

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

**IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION FOR THE PURPOSE OF
CONSIDERING:**

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

**Case Nos. 21275 and 21276
(Division Case Nos. 20916 and
20917)
Order No. R-21420-A**

ORDER OF THE COMMISSION

THIS MATTER comes before the New Mexico Oil Conservation Commission (“Commission”) on Novo Oil & Gas Northern Delaware, LLC’s (“Novo”) *Applications for Compulsory Pooling* (“Applications”). The Commission, having considered the Applications at a hearing held on August 14 and 20, 2020 and being fully advised of the premises, enters the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. In Case No. 21275, Novo requests 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. Novo proposes to drill the Astrodog Fed Com 0809 Well Nos. 211H, 212H, 215H, 221H, 222H, 225H, 231H, 232H, and 235H and dedicate the N/2 of Section 8 and the N/2 of Section 9 to the wells.

2. In Case No. 21276, Novo requests 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. Novo proposes to drill the Astrodog Fed Com 0809 Well Nos. 131H, 132H and 135H and dedicate the N/2 of Section 8 and the N/2 of Section 9 to the wells.

3. Novo’s Applications were heard by the Oil Conservation Division (“Division”) on November 15, 2019, and the Division issued Order No. R-21252 granting Novo’s Applications on April 13, 2020.

4. BTA Oil Producers, LLC (“BTA”) was a party to the Division hearing and opposed Novo’s Applications. As a party adversely affected by Order No. R-21252, BTA timely filed Applications for *De Novo* Hearing with the Commission on April 24, 2020.

5. In accordance with NMSA 1978, Section 70-2-13 and 19.15.4.23(A) NMAC, the Commission held a *de novo* hearing on Novo’s Applications on August 14 and 20, 2020. The Applications were consolidated for hearing.

6. Novo and BTA participated in the *de novo* hearing. No other parties entered an appearance.

7. The Oil and Gas Act, NMSA 1978 §§ 70-2-1 *et seq.* (“the Act”), prohibits the waste of oil and gas and delegates to the Commission authority to prevent waste and protect correlative rights.

8. Section 70-2-17(C) of the Act provides that when the owners of the interests in a spacing unit “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, 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.”

9. In evaluating competing pooling applications, the Commission may consider:

- a. A comparison of geologic evidence presented by each party as it relates to the proposed well location and the potential of each proposed prospect to efficiently recover the oil and gas reserves underlying the property.
- b. A comparison of the risk associated with the parties' respective proposal for the exploration and development of the property.
- c. A review of the negotiations between the competing parties prior to the applications to force pool to determine if there was a "good faith" effort.
- d. A comparison of the ability of each party to prudently operate the property and, thereby, prevent waste.
- e. A comparison of the differences in well cost estimates (AFEs) and other operational costs presented by each party for their respective proposals.
- f. An evaluation of the mineral interest ownership held by each party at the time the application was heard
- g. A comparison of the ability of the applicants to timely locate well

sites and to operate on the surface (the "surface factor").¹

10. In support of its Applications, Novo presented the testimony of Brandon Patrick (Landman), Michael Hale (Geoscientist), and Alex Bourland (Operations Engineer).

11. In opposition to Novo's Applications, BTA presented the testimony of Willis Price (Landman), Nick Eaton (Petroleum Engineer), and Britton McQuien (Petroleum Engineer).

12. Novo proposes to complete three horizontal wells in the Third Bone Spring Sand and nine horizontal wells in Wolfcamp formation in the N/2 of Sections 8 and 9, Township 23 South, Range 29 East. The proposed wells are 2-mile laterals.

13. Novo's proposed wells are located in the Potash Area and are subject to the Secretary of the Interior's Order No. 3324, which imposes restrictions on oil and gas development and surface usage.

14. Novo holds 75% of the working interest in its proposed horizontal spacing units. As a result, Novo must pool the remaining interests to develop its acreage.

15. Pursuant to a Joint Operating Agreement ("JOA"), BTA is the operator of 474.11 acres comprising the N/2 of Section 7 and the NW/4 of Section 8, Township 23 South, Range 29 East (the "Ochoa Acreage").

16. BTA acquired its interest under the JOA and became the operator of the Ochoa Acreage on November 1, 2018.

17. When BTA acquired the Ochoa Acreage, it was aware that the Ochoa Acreage was located within the Potash Area, which requires operators to obtain BLM approval of Development Areas, and that parties receiving notice of a Development Area proposal have the right to object.

