

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.

Application for Ascent Energy, LLC, 22112, 22171
for a Horizontal Spacing and
Proration Unit and Compulsory
Pooling, Eddy County New Mexico

Amended Application of 22093
Mewbourne Oil Company for
Compulsory Pooling and approval
of an Overlapping Horizontal
well spacing unit, Eddy County
New Mexico

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, OCTOBER 21, 2021

This matter came on for hearing
before the New Mexico Oil Conservation Division,
William Brancard, Esq. Hearing Examiner, on
October 21, 2021, via Webex Virtual Conferencing
platform hosted by New Mexico Department of Energy
Minerals and Natural Resources

Reported by: Christine J. Roybal
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6 Technical Examiner:

Dean McClure

1 EXAMINER BRANCARD: All right. We'll hit another
2 two cases now with an unspoken third case, cases 22112 and
3 22093, Ascent Energy, LLC.

4 MR. SAVAGE: Good morning, Mr. Examiner.
5 Darin Savage with Abadie & Schill, appearing on behalf of
6 Ascent Energy, LLC.

7 EXAMINER BRANCARD: And then Mewbourne Oil
8 Company.

9 MR. FELDEWERT: Michael Feldewert with the
10 Santa Fe office of Holland & Hart, appearing on behalf of
11 Mewbourne, the applicant in case 22093.

12 EXAMINER BRANCARD: So then I guess what is not
13 listed but is impacted by this is case 22171, Alpha Energy
14 Partners.

15 MS. HARDY: Yes, good morning, Mr. Examiner.
16 Dana Hardy with the Santa Fe office of Hinkle Shanor on
17 behalf of Alpha Energy Partners.

18 EXAMINER BRANCARD: Thank you.

19 MS. BENNETT: Mr. Hearing Examiner, this is
20 Deana Bennett on behalf of the city of Carlsbad. I didn't
21 realize that case 22171 was implicated in this matter -- in
22 these matters, but I am counsel of record for the city of
23 Carlsbad in that case.

24 EXAMINER BRANCARD: Thank you. Yes. I mean, we
25 have a motion to consolidate all three cases before us.

1 MS. BENNETT: Okay.

2 EXAMINER BRANCARD: Which is -- which is what is
3 going on here.

4 And then I believe the Oil Conservation Division made
5 an entry of appearance. Anyone present today?

6 MR. AMES: Yes, good morning Mr. Hearing examiner,
7 Eric Ames for OCD.

8 EXAMINER BRANCARD: Thank you.

9 All right, are there any other interested persons in
10 cases 22112, 22093 and I guess anyone else interested in
11 22171?

12 Hearing none, I -- Mr. Savage, were you the one that
13 filed the motion to consolidate?

14 MR. SAVAGE: I did.

15 EXAMINER BRANCARD: Okay. So you're seeking to
16 consolidate because we have what you referred to as a daisy
17 chain competing --

18 MR. SAVAGE: Yes.

19 EXAMINER BRANCARD: -- pooling situation here?

20 MR. FELDEWERT: Those daisy chains, they overlap,
21 and not completely overlap. They kind of get you in
22 trouble, yes. We became aware when we were attending the
23 hearing on October 7th that Alpha Energy Partners was
24 seeking pooling in 22171. That included sections, I
25 believe, 19 and 20 of this particular Township and Range.

1 And we realized that that impacted not only our previously
2 filed proposal which was under a pre-hearing order for
3 hearing today, but also indirectly Mewbourne's proposed unit
4 also under pre-hearing order for hearing today; and
5 therefore, we ask for a consolidation of the -- of the three
6 cases so that the Division has opportunity to hear all three
7 and choose what is the best of all the plans.

8 EXAMINER BRANCARD: Thank you.

9 So going to Ms. Hardy here; when you were set to come
10 back in in early November on 22171, but we were all sort of
11 unaware at the time when we did this of the overlapping
12 pooling applications which seems like an issue that has to
13 be dealt with. So I don't think we're going to have a
14 hearing on November 4th. I think we're going to have a
15 hearing some time in the future. Would you agree?

