

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

**APPLICATION OF APACHE CORPORATION
FOR COMPULSORY POOLING AND APPROVAL
OF A HORIZONTAL SPACING UNIT AND
POTASH DEVELOPMENT AREA,
EDDY COUNTY, NEW MEXICO**

CASE NOS. 20202

**APACHE CORPORATION'S RESPONSE
TO ASCENT'S MOTION FOR CONTINUANCE**

Apache Corporation ("Apache") submits the following Response to the Motion for continuance of these cases filed by Ascent Energy, LLC. Apache respectfully requests that the Motion be denied, and in support such denial, states as follows:

1. These cases involve competing proposals for development in Eddy County Wolfcamp and Bone Spring horizontal spacing units in the W/2W/2 of Section 28 and the W/2W/2 of Section 33, Township 20 South, Range 30 East, N.M.P.M., Eddy County, New Mexico, located in the Potash Area.

2. The parties appeared for a pretrial conference on January 24, 2019 in which they and the Division agreed to set the applications for a special hearing docket. The Division initially set the cases for a special hearing on April 30, 2019 but the cases were continued by Ascent over Apache's objections. *See* Exhibit "A."

3. On May 5, 2019, the parties informed the Division that they were available for hearing on August 20-21, which dates the Division had previously informed them they could accommodate them. *See* email to the Division, attached hereto as Exhibit "B"

4. Just two weeks ago, the Division contacted the parties: "Just to confirm you are all set to present the four cases at the special hearing set for August 20th and 21st. Please let me

know as soon as possible as I need to prepare a docket.” *See* July 30, 2019 email from the Division, attached as Exhibit “C.”

5. Ascent, Apache and EOG all responded that they were ready for hearing. *Id.* As a result, the Division issued its notice of the special hearing. *See* Exhibit “D.”

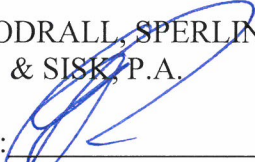
6. Ascent has known about the hearing date for over two months and informed the Division that it was ready for hearing just two weeks ago. Its motion for continuance presents no evidence concerning the supposed unavailability of its witnesses or why they are needed on the rig. The motion only states that “Ascent was recently able to obtain the services of a drilling rig.” However, the New Mexico rig count was at 108 on the date of the January prehearing conference, fell to 102 in May, 100 in June and picked back up to 105 last month. *See* <https://rigcount.bhge.com/na-rig-count>. In any event, Ascent controls the date it drills wells and should have taken into account its prior commitment to the Division that it confirmed to appear for hearing on August 20-21, 2019.

7. Apache will be prejudiced by the continuance. Apache intends to drill its proposed wells later this year and its plans have already been postponed due to the difficulties in securing a special hearing date for these cases. Its witnesses and others attending the hearing secured the company plane to travel to Santa Fe and its counsel has purchased nonrefundable plane tickets to Midland, Texas to prepare for the hearing.

WHEREFORE, Apache Corporation respectfully requests that Ascent's Motion to Continue these cases be denied.

Respectfully submitted,

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By: 

Earl E. DeBrine, Jr.
Lance D. Hough
Post Office Box 2168
500 Fourth Street NW, Suite 1000
Albuquerque, New Mexico 87103-2168
Telephone: 505.848.1800
edebrine@modrall.com
ldh@modrall.com
Attorneys for Apache Corporation

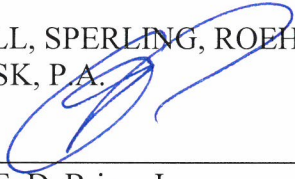
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following counsel of record by electronic mail on August 13, 2019:

James Bruce
JAMES GARRETT BRUCE ATTORNEY AT LAW
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Santa Fe, New Mexico 87504-1056
Phone: (505) 982-2043
Fax: (505) 982-2151
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Attorney for Ascent Energy, LLC

Dalva L. Mollenberg
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Attorneys for Occidental Petroleum Company

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By: 
Earl E. DeBrine, Jr.

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Attorneys for Mewbourne Oil Company

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PADILLA LAW FIRM, P.A.
1512 S. St. Francis Dr.
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Phone: (505) 988-7577
padillalaw@qwestoffice.net
Attorneys for EOG Resources Inc.