18. Under the JOA, BTA is the designated operator of 100% of the Ochoa Acreage.

19. BTA owns 82% of the working interest in the Ochoa Acreage. Oxy Y-1 Company ("Oxy") is the other party to the JOA and owns 18% of the working interest in the Ochoa Acreage.

20. Oxy ratified the JOA and BTA as operator of the Ochoa Acreage effective on November 1, 2018. Although Oxy sent Novo a letter in support of Novo's Astrodog pooling applications on November 13, 2019, Oxy's interest is governed by the JOA.

¹See, e.g., Order No. R-20223. Although BTA has not filed a competing pooling application because it does not need to do so since its acreage is subject to a joint operating agreement, the Commission evaluated BTA's development plan and considered these factors with respect to Novo's and BTA's proposals.

21. As operator of 100% of the Ochoa Acreage, BTA does not need to file a compulsory pooling application to develop the Ochoa Acreage. BTA only needs to submit well proposals to Oxy and allow for the 30-day election period prior to drilling its wells.

22. BTA acquired its operating rights under the JOA to allow it to control costs and implement its development plan. BTA witness Willis Price testified that BTA's operating rights under the JOA are valuable because they allow BTA to take advantage of its experience in the area, select the most efficient development plan, and control costs. Mr. Price also testified that granting Novo's applications would nullify BTA's operating rights under the JOA by precluding BTA from developing the Ochoa Acreage.

23. Joint Operating Agreements facilitate development and conservation of resources by allowing operators to develop their acreage without the necessity of a pooling proceeding.

24. BTA proposes to complete four 1.5-mile horizontal wells in the Lower Wolfcamp formation in the Ochoa Acreage and has approved plans to complete four additional 1.5-mile horizontal wells in the Ochoa Acreage: two wells in the Second Bone Spring and two wells in the Wolfcamp XY Sand.

25. On May 16, 2019, BTA had its onsite meeting with the BLM for the four wells that BTA proposes to complete in the Lower Wolfcamp formation: the Ochoa 8703 Fed 1H, 2H, 3H, and 4H wells ("Ochoa Wells").

26. The BLM has approved BTA's well sites.

27. BTA's well sites are located outside the Potash Area, and the completed laterals will extend into the Potash Area. Mosaic Potash has been notified and has no objection.

28. On June 26, 2019, BTA submitted Applications for Permits to Drill ("APD") the Ochoa Wells to the BLM.

29. On July 8, 2019, BTA sent Oxy well proposals for the Ochoa Wells in the N/2 of Section 7 and NW/4 of Section 8.

30. BTA submitted notice of its Ochoa Development Area on August 28, 2019.

31. The BLM's determination on BTA's APDs and Ochoa Development Area are pending.

32. Novo acquired from TDY the mineral interest in the N/2 of Section 9 and the NE/4 of Section 8 on July 25, 2019 and submitted its well proposals for the Astrodog wells that are the subject of its Applications on July 29, 2019. BTA and TDY had previously been involved in a quiet title lawsuit regarding these minerals, and the lawsuit was resolved in July 2019.

33. At the time Novo acquired its acreage, it was aware that surface restrictions would exist due to the location of the acreage in the Potash Area and was also aware of BTA's JOA.

34. Novo submitted notice of its proposed Astrodog Development Area on November 19, 2019.

35. The BLM approved Novo's Development Area on April 16, 2020 in observation of the Division's Order No. R-21252, which is the subject of these cases, and BLM stated that it would cooperate with the Division and Commission regarding the implementation of their regulations.

36. Novo does not hold an interest in the Ochoa Acreage and seeks to pool BTA's interest in the NW/4 of Section 8.

37. Novo's witnesses testified that because of surface restrictions that exist due to the location of its acreage in the Potash Area, Novo cannot drill 1.5-mile laterals in the N/2 of Section 9 and the NE/4 of Section 8 and instead must pool BTA's acreage to develop its proposed 2-mile wells in the N/2 of Sections 8 and 9.

