

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

**PETITION FOR HEARING BEFORE
A DIVISION EXAMINER REGARDING
DIRECTOR’S DECISION ON ABATEMENT
OF EAST BLINEBRY DRINKARD UNIT**

CASE NO. 26126

NEW MEXICO OIL CONSERVATION DIVISION’S CLOSING ARGUMENT

The New Mexico Oil Conservation Division ("OCD") hereby submits this Closing Argument in the above-captioned matter and would respectfully show the following:

I. Introduction and Procedural History

On or about February 19, 2025, the Oil Conservation Commission (“OCC”) entered Order No. R-23728. OCD Exhibit B. Thereafter, on or about April 17, 2025, OCD and Apache submitted a Joint Motion to Amend Order No. R-23728. OCD Exhibit C. Apache represented in the Joint Motion that: “Following the hearing on this matter, Apache completed an additional round of groundwater monitoring including sampling and analysis of all existing monitoring wells and has reported the results to the Division. Apache and the Division have reviewed the results and additional historic information regarding the area to refine their understanding of site conditions and to attempt to identify possible sources of groundwater impacts. Based upon this information, Apache then proposed a revised plan for installation of additional groundwater monitoring wells and soil borings to meet all of the objectives of the Order, taking into account the additional information. The Division reviewed Apache’s revised proposal and the parties then conferred and reached agreement on a modified plan, subject to the Commission’s approval.” *Id.*

at p.2. On or about June 5, 2025, OCD and Apache's Joint Motion to Amend Order No. R-23728 was unanimously granted by the OCC through Order No. R-23728-A. OCD Exhibit D. The Order, in principle part, required Apache to install fifteen (15) groundwater monitoring wells, do soil borings on sites suspected of being potential sources of contaminants, and generally monitor and investigate the contamination that the parties agreed existed on the property then operated by Apache. *Id.* In fact, at the time of the hearing the parties still agreed that the groundwater continued to be contaminated. Hearing Transcript p. 202, l. 6950-6957.

Subsequent to the entry of Order R-23728-A, on July 10, 2025, operatorship of the wells at issue were transferred from Apache to Hilcorp Energy Company. OCD Exhibit G. Even after the transfer of operatorship, Apache continued to perform the soil and groundwater monitoring required by its agreement to Order R-23728-A. *Id.* Since at least September of 2019, elevated levels of chlorides and total dissolved solids, in excess of allowable limits, were detected by groundwater monitoring. OCD Exhibit E. Sampling of the groundwater conducted by Apache after the Order was entered continued to show both chlorides and total dissolved solids in amounts above the allowable limits (and in amounts that OCD may demand abatement). *Id.* 19.15.30 NMAC.

On or about March 12, 2026, OCD sent a notice to Apache requiring abatement pursuant to 19.15.30 NMAC. OCD Exhibit A. OCD, by and through its Environmental Bureau Chief, Rosa Romero, notified Apache that it has determined from reports submitted by Apache that groundwater has been impacted by Oil & Gas activity in excess of the standards outlined in 19.15.30.9 NMAC. *Id.* OCD further notified Apache that OCD required Apache to submit an abatement plan pursuant to 19.15.30 NMAC. *Id.* Apache subsequently filed this case in response to

OCD's demand that it submit an abatement plan. A hearing occurred before OCD Hearing Examiner Gregory Chakalian on June 4, 2026.

II. Summary of Relevant Testimony

At the hearing, many of the facts in this matter were not disputed. Rather, as recognized by the Hearing Examiner, this case involves differing legal interpretations of "responsible party" and/or "responsible person". Apache took the position that since it sold the property and was no longer the registered operator, its responsibility for the contamination no longer existed. Apache argues this despite the fact that the parties agree that both the soil and groundwater were contaminated during Apache's ownership, operatorship, and custody of the property (and the groundwater continued to be contaminated at the time of the hearing). Hearing Transcript at p. 202, l. 6950-6957. Further, Apache agreed to install groundwater monitoring wells in an effort to "identify possible sources of groundwater impacts." OCD Exhibit C at p. 2. At hearing, Apache conceded that it could not determine how, where, or when the contamination occurred. Hearing Transcript at p. 186-7, l. 6409-6433; p. 203, l. 6981-6985. In fact, Apache's expert witness, Mr. Grahams, stated that it is "exceptionally difficult to pinpoint the sources of contamination." *Id.* at p. 187, l. 6447-6448. Apache continued groundwater monitoring into 2026, pursuant to its agreement with OCD and the evident contamination that existed from at least 2019 (when testing begun) through the present. OCD Exhibit F. OCD's notice requiring an Apache to submit an abatement plan came shortly after groundwater contamination continued to be detected by testing done earlier this year. *Id.*; OCD Exhibit A.

