

**STATE OF NEW MEXICO  
ENVIRONMENTAL IMPROVEMENT BOARD**

IN THE MATTER OF THE APPEALS  
OF THE AIR QUALITY PERMIT  
NO. 7482-M1 ISSUED TO 3 BEAR  
DELAWARE OPERATING – NM LLC

EIB No. 20-21(A)

AND

REGISTRATION NOS. 8720, 8730, AND 8733  
UNDER GENERAL CONSTRUCTION PERMIT  
FOR OIL AND GAS FACILITIES

EIB No. 20-33(A)

WildEarth Guardians,  
*Petitioner.*

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**PROCEDURAL ORDER**

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In conducting the above-referenced consolidated hearing, the Hearing Officer shall generally follow the Environmental Improvement Board's adjudicatory procedures at 20.1.2 NMAC. Pursuant to 20.1.2.109.A NMAC, the additional requirements described in this Procedural Order and the previously-issued Procedural Order dated July 20, 2020 shall also apply.

**I. General Framework for the Hearing**

The consolidated hearing shall begin at 9:00 a.m. on September 23, 2020 and continue until approximately 5:00 p.m. If necessary, the hearing shall continue at 9:00 a.m. on September 24, 2020 and continue until approximately 5:00 p.m. The parties shall make diligent efforts to ensure that the proceedings are completed by 5:00 p.m. on September 24; however, if the hearing is not completed by the end of the day on September 24, the parties and the Board shall confer to establish a schedule for reconvening and completing the hearing as expeditiously as possible.

The consolidated hearing shall be held virtually through the online WebEx platform.

The consolidated hearing shall generally proceed with presentation of pre-filed testimony summaries and sur-rebuttal testimony from the parties in the following order:

- (1) WildEarth Guardians,
- (2) New Mexico Environment Department,
- (3) 3 Bear Delaware Operating – NM LLC,
- (4) XTO Energy Inc.,
- (5) Spur Energy Partners LLC, and

Cross-examination of witnesses shall proceed in the same order, followed by other interested participants who have filed Entries of Appearance and then members of the Board.

As further described below, the consolidated hearing shall generally proceed in the following order, except for the opportunity for public comment which shall be provided as described in Section II below:

- (1) Admission of Pre-Filed Exhibits as Evidence
- (2) Opening Statements
- (3) Direct Examination of Witness A
- (4) Cross-Examination of Witness A
- (5) Direct Examination of Witness B
- (6) Cross-Examination of Witness B
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## **II. Participation by the General Public**

In accordance with 20.1.2.207 NMAC, the Board shall provide an opportunity for oral non-technical testimony or public comment from 4:00 to 5:00 p.m. on September 23. If the hearing proceeds to a second day, an opportunity for public comment will also be provided starting at 9:00 a.m. on September 24. The Board shall accept into evidence any exhibits offered by members of the public that are non-technical in nature and not unduly repetitious. Such public comment shall be limited to 5 minutes per commenter.

## **III. Exhibit Lists and Exhibit Objections**

By 12:00 pm on Friday, September 18, each party wishing to admit exhibits into evidence shall file and serve a list of exhibits; with such exhibits to be numbered serially. For ease of reference, the list of exhibits shall indicate the original filing to which any pre-filed exhibits were attached. Any additional exhibits that parties may wish to admit shall also be identified on this exhibit list and served upon all parties and interested participants along with the exhibit list.

At the start of the hearing on September 23, all pre-filed written testimony, written rebuttal testimony, and related exhibits shall be admitted as evidence in bulk, except for exhibits to which a written objection is filed with the Board by 5:00 pm on Monday, September 21. Any such record objections will be heard at the start of the hearing.

#### **IV. Opening Statements**

All parties and interested participants shall be given an opportunity to make brief opening statements, which shall be limited to approximately 15 minutes. A party may choose to make its opening statement either (1) following the Admission of Pre-Filed Exhibits, or (2) immediately prior to the examination of its initial witness.

#### **V. Witness Examination**

All party witnesses have pre-filed their written direct and rebuttal testimony. Accordingly, direct examination of witnesses shall not be unduly repetitive of pre-filed testimony, but shall be intended to highlight, summarize, and explain the issues critical to the Board's resolution of this matter. No parties shall offer additional witnesses that have not submitted pre-filed written testimony. After direct examination of each witness, each party, interested participant, and Board member shall have an opportunity for cross-examination. The party presenting the witness shall then have an opportunity for a brief redirect examination of the witness.

The parties shall present their witnesses in the following order:

WildEarth Guardians: (1) Dr. Ranajit (Ron) Sahu;

New Mexico Environment Department: (1) Sufi Mustafa; (2) Elizabeth Bisbey Kuehn;

3 Bear Delaware Operating – NM LLC: (1) Lori Marquez; (2) Jeffrey Bennett;

XTO Energy Inc.: (1) Randy Parmley;

Spur Energy Partners LLC: (1) Todd Mucha; (2) John Connolly; (3) Adam Erenstein.

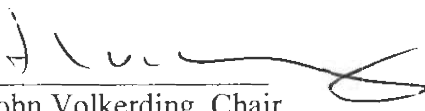
**VI. Post-Hearing Submittals**

In accordance with 20.1.2.401 NMAC, the parties and interested participants may submit written closing argument, along with proposed findings of fact and conclusions of law, within 30 days of the Board’s notice of the availability of the hearing transcript.

**VII. Board Deliberation and Decision**

After the period for post-hearing submittals has closed, the Board shall deliberate, issue a final decision, and prepare a final order in accordance with the procedures specified in 20.1.2.403 NMAC.

So ordered,

  
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John Volkerding, Chair  
Hearing Officer

## Certificate of Service

Pursuant to 20.1.2.112 NMAC, I hereby certify that a copy of the above

**PROCEDURAL ORDER** was filed and served via electronic mail delivery to the persons listed below on September 18, 2020.

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Pamela Jones Digitally signed by Pamela Jones  
Date: 2020.09.18 10:00:46 -0600

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Pamela Jones  
*Administrator for the Environmental Improvement Board*