38. Novo's witnesses testified that if Novo is not permitted to pool BTA's acreage, the following would occur: (i) Novo would have to drill 2,500 feet of "dead hole" to reach its proposed wells, thus creating economic waste; (ii) Novo and BTA would both drill wells through the NW/4 of Section 8, thus increasing the risk of wellbore collision; (iii) the tangent drilling methods Novo would have to execute to avoid drilling a "dead hole" create substantial and unreasonable risks; (iv) BTA has never executed the tangent drilling methods being asked of Novo; and (v) BTA's plan only contemplates two wells in the Wolfcamp XY and no wells in the third Bone Spring thus BTA's plan will under-develop the reservoir and strand reserves.

39. With respect to Novo's ability to access its proposed wells, BTA's witnesses testified that: (i) Novo does not need to pool BTA's acreage to access its wells because Novo can safely and economically access its wells from the approved drill island using a 20-degree, 403-foot tangent, which is a less aggressive tangent than Novo is using to access its wells in the S/2 of its Astrodog unit; (ii) Novo does not need to drill a 1/2 mile "dead hole" to reach its wells because it can use a tangent to access the wells; (iii) BTA's schematic modelling and analysis shows that if Novo uses a tangent, BTA and Novo can each develop their acreage without collision risk; (iv) BTA is an experienced multi-well pad operator, has completed similar developments (including its 34 well Rojo development), and is experienced in addressing collision risk; (v) tangents are routinely used in the industry and in the Potash Area; and (vi) BTA has drilled longer tangents than the one proposed here.

40. With respect to Novo's and BTA's development plans, BTA presented evidence that: (i) Novo does not propose any wells in the Second Bone Spring Sand while BTA proposes two; (ii) Novo's Applications, in conjunction with Marathon's Applications in Case Nos. 21273 and 21274, create a risk that BTA's Second Bone Spring acreage will be stranded due to the presence of the Road Lizard Well traversing the W/2 E/2 of Section 8; (iii) BTA proposes to complete four wells at different depths in the Lower Wolfcamp while Novo proposes three wells at the same depth in the Lower Wolfcamp; (iv) Novo's Applications include nine wells in three intervals, which will overdevelop the acreage and result in decreased recovery of reserves and

unnecessary wells and expense; (v) BTA's plan will fully and efficiently develop the Ochoa Acreage, while Novo's plan will not; (vi) in comparable developments, BTA presented evidence it has captured all the reserves using fewer wells than Novo has proposed resulting in increased per well reserves; (vii) Novo's proposed development plan would not result in fewer wells or decreased surface impacts; (viii) if Marathon's and Novo's applications are granted, BTA would still need to develop the Second Bone Spring Sand in the N/2 N/2 of Section 7 and the NW/4 of Section 8; (ix) BTA's 1.5-mile horizontal wells have been efficient and economic, and BTA expects that its wells in the Ochoa Acreage will be efficient and economic; and (x) granting Novo's applications would impair BTA's correlative rights and result in waste because Novo's development plan will not fully and efficiently develop the Ochoa Acreage and will preclude BTA from developing its acreage.

41. With respect to operator experience and the ability to timely locate wells and operate on the surface, Novo's witnesses testified that: (i) Novo has drilled three 2-mile horizontal wells in New Mexico, has an active rig available in this area, and is currently drilling a 4-well program in the sections adjacent to Sections 8 and 9; (ii) Novo is ready, willing, and able to drill and complete the Astrodog Wells once these cases are resolved; (iii) Novo is currently negotiating contracts for takeaway of gas, produced water, and oil; and (iv) Novo's well sites have been approved by the BLM, and Novo is able to timely locate its wells and operate on the surface.

42. With respect to operator experience and the ability to timely locate wells and operate on the surface, BTA's witnesses testified that: (i) BTA has completed 84 horizontal wells in New Mexico; (ii) BTA has spudded 28 wells in New Mexico in 2020, has two active rigs available, and is continuing to drill and complete wells in New Mexico; (iii) BTA is ready, willing, and able to drill and complete its Ochoa Wells once these cases are resolved; (iv) BTA's contracts for the takeaway of gas, produced water, and oil are ready for execution; (v) BTA's well sites have been approved by the BLM, and BTA is able to timely locate its wells and operate on the surface; (vi) BTA is an experienced multi-well pad operator in New Mexico; (vii) Novo has not completed any similar multi-well pad developments in New Mexico; (viii) of the three wells Novo has completed in New Mexico, one did not reach its planned depth due to an error of Novo's contractor; and (ix) Novo's consultant has informed the Oil Conservation Division that Novo does not plan to complete certain other wells it has pooled anytime soon.

