titus provided the draft MOU to Division counsel on July 15, 2021. It shared the same draft MOU with counsel for the SLO yesterday, September 20, 2021.

The draft MOU addresses only wells proposed to be drilled from a surface location in New Mexico to a bottom hole location in Texas. Titus does not intend to drill from Texas into New Mexico. New Mexico will have different concerns in the case of drilling a well with a surface location in Texas to a bottom hole location in New Mexico, which concerns need not be addressed at this time. To address such concerns at this time, in conjunction with this application, would be speculative and unnecessary. For this reason, the Commission should decline to consider concerns that would be raised in the event that an operator proposes to drill from Texas into New Mexico in the future. Such concerns should be addressed at the time that such a well is proposed in the future.

### **III. Concern about the “enforceability” of a MOU Is a Red Herring.**

Memorandums of understanding are commonly used between agencies and among sovereigns to memorialize the cooperative efforts of separate agencies or sovereigns. *See, e.g.*, MOU Between New Mexico, Arizona, and the State of Sonora, *available at* [https://azgovernor.gov/sites/default/files/az\\_nm\\_sonora\\_mou.pdf](https://azgovernor.gov/sites/default/files/az_nm_sonora_mou.pdf); Amended Memorandum of Understanding Between the Colorado and New Mexico Bureau of Land Management and the New Mexico Oil Conservation Division Regarding Well Spacing on Indian Lands (“BLM/OCD MOU”), *available at* [https://ocdimage.emnrd.state.nm.us/Imaging/FileStore/SantaFeAdmin/CF/ADA-03-00398%20Case%20Files/ADA-03-00398%2010001-20000/12290\\_18297.pdf](https://ocdimage.emnrd.state.nm.us/Imaging/FileStore/SantaFeAdmin/CF/ADA-03-00398%20Case%20Files/ADA-03-00398%2010001-20000/12290_18297.pdf); *see also* Letter, Steve Ross to Colorado Area Manager (Feb. 8, 2002) (referencing the BLM/OCD MOU), *available at* [https://ocdimage.emnrd.state.nm.us/imaging/filestore/SantaFeAdmin/CF/ADA-03-00398%20Case%20Files/ADA-03-00398%2010001-20000/12290\\_18296.pdf](https://ocdimage.emnrd.state.nm.us/imaging/filestore/SantaFeAdmin/CF/ADA-03-00398%20Case%20Files/ADA-03-00398%2010001-20000/12290_18296.pdf). Due to the sovereign nature of entities such as states and tribes, an MOU is an appropriate method to effect an agreement between such entities.

### **IV. Granting the Application Will Prevent Waste, Protect Correlative Rights, and Lessens Environmental Impacts**

Granting Titus’s application will prevent waste, protect correlative rights, and result in less environmental impact. If the application is denied, waste would occur in both New Mexico and Texas. This waste would result in Texas, as a result of acreage that would be stranded. *See id.* More importantly, waste would occur in New Mexico, because the last take point would be 100 feet north of the state line if the spacing unit does not include Texas acreage. Extending the development across the state line will result in more recoverable hydrocarbons in New Mexico. *See, e.g.*, Part 1 of 2 (pdf 153, ¶¶ 4-6). Moreover, the proposed allocation of production to New

Mexico and Texas based on surface acreage is consistent with the practice used by New Mexico to protect correlative rights. Finally, development by longer lateral as proposed by Titus creates less surface disturbance and thereby lessens environmental impact.

For all of the reasons stated herein, and in the record made below in the Division, the application should be granted.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served on the following counsel of record by electronic mail on September 21, 2021:

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/s/ Sharon T. Shaheen  
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MEMORANDUM OF UNDERSTANDING  
BETWEEN  
NEW MEXICO OIL CONSERVATION COMMISSION  
AND  
OIL AND GAS DIVISION  
RAILROAD COMMISSION OF TEXAS

This MEMORANDUM OF UNDERSTANDING (“MOU”) dated this \_\_\_\_ day of \_\_\_\_\_, 2021 (the “Effective Date”) is by and between the NEW MEXICO OIL CONSERVATION COMMISSION (hereinafter referred to as the “OCC”) and the RAILROAD COMMISSION OF TEXAS (hereinafter referred to as the “RRC”) (collectively, the “parties”).

