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

APPLICATION OF MEWBOURNE OIL COMPANY FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO	**CASE NO. 21361**
APPLICATION OF MEWBOURNE OIL COMPANY FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO	**CASE NO. 21362**
APPLICATION OF MEWBOURNE OIL COMPANY FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO	**CASE NO. 21363**
APPLICATION OF MEWBOURNE OIL COMPANY FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO	**CASE NO. 21364**

APACHE CORPORATION'S RESPONSE TO MEWBOURNE OIL COMPANY'S MOTION FOR REFERRAL OF APPLICATIONS TO NEW MEXICO OIL CONSERVATION COMMISSION FOR HEARING IN CONJUNCTION WITH *DE NOVO* HEARING IN CASE NOS. 21277-21280

Apache Corporation ("Apache") for its Response to Mewbourne Oil Company's ("Mewbourne") Motion for Referral of Applications to New Mexico Oil Conservation Commission for Hearing in Conjunction with *De Novo* Hearing in Case Nos. 21277-21280 (the "motion") states as follows:

1. Apache opposes Mewbourne's motion.

2. Mewbourne was a party to the Apache and Ascent Case Nos. 21277-21280 when they were heard by the Division on August 20, 2019 and are now set for *de novo* hearing before the Commission on September 17, 2020. Mewbourne chose not to present any evidence at the Division hearing for those cases nor did it indicate that it had development plans for its acreage in the area that would be adversely affected by either Apache's or Ascent's applications.

3. Although NMSA 1978, § 70-2-6(B) of the Oil and Gas Act provides that "any hearing on any matter may be held before the commission if the division director, in his discretion, determines that the commission shall hear the matter," it does not permit the Director to consolidate an application for hearing before the Division with an existing *de novo* appeal pending before the Commission. Moreover, the reasons proffered by Mewbourne for consolidation are a contractual dispute between Ascent and Mewbourne that caused it to file new applications before the Division. The Commission clearly lacks jurisdiction to resolve contractual disputes and the complex issues presented by Mewbourne's applications should be resolved in the first instance by the Division. Allowing Mewbourne to leap-frog the process for first presenting its case to the Division will unfairly prejudice Apache.

4. When a *de novo* hearing is held by the Commission on appeal from an order by the Division, the legal and factual issues presented by an application have already been fleshed out in the adjudicatory hearing before the Division. Because they are familiar with the evidence, parties to a Commission hearing are required to submit their exhibits a week in advance of the hearing. *See* 19.15.4.13(B)(2) NMAC.

5. Without the benefit of a Division hearing, and because Mewbourne chose to not present any evidence in the Division hearing for Apache and Ascent's cases, Apache can only guess at the evidence that Mewbourne will advance in an attempt to support Mewbourne's applications. Because Apache will be unfairly disadvantaged without Mewbourne's applications first being presented at a Division hearing, Mewbourne's request should be denied.

6. In the event that the motion is granted, Apache requests that the September 17, 2020 hearing before the Commission be continued to the December 10, 2020 docket to provide sufficient time for Apache to subpoena records from Mewbourne and to prepare for a hearing involving a completely different set of facts than those heard by the Division.

Respectfully submitted,

MODRALL, SPERLING, ROEHL, HARRIS
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following counsel of record by electronic mail on July 23, 2020:

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