

**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 FOR
THE PURPOSE OF CONSIDERING:**

**APPLICATIONS OF NOVO OIL & GAS NORTHERN
DELAWARE LLC FOR COMPULSORY POOLING,
EDDY COUNTY, NEW MEXICO.**

Case Nos. 20916 and 20917

**NOVO'S CLOSING STATEMENT
AND
PROPOSED FINDINGS AND CONCLUSIONS**

This closing statement is submitted by Novo Oil & Gas Northern Delaware LLC ("Novo") as requested by the Division at the end of the hearing in these cases on November 15, 2019.

I. FACTS.

In Case No. 20916, Novo applied for an order pooling all mineral interests in the Wolfcamp formation underlying a (proximity tract) horizontal spacing unit comprised of the N/2 of Section 8 and the N/2 of Section 9, Township 23 South, Range 29 East, NMPM. The unit will be dedicated to the Astrodog Fed. Com. 0809 Well Nos. 211H, 212H, 215H, 221H, 222H, 225H, 231H, 232H, and 235H.

In Case No. 20917, Novo applied for an order pooling all mineral interests in the Bone Spring formation (from 8773 feet subsurface as found in the Road Lizard 5 Fed. Com. Well No. 2H [API No. 30-015-39283] to the base of the Bone Spring formation) underlying a (proximity tract) horizontal spacing unit comprised of the N/2 of Section 8 and the N/2 of Section 9,

Township 23 South, Range 29 East, NMPM. The unit will be dedicated to the Astrodog Fed. Com. 0809 Well Nos. 131H, 132H, and 135H.

Novo's 2 mile lateral wells will be drilled from the Nido de Salado drilling island in the NW/4NW/4 of Section 8. Novo's well proposals are supported by OXY USA Inc., a working interest owner in the N/2 of Sections 8 and 9. **Novo Exhibit 7A.** BTA Oil Producers, LLC ("BTA") is the only other working interest owner in Novo's proposed wells.

BTA is a working interest owner in the N/2 of Section 7 and the NW/4 of Section 8. A Joint Operating Agreement ("JOA") covers that acreage. BTA proposes to drill 1-1/2 mile lateral wells. Novo's and BTA's proposals conflict as to the NW/4 of Section 8. (Because BTA's wells are covered by a JOA it did not file pooling applications.)

II. DISCUSSION AND AUTHORITIES.

BTA's objections to Novo's applications can be summarized by the following points:

- A. Novo cannot legally pool acreage already subject to a JOA.
- B. BTA's correlative rights will be impaired because it will not be operator of any of Novo's wells which include the NW/4 of Section 8.
- C. Novo can drill 1-1/2 mile laterals including only the NE/4 of Section 8 and the N/2 of Section 9.

The first two arguments can be dismissed based on legal principles. The third argument is contrary to the facts of these cases.

As to Point A, the Oil and Gas Act expressly authorizes compulsory pooling when "two or more separately owned tracts of land are embraced within a spacing or proration unit....[and] such owner or owners have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a

common source of supply....” **NMSA 1978 §70-2-17(C)**. Furthermore, “*the division*, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, *shall pool* all or any part of such lands or interests or both in the spacing or proration unit as a unit.” *Id.* (emphasis added).

There is recent Division precedent directly on point which allows compulsory pooling of acreage committed to a JOA. In Case Nos. 15758 and 15759, OneEnergy Partners Operating, LLC (“OneEnergy”) sought to pool the Bone Spring formation (collectively) underlying the W/2 of Section 1 and the W/2 of Section 12, Township 22 South, Range 34 East, NMPM. One hundred percent (100%) of the working interests in the W/2 of Section 1 were subject to a JOA under which V-F Petroleum, Inc. (“V-F”) was a working interest owner and the operator. V-F had plans to drill one mile lateral wells in Section 1, and opposed OneEnergy’s applications. These facts are virtually the same as in these Case Nos. 20916 and 20917.

OneEnergy argued before the Division that 2 a mile lateral, in contrast to two 1 mile laterals, would (i) have lower per foot drilling costs, (ii) result in greater recovery, (iii) have lower operating costs, and (iv) prevent waste.

By Order Nos. R-14523 and R-14524 the Division granted OneEnergy’s applications. As to the argument that OneEnergy cannot pool acreage subject to a JOA, the Division merely quoted the Oil and Gas Act language cited above. **See Order No. R-14523, Paragraphs (14) – (17)**. This decision stems from the legal principle that *private contracts are subject to valid state laws*. This was recognized by BTA. **Tr. 99**. The Division also agreed with OneEnergy’s arguments regarding the benefits of longer laterals. *Id.*, **Paragraphs (11), (12)**.

As a result, based on Order Nos. R-14523 and R-14524, the Division should dismiss BTA's legal argument that it does not have authority to grant Novo's applications. **See also Division Order No. R-14140.**

As to Point B, Order Nos. R-14523 and R-14524 also addressed this issue. OneEnergy asserted that V-F's correlative rights would not be impaired because V-F would still receive its proportionate share of production from OneEnergy's proposed wells.¹ The Division agreed, and concluded that OneEnergy's applications would protect V-F's correlative rights. **See Order No. R-14523, Paragraph (17).**

In addition, the definition of correlative rights does not have anything to do with operatorship. **NMSA 1978 §70-2-33** and **NMAC 19.15.2.7.C(15)** only address the right to recover, without waste, an interest owner's proportionate and equitable share of reserves. BTA recognized this fact. **Testimony of Willis Price, Transcript ("Tr.") 103.**

Regarding Point C, Novo presented substantial land and technical evidence regarding the need to include the NW/4 of Section 8 in its well units and to drill two mile laterals, as follows:

- (i) The subject acreage is in the oil-potash area, and thus is subject to surface use restrictions.
- (ii) Novo's well units must be accessed by use of the Nido de Salado drilling island in the NW/4NW/4.
- (iii) The potash lessee, Mosaic, is the surface owner in the NW/4 of Section 8. Novo has negotiated with and agreed with Mosaic regarding well locations. Due to environmental concerns, the well locations must be west of the railroad right-of-way in the drilling island. The Bureau of Land Management agrees with Novo's well locations.

