

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

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

CASE NOS. 21361, 21362, 21363, 21364

APPLICATION OF MEWBOURNE OIL
FOR COMPULSORY POOLING IN
EDDY COUNTY, NEW MEXICO

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

THURSDAY, AUGUST 20, 2020

SANTA FE, NEW MEXICO

This matter came on for hearing before the
New Mexico Oil Conservation Division, FELICIA ORTH Hearing
Examiner, and Technical Examiners SCOTT COX and DEAN
McCLURE on Thursday, August 20, 2020, Via Webex Video
conferencing

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25 (Note: No Exhibits marked.)

1 (Time noted 9:13 a.m.)

2 HEARING EXAMINER ORTH: All right. We will
3 skip over lines 15 through 18, which we have already
4 discussed, and move to Case 21361, 21362, 21363 and 21364.
5 Mewbourne Oil is the Applicant for those Compulsory
6 Pooling Applications related to a well named Sidecar.

7 So Hinkle, Shanor on behalf of the
8 Applicant.

9 MS. HARDY: Good morning. Dana Hardy on behalf
10 of the Applicant.

11 HEARING EXAMINER ORTH: All right. Thank you.
12 We have several other parties.

13 First, Ascent Energy. Is that you from
14 Abadie and Schill, Mr. Savage?

15 MR. SAVAGE: Uh, yes. Darin Savage from the
16 Santa Fe Office of Abadie and Schill on behalf of Ascent
17 Energy, LLC.

18 Also appearing and visiting from Durango is
19 Bill Zimski and Andrew Schill.

20 HEARING EXAMINER ORTH: All right. Thank you
21 very much. Welcome to all of you gentlemen.

22 Then we have Apache Corporation. Is that
23 you, Ms. Bennett?

24 MS. BENNETT: Yes, it is. Good morning.

25 HEARING EXAMINER ORTH: Good morning.

1 And finally EOG. Mr. Padilla, I think I
2 see you.

3 MR. PADILLA: Ernest Padilla for EOG Resources.
4 And our involvement in this case is merely to preserve
5 appellate rights.

6 HEARING EXAMINER ORTH: All right. Thank you.

7 Let me pause just a moment to see if there
8 are any another appearances. (Note: Pause.) No.

9 Excuse me. This -- sorry for the confusing
10 communication I sent via email late yesterday, and thank
11 you to Mr. DeBrine for prompting a more accurate memo of
12 what we would be doing this morning.

13 Uhm, these cases --

14 MR. DEBRINE: Madam Examiner.

15 HEARING EXAMINER ORTH: Yes.

16 Mr. DeBRINE: This is Earl DeBrine. I am on the
17 line but Ms. Bennett is going to handle any argument.

18 HEARING EXAMINER ORTH: Oh, thank you. Hello,
19 Mr. DeBrine.

20 MR. DeBRINE: Good morning.

21 HEARING EXAMINER ORTH: Yes, these cases are
22 related to a much larger bundle of cases for some of which
23 there is a pending referral to the OCC, and having briefed
24 that and argued that on August 6th, a more recent motion
25 to stay some matters is currently on the OCC's September

1 17th docket. And so, having briefed that with the final
2 pleadings coming in on Tuesday of this week, we are
3 prepared then to listen to the arguments on that motion,
4 which is the Stay Motion for the OCC matters.

5 MR. SAVAGE: Madam Examiner, this is Darin
6 Savage with Ascent. If I may just add a few words on
7 that.

8 Those emails arrived last night late, 5:30.
9 We did rely on those emails, and we believe actually
10 you're correct in your assessment that the Commission
11 ultimately is the one that needs to and has to decide this
12 under the rules for stays on -- for stays on Commission
13 Orders.

14 You know, that regulation -- you know, we
15 don't believe there was ambiguity. It looks like that the
16 regulation is designed to provide the Division some
17 discretion to step in and create a holding pattern for
18 case management, and then the Commission -- and then rule
19 on the item on a temporary basis, and then the Commission
20 ultimately would have the authority to make the final
21 decision on that.

22 So we think you are correct in exercising
23 your discretion on that, and, you know, based on the
24 confusion in the circumstances and, you know, reliance on
25 these those emails to look at other matters in preparation

1 for this day, we ask that you consider, you know, the
2 original assessment that you had made.