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From: Warnell, Terry G, EMNRD <TerryG.Warnell@state.nm.us>
Sent: Wednesday, 17 April, 2019 3:25 PM
To: Earl E. DeBrine <edebrine@modrall.com>; Gary Larson <glarson@hinklelawfirm.com>; jamesbruc@aol.com; mjc@gallegoslawfirm.net; DLM@gknet.com; epadillaplf@qwestoffice.net
Cc: Davidson, Florene, EMNRD <florene.davidson@state.nm.us>; Jones, William V, EMNRD <WilliamV.Jones@state.nm.us>; Brooks, David K, EMNRD <DavidK.Brooks@state.nm.us>
Subject: RE: Special Hearing for Ascent and Apache Cases 16481, 16482, 20171 and 20202

Earl, et al:

I understand your concerns and I agree with you. Some time back both Ascent and Apache agreed a April 30 hearing would work for everyone so OCD set a Special Hearing up for the 30th. That date appears to no longer work for everyone. Perhaps tomorrow when we can all discuss a new hearing date that works for everyone. Whatever that date maybe.

Regards,
Terry

From: Earl E. DeBrine <edebrine@modrall.com>
Sent: Tuesday, April 16, 2019 4:08 PM
To: Gary Larson <glarson@hinklelawfirm.com>; jamesbruc@aol.com; Warnell, Terry G, EMNRD <TerryG.Warnell@state.nm.us>; mjc@gallegoslawfirm.net; DLM@gknet.com; epadillaplf@qwestoffice.net
Cc: Davidson, Florene, EMNRD <florene.davidson@state.nm.us>; Jones, William V, EMNRD <WilliamV.Jones@state.nm.us>
Subject: [EXT] RE: Special Hearing for Ascent and Apache Cases 16481, 16482, 20171 and 20202

Examiner Warnell, et al:

Apache opposes the continuance for the following reasons:

- It is unclear from the email how Ascent's purchase of Melbourne's interest in its proposed spacing units would affect the parties who were required to be notified of its application.
- Moreover, Ascent previously pressed that its cases be heard last December
- All of the parties agreed on the special hearing date several weeks ago.

Nevertheless, if the Division is inclined to grant the request for continuance, Apache requests that it be acted upon expeditiously so that it can adequately prepare for the hearing if the request is denied. Apache further requests that if the request for continuance is granted, that the hearing be held on a date that is convenient to Apache.

EXHIBIT A

Very truly yours,



Earl E. DeBrine, Jr.

Modrall Sperling | www.modrall.com

P.O. Box 2168 | Albuquerque, NM 87103-2168

500 4th St. NW, Ste. 1000 | Albuquerque, NM 87102

D: 505.848.1810 | O: 505.848.1800 | F: 505.848.9710

matter is continued, the hearing should be held on a date that is convenient to Apache and

From: Gary Larson <glarson@hinklelawfirm.com>

Sent: Tuesday, 16 April, 2019 3:11 PM

To: jamesbruc@aol.com; TerryG.Warnell@state.nm.us; mjc@gallegoslawfirm.net; DLM@gknet.com; epadillaplf@qwestoffice.net; Earl E. DeBrine <edebrine@modrall.com>

Cc: florene.davidson@state.nm.us; WilliamV.Jones@state.nm.us

Subject: RE: Special Hearing for Ascent and Apache Cases 16481, 16482, 20171 and 20202

All,

Mewbourne does not object.

Gary

From: jamesbruc@aol.com <jamesbruc@aol.com>

Sent: Monday, April 15, 2019 2:36 PM

To: TerryG.Warnell@state.nm.us; mjc@gallegoslawfirm.net; Gary Larson <glarson@hinklelawfirm.com>; DLM@gknet.com; epadillaplf@qwestoffice.net; edebrine@modrall.com

Cc: florene.davidson@state.nm.us; WilliamV.Jones@state.nm.us

Subject: Re: Special Hearing for Ascent and Apache Cases 16481, 16482, 20171 and 20202

All: Ascent requests that the cases be continued. Ascent has agreed to purchase Mewbourne's interests in its well units, but there is title curative to be done. Until the title is cured, there is the possibility of additional parties to be notified of the hearing. Therefore, a continuance is requested.

Please let me know if you object.