THE PARTIES HERETO HAVE REACHED THE FOLLOWING UNDERSTANDING:

ARTICLE I  
BACKGROUND

The RRC through its offices and staff is responsible for the conservation, management, and development of natural resources, such as crude oil and natural gas, within the boundaries of the State of Texas (Texas Natural Resources Code, Section 81.051).

The OCC through its offices and staff has jurisdiction and authority over all matters relating to the conservation of oil and gas and jurisdiction, authority, and control of and over all persons, matters, or things necessary or proper to enforce the law of this state relating to the conservation of oil or gas, within the boundaries of the State of New Mexico (NMSA 1978, Section 70-2-6).

ARTICLE II  
PURPOSE

The purpose of this MOU is to facilitate the collaboration between the OCC and RRC in matters related to the drilling, completing and producing of horizontal wells which have open producing intervals in lands in both New Mexico and Texas and have a surface location in New Mexico and a bottom hole location in Texas. The operator (hereinafter referred to as “Operator”) of any such horizontal well to be drilled from a surface location in New Mexico and having a bottom hole location in Texas shall adhere to the guidelines as set forth herein and any other reasonable requirements requested by the parties.

ARTICLE III  
TERM

This MOU shall remain in effect from the Effective Date, unless and until terminated by the mutual consent of the OCC and RRC.

EXHIBIT A

ARTICLE IV  
ALLOCATION

Allocation of all oil and gas production and its associated revenues, royalties, taxes, and any other related allocations shall be made on a surface acre proration unit basis, unless otherwise requested and agreed to in writing by the OCD, RRC, and Operator.

ARTICLE V  
REPORTING

The Operator shall report to each state's appropriate regulatory agencies the gross production volumes from the entire wellbore and shall also report to each state's appropriated regulatory agencies the production volumes allocated to lands located within each state's borders, as applicable. Operator shall report to each state's regulatory agencies all required information for that portion of the wellbore located within each state's borders.

ARTICLE VI  
PERMITTING AND OPERATIONS

All surface locations pursuant to this MOU will be located in New Mexico, therefore Operator's permitting and subsequent operations shall be subject to the rules and regulations of the OCC and all other applicable State of New Mexico regulatory agencies as it pertains to compliance with all environmental, surface activity, permitting, drilling, completion, production, plugging, abandonment, and any other regulatory requirements.

ARTICLE VII  
FINANCIAL ASSURANCES AND INSURANCE

Operator shall maintain the appropriate financial assurances, bonds, and any other applicable financial and insurance requirements required by both the State of New Mexico and the State of Texas.

ARTICLE VIII  
MISCELLANEOUS

Any notice, request or other communications under this MOU shall be in writing and shall be deemed to have been duly given or made when it has been delivered by hand or mail, as the case may be, by either party to:

For the OCC: New Mexico Oil Conservation Commission  
1220 South St. Francis Dr.  
Santa Fe, NM 87505

For the RRC: Director of the Oil and Gas Division  
Railroad Commission of Texas  
PO Box 12967  
Austin, Texas 78711-2967

This MOU shall not be altered, changed or amended except by instrument in writing agreed to and executed by both the OCC and RRC.

The OCC and/or the RRC shall maintain their ability to take any action deemed appropriate by said party and nothing herein shall be construed as a waiver of any rights which either party may have.

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IN WITNESS WHEREOF, the OCC and the RRC, each acting through its representatives duly authorized thereunto, have executed this Memorandum of Understanding and it shall be effective as of the Effective Date.

\_\_\_\_\_  
SIGNATORY NAME, TITLE  
New Mexico Oil Conservation Commission

Date \_\_\_\_\_

\_\_\_\_\_  
SIGNATORY NAME, TITLE  
Oil and Gas Division  
Railroad Commission of Texas

Date \_\_\_\_\_

DRAFT