3 Thank you.

4 HEARING EXAMINER ORTH: All right. Thank you.

5 So I did actually want to make clear the
6 pleadings that had been submitted, just to take sure that
7 I have the full set.

8 We have Apache: Apache's amended Motion to
9 Stay the de novo hearings in Cases 21277 through 80

10 Mewbourne: Mewbourne's Response to
11 Apache's Motion to Stay.

12 Ascent's Response in opposition to Apache's
13 Motion to Stay.

14 Mewbourne's Reply to Ascent's Response in
15 opposition to Apache's Motion to Stay.

16 Ascent's Reply to Mewbourne's Response to
17 Apache's Amended Motion to Stay.

18 And Apache's Reply on the Motion to Stay.

19 Does anyone believe that any other
20 pleadings have been submitted there?

21 (Note: Pause.)

22 Okay. Hearing nothing, so again what I'd
23 like to do is to invite anyone who would like to present
24 argument that -- particularly if for some reason it is not
25 in the written Motion or Responses in order to, uhm, flesh

1 out the argument for the OCC to make a decision on this,
2 what would be Motion for Stay relating to our September
3 17th.

4 I don't believe that there will be time to
5 set up another argument, if you will, in a way that would
6 be timely for this motion to be heard, so I would like to
7 get the argument on the record this morning.

8 MS. BENNETT: Thank you, Madam Examiner. This
9 is Deana Bennett on behalf of Apache.

10 And, if I may, I -- given that this is
11 Apache's motion, I won't take up too much time, but I did
12 want to just highlight three important points that we've
13 made in our briefing that Apache feels are dispositive
14 here and demonstrate that a stay of the OCC cases is
15 warranted pending the outcome of the Division cases that
16 should go forward first.

17 Just as a procedural point -- and I'm not
18 sure this makes much difference, but I did want to say
19 that I think the Motion for Referral was only partially
20 heard at the last examiner hearing. I think there was
21 discussion of the Motion for Referral but because these
22 two motions are somewhat intertwined the Motion for
23 Referral wasn't fully argued. But I'll let Ms. Hardy or
24 Mr. Savage correct me on that if I am wrong.

25 But just returning to the main, the three

1 main points that I want to focus on here: As you've seen
2 from the pleadings, and in particular the slide that I
3 attached to Apache's Reply, which hopefully you've had a
4 chance to look at, that slide outlines the overlap between
5 the Apache proposals and a sense of west half/west half
6 cases and the Ascent east half/west half cases that Ascent
7 recently filed, as well as Mewbourne's recently filed east
8 half/west half and west half cases

9 So what that slide shows I think in detail
10 is that there's no way to separate out Apache's proposals
11 into east half/west half cases and west half/west half
12 cases, which is what Ascent is proposing as the resolution
13 here, because Apache's proposals cover both the
14 east half/west half of the west half. So there is simply
15 no way to allocate Apache's proposals half to the
16 Commission and half to the Division. That won't work.

17 So Apache's suggestion, and, you know, it's
18 an efficient, reasonable suggestion, is that the
19 Commission's cases that were about the west half/west half
20 only be stayed pending the Division's decision on
21 Mewbourne's east half and west half cases, Ascent's east
22 half/west half cases, and then the Apache cases that are
23 perpendicular to the Ascent and Mewbourne cases.

24 Ascent in its response argues that the west
25 half/west half factd -- or the west half/west half lands

1 have different facts than the east half/west half lands,
2 and to me that actually cuts against Ascent's argument,
3 because if there are factual differences between those
4 lands then that's even more of a reason to have a fulsome
5 discussion of that set of lands before the Commission in
6 one set versus piecemeal.

7 So because Apache's proposals cannot be
8 dissected in the way that Ascent suggests, we think that a
9 stay of the Commission's de novo hearing is appropriate.

10 We also think that the important parcel of
11 that is that the Division process should go forward to
12 allow Apache and Ascent, and Mewbourne for that matter, to
13 have a full understanding of each other's cases without
14 having to sort of guess at what each other's exhibits are
15 going to be, testimony is going to be.

16 Under the Commission rules the parties
17 would be limited to a week's worth of Notice on the
18 exhibits. There is an opportunity to submit subpoenas,
19 but given the reality that these cases could be stayed it
20 doesn't seem necessary to go to those lengths, especially
21 when here there are property rights at interest that can
22 be prejudiced by not allowing a fulsome discussion of the
23 issues before the Division.

