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

**APPLICATIONS OF ASCENT ENERGY, LLC FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO**

**OCC CASE NOS. 21277 & 21278**
**(Division Case Nos.16481 & 16482)**

**AMENDED APPLICATIONS OF APACHE CORPORATION FOR COMPULSORY POOLING AND APPROVAL OF A HORIZONTAL SPACING UNIT AND POTASH DEVELOPMENT AREA, EDDY COUNTY, NEW MEXICO**

**OCC CASE NOS. 21279 & 21280**
**(Division Case Nos.20171 & 20202)**

**ORDER R-21258**

**APACHE CORPORATION'S REPLY ON ITS MOTION TO STAY THE *DE NOVO* HEARING IN CASE NOS. 21277-21280**

A stay of the *De Novo* Hearing in Case Nos. 21277-21280 is warranted to allow the New Mexico Oil Conservation Division ("Division") to first resolve issues relating to the competing cases filed by Mewbourne Oil Company ("Mewbourne") and Ascent Energy, LLC ("Ascent"), as well as the cases Apache intends to file to compete with the new Ascent and Mewbourne cases.

At issue are multiple applications filed by three operators that, as is relevant here, all seek to pool the same acreage in the N/2 of Section 28. Ascent's applications covering the W/2W/2 of Sections 28 and 33 ("Ascent W/2W/2 Stand Up Units") are currently set for a *de novo* hearing on September 17, 2020 (the "W/2W/2 *De Novo* Hearing"). On April 14, 2020 the Division issued the Order that is the subject of the W/2W/2 *De Novo* Hearing. Despite having prevailed before the Division, Ascent has not commenced drilling of its wells nor is it likely to do so anytime soon given current conditions in the industry. Apparently, a title problem occurred concerning some of

the lands involved in Ascent's proposed spacing units that caused Mewbourne to file applications with the Division seeking to pool the W/2W/2 of Sections 28 and 33 (the "Mewbourne W/2W/2 Stand Up Units") *and* the E/2W/2 of Sections 28 and 33 ("Mewbourne E/2W/2 Stand Up Units", collectively the "Mewbourne W/2 Stand Up Units"). Mewbourne has requested the W/2 Stand Up Units cases be consolidated with the Ascent W/2W/2 Stand Up Units cases pending before the Commission, which Apache opposes. Alternatively, if Mewbourne's request for consolidation is granted, both Apache and Mewbourne agree that the hearing should be postponed to allow the parties sufficient time to prepare for the consolidated hearing. Ascent then filed its E/2W/2 cases covering Sections 28 and 33 ("Ascent E/2W/2 Stand Up Units") on August 4, 2020, with the Division.

Apache originally filed pooling applications covering the N/2 of Sections 28, 29, and the NW/4 of Section 30. Apache and Ascent's cases were consolidated for hearing because they were competing applications with respect to the W/2 NW/4 of Section 28. At the outset of the hearing on the applications, Apache withdrew its request for compulsory pooling because working interest owners it sought to voluntarily pool were unable to determine whether to voluntarily commit their acreage for Apache's Taco 28-30 wells or Ascent's Anvil wells until the Division determined the orientation of the spacing units and Development Area for the wells. However, given the uncertainties resulting from the Ascent and Mewbourne competing pooling applications, both of which involve the pooling of Apache's acreage in the NW/4 of Section 28 and the passage of time, on August 17, 2020, Apache sent out updated well proposals which will necessitate the compulsory pooling of interest to protect its correlative rights, again proposing lay down units covering the N/2 of Sections 28, 29, and the NW/4 of Section 30 ("Apache Lay Down Units"). *See* Affidavit of Blake Johnson, attached as Exhibit A. In Apache's view, the most efficient process, given the

intervening filing of applications by Mewbourne and Ascent, and Apache's intent to file its own pooling applications is to put the Commission *de novo* hearing on hold until the Division can decide the new competing applications filed (and that will be filed) by all three parties to the cases pending before the Commission. Mewbourne also takes the position that the Commission should hold a single de novo hearing, which is consistent with Apache's suggestion. *See* Mewbourne Response at 4.

Ascent's Response highlights why the Commission should stay the *de novo* hearings pending the resolution of the applications before the Division. The table Ascent compiled shows the status of 12 filed and potentially filed applications, by three operators, covering overlapping acreage, and, for the filed applications, pending before two tribunals but with different procedural postures. Ascent's Response highlights the complexity of the issues and cases, which should be resolved by the Division in the first instance.

## I. RESPONSE TO ASCENT'S ARGUMENTS

Ascent's Response ignores that in Apache's Lay Down Units proposals, Apache is proposing wells that cover both the *W/2W/2* and the *E/2W/2* of the NW/4 of Section 28. Because Apache has proposed a lay down development and spacing unit for its wells, Apache's wells cannot be defined as W/2W/2 and E/2W/2 wells—instead they are N/2N/2 and S/2N/2 wells. *See* Exhibit B. Consequently, a Commission hearing that that is focused only on the W/2W/2 of Section 28, which is what Ascent proposes, will necessarily be piecemeal and incomplete. The most efficient way to move forward is to consolidate for a hearing before the Division the Mewbourne W/2 Stand Up Units cases, the Ascent E/2W/2 Stand Up Units cases, and the Apache Lay Down Units applications, once filed. Upon the conclusion of those cases, if an appeal is taken to the Commission, that appeal could be consolidated with the currently set W/2W/2 *De Novo* Hearing,

allowing the Commission to rule on the entire controversy that impacts the NW/4 of Section 28, rather than decide the cases piecemeal.

