

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

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

Case Nos. 20916 and 20917

**BTA OIL PRODUCERS, LLC'S
MOTION TO STAY ORDER NO. R-21252**

In accordance with 19.15.4.23(B) NMAC, BTA Oil Producers, LLC ("BTA") moves the Oil Conservation Division ("the Division") for a stay of Order No. R-21252, which was issued on April 13, 2020. A proposed order is attached as Exhibit A. In support of this motion, BTA states the following.

INTRODUCTION

These consolidated cases concern two applications for compulsory pooling filed by Novo Oil & Gas Northern Delaware, LLC ("Novo"). In Case No. 20916, Novo sought an order pooling all uncommitted 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 in Eddy County and proposed to dedicate the horizontal spacing unit to the Astrodog Fed Com 0809 Well Nos. 211H, 212H, 215H, 221H, 222H, 225H, 231H, 232H, and 235H. In Case No. 20917, Novo requested an order pooling all uncommitted mineral interests in the Bone Spring formation (from 8,773 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 in Eddy County and proposed to drill the Astrodog Fed Com 0809 Well Nos. 111H, 112H, 131H, 132H and 135H.

Pursuant to a Joint Operating Agreement (“JOA”), BTA is the operator of the acreage comprising the N/2 of Section 7 and the NW/4 of Section 8, Township 23 South, Range 29 East. BTA expended considerable resources to acquire its rights under the JOA and has development plans for the JOA acreage. One hundred percent of the lands covered by the JOA are committed to the JOA, and BTA presently operates a producing well under the terms of the JOA.

Novo’s applications sought to pool acreage in Section 8 that BTA controls under the JOA. BTA opposed Novo’s applications because granting them would, in effect, void the JOA and unlawfully impair BTA’s correlative rights. BTA also presented evidence that Novo failed to make a good-faith effort to secure BTA’s voluntary participation and that granting the applications would discourage and impair voluntary agreements in contravention of the Oil and Gas Act and New Mexico public policy. In addition, BTA established that the reasonable expectations of the parties required denial of Novo’s applications because Novo was aware of the JOA when it acquired its adjacent acreage and was also aware that development would be restricted because the acreage is located in the Potash Area.

The consolidated cases were heard by the Division on November 15, 2019, and the Division entered Order No. R-21252 granting Novo’s applications on April 13, 2020. On April 24, 2020, BTA filed an Application for Hearing *De Novo* (“Application”) pursuant to NMSA 1978, Section 70-2-13 and 19.15.4.23(A) NMAC. Because BTA’s Application seeks to protect its correlative rights and avoid gross negative consequences, BTA requests a stay of Order No. R-21252 during the pendency of its Application.

ARGUMENT

A. A stay of Order No. R-21252 is necessary to protect BTA's correlative rights.

The Division may stay an order to protect correlative rights or prevent gross negative consequences to an affected party. 19.15.4.23(B) NMAC. Here, BTA has asserted that Novo's proposed horizontal spacing units, and thus Order No. R-21252, substantially harm BTA's correlative rights by depriving BTA of the ability to exercise its rights under the JOA. As mentioned above, BTA expended considerable resources to acquire its interest under the JOA, acquired its interest prior to Novo's acquisition of the adjacent acreage, and has development plans for the JOA acreage.

As BTA explained in its post-hearing brief, New Mexico law defines correlative rights as "the opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste the owner's just and equitable share..." 1978 NMSA, § 70-2-33(H). In determining what is meant by a "just and equitable share," courts generally agree that correlative rights include more than the right to simply receive a pro rata share of production. *See, e.g., Home-Stake Royalty Corp. v. Corporation Commission*, 594 P.2d 1207, 1210 (Okla. 1979) (the measure of a just and equitable share includes the right to drill on a tract of land); *see also, Coleman v. Railroad Commission*, 445 S.W.2d 790, 797 (Tx. Ct. App. 1969) (whether an offer meets the statutory test of being fair and reasonable ordinarily requires consideration of more than the acreage of the owners). Thus, BTA's Application raises important questions of statutory interpretation and public policy, including whether the loss of operating rights under a JOA impairs correlative rights and provides a basis to deny an application for compulsory pooling under New Mexico law.

A stay of Order No. R-21252 during the pendency of BTA's Application is necessary to protect BTA's correlative rights. In the absence of a stay, BTA's JOA acreage in Section 8 would be pooled and subject to development by Novo prior to the Commission's determination on the issues raised by BTA's Application. And should the Commission ultimately reverse all or part of Order No. R-21252, BTA would suffer gross harm to its correlative rights without a stay maintaining the status quo.