24 And finally the third point I want to make
25 is there really isn't any -- and I'm trying -- not trying

1 to be disparaging here, but there is no lease expiration
2 issues so there's no -- it doesn't seem to me, sitting
3 here, that there's any rush to move forward with the west
4 half/west half cases. And I'm certain that Mr. Savage
5 will have the some counterpoints to that, but it's my
6 understanding that these leases are in the potash area and
7 that they are in suspense right now, and so there's no
8 lease expiration issues.

9 It's my understanding from the pleadings
10 that Ascent hasn't yet started drilling or taken --
11 started drilling out there; and, also, there's just been
12 the industry downturn where a number of operators have
13 been asking for extensions of time to drill, they've been
14 asking for, you know, shut-ins. So in the grand scheme of
15 things there doesn't -- the need to move these OCC cases
16 forward in the ab- -- or to the detriment of an orderly
17 process with the Division just doesn't seem to be, uhm --
18 be present.

19 So for those reasons Apache requests that
20 the OCC de novo hearings be stayed pending the outcome of
21 the related, inextricably-entwined Division cases.

22 Thank you.

23 HEARING EXAMINER ORTH: Thank you, Ms. Bennett.

24 Ms. Hardy.

25 MS. HARDY: Yes. Thank you, Madam Examiner.

1 Ms. Bennett is correct that we didn't
2 actually have argument on the Motion for Referral at the
3 last hearing, because we postponed it due to the pending
4 Motion for Stay that was filed.

5 So I don't know if you, if Madam Examiner
6 would request that we provide argument on the Motion for
7 Referral. It sounds like not. I think it's been fully
8 briefed. I'm happy to answer questions on it if there are
9 any.

10 But with respect to Apache's motion for a
11 stay, we agree that there should absolutely be one
12 Commission hearing on all of these pending Applications.
13 The Commission should have all of the information that's
14 relevant before it to evaluate competing proposals in
15 order to protect correlative rights of all of the parties,
16 and also to protect due process rights. I think that's an
17 important issue.

18 And in a sense the argument that the
19 Commission should proceed first to potentially foreclose
20 the Division applications is inconsistent with the
21 Commission and the Division's obligation to protect
22 correlative rights and with the due process rights of the
23 parties.

24 And the map that Apache provided shows that
25 the competing applications are intertwined and should be

1 heard together, and that hearing all of the applications
2 ultimately before the Commission would facilitate the
3 purposes of the Oil and Gas Act and the obligations to
4 protect correlative rights.

5 I want to address a couple of the claims
6 that Ascent asserted in its Reply to MewBourne's Response.

7 Ascent made the claim that Mewbourne and
8 Apache cannot challenge the Division Pooling Order in the
9 cases that are pending before the Commission, and that
10 allegation doesn't make sense. That is the exact purpose
11 of the de novo hearing; it's a hearing to address the
12 applications that have been filed by Apache and Ascent so
13 the Commission would hear all of the evidence and decide
14 whether to grant those Applications. So I don't think
15 Ascent's argument on that issue is correct.

16 Also contrary to Ascent's claims, Mewbourne
17 is not asking the Commission or the Division to make any
18 determination on its potential contract claim regarding
19 Ascent. Mewbourne has filed competing pooling
20 applications involving the west half of Sections 28 and
21 33, and those are the applications that must be heard.

22 There's is no allegation or information
23 regarding the contract issues in those applications. They
24 are pooling applications. Mewbourne had only provided
25 information regarding the contract issues to explain why

1 it had filed its applications when it did and to support
2 its motion for referral to the Commission.

3 So this is not a contract issue that
4 Mewbourne is asking for a decision on.

5 Ascent's claimed the differences in
6 ownership between the west half/west half and east half
7 also don't support separate hearings. I agree with Ms.
8 Bennett that those actually show why the cases should be
9 heard together. And it seems to me that Ascent's claim is
10 that it is actually entitled to claim credit in the
11 Commission hearing for Mewbourne's ownership interest that
12 it's obtained by assignment and that it held before the
13 Division heard Ascent's cases. There is no precedent that
14 supports that idea. I think it's inconsistent with prior
15 decisions, and the Division and Commission can evaluate
16 ownership interest in these cases as they do in any other
17 cases. That's not unusual, and it certainly doesn't
18 provide a basis for hearing the east half/west half cases
19 separately from the west half/west half.

