

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

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

Application of Mewbourne Oil
Company for Compulsory Pooling,
Eddy County, New Mexico. Cases Nos. 21361-21364

Application of Ascent Energy,
LLC for Compulsory Pooling,
Eddy County, New Mexico. Cases Nos. 21393-21394

Application of Apache
Corporation for Compulsory Pooling
and Approval of a Horizontal
Spacing Unit for a Potash Development.
Area and Pilot Project,
Eddy County New Mexico. Case Nos. 21489-21491

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MOTION FOR CONTINUANCE

THURSDAY, SEPTEMBER 9, 2021

This matter came on for hearing before the
New Mexico Oil Conservation Division, William
Brancard, Esq. Hearing Examiner, Kurt Simmons,
Technical Examiner, on September 9, 2021, via Webex
Virtual Conferencing Platform hosted by New Mexico
Department of Energy, Minerals and Natural Resources

Reported by: Mary Therese Macfarlane
New Mexico CCR #122
PAUL BACA PROFESSIONAL COURT REPORTERS
500 Fourth Street NW, Suite 105
Albuquerque, New Mexico 87102
(505) 843-9241

A P P E A R A N C E S

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For Mewbourne Oil Company: Dana S. Hardy, Esq.
Hinkle Shanor, LLP
P.O. Box 2068
Santa Fe, NM 87504-2068
(505) 982-4544
dhardy@hinklelawfirm.com

For Ascent Energy: Darin C. Savage, Esq.
Abadie & Schill, PC
214 McKenzie Street
Santa Fe, NM 87501
(970) 385-4401
darin@abadieschill.com

For Apache Corporation: Deana M. Bennett, Esq.
Modrall, Sperling, Roehl,
Harris & Sisk
Post Office Box 2168
Albuquerque, NM 87103-2168
deana.bennett@modrall.com.

For Eog Operating: Ernest L. Padilla, Esq.
P.O. Box 2523
Santa Fe, NM 87504
(505) 988-7577
PadillaLawNM@outlook.com

C O N T E N T S

CASE NOS.		PAGE
21361-21364, 21393, 21394, 21489-21491		
Cases Called:		3
Tentatively set for contested hearing on December 3, 2021		20

1 (Time noted 8:22 a.m.)

2 EXAMINER BRANCARD: All right.

3 Now we have Cases 21361, -362, -363, -364,
4 Mewbourne Oil Company; 21393, -394, Ascent Energy; 21489
5 21490, 21491 Apache; and a whole bunch of other case
6 numbers that get mentioned in the pleadings.

7 So Mewbourne Oil Company, Hinkle Shanor.

8 MS. HARDY: Good morning, Mr. Hearing Examiner.
9 Dana Hardy of Hinkle Shanor on behalf of Mewbourne.

10 EXAMINER BRANCARD: All right.

11 I think you're a little soft on the voice
12 there, Dana, so move your microphone, maybe.

13 MS. HARDY: Okay. Let me try to.

14 EXAMINER BRANCARD: That works better, whatever
15 you just did.

16 MS. HARDY: Okay. I'll speak louder. Thank
17 you.

18 EXAMINER BRANCARD: Ascent Energy.

19 MR. SAVAGE: Good morning, Mr. Hearing Examiner.
20 Darin Savage here for Ascent Energy.

21 EXAMINER BRANCARD: Ascent. I get that wrong
22 all the time.

23 Apache.

24 MS. BENNETT: Good morning, Mr. Hearing
25 Examiner. Deana Bennett, Modrall Sperling, on behalf of

1 Apache Corporation.

2 EXAMINER BRANCARD: All right. So as I
3 understand it these are cases that have been remanded -- I
4 don't know what the correct term is -- sent to us by the
5 Commission to hear.

6 We have heard other cases earlier, I
7 believe, both at Ascent and Apache -- the Division has,
8 that is -- so I think we need to work through several
9 issues here today, No. 1 being: When do we want to have
10 this big, spectacular hearing that we were supposed to
11 have yesterday? And you heard the dates that Marlene
12 mentioned earlier.

13 I think we need to deal with the issue of
14 the prior Division hearings on these Cases 16481, 16482,
15 and I believe there were a couple of others, and do we
16 want to incorporate the record from those proceedings into
17 this proceeding.