Jim

-----Original Message-----

From: Warnell, Terry G, EMNRD <TerryG.Warnell@state.nm.us>

To: mjc@gallegoslawfirm.net <mjc@gallegoslawfirm.net>; Gary Larson <glarson@hinklelawfirm.com>; DLM@gknet.com <DLM@gknet.com>; epadillaplf@qwestoffice.net <epadillaplf@qwestoffice.net>; Earl

From: Earl E. DeBrine
Sent: Friday, 10 May, 2019 3:08 PM
To: 'Hearings, OCD, EMNRD' <OCD.Hearings@state.nm.us>
Cc: Jim Bruce <jamesbruc@aol.com>; Gary Larson <glarson@hinklelawfirm.com>;
epadillaplf@qwestoffice.net; Moellenberg, Dalva L. <DLM@gknet.com>
Subject: RE: Special Hearing for Ascent and Apache Cases 16481, 16482, 20171 and 20202

Yes. Thanks.

--Earl

From: Salvidrez, Marlene, EMNRD <Marlene.Salvidrez@state.nm.us> **On Behalf Of** Hearings, OCD, EMNRD
Sent: Friday, 10 May, 2019 12:37 PM
To: Earl E. DeBrine <edebrine@modrall.com>; Hearings, OCD, EMNRD <OCD.Hearings@state.nm.us>
Cc: Jim Bruce <jamesbruc@aol.com>; Gary Larson <glarson@hinklelawfirm.com>;
epadillaplf@qwestoffice.net; Moellenberg, Dalva L. <DLM@gknet.com>
Subject: RE: Special Hearing for Ascent and Apache Cases 16481, 16482, 20171 and 20202

Good afternoon,
And it is only the four cases, correct?

Marlene Salvidrez

Oil Conservation Division
New Mexico Energy, Minerals and Natural Resources Department
(505) 476-3461



From: Earl E. DeBrine <edebrine@modrall.com>
Sent: Friday, May 10, 2019 9:37 AM
To: Hearings, OCD, EMNRD <OCD.Hearings@state.nm.us>
Cc: Jim Bruce <jamesbruc@aol.com>; Gary Larson <glarson@hinklelawfirm.com>;
epadillaplf@qwestoffice.net; Moellenberg, Dalva L. <DLM@gknet.com>
Subject: [EXT] RE: Special Hearing for Ascent and Apache Cases 16481, 16482, 20171 and 20202

Marlene,
All parties are available on August 20-21 for the hearing of these cases.
--Earl

 MODRALL SPERRING

EXHIBIT B

Earl E. DeBrine, Jr.

Modrall Sperling | www.modrall.com

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This e-mail may be a confidential attorney-client communication. If you received it in error, please delete it without forwarding it to others and notify the sender of the error.

From: James Bruce <jamesbruc@aol.com>
Sent: Tuesday, 30 July, 2019 3:14 PM
To: Earl E. DeBrine <edebrine@modrall.com>
Cc: epadillaplf@qwestoffice.net; Hearings, OCD, EMNRD <OCD.Hearings@state.nm.us>; Gary Larson <glarson@hinklelawfirm.com>; Moellenberg, Dalva L. <DLM@gknet.com>
Subject: Re: Special Hearing for Ascent and Apache Cases 16481, 16482, 20171 and 20202

So is Ascent.

Sent from my iPhone

On Jul 30, 2019, at 3:10 PM, Earl E. DeBrine <edebrine@modrall.com> wrote:

Apache is too.

--Earl

----- Original message -----

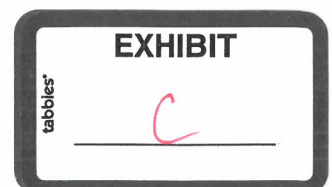
From: epadillaplf@qwestoffice.net
Date: 7/30/19 3:07 PM (GMT-07:00)
To: "'Hearings, OCD, EMNRD'" <OCD.Hearings@state.nm.us>, "Earl E. DeBrine" <edebrine@modrall.com>
Cc: 'Jim Bruce' <jamesbruc@aol.com>, 'Gary Larson' <glarson@hinklelawfirm.com>, "'Moellenberg, Dalva L.'" <DLM@gknet.com>
Subject: RE: Special Hearing for Ascent and Apache Cases 16481, 16482, 20171 and 20202

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Marlene,
Mr. Padilla is good with those dates. Thank You.