20 Ascent's arguments regarding the
21 jurisdiction of the Division and the Commission ignores
22 the New Mexico statutes that give both entities concurrent
23 jurisdiction to prevent waste and protect correlative
24 rights, and also authorizes the Division Director to refer
25 applications to the Commission, and instead of citing

1 those provisions, Apache relies on case law from other
2 states, I think primarily Oklahoma. And if Ascent wants
3 to raise jurisdiction issues regarding the applications, I
4 think those issues should be fully briefed and decided,
5 and not peripherally addressed in a response to a Motion
6 for Stay. I don't think they are appropriate for
7 consideration here.

8 Also, given the timing of the upcoming
9 September 17th hearing a stay would be appropriate, even
10 if the Division just needs more time to evaluate how it
11 will proceed. That date is quickly approaching and the
12 parties need to exchange exhibits, so I think the faster
13 we have a decision on this issue the better for all
14 parties.

15 So, in conclusion, there should be one
16 Commission hearing on all of the pending applications to
17 protect correlative rights, prevent waste, and protect the
18 parties' due process rights.

19 Thank you.

20 HEARING EXAMINER ORTH: Thank you very much, Ms.
21 Hardy.

22 Mr. Padilla, do you have anything to add in
23 relation to the Motion for Referral or the Motion For
24 Stay?

25 MR. PADILLA: No, Madam Examiner. Earlier we

1 had said we didn't have an objection to moving all these
2 cases to the Commission, but I respect the arguments made
3 by the other parties, so we are not taking issue with
4 whether or not you ought to -- in other words, you should
5 consider the arguments. We're not taking part in any --
6 one way or the other, whether they go to the Commission or
7 whether they stay with the Division and then go to the
8 Commission.

9 So I don't have anything to add.

10 HEARING EXAMINER ORTH: Thank you, Mr. Padilla.
11 Mr. Savage.

12 MR. SAVAGE: Yes, Madam Examiner. Well, that's
13 a lot of ground to cover, so at least bear with me as I
14 work through what Ms. Bennett and Ms. Hardy stated.

15 So first looking at the area of overlap
16 that's in dispute, the west half/west half.

17 So the west half/west half concerns an
18 area, lands for which the Division has already issued an
19 Order, a standing Order that's binding upon the parties.

20 You know, it is true that there is
21 concurrent jurisdiction on issues of conservation, waste,
22 and correlative rights, but that's stated in 7-2-6 under
23 very general terms. That's a general statute. The
24 statute that's more specific is 7-2-13, and that invokes
25 the power to request a de novo hearing. And once that

1 more specific statute is invoked, the general statute of
2 concurrent jurisdiction for conservation does not override
3 the dictates and requirements of a specific statute.

4 That's basic general cannons of statutory
5 construction.

6 Ms. Hardy points out that we rely on
7 Oklahoma case law, from another state. Well, it so
8 happens that Oklahoma's pooling statutes happen to be
9 almost identical to New Mexico's pooling statutes. Very
10 similar if not identical in a number of places.

11 Unfortunately New Mexico doesn't have case
12 law that addresses this question. The closest it comes to
13 it seems to be Continental, the Continental court. And
14 so -- you know, we selected a case, Chesapeake v.
15 Burlington that is very related to the Continental court's
16 decisions, and it points out that once the Division makes
17 a decision and issues an Order, for the Division to go
18 back and revisit that and to undermine that decision is
19 prohibited by res judicata, not to mention that the
20 specific regulation that the Division applies for
21 interpretation of 7-2-13, which is the de novo statute, is
22 very -- very much limits the Division and Commission about
23 what it can hear during a de novo hearing, and that is
24 specifically the matter or the specific singular
25 proceeding that the examiner decided on.

1 So the statute, the regulation, the related
2 case law from states that have a lot of experience
3 litigating these matters, it all lines up to show that the
4 Division -- uh, basic Civil Procedure 101, the Division
5 cannot go back and vacate its Order. The only way -- the
6 way of only posture on this is to go -- is to go forward,
7 and statutes provide for the Division to progress and make
8 a decision on the west half/west half.

9 So the approaches of Apache and Mewbourne
10 contradict and undermine the statutes and the regulations
11 that govern proper procedural approaches, and we feel that
12 this is highly irregular.