43. Novo witness Alex Bourland testified that in the S/2 of the Astrodog unit, which is also located in the Potash Area, Novo is accessing its wells using a 2000-foot tangent.

44. If Novo uses a tangent to access its proposed wells in the N/2 of the Astrodog unit, Novo and BTA can each complete 1.5 mile laterals in their own acreage.

45. Novo's Bone Spring Applications are depth-severed and do not encompass the Second Bone Spring Sand in the N/2 of Sections 8 and 9.

46. BTA witness Britton McQuien testified that if Novo's Applications are denied, BTA can complete additional wells in the Ochoa Acreage if it determines they are necessary. Mr. Quien also testified that: Novo's Applications propose the most aggressive plan in the area and

include one more well than the XTO Remuda Development, which Novo has presented to support its plan; Novo's proposal will overdevelop the acreage and decrease recovery of reserves; and the drilling of an excessive number of wells cannot be remedied.

47. Novo witness Michael Hale acknowledged that Novo's Applications propose the most aggressive plan in the area and include one more well than the XTO Remuda Development.

48. Novo and BTA both presented evidence regarding good faith negotiation.

49. Novo witness Michael Hale testified generally that co-development will reduce the parent-child effect but did not provide a production analysis or quantification regarding the parent-child effect. BTA witness Britton McQuien presented opposing evidence, including production data regarding BTA's comparable developments.

50. Regarding lateral length, Novo witness Alex Bourland generally testified that 2-mile developments are preferable but did not provide data or analysis regarding the benefits of 2-mile laterals versus 1.5-mile laterals. BTA witness Britton McQuien presented opposing evidence, including production data regarding BTA's comparable developments.

51. Regarding surface waste, Novo's witnesses generally testified that its plan would reduce surface waste but provided no quantification. BTA presented evidence that Novo's plan would not reduce surface waste because if Novo's Applications were approved, BTA would still need to develop the Second Bone Spring Sand from a separate drilling pad.

52. Novo failed to establish that its development plan would protect correlative rights, prevent waste, or avoid the drilling of unnecessary wells.

53. BTA's development plan will fully and efficiently develop the Ochoa Acreage, will not strand any acreage, and will best prevent waste.

54. BTA's development plan will best protect correlative rights by allowing each party to develop its own acreage.

55. If Novo's Applications are granted, BTA will be unable to fully and efficiently develop the Ochoa Acreage.

56. If Novo's Applications are denied, each operator can develop its own acreage.

57. If Novo's Applications are denied, no acreage will be stranded.

58. The Commission considered evidence presented by both parties regarding the percentage of ownership interests, operational costs and Authorizations for Expenditures, prudent operation, and good faith negotiation and found the evidence was insufficient to determine whether these factors favored Novo or BTA.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Parties and the subject matter of this case.
2. Proper public notices of the Applications and the Commission's hearing were given.
3. As the applicant in this proceeding, Novo bore the burden of proof.
4. Novo failed to establish that its Applications, if granted, would prevent waste.
5. Novo failed to establish that its Applications, if granted, would protect correlative rights.
6. Novo failed to establish that its Applications, if granted, would prevent the drilling of unnecessary wells.
7. BTA's proposed development plan will prevent waste more effectively than Novo's proposed development plan.
8. BTA's proposal protects correlative rights by presenting the best opportunity for each party to develop its own acreage.
9. The evidence and testimony regarding the efficiencies of 2-mile laterals versus 1.5-mile laterals was either insufficient or contradictory.
10. The evidence and testimony regarding the parent-child effect was either insufficient or contradictory.
11. The evidence and testimony regarding the differences in well spacing and the number of wells was either insufficient or contradictory.
12. The evidence and testimony regarding surface waste was either insufficient or contradictory.
13. The evidence regarding good faith negotiations; capability as an operator; ownership percentage, and well costs did not weigh in favor of either Novo or BTA.

ORDER

1. Novo's Applications are denied.
2. The Commission retains jurisdiction of this matter for the entry of such orders as may be deemed necessary.

DONE at Santa Fe, New Mexico on the 17 day of September, 2020.

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**



Adrienne Sandoval, M.E., Chair



Dr. Thomas Engler, P.E., Member



Jordan Kessler, Esq., Member