

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: 21489 - 21491

APPLICATION OF APACHE CORPORATION  
FOR COMPULSORY POOLING,  
EDDY COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS

EXAMINER HEARING

NOVEMBER 5, 2020

SANTA FE, NEW MEXICO

This matter came on for virtual hearing before  
the New Mexico Oil Conservation Division, HEARING OFFICER  
FELICIA ORTH and TECHNICAL EXAMINERS DYLAN ROSE-COSS on  
Thursday, November 5, 2020, through the Webex Platform.

Reported by: Irene Delgado, NMCCR 253  
PAUL BACA PROFESSIONAL COURT REPORTERS  
500 Fourth Street, NW, Suite 105  
Albuquerque, NM 87102  
505-843-9241

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A P P E A R A N C E S

For the Applicant:

EARL DEBRINE  
MODRALL SPERLING ROEHL HARRIS & SISK PA  
500 4th Street, NW, Suite 1000  
Albuquerque, NM 87102  
505-848-9710

For Ascent Energy:

ABADIE & SCHILL, PC  
DARIN C. SAVAGE  
214 McKenzie Street  
Santa Fe, NM 87501  
970-395-4401  
darin@abadieschill.com

For Mewbourne:

DANA HARDY  
HINKLE SHANOR LLP  
P.O. Box 0268  
Santa Fe, NM 87504  
505-982-4554

I N D E X

CASE CALLED	
STATUS CONFERENCE	03
REPORTER CERTIFICATE	10

1 HEARING EXAMINER ORTH: Let's move then to our  
2 next three matters, this is 21489, 21490, 21491. Apache  
3 Corporation is the applicant, compulsory pooling  
4 applications related to the Taco 28/30 development area. I  
5 see that Modrall Sperling represents the applicant. Who  
6 here is from Modrall Sperling?

7 MR. DEBRINE: Madam Examiner, Earl DeBrine with  
8 Modrall Sperling for the applicant, Apache Corporation.

9 HEARING EXAMINER ORTH: Hello, Mr. Debrine. And  
10 then I saw that we have Mewbourne having entered an  
11 appearance. Who here -- is that you, Ms. Hardy?

12 MS. HARDY: It is. It is. Dana Hardy on behalf  
13 of Mewbourne.

14 HEARING EXAMINER ORTH: All right, thank you.  
15 And we also have Ascent Energy, Abadie & Schill.

16 MR. SAVAGE: Good morning, Madam Examiner. Darin  
17 Savage on behalf of Ascent Energy LLC.

18 HEARING EXAMINER ORTH: Good morning, Mr. Savage.  
19 Pause for a moment to see if there are any other  
20 appearances.

21 (No audible response.)

22 HEARING EXAMINER ORTH: Hearing none, I  
23 understand we are having a status conference this morning.

24 MR. DEBRINE: Correct, Madam Examiner.

25 HEARING EXAMINER ORTH: Mr. Debrine, would you

1 like to kick us off?

2 MR. DEBRINE: We are here, I believe, to discuss  
3 the hearing date for the consolidated cases, not only the  
4 Apache cases, but the competing cases that have been filed  
5 by Mewbourne and Ascent.

6 I note that recently Ascent filed a motion to  
7 dismiss these cases. That motion has not been briefed, and  
8 I don't think it should be considered today, but we -- I  
9 have talked to at least Ms. Hardy about a potential date. I  
10 have not spoken to Mr. Savage, but we were thinking hearing  
11 dates for all the consolidated cases in late January early  
12 February would work. And we discussed that time frame with  
13 our witnesses, and that works for Apache, and I believe it  
14 works for Mewbourne, but Ms. Hardy can speak for Mewbourne  
15 and Mr. Savage can speak for Ascent.

16 HEARING EXAMINER ORTH: Ms. Hardy?

17 MS. HARDY: Yes, Madam Examiner. I agree with  
18 Mr. Debrine. We believe a hearing date in late January or  
19 early February would work. I would need to confirm final  
20 dates with Mewbourne's witnesses once we have those, but  
21 that time period, I believe, is agreeable for Mewbourne.

22 HEARING EXAMINER ORTH: And Mr. Savage?

23 MR. SAVAGE: Yes, Madam Examiner, Ascent Energy  
24 did file a motion to dismiss these cases. We feel that  
25 there remains some unanswered questions, unresolved issues

1 regarding what constitutes A proper competing application at  
2 the Division level.

3 The Commission order ruled on the motion to stay,  
4 and they left it, it looks like based on the order that was  
5 sent to us, it looks like they left the Division to decide  
6 what cases will be decided or heard, and we fell like there  
7 still remains some questions in this regard.

8 And I agree with Mr. Debrine. I think that  
9 these -- the issues have been briefed and there is no need  
10 to brief them additionally unless Mewbourne and Apache wish  
11 to respond to this specific motion to dismiss, but we feel  
12 it's important that these issues be presented and argued on  
13 the record; they have not been addressed.

14 We feel like this should be done prior to  
15 deciding which dates should be heard because if it turns out  
16 that, for example, these cases are not proper competing  
17 applications under issues of res judicata, plain language of  
18 the statutes involved, case law, then deciding on the dates  
19 for these cases would not be proper.

20 HEARING EXAMINER ORTH: All right. So one thing  
21 suggests itself, but I don't have any strong feelings about  
22 any of this. One thing that suggests itself is, we are  
23 sitting on November 5, is that the motion to dismiss be  
24 briefed, and then could be argued as part of the December 3  
25 docket. That wouldn't require us to set it for special

1 hearing; it would simply be part of that session. And it  
2 would still give us plenty of time then to set it in late  
3 January or early February. How does that sound?