13 Uhm, so there is a way, a very clean way to
14 allocate the west half/west half and the east half/west
15 half, and that would be to address the issues that are
16 unique to the west half/west half under the de novo
17 statute and regulation and get those issues addressed and
18 considered, and clear the pathway for the east half/west
19 half, which has very different considerations, issues --
20 very different facts.

21 And once the unresolved issues are resolved
22 by the Commission, then the Division would be in the best
23 procedural posture to address the remaining applications
24 for which it has not issued an Order, and therefore there
25 is no prohibition against issuing an Order for the east

1 half/west half.

2 We also have the issue of the BLM's
3 interest in this, and we don't know what that is. We know
4 that in the original underlying hearing that there was
5 much discussion about the jurisdiction of the BLM in
6 relation to the jurisdiction of the Division and
7 Commission.

8 We feel that -- you know, not necessarily
9 that the Commission, you know, can't hear this because of
10 the BLM's interest, but because of the decision by the BLM
11 to approve Ascent's development plan, we feel very
12 strongly that that should be a factor, it should be one of
13 the factors that comes into play, an important factor with
14 high priority that comes into play, along with the
15 traditional factors that the Commission consider, such as:
16 working interest; new geology; operations, prudent
17 operations; who initiated the process first, and those
18 kinds of considerations.

19 So the BLM issue seems to add another
20 important factor to consider, and, uhm...

21 And then the -- the question about the --
22 that Ms. Bennett raised about the no lease expiration
23 issue, Ascent has, you know, been pursuing this for the
24 past two and a half years, applying early in 2018 with its
25 pooling application and that being delayed and continued,

1 and, you know, finally getting an opportunity to have a
2 hearing August 20, 2019. They persevered through this.
3 They couldn't apply -- you know, Apache -- Apache points
4 out that they haven't drilled or developed yet, but
5 that's because they couldn't apply for the APDs until they
6 received the Pooling Order to get working interests in
7 every tract in the unit. They have done that, and they've
8 applied to the -- now have already applied for the APDs,
9 and that seems to be progressing along without concern.

10 And then Ms. Bennett points out that in
11 today's market that there's a question about whether or
12 not Apache would drill or other parties would drill.

13 Let me just point out that Apache -- I mean
14 Ascent -- has met the timeline, drilling timeline on every
15 Order that it has received by the Division at this point.
16 It has drilled six wells in New Mexico and those wells
17 come in with higher-than-anticipated in terms of
18 production.

19 So Ascent has demonstrated that it is
20 willing to drill even under these conditions. It's going
21 forward, it intends to drill under the Pooling Order that
22 it has received for the west half/west half lands. And,
23 you know, it has never -- Apache was the one who issued
24 the public press release stating that they are shutting in
25 wells left and right under these conditions. And that's

1 typical of the -- of a lot of larger companies that don't
2 have the agility of a smaller company. The larger
3 companies will shut in. Historically that's been true,
4 you know, in the Permian Basin/Delaware Basin from the
5 1980s to about 2004, 2010 when the -- most of the
6 operators were the smaller operators that kept the economy
7 going and the industry in this area, and then during the
8 booms the larger companies would come in.

9 So Ascent has the agility, they have the
10 interest, and they have the intent, and they plan to
11 pursue this development of the west half/west half.

12 I don't see there's anything else here.

13 The stay would not be appropriate. It
14 would push back the timeline for being able to hear these
15 cases, at least. You know, actually it took 18 months to
16 have a pooling hearing on the west half/west half. Now if
17 you want to have pooling hearings on the east half/west
18 half and the ones that Apache proposes for the north half
19 of 28, 29 and 30, then you're talking about pushing the
20 timelines back another 18 months, if you look at the
21 history and pattern of what has preceded.

22 You know, we feel like this is highly
23 prejudicial to Ascent and that those kinds of burdens and
24 inconveniences should not be part of the proposed
25 procedure.

1 So for those reasons, Ascent asks that the
2 Motion to Stay be denied, and we look forward to being
3 able to at some point look at the Motion to Refer.

4 Thank you, Madam Examiner.

5 HEARING EXAMINER ORTH: All right. Thank you
6 very much, Mr. Savage.

7 Mr. -- oh, Ms. Bennett if you have anything
8 to add.

9 MS. BENNETT: I just wanted to make a couple of
10 points in rebuttal to what Mr. Savage stated, if that's
11 okay with the -- with Madam Examiner.