Apache conceded that the July 14, 2019 release reasonably could have caused groundwater impacts. Hearing Transcript, p. 183, l. 6310-6317.

Additionally, Mr. Grahams agreed that the area had elevated levels of contaminants of concern from likely oil and gas activity. *Id.* at p.185, l.6379-6387.

When the soil remediation actions undertaken by Apache related to the 2019 incident were completed, the Closure document explicitly stated that the closure was “for the soil remediation only still conducting groundwater monitoring.” Apache Exhibit A-4.

Apache was the active operator of the lease from approximately November of 1998 until at least December 31, 2024. Hearing Transcript, p. 191-2, l. 6599-6608; p. 204, l. 7014-7018. There was chloride contamination in excess of the allowable limits while Apache was operating the property. *Id.* at p. 200, l. 6898-6911. Apache does not dispute that the groundwater is contaminated and that it was contaminated at the time of Apache’s operatorship. *Id.* at p. 202, l. 6950-6957.

OCD’s Environmental Bureau Chief, Rosa Romero, testified that 19.15.29 and 19.25.30 NMAC “relate to each other because they typically are both the result of a release.” Hearing Transcript p. 211, l. 7277-7279. She further stated that, under those rules, “under part 29, we’re looking at primarily soil remediations, but if delineation for some reason shows that it has reached the vadose zone and entered groundwater, then [OCD will] start to look at the broader rule of part 30”, which are based upon water quality standards. *Id.* at l. 7279-7283. The transition from part 29 to part 30 involves a change in goals from only soil remediation to full subsurface protection, which involves a stage one abatement plan requiring investigation and delineation of the release. *Id.* at l. 7284-7288. The present case requires ground water abatement

due to testing arising from the groundwater monitoring required by the Agreed Order between OCD and Apache finding chlorides and total dissolved solids in excess of the allowable limits. *Id.* at p. 212-213, l. 7325-7338. Ms. Romero further testified that when the 2019 release occurred, some contamination was suspected since there was a well in very close proximity to where the release happened. *Id.* at p. 221, l. 7617-7619. Thus, the groundwater continued to be monitored even after soil contamination closure report was entered. *Id.* at l. 7626-7629. Ms. Romero testified that OCD continued after that time to attempt to work with Apache to investigate the groundwater contamination and subsequently pushed for a more aggressive investigation at the 2025 hearing. *Id.* at l. 7630-7632. OCD required a more complex set of groundwater monitoring wells in the suspicion that it could have been a different release that occurred and to attempt to identify where the contamination was. *Id.* at p. 221-222, l. 7632-7637.

Ms. Romero also correctly stated that responsibility for abatement may be attributed to the person causing the release or the person controlling the location of the release. Hearing Transcript at p. 213-214, l. 7355-7365. OCD considers Apache a responsible party and responsible person for the contamination, and cases can shift from part 29 soil contamination to part 30 groundwater contamination. *Id.* at l. 7351-7372. Ms. Romero testified that “it would be inappropriate for OCD to allow an operator to divest [responsibility], especially considering we had a commission order that was explicitly designed to investigate the contamination...the change of operator should not remove them from the obligation.” *Id.* at p. 216, l. 7439-7442; p. 219, l. 7544-7552. She continued, “[t]hey were the operator [of] record, not just for the EBDU 37 site, but for the entirety of that area surrounding where we’re finding contaminations for approximately three decades.” *Id.* at l. 7439-7445. There is nothing in the regulatory framework that states OCD has to find out exactly when, where, or how contamination occurred. *Id.* at l.