16 MS. HARDY: Yes, I do agree, Mr. Examiner. We
17 also do have case 22172 set on November 2nd, but that one
18 does not overlap with these, so...

19 EXAMINER BRANCARD: All right. That's the south
20 half of the section, correct?

21 MS. HARDY: That's correct. That's correct, yes.

22 EXAMINER BRANCARD: Mr. Savage, your client
23 doesn't have competing applications with that?

24 MR. SAVAGE: We do not. Thank you, Mr. Examiner.

25 EXAMINER BRANCARD: Okay. All right. Why don't

1 we look for a date to try to set this. We have managed in
2 the course of this morning to really cloud up January 20th,
3 and so I think we're looking at the beginning of February
4 for a contested hearing on this.

5 MR. AMES: Mr. Hearing Examiner?

6 EXAMINER BRANCARD: Yes, Mr. Ames.

7 MR. AMES: Thank you. I'd like to make a
8 statement now, I think, given that you're looking for a date
9 in the beginning of the year. The Division would propose or
10 recommend that these matters be postponed until after the
11 Carlsbad brine cavern is fully remediated and stabilized.
12 To select the best applicant from these competing operators,
13 the OCD has to conduct a multi-factor analysis grounded in
14 statutory purposes of preventing waste and protecting
15 relative rights, public health and the environment. In that
16 context, the key factor is going to be the proximity of
17 those wells in the CP areas to the Carlsbad brine cavern
18 which presently is a major economic and environmental
19 liability for the State.

20 All points in the overlapping CP areas at issue here
21 lie within one mile at the southern edge of the cavern with
22 the closest point being less than two-tenths of a mile.

23 The cavern, which underlies the region's major
24 highways, as well as an important groundwater aquifer has
25 been undergoing remediation at substantial cost to state and

1 federal taxpayers for some time now, and the State has
2 recently begun the final stage of remediation, which is
3 expected to be completed in the spring -- late spring of
4 next year.

5 In the meantime, the cavern is vulnerable to seismic
6 activity, as you may be aware. The Department recently
7 conducted a sonar survey and discovered additional caving
8 involving ten feet of roof fall and increasing the volume of
9 the cavern by about four-and-a-half percent.

10 Now, while we don't know the precise geometry of the
11 laterals that the applicants intend to drill until they file
12 their APDs, OCD believes that the their proximity to the
13 cavern poses a substantial risk. In the immortal words of
14 the dude, the man, not Alpha's proposed well, this is a
15 complicated case with a lot ins, a lot of outs and a lot of
16 what have yous. OCD's director recently concluded in case
17 22102 that any drilling or completion within three miles of
18 the cavern must be suspended pending completion of
19 remediation and stabilization of the cavern. For this
20 reason, OCD recommends that the hearing on these competing
21 applications be postponed until after remediation is
22 completed and the cavern is stabilized.

23 Postponing the hearing until then would consider OCD
24 and party resources and discover the parties for making
25 additional investments until it is clear that the winning

1 applicant or applicants can obtain an APD. However, if the
2 hearing were not postponed and were scheduled in February as
3 currently proposed, OCD would favor the applicant or
4 applicants that are capable and willing to commit to
5 postpone drilling until after remediation is completed and
6 the cavern is stabilized.

7 Thank you.

8 EXAMINER BRANCARD: Thank you. I did -- I was
9 going to mention, and I should have mentioned right away,
10 about the order that I'm sure the parties are aware of that
11 has been issued in case 22102. Given the director's
12 decision in that case, it would be my assumption that
13 whatever conditions applied in that case would, at minimum,
14 apply to this case, even with the decision on compulsory
15 pooling. So even if you get a positive decision for
16 compulsory pooling you're still going to have to comply with
17 the conditions that have been set forth in that case. Are
18 the parties clear about that?