12 HEARING EXAMINER ORTH: Yeah, that's fine.

13 MS. BENNETT: Thank you. I wasn't trying to
14 shortcircuit anyone's time here. If there is someone else
15 who should be going on before me, I will defer to them,
16 but in the absence of that I will proceed.

17 HEARING EXAMINER ORTH: Please go ahead.

18 MS. BENNETT: Thank you.

19 Apache agrees with Mewbourne that the
20 Division has jurisdiction over Mewbourne's pooling
21 applications and over the pooling applications that Apache
22 will be filing.

23 There's nothing in the statutes or
24 regulations in the Oil and Gas Act or its implementing
25 regulations that would divest the Division of

1 jurisdiction, especially when, as here, Apache's proposals
2 cover different acreage. It certainly is competing as to
3 a portion of Section 28, but it's different even within
4 Section 28 as to what is pending before the Commission.

5 So there's no prohibition on the Division
6 asserting jurisdiction.

7 Apache also agrees that Apache and
8 Mewbourne absolutely have the right to challenge Ascent's
9 Pooling Order for the west half/west half, which is what
10 is pending before the Commission.

11 Mr. Savage said that it's Ascent's position
12 that these cases can be segregated or allocated, but they
13 really can't be, as I established during my opening
14 remarks, because Apache's interests are perpendicular to
15 and traverse both the east half and the west half of the
16 west half of Section 28. So any issues, factual issues
17 that Mr. Savage is relying on to distinguish the east
18 half/west half cases from west half/west half cases
19 necessarily affect Apache as a whole.

20 So there is no way to distribute Apache's
21 proposals to two separate proceedings pending before two
22 separate tribunals, especially not if there are facts that
23 go to Apache's proposal as a whole, as Mr. Savage
24 suggests.

25 Uhm, Ms. Hardy mentioned that there could

1 be some ownership issues and some crediting of Mewbourne's
2 interest, and I am not familiar with that, but what I can
3 say sitting here is that if there is a difference in
4 ownership interest then that will have an effect on who
5 the pooled parties are, what Ascent's ultimate interest is
6 in the unit, and that's another reason why the OCC
7 Commission case should be stayed.

8 Apache, like Ascent, has devoted a
9 significant amount of time and resources to work with
10 surface owners, the BLM. They are in the same position
11 as Ascent, and what Apache is advocating here is for a
12 fair process going forward that allows Apache the ability
13 to fully and adequately protect its property rights and
14 its acreage.

15 And there's no reason these cases can't be
16 heard in December. It's not like this is an interminable
17 process that we are talking about here. So we can, you
18 know, move this forward to the December OCC hearing.

19 So this isn't necessarily an infinite
20 timeline but rather there's some finite processes,
21 especially that the Division has instituted recently to
22 make the docket more efficient and move things along more
23 efficiently.

24 And I think I may have misspoken just a
25 minute ago when I said there's no reason that the cases

1 can't be heard in December. I meant the competing cases
2 before the Division, because I understand that the
3 Division, based on our conversations this morning the
4 Division's docket for contested cases is somewhat
5 constrained, and this would be a complex case involving
6 three parties and so wouldn't be able to be heard right
7 after a Division docket, like some cases.

8 So I think I did misspeak when I said OCC
9 hearings. I meant the Division hearings.

10 For those reasons and for the reasons
11 stated in our briefing, Apache believes it's appropriate
12 to stay the Commission cases.

13 Thank you very much, Madam Examiner.

14 HEARING EXAMINER ORTH: Thank you, Ms. Bennett.

15 Ms. Hardy, anything to add?

16 MS. HARDY: Just very briefly, Madam Examiner.

17 I do agree with Ms. Bennett that the BLM
18 issues that Mr. Savage has raised and the factual issues
19 impact all of the applications, so those issues further
20 warrant hearing all of them in one hearing instead of
21 separating them.

22 And with respect to delay, I don't think
23 anyone expects at this point there will be another
24 18-month delay, and think that any minimal delay that
25 would occur would be, uhm -- should be acceptable to the

1 parties, and it's more important for the Commission to
2 have all the information to evaluate these competing
3 applications to get the decision right and evaluate
4 everyon's interest. I think that's more important than
5 pushing a hearing through without a full picture before
6 the Commission.