18 I think we need to figure out what the
19 order of the presentation is for these cases at hearing.

20 We need to figure out what to do with
21 16481, and does Mr. Savage need to redo it all again. The
22 Commission has said no, so I guess we go with their
23 wishes.

24 And I think there's also a request to bring
25 in all the pleadings and stuff that were before the

1 Commission.

2 And then finally I have a personal request
3 in this case, which we will get to at the end.

4 So, Mr. Savage, why don't you start us off
5 with what you would like to do today.

6 MR. SAVAGE: Well, Mr. Brancard, thank you.

7 You know, as I understood, this was a
8 status conference ultimately to decide a hearing date
9 because of the latest continuance in these cases. And
10 we've had several continuances previously. One was for an
11 ice storm that was unforeseeable, and now we have a Covid
12 incident. So these cases are being dragged out a little
13 bit.

14 The facts seem to change over the course of
15 the continuances. Certain assertions in the pleadings --
16 sorry, in the exhibits and in the testimony have changed.
17 For example, Ascent made the case that some of its
18 drilling specifications were superior to some of the other
19 applicants, based on BLM requirements. We recently
20 received Notice that some of the other parties have
21 changed those to match. So it seems to be kind of a
22 shifting playing field at this point. But, you know,
23 Ascent is sympathetic to the Covid issue and, you know, we
24 agreed to the continuance.

25 So I think you mentioned several issues on

1 this, and I'll just go through and pick the ones that I
2 think that are important on this, so for example, the
3 Cases of 16481 and 16482. And I believe Apache also had a
4 previous case at the Division level.

5 So Ascent feels that since these particular
6 cases being heard before the Division are ones that have
7 been sent back to the Division level after a valid Pooling
8 Order had been issued and granted operatorship to Ascent,
9 we feel that Ascent should have the opportunity, with the
10 Division's consent, of course, to select various items
11 from those cases to defend itself against the challenge of
12 that Order, because basically these new cases are
13 basically challenging and arguing kind of the divestment
14 of the current operator rights that Ascent has been
15 granted.

16 And Ascent has always been consistent in
17 its position on this, we've never wavered or changed our
18 position, and that is that we believe that the appellate
19 process should go forward to the OCC level, and that
20 the -- if there is a standing Order involved that the
21 cases should not be sent back to the Division unless a
22 particular Order is invalidated.

23 That has always been our position on that,
24 so, you know, there's no mystery there.

25 So, you know, we feel that Ascent should

1 have an opportunity to defend itself utilizing the
2 original cases from which the Order was issued.

3 And I can't remember, Mr. Brancard you may
4 have to remind me of the next large issue that's -- that
5 we should address.

6 EXAMINER BRANCARD: Well, I guess I
7 don't -- I'll say this for the benefit right now, try to
8 move this along. I don't disagree with you, Mr. Savage,
9 in the sense that the Commission has asked the Division to
10 hear competing applications, and we can't really judge
11 competing applications unless Ascent is willing -- is able
12 to also defend its original application at the same time.

13 So while we can streamline this a bit by
14 sort of incorporating the testimony that was given in the
15 first set of hearings for the Division, uh, as you say,
16 things have changed, there are new applications. I have
17 no objection to Ascent sort of defending its original
18 applications here also in this hearing, as necessary, so
19 the Division gets a full picture of what are all the
20 competing applications in this matter.

21 MR. SAVAGE: All right. Thank you.

22 And I believe the other question you raised
23 was the incorporation of the pleadings, the prior
24 pleadings.

25 You know, basically that's a request to

1 just make sure the record is complete on all the issues
2 that have been addressed, and procedural matters. You
3 know, we want the record to follow through the -- so
4 basically the hearing -- it looks to us that the hearings
5 at the Division level are really a part of the de novo
6 process. They were initiated by the federal applications,
7 after the federal applications were filed. The competing
8 parties are the parties filed competing applications.

9 It looks to us like the return to the
10 Division is part of this de novo process. And there's
11 been a lot of legal discussion surrounding this, and it's
12 basically just wanting to make sure the record is complete
13 on that, so in terms of the incorporation.

14 But those would not be motions or issues
15 that would take up time at the hearing at the Division
16 level, certainly would not confuse that matter. We would
17 want the hearing to go forward streamlined and
18 efficiently.

19 EXAMINER BRANCARD: The other issue is order of
20 presentation at the hearings.

21 MR. SAVAGE: Okay.

22 EXAMINER BRANCARD: My initial thought, Mr.
23 Savage, is Ascent would go last. I'm not sure who would
24 go first, though. Do you have any thoughts on this?