19 MR. FELDEWERT: Mr. Examiner, Michael Feldewert
20 with Mewbourne, if I may be heard for a minute?

21 EXAMINER BRANCARD: Certainly.

22 MR. FELDEWERT: I mean, I certainly recognize the
23 issue raised by Mr. Ames, and I concur in your assessment
24 that the Division seems to have found a way to address this
25 without imposing a complete moratorium on efforts to mine --

1 for companies to put themselves in a position to be able to
2 drill once the remediation is complete, which we hope to see
3 in late spring. So as you know, pooling cases and competing
4 pooling applications, themselves, as Mr. Ames said, the ins
5 and the outs and what have you. So they take time to get
6 done, and then once you get the pooling application, then
7 you file your applications to drill, and so there is a
8 process and a time frame that's involved that to me does not
9 need to be unreasonably delayed. And it does seem to me
10 that your proposal to have a hearing in February which would
11 then result in an order some time thereafter, which is about
12 in the time frame they hope the brine well remediation will
13 be complete. And, of course, the parties are going to have
14 to get their APDs and comply with any conditions of the APD.
15 So I don't see a need to unreasonably postpone the pooling
16 case here. So that's my first point.

17 Second point is, we, like Alpha, agree that the cases
18 should be consolidated for hearing. You know, the sand
19 cones in the north half of Section 21 -- and it is kind of
20 interfering with the development plans that Mewbourne has on
21 each side of the north half of Section 21, and Alpha has on
22 the other side, on the north half of Section 21.

23 There is also competing Bone Spring well proposals,
24 one of which, there is a current case, the Ascent case,
25 22184, that's 22184, which is currently on the December 16th

1 docket. That involves the subject acreage. Mewbourne has
2 sent competing Bone Spring Well proposals, that will be
3 pooling applications filed in November, assuming the parties
4 can't reach an agreement. So those, likewise, will need to
5 be brought into this package of cases to be heard in what
6 looks like, you know, whenever you can get to it, which you
7 said seems to be February.

8 So we have these three cases. We also have the
9 existing Bone Spring case. There's also some Bone Spring
10 well proposals not only by Mewbourne, but I think by Alpha
11 that will be appearing on the docket shortly that can also
12 be wrapped into this for a hearing some time next year..

13 EXAMINER BRANCARD: Thank you. These are Wolf
14 Camp proposals we're looking at today?

15 MR. FELDEWERT: Yes. Yes. But the -- Ascent has
16 already filed their case with the Bone Spring, which, in
17 both Mewbourne and Alpha have -- I believe Alpha -- I will
18 let Dana speak, but I know Mewbourne has sent out competing
19 Bone Spring Well proposals which we intend to file pooling
20 applications on, assuming we can't reach an agreement, in
21 November. So the within the next week or two.

22 EXAMINER BRANCARD: Just gets more interesting.

23 Well, I appreciate your thoughts, Mr. Feldewert
24 because I was going to throw back to the parties Mr. Ames'
25 perspective here, which is that the project that is ongoing

1 with the brine well creates sort of a level of uncertainty
2 for the parties here in how you want to deal with it. You
3 seem to be willing to, on Mewbourne's behalf, to sort of
4 move forward when there is uncertainty with that project.

5 MR. FELDEWERT: Yeah, I mean, for a couple
6 reasons; Mewbourne, I think, you know, has recognized this
7 issue. They have been working with the Division on this
8 issue. They are well-versed on how to deal with this. But,
9 you know, it probably is not just -- you know, there is a
10 whole series of events that has to occur here to get
11 Mewbourne in the position where they can drill. They have
12 got to get the pooling order, then they've got to get the
13 applications to drill. And so, you know, within that
14 process, the Division, as you saw from case 22102, is able
15 to impose either in the pooling order or even in the
16 applications to drill the necessary restrictions to address
17 the ongoing remediation project.