7455-7459. Rather, OCD's job is to ensure these spills are cleaned up and to protect the public from groundwater contamination, including through notices of abatement, like that in the present case. *Id.* p. 216-217, l. 7462-7472. Ms. Romero testified that if Apache were able to transfer liability and continuing obligations to remediate and/or abate the groundwater contamination that clearly existed on the property prior to the transfer, it "would be a very dangerous legal precedent to allow. Allowing an operator to transfer away an asset for a site that is environmentally sensitive or has existing anything, especially in a scenario where we have an existing order, would be creating a large loophole [in the] regulatory process." *Id.* at p. 217, l. 7487-7497.

Brittany Hall, OCD's Environmental Field Compliance Supervisor, also testified about Apache's responsibility. Hearing Transcript p. 229- 247. Specifically, Ms. Hall stated that the groundwater testing results show that during Apache's custody, control, ownership, and operatorship of the subject location, groundwater contamination existed in excess of the allowable limits. OCD Exhibit E; Hearing Transcript at p. 230-233, l. 7944-8033. Ms. Hall further noted that the Field Activity Report commissioned by and for Apache had amongst its conclusions that Apache should develop and submit a semi-annual groundwater monitoring report. OCD Exhibit F; *Id.* at p. 237, l. 8162-8166. She further noted that such reports are part of a stage one abatement plan pursuant to part 30. *Id.* at l. 8166-8167. Ms. Hall also noted that contrary to Apache's contention that it was unable to access the site, Apache had continued to work at the site even after Hilcorp took operatorship of the site. *Id.* at p. 238, l. 8208-8209. As indicated in Exhibit H, Ms. Hall testified that Apache has either owned or operated wells that might have been the cause of upgradient contamination migration and the site of the pit that Apache alleges may or may not have been the source of the groundwater contamination. Exhibit

H; Hearing Transcript p. 243-244, l. 8375-8399. Ms. Hall further testified that operators typically report and clean up contamination that is discovered during their operatorship, even if they do not believe they caused the release. Hearing Transcript at p. 246, l. 8467-8481. Ms. Hall further stated that elevated levels of contaminants are in the groundwater at or near the release site. *Id.* at p. 247, l. 8500-8507.

III. Arguments and Authorities

A. Introduction

This case involves a site that has had soil contamination which was remediated by Apache and water contamination which is ongoing and unabated. Exhibit A; Hearing Transcript at p. 219, l. 7439-7445. 19.15.29 NMAC (sometimes referred to as “part 29”) controls soil contamination and 19.15.30 NMAC (sometimes referred to as “part 30”) controls groundwater contamination. Nowhere in either rule does the regulatory framework make these two kinds of oil and gas contamination mutually exclusive. *See* 19.15.29 NMAC; 19.15.30 NMAC. In fact, as described more thoroughly hereinbelow, such a reading would fly in the face of the reality of releases and contamination, both known and unknown. The present case makes clear that part 29 and part 30 are meant to work in conjunction when both soil and groundwater contamination exist. OCD Exhibit D; Hearing Transcript at 213-214, l. 7351-7372. This was recognized in the previous hearing before the OCC, wherein Apache agreed to install groundwater monitoring wells and reviewed the results and additional historic information regarding the area to refine their understanding of site conditions and to attempt to identify possible sources of groundwater impacts.” OCD Exhibit D. It is uncontroverted that groundwater

contamination in excess of allowable levels existed during Apache's operatorship and control of the site. Hearing Transcript at p. 202, l. 6950-6957.

B. Apache is a Responsible Party for the Groundwater Contamination that Exists at the Site Where Apache Conducted Oil and Gas Activities