Ascent argues, without citing any support, that the W/2W/2 *De Novo* Hearing deprives the Division of jurisdiction over Apache's Lay Down Units. As the premise for this argument, Ascent states that the Division "cannot adjudicate another pooling application that covers the same lands and formation." Ascent Response at 8. This premise is incorrect, however, because Apache's Lay Down Units will cover acreage and interests not at issue in the W/2W/2 *De Novo* Hearing because Apache's Lay Down Units will cover the entire NW/4 of Section 28, along with other acreage that is not contested. Simply put, there is no way to allocate Apache's Lay Down Units applications, once filed, to the Commission (W/2W/2) and to the Division (E/2W/2) because Apache's Lay Down Units compete with both sets of the Mewbourne and Ascent W/2 cases. Consequently, the prudent course of action is to stay the W/2W/2 *De Novo* Hearing until the Division hears the competing Apache Lay Down Units cases, Ascent E/2W/2 Stand Up Units cases, and the Mewbourne W/2 Stand Up Units cases.

Ascent's concerns about timing are also unavailing. Although it prevailed at the Division level Ascent has not commenced drilling of its wells nor is it likely to do so anytime soon given current market conditions. Standard provisions in joint operating agreements require that an operator commence drilling operations within 90 days of the expiration of the election period, or the proposal expires. *See Enduro Operating LLC v. Echo Prod., Inc.*, 2018-NMSC-16, ¶ 1, 413. P.3d 866. (AAPL 1982 Model Form JOA "required that the proposing party 'actually commence the proposed operation and complete it with due diligence' within ninety days after the expiration of the thirty-day notice period.") Presumably, if working interest owners agreed to participate in Ascent's proposals under a JOA, those proposals have expired. Moreover, Ascent's counsel has

represented to Apache's counsel that it had not sent out new proposals, despite the change in market conditions since it proposed the wells in 2018.

The Ascent and Mewbourne cases currently pending before the Division, as well as Apache's case that will be filed, can and should be decided before the *de novo* appeal involving just one piece of puzzle involving the 3-way dispute over multiple competing spacing units and Potash Development Areas. The Division has implemented a pre-hearing order process for contested cases which provides for the parties to identify contested issues, agree on prehearing motion practice, and, with the Division's input, set a hearing date which hopefully will not be held remotely in order to avoid the additional due process concerns of holding an evidentiary hearing that results in a taking of property through the compulsory pooling power.

If the W/2W/2 *De Novo* Hearing is not stayed, then the orderly process before the Division will be short-circuited and Apache will not have the benefit of the record developed before the Division. Apache understands that the Commission process is *de novo*, but nevertheless, generally speaking the parties to the Commission hearing will have gone through the Division hearing process and will have laid out their arguments and evidence in that forum in the first instance. If the *De Novo* Hearing is not stayed, and Mewbourne's cases are referred, that process will not have been followed with respect to the newly filed Mewbourne applications and Apache will not have the information it needs in a timely fashion to prepare for the *De Novo* Hearing, such as Mewbourne's well proposals, and other relevant information, which, in turn, impacts Apaceh's due process rights. Apache will have to resort to submitting a subpoena to Mewbourne, to obtain that information. A more efficient approach, and one more protective of the parties' rights and compliant with the mandates of the Oil and Gas Act, is to stay the de novo hearing pending the Division's resolution of the parties' competing cases.

## II. CONCLUSION

Contrary to Ascent's assertions, the complexities of the competing cases at issue demonstrate good cause to stay the *de novo* hearing. As Ascent points out in its Response, Ascent, Mewbourne, and Apache all have different approaches to the order in which the cases should be addressed and by which tribunal. *See* Ascent Response at 7-8. However, there is only one way to follow the procedure prescribed by the Oil and Gas Act and preserve the due process rights of the parties--stay the appeal involving just one of competing proposals to enable the other matters to proceed in an orderly fashion for hearing before the Division so the Commission, Division, and the parties have the information and adequate time to prepare the complex cases presented by these cases.

Respectfully submitted,

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By: */s/ Earl E. DeBrine, Jr.*

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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 August 18, 2020:

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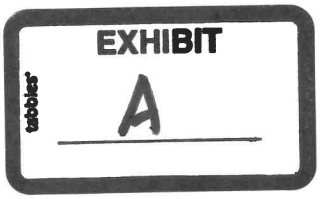
**ORDER R-21258**

**SELF AFFIRMED STATEMENT OF BLAKE JOHNSON IN SUPPORT OF APACHE CORPORATION'S MOTION TO STAY THE *DE NOVO* HEARING IN CASE NOS. 21277-21280**

1. I am over the age of 18, I am a landman for Apache Corporation ("Apache") and have personal knowledge of the matters stated herein. I have previously testified by affidavit before the Oil Conservation Division ("Division") and my credentials as an expert petroleum landman were accepted by the Division as a matter of record.