18 EXAMINER BRANCARD: Okay, thank you.

19 Let me try Ms. Hardy. Dealing with the uncertainty of
20 the brine well project, does that make your client want to
21 hold off a bit on this, or to move forward with it the
22 earliest possible competing pooling hearing.

23 MS. HARDY: Mr. Examiner, I agree with
24 Mr. Feldewert. I think that it would be reasonable to
25 proceed with the hearing in February and Alpha also is

1 familiar with the brine well situation and understands the
2 conditions that have been posed in the other matter that has
3 been addressed by the Division. I concur with
4 Mr. Feldewert. And he is also correct that Alpha is
5 submitting or has submitted Bone Spring Well proposals also
6 for its acreage. So those cases, I think, would also be
7 initially set on the December docket.

8 EXAMINER BRANCARD: Mr. Savage.

9 MR. SAVAGE: Yes, thank you, Mr. Examiner. Ascent
10 has been looking at this area for quite a while even had an
11 APD approved for part of the lands and then they evaluated
12 and expanded on all the plan and that APD expired. And then
13 they have applied for renewed APDs, and that's all been in
14 process. So they have been looking at this. They also
15 have, owned and operated a vertical well in this area in
16 Section 21. And the question of who operates and who
17 operates that well and how much it is operated during the
18 development of these lands would seem to play a significant
19 role in the management of the risk-taking concerns that
20 Mr. Ames brings up.

21 Ascent acknowledges and has acknowledged from the
22 beginning the concern about the brine well, and Mr. Ames'
23 comments are well taken. Ascent feels that if we did go
24 forward, that the division should consider language in the
25 pooling order to account for the parties' willingness to

1 commit and postpone drilling depending on the progress and
2 outcome of the remediation of the brine well. If we do go
3 forward and we agree to that, Ascent would like to see that
4 language in there. You know, wouldn't let a party proceed
5 if it continued to cause risk. And it also seems to be
6 under these circumstances good cause for an extension if the
7 remediation is still in progress.

8 So I mean, under those circumstances, you know, we
9 would agree to moving forward under those contingencies, and
10 if those contingencies cannot be met, specifically in an
11 order or some kind of formal arrangement, we would recommend
12 postponement.

13 EXAMINER BRANCARD: Thank you. And so Ascent
14 has -- is this current case 22148, is that your -- is that a
15 Bone Spring application?

16 MR. SAVAGE: It is a Bone Spring. And, you know,
17 we proposed that quite a while ago as part of the package
18 for development of these lands. And we filed the
19 application for this and it has been in place. We continued
20 it once because of a scheduling problem with Ascent, and it
21 is scheduled for December 16th.

22 EXAMINER BRANCARD: Okay. But would you agree
23 that that would be best to hear that at the same time as we
24 hear these other cases?

25 MR. SAVAGE: I think under the circumstances,

1 given the remediation issues and efforts and that this is
2 also will be -- would be operated in this area, I agree with
3 that. I think that should be consolidated with the other
4 cases.

5 EXAMINER BRANCARD: Thank you. But you're okay
6 with the February hearing date?

7 MR. SAVAGE: I believe so. You know, I have to
8 check with Ascent but that sounds like a -- it is far enough
9 in advance that arrangements can be made, unless there's
10 something I'm not aware of that would prevent that, but...

11 EXAMINER BRANCARD: All right.

12 So Mr. Feldewert, Mewbourne is about to file a Bone
13 Spring application?

14 MR. FELDEWERT: Assuming we cannot reach an
15 agreement, yes. They sent out the well proposals. We --
16 whatever the next filing date which is coming up on us here
17 quickly is when we have it on our sheet to file the pooling
18 applications. So that would put them on the December 2nd
19 docket. So we would have a case number after we filed the
20 first of November, which I could apprise you of.

21 EXAMINER BRANCARD: Okay.

22 Just to check in, Ms. Bennett, you're put on the spot,
23 here for the city of Carlsbad. But I believe your --
24 Carlsbad is in this because it has mineral interests, not
25 because it has any great concerns over the brine well. Is

1 that correct?