25 MR. SAVAGE: We would be open to discussion on

1 that. Ascent going last sounds reasonable to kind of
2 recap the proceedings.

3 EXAMINER BRANCARD: Okay. Let me see. I guess
4 we will move on to Ms. Hardy.

5 MS. HARDY: Yes. Thank you, Mr. Examiner.

6 Just to clarify a couple of matters.

7 Can you hear me?

8 EXAMINER BRANCARD: Yes.

9 MS. HARDY: Okay. Thank you.

10 So just to clarify with respect to the
11 Division and the Commission and the status.

12 Mewbourne's cases, of course, haven't been
13 heard at all, and two of those cases involve the east
14 half/west half of the acreage at issue and two involve the
15 west half/west half. So the Ascent cases that were heard
16 by the Division previously only competed with two of
17 Mewbourne's applications, and that would be the east
18 half/west half applications. So the west half/west half
19 has not been decided at any point by the Division or the
20 Commission.

21 So I just wanted that to be clear.

22 And I don't think the Commission has really
23 sent those cases back to the Division. I think the Orders
24 state that they stayed the de novo hearing process so that
25 the Division could hear the competing applications.

1 So that's my understanding of where we are.
2 But I do think that would involve, of course, considering
3 the actual competing applications in both the east
4 half/east half and west half/west half. So I think that's
5 really where we are procedurally.

6 As far as incorporating the prior record, I
7 think that as long as Mewbourne can refute what was in the
8 prior record, that would be okay, to the extent the
9 information is relevant. Mewbourne was in a different
10 procedural posture at that point, so things have changed.

11 And I think with respect to the fact
12 changes that have occurred, that could be addressed by the
13 parties submitting updated exhibits with their Prehearing
14 Statements prior to the hearing date that's agreed upon.

15 And on the order of presentation, uhm, I
16 think there are different ways we could do that. I think
17 if we want to look at which cases were filed first or --
18 that might make sense, but I think we're open to
19 discussion on that issue.

20 EXAMINER BRANCARD: Thank you. Okay.

21 Ms. Bennett.

22 MS. BENNETT: Thank you, Mr. Examiner.

23 I largely agree with what Ms. Hardy just
24 set out, and I do believe that -- you know, incorporating
25 the record from the provider proceeding seems a bit overly

1 burdensome. I think I heard Mr. Savage say that he would
2 rather, or he would be wanting to pull out certain items
3 from the prior proceeding.

4 I guess my thought is maybe the parties
5 should confer offline and propose to the Division a
6 Prehearing Order that addresses the questions that you
7 had, Mr. Examiner, including incorporating the record from
8 the prior proceeding, which portions, if any.

9 Incorporating the prior pleadings, I have
10 to disagree with Mr. Savage on that. I don't think those
11 are relevant to these cases.

12 And then the order of presentation, I think
13 we could confer on those topics and provide a draft of a
14 Prehearing Order to you, which might be more streamlined
15 than hashing that out here during this status conference.

16 An alternative of course, would be just to
17 have the parties present testimony for each of their
18 competing cases using the factors that the Division has
19 set out for competing cases, and sort of just start with
20 that, as the basis for the exhibits for these cases.

21 So that is -- that's sort of my big-picture
22 answer to all of your questions.

23 In terms of the hearing date, though, which
24 was your very first question, Apache's preference would be
25 December 2nd, I guess, out of the dates that you

1 identified or that Ms. Salvidrez identified. I'm not sure
2 what the other parties' preferences are in terms of dates.

3 EXAMINER BRANCARD: All right. Well, we may
4 need to do a special hearing docket for this, given the
5 number of applications here. But yes.

6 So you prefer earlier than January,
7 December rather than January. That's your preference, Ms.
8 Bennett?

9 MS. BENNETT: Not necessarily. I guess I didn't
10 realize when I was conferring with Apache that there would
11 be January dates that we would have available. I was just
12 thinking as between December 2nd and December 16th that
13 December 2nd is preferable, given some other obligations
14 that we have. But I think the January hearing date would
15 most likely work for Apache, as well.

16 EXAMINER BRANCARD: Okay. I'll go back quickly
17 to Mr. Savage. Ms. Bennett has proposed trying to work
18 some of these things out among the parties. Do you think
19 that's workable?