2. My area of responsibility at Apache includes the area of Eddy County in New Mexico.

3. On August 17, 2020, I sent out proposal letters proposing the drilling of wells within horizontal spacing units covering the N/2 of Sections 28 and 29 and the NE/4 of Section 30 of Township 20 South, Range 30 East, N.M.P.M., Eddy County, New Mexico. Mewbourne and Ascent are working interest owners in the proposed spacing units and are expected to decline to



voluntarily pool their interest since their acreage is the subject of competing proposal for compulsory pooling that are subject of applications pending before the Oil Conservation Division in Case Nos. 21361-21364 (Mewbourne) and 21393 and 21394 (Ascent).

4. I affirm that my testimony in paragraphs 1-3 above is true and correct and is made under penalty of perjury under the laws of the State of New Mexico. My testimony is made as of the date handwritten next to my signature below.

Blake Johnson

8/18/2020
Date

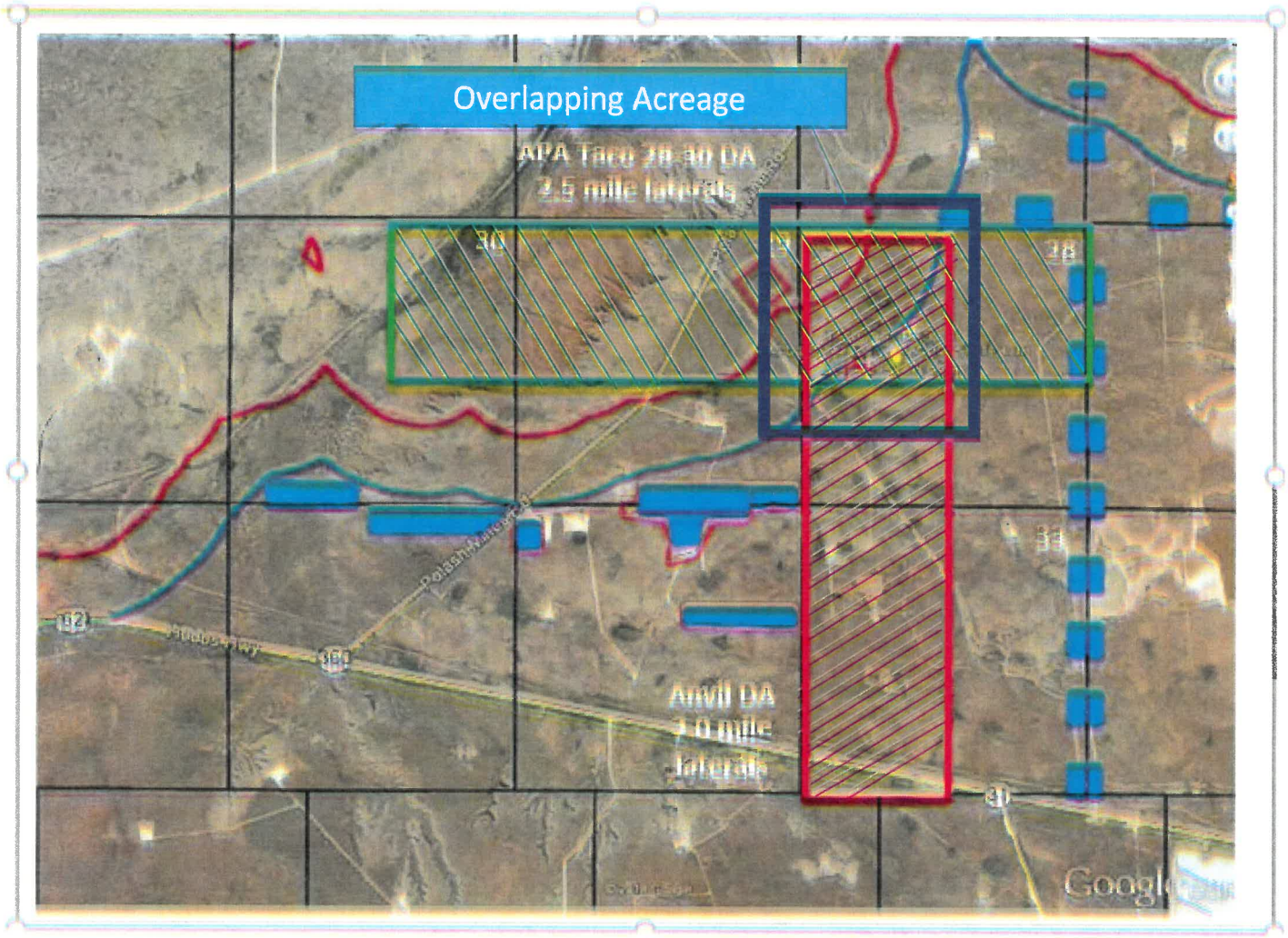



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EXHIBIT

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