2 MS. BENNETT: That's right. And I'm not taking
3 any position on any of the motions or the hearing date. I'm
4 along for the ride.

5 EXAMINER BRANCARD: All right.

6 Mr. Ames, any final thoughts?

7 MR. AMES: Briefly, Mr. Hearing Examiner. First,
8 we appreciate your recognition of the uncertainty associated
9 with these applications as a result of the proximity of the
10 CP areas to the cavern. OCD still would prefer to postpone
11 the hearing until after the cavern is fully stabilized. But
12 if that is not the Hearing Examiner's preference, we would
13 emphasize for the record that all the applicants have
14 expressed their acceptance of the risk associated with
15 proceeding in the circumstances.

16 EXAMINER BRANCARD: Thank you.

17 Well, let me just check, is there anyone else with an
18 interest in case 22093, 22112 or 22117 -- 171, sorry.

19 MR. RANKIN: Mr. Examiner, Adam Rankin with the
20 law firm of Holland & Hart entering an appearance in 22112,
21 on behalf of MRC Permian Company.

22 EXAMINER BRANCARD: Oh, thank you.

23 And MRC's position is?

24 MR. RANKIN: At this time not taking a position in
25 any of the matters, just engaging to preserve their rights.

1 EXAMINER BRANCARD: Thank you.

2 All right. Given everyone's issues here, Mr. Ames,
3 what is the projected duration of the brine well project,
4 the current one, that is?

5 MR. AMES: Mr. Brancard, my understanding is that
6 the final stage of remediation is expected to be completed
7 in late spring. But as you may be aware, these projects
8 have projections, but there is no clear certainty.

9 EXAMINER BRANCARD: So late spring. We're
10 thinking May or June?

11 MR. FELDEWERT: No, that would be March/April.

12 EXAMINER BRANCARD: Doesn't summer start
13 June 20th? Different calendars.

14 MR. FELDEWERT: Mr. Ames is not going to give you
15 a month.

16 EXAMINER BRANCARD: I tried.

17 MR. AMES: June 20th, Mr. Hearing Examiner, more
18 or less.

19 EXAMINER BRANCARD: More or less, yes.

20 All right. We will -- we will set this for hearing on
21 March 17th. I think we should probably know about -- more
22 about the brine well at that time, but as Mr. Feldewert
23 points out, if we do go forward with the hearing, these
24 cases are complicated and the orders don't often come out
25 right away anyway, so...

1 MR. FELDEWERT: Mr. Examiner --

2 EXAMINER BRANCARD: But I'm really concerned here
3 about this Bone Springs stuff and whether we need to add
4 that on. So I'm hoping for a little bit of guidance here.

5 Mr. Feldewert, do you think this might be worked out
6 between the parties?

7 MR. FELDEWERT: I'm always optimistic. I'm always
8 optimistic. But there is certainly no reason not to include
9 the Bone Spring because it is the same acreage, same
10 parties, same interests, same issues, basically. You're
11 just dealing with a different formation. So I don't know
12 why you wouldn't include the Wolf Camp applications and the
13 Bone Spring applications.

14 EXAMINER BRANCARD: Ms. Hardy, is your client
15 looking to file Bone Spring applications?

16 MS. HARDY: Yes, we are, Mr. Examiner. And I also
17 wanted to mention that unfortunately, I have a conflict with
18 March 17th, so I would ask, subject to the availability of
19 my client, whether we could have the hearing on March 3rd,
20 if possible.

21 EXAMINER BRANCARD: I am impressed. You know your
22 schedule that far in advance.

23 MS. HARDY: I'm booking an international trip,
24 so -- right in the process of booking that. That's the only
25 reason I know.

