

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

IN THE MATTER OF THE APPLICATION OF  
ASCENT ENERGY, LLC FOR COMPULSORY  
POOLING, EDDY COUNTY, NEW MEXICO.

CASE NO. 16481

IN THE MATTER OF THE APPLICATION OF  
ASCENT ENERGY, LLC FOR COMPULSORY  
POOLING, EDDY COUNTY, NEW MEXICO.

CASE NO. 16482

IN THE MATTER OF THE AMENDED APPLICATION  
OF APACHE CORPORATION FOR COMPULSORY  
POOLING AND APPROVAL OF A HORIZONTAL  
SPACING UNIT AND POTASH DEVELOPMENT AREA,  
EDDY COUNTY, NEW MEXICO

CASE NO. 20171

IN THE MATTER OF THE AMENDED APPLICATION  
OF APACHE CORPORATION FOR COMPULSORY  
POOLING AND APPROVAL OF A HORIZONTAL  
SPACING UNIT AND POTASH DEVELOPMENT AREA,  
EDDY COUNTY, NEW MEXICO

CASE NO. 20202

**MOTION TO DISMISS**  
**or**  
**ALTERNATIVELY TO DEFER HEARINGS**

EOG Resources, Inc., by and through its undersigned attorney, moves the Oil Conservation Division (“Division”) for dismissal of the above-captioned application, and as grounds therefor, states:

**A. Background and Applications**

1. EOG holds oil and gas working interests in W/2 of Section 28 and the S/2 of Section 29, Township 20 South, Range 30 East, NMPM, Eddy County, New Mexico.
2. In Case 16481 Ascent Energy LLC (“Ascent”) has applied for an order creating a 320-acre spacing and proration unit in the Bone Spring Formation comprised of the W/2W/2 of Section 28 and W/2W/2 of Section 33, Township 22 South, Range 30 East, NMPM, Eddy

County, New Mexico, for compulsory pooling of all uncommitted interests in the Bone Spring formation underlying the proposed unit, and to dedicate the unit to its Anvil Fed. Com Wells Nos. 401H, 501H, and 601H.

3. In Case 16482 Ascent has applied for an order creating a 320-acre spacing and proration unit in the Wolfcamp Formation comprised of the W/2W/2 of Section 28 and W/2W/2 of Section 33, Township 22 South, Range 30 East, NMPM, Eddy County, New Mexico, for compulsory pooling of all uncommitted interests in the Bone Spring formation underlying the proposed unit, and to dedicate the unit to its Anvil Fed. Com Wells Nos. 701H, and 702H.

4. In Cases 20171 and 20202 Apache Corporation (“Apache”) has applied for compulsory pool order creating an 800-acre horizontal spacing and a potash area development area, compulsory pooling comprised of the N/2 of Sections 28, 29 and the NE/4 of Section 30 Township 22 South, Range 30 East, NMPM, Eddy County, New Mexico, and to dedicate the unit to its Taco 28-30 Federal Com Wells Nos. 301H, 302H, 303H, 201H, 202H, 401H, 402H, and 403H.

5. EOG’s interests are affected by the applications of Ascent and Apache.

6. The lands covered by the applications of Ascent and Apache are within the Designated Potash Area as designated by Oil Conservation Division Order R-111-P and Department of Interior Order No. 3324 (“Order No. 3324”).

***B. The applications are premature until such time as the BLM approves a potash development area.***

As a preliminary matter the BLM is the lead agency in determining and approving the potash area developing area. Order R-111-P issued rules for drilling well within the Potash Area. Rule G (Designation of Drillable Location for Wells) (e)(3) states in part:

Drilling applications on federal lands will be processed for approval by the BLM.

The APDs filed by Ascent and Apache are being processed by the BLM. To EOG's knowledge and information none of the parties' APDs have been approved. In fact, the development areas proposed by the proposed APDs of Ascent and Apache are contested before the BLM. Obviously, the development area must be established before the APDs can be approved.