From: Salvidrez, Marlene, EMNRD <Marlene.Salvidrez@state.nm.us> **On Behalf Of** Hearings, OCD, EMNRD
Sent: Tuesday, July 30, 2019 1:12 PM
To: Earl E. DeBrine <edebrine@modrall.com>; Hearings, OCD, EMNRD <OCD.Hearings@state.nm.us>
Cc: Jim Bruce <jamesbruc@aol.com>; Gary Larson <glarson@hinklelawfirm.com>; epadillaplf@qwestoffice.net; Moellenberg, Dalva L. <DLM@gknet.com>
Subject: RE: Special Hearing for Ascent and Apache Cases 16481, 16482, 20171 and 20202

Good afternoon,



Just to confirm you are all set to present the four cases at the special hearing set for August 20th and 21st. Please let me know as soon as possible as I need to prepare a docket.
Thank you

Marlene Salvidrez

Oil Conservation Division

Energy, Minerals and Natural Resources Department

(505) 476-3461

<image001.png>



OCD Docket No.
30-19 Special.pdf



OCD Docket No.
30-19 Special.docx

From: Salvidrez, Marlene, EMNRD <Marlene.Salvidrez@state.nm.us>

Sent: Tuesday, 30 July, 2019 3:28 PM

To: A. Blair Dunn Esq. (abdunn@ablairdunn-esq.com) <abdunn@ablairdunn-esq.com>; Sandoval, Adrienne, EMNRD <Adrienne.Sandoval@state.nm.us>; Marks, Allison <amarks@slo.state.nm.us>; Shaw, Alysha <ashaw@slo.state.nm.us>; aantillon@slo.state.nm.us; Balch (balch@prrc.nmt.edu) <balch@prrc.nmt.edu>; (ballen@sesi-nm.com) <ballen@sesi-nm.com>; Powell, Brandon, EMNRD <Brandon.Powell@state.nm.us>; Dutton, Brittany, EMNRD <Brittany.Dutton2@state.nm.us>; (cheryls@yatespetroleum.com) <cheryls@yatespetroleum.com>; Cissy Vasquez (cvasquez@yatespetroleum.com) <cvasquez@yatespetroleum.com>; D. McLeod (dmcleod@petrogulf.com) <dmcleod@petrogulf.com>; (dale@capstoneoil.com) <dale@capstoneoil.com>; Dana Hardy (dhardy@hinklelawfirm.com) <dhardy@hinklelawfirm.com>; (dboneau@pvtnetworks.net) <dboneau@pvtnetworks.net>; Brooks, David K, EMNRD <DavidK.Brooks@state.nm.us>; Deana M. Bennett <dmb@modrall.com>; Delva Moellenberg (dlm@gknet.com) <dlm@gknet.com>; (dexterh@forl.com) <dexterh@forl.com>; Earl E. DeBrine <edebrine@modrall.com>; (ekendrick@montand.com) <ekendrick@montand.com>; Crosby, Faith <fcrosby@slo.state.nm.us>; Fred Verner (fredverner@chevron.com) <fredverner@chevron.com>; Wade, Gabriel, EMNRD <Gabriel.Wade@state.nm.us>; glarson@hinklelawfirm.com; jeg@gallegoslawfirm.net; Geoff King (Geoff.King@rlicorp.com) <Geoff.King@rlicorp.com>; (hconder@riceswd.com) <hconder@riceswd.com>; J. Chan (jchan2@dow.com) <jchan2@dow.com>; Scott Hall <shall@logosresourcesllc.com>; jsullivan@slo.state.nm.us; Glover, James <jglover@blm.gov>; (jan.wooldridge@div.com) <jan.wooldridge@div.com>; Amacher, Jana <Jana.Amacher@nmlegis.gov>; Janine Kaul (jkaul@marathonoil.com) <jkaul@marathonoil.com>; Jerry Goedert <JGoedert@petrogulf.com>; Jessica Gorman (jgorman1@marathonoil.com) <jgorman1@marathonoil.com>; jamesbruc@aol.com; Griswold, Jim, EMNRD <Jim.Griswold@state.nm.us>; Jim Winchester <jimwinchester@ipanm.org>; Jimmy D. Carlile (jimmyc@forl.com) <jimmyc@forl.com>; John F. McIntyre <jmcintyre@montand.com>; John Underwood (johnU@heycoenergy.com) <johnU@heycoenergy.com>; Jonas Armstrong jonas.armstrong@nmlegis.gov (jonas.armstrong@nmlegis.gov) <jonas.armstrong@nmlegis.gov>; Jonas Armstrong (jonas.armstrong@nmlegis.gov) <jonas.armstrong@nmlegis.gov>; Jonathan Filbert <jfilbert@matadorresources.com>; Jordan Kessler (jkessler@slo.state.nm.us) <jkessler@slo.state.nm.us>; Julie Sanchez (jsanchez@slo.state.nm.us) <jsanchez@slo.state.nm.us>; (kjones@riceswd.com) <kjones@riceswd.com>; Kaitlyn A. Luck (KALuck@hollandhart.com) <KALuck@hollandhart.com>; Pickford, Katherine, EMNRD <Katherine.Pickford@state.nm.us>; Katie Nguyen (Katie.Nguyen@rlicorp.com) <Katie.Nguyen@rlicorp.com>; Keith_Barton@oxy.com; KBurch@catenares.com; Lara Katz <lara@abadieschill.com>; Laura Winkler (laurawinkler@rileyexploration.com) <laurawinkler@rileyexploration.com>; Lowe, Leonard, EMNRD <Leonard.Lowe@state.nm.us>; Luke Bross <LukeB@R360es.com>; M. Pruett (mpruett@slo.state.nm.us) <mpruett@slo.state.nm.us>; Maritza Santana (maritza@faenergyus.com) <maritza@faenergyus.com>; Martin Joyce (mjoyce@pvt.net) <mjoyce@pvt.net>; Mary Feldblum (feldblum2487@gmail.com) <feldblum2487@gmail.com>; Michael Condon <mjc@gallegoslawfirm.net>; Michael Feldewert (MFeldewert@hollandhart.com) <MFeldewert@hollandhart.com>; McMillan, Michael, EMNRD <Michael.McMillan@state.nm.us>; (nmwgi@nmagriculture.org) <nmwgi@nmagriculture.org>; Nathalie Eddy (neddy@earthworksaction.org) <neddy@earthworksaction.org>; (rel@dfn.com) <rel@dfn.com>;