1 EXAMINER BRANCARD: Anybody have any concerns with
2 March 3rd?

3 MR. FELDEWERT: No, sir.

4 EXAMINER BRANCARD: Okay. That's a new case
5 docket, so it could easily go into March 4th. Do we
6 understand that?

7 All right. So right now we can schedule cases 22093,
8 22112 and 22171 for a March 3rd hearing, but I can draft a
9 pre-hearing order that I would like to see proposed
10 amendments to that pre-hearing order if there are Bone
11 Spring cases that we need to add to that application.

12 MR. FELDEWERT: We know there's one, 22184.

13 EXAMINER BRANCARD: Okay. All right. We can add
14 that. Is that okay, then, that would be Mr. Savage, right?

15 MR. SAVAGE: Yes. Yes, Mr. Examiner. That should
16 be fine. I mean, it is the same concerns, and if the
17 Division wants to address those same concerns that seems
18 reasonable.

19 EXAMINER BRANCARD: So, any other cases that -- we
20 don't know what the other cases are, so if you all could
21 file some motion to amend the pre-hearing order. You know,
22 I sometimes wait on pre-hearing orders to catch other cases,
23 but my fear is always that I will sort of forget if I don't
24 do them quickly. Do you have any sense of when you might
25 file, Mr. Feldewert? Your client might file?

1 MR. FELDEWERT: Yes. We will be filing the -- on
2 the next filing date. I don't have my calendar. I will
3 pull my calendar up, but it will be first part of November.

4 EXAMINER BRANCARD: Ms. Hardy, any sense?

5 MS. HARDY: I believe -- I need to check on the
6 date of the well proposals. I believe we would likely be
7 filing by December for the January 1st -- first docket in
8 January.

9 EXAMINER BRANCARD: All right. I will go ahead
10 with a pre-hearing order and then we can add the cases on as
11 necessary. But please be aware when you do do the filing,
12 that that's what we're shooting for. Is everybody agreeable
13 with that?

14 Thank you, Mr. Feldewert.

15 All right, any other concerns or objections? This is
16 a little complicated here, daisy chains and brine wells.

17 MR. FELDEWERT: We don't need to worry about the
18 brief they received at 6:00 last night?

19 MR. SAVAGE: Mr. Feldewert you want to stir things
20 up, don't ya.

21 MR. FELDEWERT: Well, I'm not stirring things up.

22 EXAMINER BRANCARD: Yeah, as for -- I will respond
23 to some of the comments in the motions and responses, that
24 is I'm dealing strictly with the motion to consolidate and I
25 agree that we should consolidate these three cases. As to

1 any other comments about other parties, leave that for the
2 competing compulsory pooling hearing.

3 MR. SAVAGE: Mr. Hearing, it sounds like good
4 advice. I just want to say, that, you know, Alpha made a
5 response and we made a reply and are essentially satisfied
6 with how things are at this point.

7 EXAMINER BRANCARD: All right. Thank you.

8 So I think we're done there with cases 22093 and 22112
9 and 22171. Thank you, everyone.

10 (Concluded 9:08 a.m.)

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1 STATE OF NEW MEXICO)
2) SS
3 COUNTY OF BERNALILLO)
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5 REPORTER'S CERTIFICATE
6

7 I, CHRISTINE J. ROYBAL, New Mexico Reporter
8 No. CCR-50, DO HEREBY CERTIFY that on Thursday, October 21,
9 2021, the proceedings in the above-captioned matter were
10 taken before me; that I did report in stenographic shorthand
11 the proceedings set forth herein, and the foregoing pages
12 are true and correct transcription to the best of my ability
13 and control.

14 I FURTHER CERTIFY that I am neither employed by nor
15 related to nor contracted with any of the parties or
16 attorneys in this case, and that I have no interest
17 whatsoever in the final disposition of this case in any
18 court.

19
20 /S/ Christine J. Roybal
21 _____
22 CHRISTINE J. ROYBAL, CCR, RPR
23 NEW MEXICO CERTIFIED COURT
24 REPORTER NO. 50
25 LICENSE EXPIRES 12/31/22