4 MR. DEBRINE: Madam Examiner, that's fine, but  
5 then I think we -- one of the Apache cases will be heard  
6 alongside, and if the motion to dismiss is granted, then the  
7 Apache cases won't be heard with the Mewbourne and Ascent  
8 cases, but those are already set. The Commission has  
9 already ruled they could be heard in a consolidated hearing.

10 This is a new motion filed by Ascent raising  
11 basically issues raised in prior briefing, we will argue  
12 that on the 3rd, but I think we ought to have a date set for  
13 hearing with respect to the -- with respect to the cases  
14 because this is the third time we have been before the  
15 Division, and the last time we were directed to get together  
16 and figure out a date that works for everybody. So I think  
17 we ought to set it, and the Apache cases may not be there,  
18 but we will have a date for everything else.

19 HEARING EXAMINER ORTH: That's -- that does make  
20 sense, Mr. Debrine, except to me that we would at least get  
21 the dates on the calendar. So I will say that the, the  
22 second hearing session in January, the later session is the  
23 21st. The early hearing session in February is February 4.  
24 I know, without having numbers in front of me, that we do  
25 have contested matters already scheduled on both of those

1 dates.

2           And I'm not adverse, based on the experience now  
3 that Marlene and I have with these contested matters, which  
4 is that the majority of them settle before we actually get  
5 to special hearing. Just understand that since I have  
6 already set contested cases on those dates, that those would  
7 go first if in fact they did not settle. So these would be  
8 the second contested hearing. As you know, we are willing  
9 to go all of Thursday and also all of Friday as necessary to  
10 accommodate the contested hearings. Would there be any  
11 other dates proposed?

12           MS. HARDY: Madam Examiner, is the second docket  
13 in February also currently booked with contested hearings?

14           HEARING EXAMINER ORTH: Again, there is one,  
15 there is one on January 21, one on February 4, one on  
16 February 18. And I know Marlene can correct me if I'm  
17 wrong, but I have a pretty distinct memory of that from our  
18 last session.

19           MS. SALVIDREZ: You are correct.

20           HEARING EXAMINER ORTH: Thanks, Marlene. So  
21 here's the thing. If you all wanted to propose a different  
22 date which you could have as a dedicated date, you would  
23 have to -- you would have to get together and propose that.  
24 And then all I would do is check with Marlene to make sure  
25 that we're not overlapping with an OCC hearing, for example,

1 so that she's not in two places at one time, and I have to  
2 check the availability with the court reporter.

3 So with that, there are plenty of other dates.  
4 So that's the alternative, and you don't have to do that  
5 right now. You can propose -- communicate with one another  
6 and then propose it in an e-mail after we are done here.

7 MR. DEBRINE: Madam Examiner, that  
8 sounds satisfactory. Let me just clarify, December 3 we are  
9 having a motion hearing on that date, and the motion to  
10 dismiss will be briefed. Is that correct? Am I  
11 understanding that correctly?

12 HEARING EXAMINER ORTH: I was throwing that out  
13 as a natural fit in our calendar. Okay. Were there  
14 objections? And I understood your, your statement there,  
15 Mr. Debrine, we do want to have a hearing date set  
16 regardless. I just thought it would be a helpful to have  
17 the motion argued before we got to the hearing date.

18 MR. DEBRINE: Whatever your preference is, Madam  
19 Examiner. We can have the motion heard on the 3rd. I think  
20 the parties can get together, because we've got to set the  
21 other cases for hearing, and we will figure out what is a  
22 good date for us. As I have indicated, I already checked  
23 with my witnesses with regard to the January and February,  
24 and looking at my calendar, and I will just throw it out  
25 there for Darin and Dana, February 8, the week of February 8



1 looks clear to me. So if you guys want to look at that date  
2 for a contested hearing date and a special hearing date,  
3 then we can start with that.

4 HEARING EXAMINER ORTH: Thank you for that,  
5 Mr. Debrine. Let me just say right now that at the moment I  
6 have a two-day hearing for another agency on the 10th and  
7 11th. So the 8th, 9th and 12th are just fine, but the 10th  
8 and 11th I already have scheduled.

9 MR. DEBRINE: Okay. Then I think we will just  
10 talk amongst ourselves and we'll get back to you and let you  
11 know. Otherwise we will see everybody on the 3rd I guess.

12 HEARING EXAMINER ORTH: All right. And would  
13 you -- would you please, when you talk amongst yourselves,  
14 also propose dates that I can put into an order for your  
15 briefing on the motion?

16 MR. DEBRINE: Sure. We'll do that. We will send  
17 you a draft order.

18 HEARING EXAMINER ORTH: Great. Thank you very  
19 much. Is there anything else we need to talk about as part  
20 of this status conference?

21 MR. DEBRINE: I don't think so.

22 HEARING EXAMINER ORTH: All right. Well, thank  
23 you all.

24 MR. SAVAGE: Thank you, Madam Chair.

25 HEARING EXAMINER ORTH: Thank you.

1 STATE OF NEW MEXICO  
2 COUNTY OF BERNALILLO

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REPORTER'S CERTIFICATE

I, IRENE DELGADO, New Mexico Certified Court Reporter, CCR 253, do hereby certify that I reported the foregoing virtual proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings to the best of my ability.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case and that I have no interest in the final disposition of this case.

I FURTHER CERTIFY that the Virtual Proceeding was of poor to good quality.

Dated this 5th day of November 2020.

/s/ Irene Delgado  
\_\_\_\_\_  
Irene Delgado, NMCCR 253  
License Expires: 12-31-20