EXHIBIT

tabbles

D

Kautz, Paul, EMNRD <paul.kautz@state.nm.us>; Paul M. O'Sullivan (Paul.OSullivan@rlicorp.com) <Paul.OSullivan@rlicorp.com>; Goetze, Phillip, EMNRD <Phillip.Goetze@state.nm.us>; (rtupman@hess.com) <rtupman@hess.com>; rswann@catenares.com; Higgin, Roslyn, NMENV <Roslyn.Higgin@state.nm.us>; Samantha Fox (sfox@B3insight.com) <sfox@B3insight.com>; Samantha Romero (srromero@slo.state.nm.us) <srromero@slo.state.nm.us>; Sharon T. Shaheen <sshahen@montand.com>; Sheila Mallory (smallory@blm.gov) <smallory@blm.gov>; Strang, Dana V. <dvstrang@slo.state.nm.us>; (stan.phillips@apachecorp.com) <stan.phillips@apachecorp.com>; Stephanie Garcia Richard (sgarciarichard@slo.state.nm.us) <sgarciarichard@slo.state.nm.us>; Sunalei Stewart (sstewart@slo.state.nm.us) <sstewart@slo.state.nm.us>; Tarin Nix (tnix@slo.state.nm.us) <tnix@slo.state.nm.us>; Thomas Engler (Thomas.engler@nmt.edu) <Thomas.engler@nmt.edu>; THOMAS MCKINNEY <stormycce@gmail.com>; Trent Colan (Trent.Colan@rlicorp.com) <Trent.Colan@rlicorp.com>; Tyra Feil (Tyra.Feil@duganproduction.com) <Tyra.Feil@duganproduction.com>; V. Ware (vware@matadorresources.com) <vware@matadorresources.com>; Perez, Yolanda <Yolanda_Perez@oxy.com>
Cc: Davidson, Florene, EMNRD <florene.davidson@state.nm.us>; Jones, William V, EMNRD <WilliamV.Jones@state.nm.us>

Subject: August 20, 2019 OCD Special Examiner Hearing Docket

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Marlene Salvidrez

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