¹ The correlative rights of BTA and the interest owners in the N/2 of Section 7 will also be protected by the granting of the pooling applications of Marathon Oil Permian LLC ("Marathon") in Case Nos. 20865 and 20866. Having Novo and Marathon drill 2 mile laterals will prevent the drilling of unnecessary wells.

(iv) Due to potash concerns, surface use issues, and existing and proposed well development in the area, Novo's well proposals are the only way it can access its acreage in the NE/4 of Section 8 and the N/2 of Sections 9. BTA's proposal for Novo to drill wells from the E/2NW/4 of Section 8 is not approved either by Mosaic, the surface lessee (United Salt) , or the BLM.

(v) While Novo is not, as such, opposed to 1-1/2 mile laterals, development of Novo's acreage on 1-1/2 mile laterals would cause waste due to drilling through the one-half mile of unperforated interval in the NW/4 of Section 8. Plus, if Novo and BTA both drill through the NW/4 of Section 8, there would be possible well collisions. This would cause waste.

(vi) Two mile laterals are more economic than shorter laterals.

Based on the foregoing, Novo's 2 mile laterals in the N/2 of Section 8 and N/2 of Section 9 must be approved.

III. FINDINGS AND CONCLUSIONS.

Findings:

1. Notice was provided to all parties. Novo Exhibit 21.
2. The N/2 of Section 7 and the NW/4 of Section 8 is subject to a JOA under which BTA is operator.
3. Novo is not subject to BTA's JOA. Tr. 46. Therefore, no voluntary agreement exists to combine the entire N/2 of Section 8 and the N/2 of Section 9.
4. Novo has made a good faith effort to obtain the voluntary joinder of interest owners in its proposed well units. Tr. 28

5. The subject lands are in the oil-potash area. There are significant surface issues restricting well development. Novo has an approved drilling island in the NW/4NW/4 of Section 8, and will drill its wells from west to east. BTA was aware of the drilling island when it bought its interest in the NW/4 of Section 8. Tr. 14

6. Novo has negotiated with the potash lessee, the surface owner, and the surface lessee as to proper well locations. The BLM does not object to Novo's well locations in the NW/4 of Section 8. Tr. 15-22.

7. Moving Novo's surface locations to the E/2NW/4, as requested by BTA, is not acceptable to the potash lessee, surface owner, and surface lessee. Novo cannot obtain approval to drill its acreage from east to west. Tr. 65; Novo Exhibits 5-7 (Case No. 20916).

8. Novo is proposing 2-mile laterals. Tr. 15.

9. 2-mile laterals are more efficient and prevent waste.

10. Novo's development plan covers the 3rd Bone Spring, Wolfcamp XY, and Wolfcamp A, and Wolfcamp B zones. Tr. 70-73. Novo will fully develop the acreage. Tr. 71.

11. Novo has a development plan that will avoid the parent-child effect. Tr. 72.75.

12. If Novo's applications are not granted, it will have to drill across a half-mile of dead zone to reach its acreage. Tr. 85. This will cause waste due to drilling through one-half mile of unperforated interval, potential collision with BTA's proposed wells, potential equipment failures, and less efficient completions and production. This will adversely affect well economics. Tr. 86-87.

13. Oxy and Marathon both support Novo's development plan. Novo Exhibits 7A and 7B.

14. Novo's well orientation is appropriate. Tr. 78.

15. Reservoir quality in the quarter-quarter sections in the well units is incredibly consistent, so each quarter-quarter section in each well unit is expected to be equally productive. Tr. 76.

16. Novo has proposed full development of the 3rd Bone Spring and Wolfcamp formations. The 3rd Bone Spring, Wolfcamp A, and Wolfcamp XY must be co-developed. Tr. 71-72.

17. Case No. 20917 requests pooling of the Bone Spring formation as to depths below 8773 feet subsurface (the 2nd Bone Spring), due to an existing well operated by COG Operating LLC ("COG"). Tr. 11. There is a frac barrier between that well's completion interval and the 3rd Bone Spring formation so that any wells completed by Novo will not affect COG's well. Tr. 74. COG does not object to Novo's Bone Spring pooling application.

18. If Novo's applications are not granted, its 480 acres of mineral interest will be stranded, impairing its correlative rights and causing waste. Tr. 23.

Conclusions:

1. A voluntary JOA is subject to the state's pooling statutes and regulations, and thus Novo may pool BTA's acreage.

2. Novo's applications will prevent waste and protect correlative rights, and should be approved.

IV. CONCLUSION.

NMSA 1978 §70-2-11 provides "The division is hereby empowered, and *it is its duty, to prevent waste* prohibited by this act and to protect correlative rights, as in this act provided." (Emphasis added.) The only way for the Division to comply with its statutory directive is to grant Novo's applications

Respectfully submitted,




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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 21st day of January, 2020 by e-mail:

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