Part 29's objective is to "prohibit releases and require persons who operate or control the release or the location of the release to report the unauthorized release of oil, gases, produced water, condensate or oil field waste including regulated NORM or other oil field related chemicals, contaminants or mixtures of those chemicals or contaminants that occur during drilling, producing, storing disposing, injecting, transporting, servicing or processing and to establish procedures for reporting, site assessment, remediation, closure, variance and enforcement." 19.15.29.6 NMAC. Under Part 29, a responsible party is defined as "the operator, as defined in 19.15.2 NMAC. Notwithstanding the foregoing, the division, in its sole discretion, may also consider a person causing the release, or controlling the location of the release as the responsible party." 19.15.29.7(C) NMAC. Thus, under Part 29, not only is an operator as defined by 19.15.2.7 NMAC considered a responsible party, but, *at its sole discretion*, OCD may considered a person *controlling the location of the release* a responsible party. *Id.* (emphasis added). 19.15.2.7(R) NMAC defines a responsible person as "the owner or operator who shall complete a division-approved corrective action for pollution from releases." Clearly, under Part 29, Apache, as the entity that controlled the location of the release (whenever that release occurred) and as the owner and operator of the site from the late 1990s until at least the end of 2024, qualifies as a responsible party and/or person. It is uncontroverted that Apache controlled the location of the release during the period

that groundwater contamination was recognized, and that Apache could not pinpoint how, when, or where the contamination occurred. Hearing Transcript at p. 186-7, l. 6409-6433; p. 203, l. 6981-6985. Additionally, Apache is the owner or operator of the site who has been required by the division to complete a groundwater abatement plan (and groundwater monitoring and soil remediation). OCD Exhibits C and D. Of course, as both an operator and the entity controlling the site of the historical release (even if it was from the old pit on the location), Apache is responsible for the remediation and abatement of the site. 19.15.2 NMAC; 19.15.29 NMAC; 19.15.30 NMAC.

Part 30 also refers to 19.15.2.7 NMAC in relation to the definition of responsible person. 19.15.30.7 NMAC. As discussed hereinabove, both prior to and after the agreed order in the OCC case was entered, Apache was the owner or operator that has been required to remediate, monitor, and abate the contamination that has been present on the site. *Id.* Apache's transfer of the site did not absolve it of responsibility to abate the subsurface water pollution or continue to monitor contaminants (as it agreed to do) in the groundwater at the site. *See* 19.15.30.6-11 NMAC. In fact, Part 30 recognizes that groundwater contamination often arises from soil contamination at the site by requiring that the "responsible person shall abate the vadose zone so that water contaminants in the vadose zone will not with reasonable probability contaminate ground water or surface water...through leaching, percolation or other transport mechanisms, or as the water table elevation fluctuates." 19.15.30.9(A) NMAC. Vadose zone is defined as "unsaturated earth material below the land surface and above ground water, or in between bodies of

ground water.” 19.15.2.7(V) NMAC. Thus, the regulatory framework, as Ms. Romero testified, necessarily contemplates that soil contamination can lead to groundwater contamination. *Id.*; Hearing Transcript p. 211, l. 7277-7279. Additionally, a situation such as Apache’s transfer to Hilcorp is contemplated under Part 30, in that Apache, as the owner, operator, and transferor of the site with groundwater contamination in excess of allowable limits at the time of the transfer to Hilcorp, both the transferor and the transferee shall be considered responsible persons for the abatement plan’s duration. 19.15.30.11 NMAC. Importantly, abatement is defined as “investigation, containment, removal or other mitigation of water pollution.” 19.15.2.7(A) NMAC. It is uncontroverted that at the time of the abatement notice from OCD, Apache was already conducting some water abatement by agreement with OCD through the installation of groundwater monitoring wells and monitoring of contaminants in the groundwater at the site. *Id.*; OCD Exhibits C, D, and F.

C. OCD Need Not Identify the Source or Specific Release Causing Groundwater Exceedances Before Requiring Abatement, and Apache is Responsible as a Matter of Law for Contamination Existing at the Site at the Time of Its Transfer to Hillcorp

As discussed hereinabove, not only are entities who cause a release responsible for abatement, but also those who control the location of a release. 19.15.29.7(C) NMAC. Apache controlled the location at the time groundwater contamination was recognized and at the time of the 2019 release. If, as Apache suggests, the contamination originated from a historical release, such as an old pit, then it is still a responsible party, since it controlled the location of that release as