20 MR. SAVAGE: Thank you.

21 EXAMINER BRANCARD: Just prehearing decisions
22 now.

23 MR. SAVAGE: Our feeling on this is that the
24 legal issue of being able to defend oneself against a
25 collateral attack on a standing Order is very important.

1 We feel that the more the Division has of the record, of
2 the original record, and the OCC does, the better position
3 they are in to be informed.

4 In terms of what materials are relevant
5 under the original cases, we feel that all the materials
6 being part of the record that the Division would be able
7 to navigate and decide that, rather than if the parties,
8 you know, got together and tried to select what should be
9 appropriate, because I doubt we would reach an agreement
10 on this. In these particular cases we have not been able
11 to reach much of an agreement, except for the willingness
12 to do continuances as the need arises.

13 So, you know, we -- Ascent would certainly
14 not go back and reiterate the entire case. We would be
15 very selective on what we would present and what we feel
16 needs to be defended, and I believe that the Division and
17 the OCC could well navigate that presentation, as needed.

18 So I don't believe there is a need to
19 confer on that particular issue.

20 EXAMINER BRANCARD: Ms. Hardy, any thoughts?
21 Quickly.

22 MS. HARDY: Sure. Mr. Examiner, I would agree
23 with Ms. Bennett. To me it makes sense for Ascent to
24 propose certain items that it wants to include in the
25 record, because I don't know that we would agree to

1 include everything since Mewbourne was in a different
2 position at that point. And I know that Ascent's exhibits
3 include, I believe, almost all of their exhibits from the
4 initial hearing, so by including those in their exhibits,
5 I think they have basically done what Mr. Savage is
6 talking about.

7 If there are other matters that they want
8 to include, I think that Mewbourne should have an
9 opportunity to review them and determine whether they
10 should be incorporated, because the facts have changed and
11 we are in a different situation at this point. That's the
12 reason that we're here.

13 EXAMINER BRANCARD: Mr. Savage, so would it be
14 okay if you simply put on a case defending your original
15 application?

16 MR. SAVAGE: Mr. Brancard, yes, I believe that
17 would be appropriate. The exhibits are there for the
18 Division's review, and Ascent can provide a case that
19 would be appropriate to the defense of that.

20 And all the parties, of course, need to
21 update their exhibits, the current exhibits, based on the
22 progress of the facts in this case.

23 EXAMINER BRANCARD: Okay. I'm just trying to
24 navigate what I read from the Commission, which said they
25 wanted a hearing on the competing applications, that

1 Ascent didn't need to defend its applications because it
2 already had the hearing on it, but it's hard to look at
3 competing applications if we're not looking at what
4 they're competing with.

5 So my feeling is that, you know, if it's
6 not incredibly burdensome to Ascent that if they want to
7 go ahead and put on a whole case defending their original
8 positions, that's fine. You know, even though we've an
9 Order granting you compulsory pooling for that
10 application.

11 Anyway, I'll figure this out. I just want
12 to be fair to all the parties on this in how the
13 presentations get done, and that we get a complete record
14 to make a decision on the competing applications as the
15 Commission requested.

16 So all right. So it doesn't seem really
17 necessary, then, to incorporate the record if we can just
18 allow Ascent to go ahead and put on a full presentation.

19 Is that okay, Mr. Savage?

20 MR. SAVAGE: Yes, I think that sounds
21 appropriate, Mr. Brancard. Thank you.

22 EXAMINER BRANCARD: As for the Commission
23 pleadings, I don't know that they're terribly useful. I
24 will certainly take notice of the Commission Orders,
25 because they're Commission Orders; they're the reason

1 we're here. So I will do that.

2 I don't want to get too bogged down in the
3 arguments that were before the Commission. We're simple
4 folks here at the Division. We will just focus on the
5 competing applications.

6 I guess with the order of the cases, then,
7 I guess my feeling is to start with Mewbourne, followed by
8 Apache and Ascent. So Mewbourne's the new kid in town on
9 the applications here, they get to go first, Ascent gets
10 the back clean-up on this.

11 My -- as far as a date, Marlene do we have
12 anything on December 3rd?

13 MR. MARTIN: We could do December 3rd, January
14 7th, or January 21st. And these are Fridays.

15 EXAMINER BRANCARD: Okay.

16 MS. BENNETT: Mr. Examiner, this is Deana
17 Bennett. I did confer with Apache and they're available
18 for the January hearing dates, as well.