B. A stay of Order No. R-21252 is necessary to prevent gross negative consequences to BTA.

BTA has also opposed Novo's applications for compulsory pooling based on the injustice and inequity that would result from allowing an operator to acquire interests under a JOA, only for another operator to later purchase neighboring interests – which are incapable of development without compulsory pooling – and insist that the first operator abandon its development plans and investments. BTA's position accords with the reasonable expectations of the parties and the strong public policy – embodied in the Oil and Gas Act and New Mexico law in general – favoring voluntary agreements. BTA will suffer gross negative consequences in the absence of a stay because its rights under the JOA will be rendered meaningless.

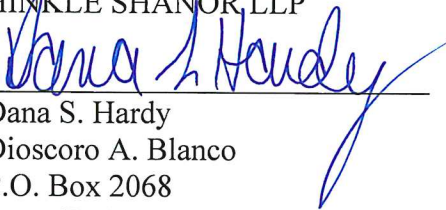
Further, 19.15.4.23(A) NMAC affords BTA the right to present its arguments *de novo* to the Commission. Without a stay, BTA's right of *de novo* review will be effectively lost because its JOA acreage will be pooled and subject to development by Novo prior to a Commission ruling. BTA should be allowed a meaningful opportunity to present its position to the Commission without the fear that its right of *de novo* review will be mooted in the interim.

CONCLUSION

For the foregoing reasons, the Division should enter an order staying Order No. 21252 during the pendency of BTA's Application. A stay is necessary to protect BTA's correlative rights, prevent gross negative consequences to BTA, and permit BTA a meaningful opportunity to present its position to the Commission.

Respectfully submitted,

HINKLE SHANOR LLP



Dana S. Hardy

Dioscoro A. Blanco

P.O. Box 2068

Santa Fe, NM 87504-2068

Phone: (505) 982-4554

Facsimile: (505) 982-8623

dhardy@hinklelawfirm.com

dblanco@hinklelawfirm.com

Counsel for BTA Oil Producers, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April, 2020 I served a true and correct copy of the foregoing pleading on the following counsel of record by electronic mail:

James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043
jamesbruc@aol.com

*Counsel for Novo Oil & Gas Northern
Delaware, LLC*



Dana S. Hardy

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ORDER

The New Mexico Oil Conservation Division (“Division”), having considered the Motion to Stay Order No. R-21252 filed by BTA Oil Producers, LLC (“BTA”) and the response thereto, finds and concludes the following.

1. In Case No. 20916, Novo sought an order pooling all uncommitted 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 in Eddy County and proposed to dedicate the horizontal spacing unit to the Astrodog Fed Com 0809 Well Nos. 211H, 212H, 215H, 221H, 222H, 225H, 231H, 232H, and 235H. In Case No. 20917, Novo requested an order pooling all uncommitted mineral interests in the Bone Spring formation (from 8,773 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 in Eddy County and proposed to drill the Astrodog Fed Com 0809 Well Nos. 111H, 112H, 131H, 132H and 135H.

2. The New Mexico Oil Conservation Division (“Division”) entered Order No. R-21252 on April 13, 2020, granting the above-referenced applications for compulsory pooling.

3. Pursuant to a Joint Operating Agreement (“JOA”), BTA is the operator of acreage comprising the N/2 of Section 7 and the NW/4 of Section 8, Township 23 South, Range 29 East. Novo’s applications sought to pool BTA’s acreage in Section 8.

4. BTA opposed Novo’s applications on the basis that granting the applications would impair BTA’s correlative rights, as established by the JOA. BTA also argued that Novo failed to make a good-faith effort to secure BTA’s voluntary participation in the proposed wells; that granting Novo’s applications would discourage and impair voluntary agreements in contravention of the Oil and Gas Act and New Mexico public policy; and that the reasonable expectations of the parties required denial of the applications.

5. On April 24, 2020, BTA filed an Application for Hearing *De Novo* (“Application”) with the Commission pursuant to 19.15.4.23(A) NMAC.

6. In accordance with 19.15.4.23(B) NMAC, BTA has requested a stay of Order No. R-21252 during the pendency of its Application to protect BTA’s correlative rights and prevent gross negative consequences. Without a stay during the pendency of the Application, BTA’s right of *de novo* review would effectively be lost because BTA’s acreage in Section 8 would be pooled and subject to development by Novo. And in the event that the Commission ultimately reverses all or part of Order No. R-21252, BTA would suffer gross harm to its correlative rights and economic interests without a stay maintaining the status quo.

7. Pursuant to 19.15.4.23(B) NMAC, a stay during the pendency of the Application is necessary to protect BTA’s correlative rights and prevent gross negative consequences to BTA.

IT IS THEREFORE ORDERED that Order No. R-21252 is stayed during the pendency of BTA’s Application for Hearing *De Novo*.

**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**

DATE: _____