7 And just with respect to the ownership
8 interest, I just wanted to clarify that Mewbourne has a
9 55 percent interest in its spacing units and in Ascent's.
10 That's a very significant interest. And that applies to
11 the east half/east half and the -- east half of the west
12 half and to the west half of the west half. So that's
13 another reason that I think it's important for the
14 Commission to hear all of the cases in one hearing.

15 Thank you.

16 HEARING EXAMINER ORTH: Thank you, Ms. Hardy.

17 Mr. Padilla, anything to add either on the
18 Motion for Referral or the Motion for Stay.

19 (Note: No response.)

20 HEARING EXAMINER ORTH: I'm sorry. I didn't
21 hear you.

22 MR. PADILLA: No, I don't have anything to add.
23 Thank you.

24 HEARING EXAMINER ORTH: All right. Thank you.

25 Mr. Savage, I will give you the last word

1 here to add to anything you have already said about either
2 the Motion for Referral or the Motion for Stay.

3 MR. SAVAGE: Madam Examiner, thank you.

4 So this question of jurisdiction of the
5 Division, we think that's a very important procedural
6 question that should not be taken lightly. Not only did
7 the Division approve and issue the order for the west
8 half/west half for Ascent, but it also officially in that
9 Order denied Apache's laydown unit. And that laydown
10 unit, you know it may involve other lands, as Ms. Bennett
11 points out, but the Division officially ruled that all of
12 those lands, including the lands that infringe upon the
13 west half/west half are denied.

14 So for the Division to come back in -- you
15 know, there's different ways to challenge and vacate a
16 standing Order. One way would be to submit an Application
17 to Reopen and Reconsider the Order, which is a valid way
18 for the Division to look at new evidence or procedural
19 deficiencies, or other matters that the Division has
20 jurisdiction to address, and to look at that Order.

21 That is not the route that Mewbourne and
22 Apache selected. Mewbourne and Apache selected -- they
23 made a specific request for a de novo hearing under the
24 statute, 7-2-13 and under the regulation that applies to
25 the statute, and once that's invoked the Division has no

1 jurisdiction to go back and vacate that Order. It has to
2 go forward to the Commission. The Commission is the only
3 one that has the jurisdiction under the statute and the
4 regulations to address those Orders.

5 And that's apparent in the case law in oil
6 and gas states that litigate this issue thoroughly. And
7 it's basic civil procedure, basically what it comes down
8 to.

9 So the west half/west half and east
10 half/west half, they are very different. Ascent has a
11 right to have the de novo hearing heard in a timely
12 manner, and we hope that the Division will respect that
13 and let the Commission pursue its statutory directive.

14 Thank you, Madam Examiner.

15 HEARING EXAMINER ORTH: All right. Thank you,
16 Mr. Savage.

17 Mr. Cox, do you have questions of any of
18 the counsel in relation to either the Motion to Refer or
19 the Motion for Stay?

20 MR. COX: No, Madam Examiner, I don't have any
21 questions at this point.

22 HEARING EXAMINER ORTH: Thank you.

23 Mr. McClure.

24 MR. McCLURE: No, ma'am, I have no questions at
25 this point.

1 HEARING EXAMINER ORTH: All right. Thank you
2 very much. Thank you, all of you, Counsel, and I will do
3 what I can to see that the motions decisions are
4 forthcoming on the motions sooner rather than later.

5 MS. BENNETT: Thank you, Madam Examiner.

6 MS. HARDY: Thank you.

7 MR. SAVAGE: Thank you.

8 (Time noted 10:01 a.m.)

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1 STATE OF NEW MEXICO)

2 : SS

3 COUNTY OF TAOS)

4 REPORTER'S CERTIFICATE

5 I, Mary Therese Macfarlane, a duly licensed
6 Certified Court Reporter for the State of New Mexico, do
7 hereby certify that on Thursday, August 20, 2020, the
8 proceedings in the above-captioned matter were taken
9 before me; that I did report in stenographic shorthand the
10 proceedings set forth herein, and the foregoing pages are
11 a true and correct transcription to the best of my ability
12 and control.

13 I further certify that I am neither employed by
14 nor related to nor contracted with (unless excepted by the
15 rules) any of the parties or attorneys in this case, and
16 that I have no interest whatsoever in the final
17 disposition of this case in any court.

18 /s/ Mary Macfarlane
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