19 EXAMINER BRANCARD: Ms. Hardy, I don't think we
20 heard anything from you on dates.

21 MS. HARDY Mr. Examiner, I think December 3rd is
22 fine with Mewbourne. I haven't conferred with them about
23 January but I know that December 3rd works.

24 EXAMINER BRANCARD: All right. Well, why don't
25 we set this, then, for December 3rd. You know, likely

1 there will be some other catastrophe that will delay this,
2 but...

3 So being simple folk, I have one request
4 from the parties: To get your land people together, get
5 out their crayons, and for the benefit of, you know, a
6 person like myself, if you could just come up with a
7 couple of simple exhibits that show where each of these
8 applications are in relation to each other so that we're
9 not having to go back and forth when we're looking at,
10 talking about one application and how it impacts the other
11 applications.

12 You need to do, you know, one for the Bone
13 Spring and one for the Wolfcamp, that might be helpful.
14 But if you could just come up with a little map that shows
15 everything, where these things sit, that would be really
16 helpful, I think, for myself and the examiners so we have
17 that right at the beginning. That can be introduced right
18 at the beginning and then we have that in front of us at
19 all times.

20 Do we have any other issues? Did I forget
21 anything else?

22 MR. PADILLA: Mr. Examiner, this is Ernest
23 Padilla.

24 EXAMINER BRANCARD: Mr. Padilla.

25 MR. PADILLA: We have been -- fully entered an

1 appearance of behalf of EOG Resources all along simply to
2 preserve appellate rights. We don't have any issues with
3 scheduling or any of the competing applications.

4 EXAMINER BRANCARD: Well, thank you,
5 Mr. Padilla. I forgot to ask whether there were other
6 interested persons in these cases. I was so caught up
7 with our three battling parties here that I didn't ask.

8 Are there any other interested persons in
9 these cases? (Note: Pause.)

10 Hearing none, we will set this, then, for
11 December 3rd. We have an order of performance here:
12 Mewbourne, Apache, Ascent. And while the original
13 Application of Ascent is not on the docket, they will be
14 allowed to present testimony defending that in the notion
15 of these are competing applications, why they should win
16 and you should lose.

17 MR. SAVAGE: Mr. Examiner, I think the December
18 3rd date should be fine, but I need to confirm that with
19 Ascent, if you don't mind. I'll do that as soon as
20 possible, and should have some information.

21 EXAMINER BRANCARD: Okay. I can hold off on a
22 Prehearing Order until early next week.

23 MR. SAVAGE: Okay. I'll take care of that.

24 EXAMINER BRANCARD: All right. Am I covering
25 everything?

1 Ms. Bennett.

2 MS. BENNETT: One last thing.

3 In terms of clarity for the Prehearing
4 Order, I think it would be helpful to make express the
5 concept that we do get to provide updated exhibits along
6 with our updated Prehearing Statements. Just make that
7 express in the Prehearing Order, with the set deadline by
8 which those exhibits must be submitted, which it has been
9 in the past the same day as the Prehearing Order -- I'm
10 sorry, the Prehearing Statement, the Thursday before. I
11 guess it might be the Friday before. But, in any event,
12 just making it express that the parties have a deadline by
13 which to submit updated exhibits.

14 EXAMINER BRANCARD: Oh, yes. Thank you. I
15 think we will follow the normal Prehearing Order with the
16 deadlines. We certainly want the most-up-to-date
17 information on these applications at the time of the
18 hearing. So that would be our preference.

19 Ms. Hardy, any further comments?

20 MS. HARDY: Not for me, Mr. Examiner. Thank
21 you.

22 EXAMINER BRANCARD: Thank you.

23 So Cases 21361, 21362, 21363, 21364, 21393,
24 21394, 21489, 21490 and 21491 are set for a contested
25 hearing on December 3rd. And I will issue a prehearing

1 Order, but I will wait a few days just to make sure that
2 there aren't any problems with the date.

3 Thank you. Once again, we will hopefully
4 get a real hearing on these cases.

5 MS. HARDY: Thank you.

6 MS. BENNETT: Thank you.

7 (Time noted 9:06 a.m.)

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1 STATE OF NEW MEXICO)

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5 REPORTER'S CERTIFICATE

6 I, MARY THERESE MACFARLANE, New Mexico Reporter
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