well at the time it agreed to abate and monitor the groundwater on the location. Hearing Transcript p. 243-244, l. 8375-8399. The Rules do not provide for temporal limitations on OCD's ability to require abatement for groundwater contamination in excess of allowable limits. *See* 19.15.29 NMAC; 19.15.30 NMAC. In fact, the Rules make an owner or operator who shall complete a division-approved corrective action for pollution from releases a responsible person/party for abatement of the pollution. 19.15.2.7(R) NMAC. Apache already agreed to monitor (abate) the groundwater pollution pursuant to the OCC Order, and, additionally, Apache was in control of the location of the release, regardless of the time of the release at the time groundwater contamination was discovered. OCD Exhibit C and D; Hearing Transcript at p. 202, l. 6950-6957. The transfer to Hilcorp only served to make Hilcorp additionally liable for abatement, but did not absolve Apache of responsibility to abate. 19.15.30.11 NMAC. As stated by Ms. Romero, if operators were able to transfer away liability for groundwater contamination, then it would create a dangerous legal precedent and large loophole in the regulatory framework for abating and remediating contamination. Hearing Transcript at p. 217, l. 7487-7497. The Rules disallow such a dangerous precedent and loophole by making both transferor and transferee of locations requiring groundwater abatement responsible. 19.15.30 NMAC.

D. Apache Is A Responsible Party for Abatement Even if The Contamination Occurred Prior to Apache's Operatorship of the Location

As discussed further hereinabove, Apache controlled the location of the contamination, and is thus a responsible party, at the division's sole discretion. 19.15.29.7(C) NMAC. Further, as the owner and operator who was required to

monitor and abate the groundwater contamination pursuant to the 2025 OCC Agreed Order, Apache is a responsible person for the abatement. OCD Exhibit C and D; 19.15.2.7(R) NMAC; 19.15.30.7 NMAC. Even if the groundwater contamination was unrelated to the 2019 release and occurred before Apache's operatorship and ownership, as the transferee and custodian of the location beginning in the late 1990s, Apache is a responsible party for abatement. 19.15.30.11 NMAC. While Apache may not be the only responsible party for the abatement, they are a responsible party and OCD properly sent them the notice to abate groundwater contamination. *Id.* As the party in control of the location at the time the contamination was discovered and the party who agreed to monitor (abate) the groundwater contamination pursuant to the agreement with the OCD, Apache was properly noticed and required to abate the contamination regardless of when the contamination occurred. 19.15.29 NMAC; 19.15.30 NMAC. To hold otherwise would encourage operators to hide releases and contamination and transfer the location to other parties. *See* Hearing Transcript at p. 217, l. 7487-7497.

E. Apache is Responsible for Abatement Even if the 2019 Release Did Not Cause Some or All of the Groundwater Contamination

Similar to the analysis hereinabove, whether the 2019 release caused some, all, or none of the groundwater contamination OCD requires Apache to abate is irrelevant to the fact that Apache is required to undertake the abatement of the contamination. First of all, Apache was already undertaking abatement pursuant to its agreement with OCD by monitoring the groundwater at the location. Secondly, since Apache controlled the location at the time the groundwater contamination was discovered, it is a responsible party under the Rules. 19.15.29.7(C) NMAC.

Additionally, Apache was both a transferee and transferor of the location of the contamination, and, thus, is responsible for abatement. 19.15.30.11 NMAC. The Rules do not require specificity as to the source, time, or location of the release causing contamination, but, rather, that responsible parties like Apache in this case undertake abatement of groundwater contamination, even if OCD or the responsible party cannot pinpoint the origins of the contamination. *See* 19.15.29 NMAC; 19.15.30 NMAC. As stated by Apache's expert, Mr. Grahams, it is "exceptionally difficult to pinpoint the sources of contamination." *Id.* at p. 187, l. 6447-6448. Regardless, operators must remediate and abate the locations they control where contamination is present.

IV. Conclusion

Wherefore premises considered, and for the reasons stated hereinabove, OCD respectfully prays that Apache's appeal and petition of OCD's "Notification of Abatement" be denied, and that Apache be ordered to comply with the Notification as more thoroughly set out in OCD Exhibit A.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on July 10, 2026, this pleading was served upon Apache by electronic mail at:

Dalva Moellenberg, Attorney for Apache

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A handwritten signature in black ink, appearing to read 'Michael Hall', is positioned above a horizontal line.

Michael Hall, Attorney for OCD