Order No. 3324 defines a Development Area as follows:

Development Area. An area established by the BLM with the Designated Potash Area in consideration of appropriate oil and gas technology such that wells can be drilled from a Drilling Island capable of effectively extracting oil and gas resources while managing the impact on potash resources. Each Development Area will typically have only one Drilling Island, subject to narrow exceptions based on specific facts and circumstances. All new oil and gas that penetrate the potash formations within the Development Area will be drilled from the Drilling Island(s) associated with the Development Area. The boundaries of each Development Area will be determined in conformity with Section 6.e.(2).

Section 6.e.(2)(a)states:

When processing an application for permit to drill (APD) an oil or gas well in the Designated Potash area that complies with regulatory requirements, the Authorized Officer will determine whether to establish a Development Area in connection with the application, and if so, will determine the boundaries of the Development area and the location within the Development Area of one or more Drilling Islands from which drilling will be permitted. The BLM may also designate a Development Area outside of the APD process based on information in its possession, and may modify the boundaries of a Development Area. Existing wells may be included within the boundaries of a Development Area. A Development Area may include Federal oil and gas leases and other Federal and non-Federal lands.

Until a Development Area and a Drilling Island is established by the BLM, compulsory pooling and designation of spacing units as requested in the Ascent and Apache applications by the Division may be rendered meaningless. Holding a hearing on competing applications which, in these applications, involve a north/south—east/west dispute, are clearly premature at this time and a waste of time for the OCD. There simply are too many variables that affect a Division determination. It is not inconceivable that the ultimate Development Area designated by the

BLM could have the effect of negating all or portions of the APDs before the BLM submitted by Ascent and Apache.

EOG, as a non-operating working interest owner, is faced with compulsory pooling applications and well proposals that effectively require it to participate in both of the competing proposals pending first, the BLM APD and Development Area processes and secondly, an uncertain Division proceeding without a clear determination of BLM approval. In addition, without a BLM determination, EOG cannot protect a portion of its leasehold interests from being stranded which devalues the interests.

C. *Alternatively, the Division should defer and continue the applications until the BLM designates a Development Area.*

The more rational approach, short of dismissal, is to continue these cases until the BLM designates a Development Area and a Drilling Island. For the Division to now proceed with hearing the applications and issuing orders would be putting the cart before the horse. Potash Assn. of New Mexico v. U.S. Dept. of the Int., CV 06-1190 MCA/ACT, 2008 WL 11359154, at \*2 (D.N.M. Aug. 29, 2008) illustrates the BLM's determination process as follows:

The IBLA defined the principal issue to be addressed at the hearing as "whether BLM's denial of the APD's accords with the provisions of the 1986 Order." Id. at 235. In particular, the IBLA directed that there be further inquiry on:

whether the APD's encompass lands within areas qualifying as potash enclaves under the parameters established by section 3.III.D.1.c. of the Order, i.e., whether the lands are currently unmined areas within Federal potash leases where potash ore is known to exist in sufficient thickness and quality to be mineable under existing technology and economics, and whether approving the APD's would result in undue waste of potash deposits or constitute a hazard to or unduly interfere with mining operations being conducted for the extraction of potash deposits.

Id. at 235-36 (footnote and quotation marks omitted).

The 1986 Order preceded Order No. 3524, provides for the type of BLM review as the 1986 Order.

D. *Conclusion.*

It is not the province of the Division in these cases for the Division to determine the Development Area which may or may not ultimately coincide with the proposed APDs. While the Division may have authority over compulsory pooling, it is illusory at this time for the Division to proceed and issue orders on the applications before a BLM determination on the APDs and the Designation Area.

WHEREFORE, the applications in the captioned cases should be dismissed, or in the alternative, deferred and continued to a time after the BLM has made a determination on the APDs and the Development Area.

Respectfully submitted,

PADILLA LAW FIRM, P.A.

By: /s/ ERNEST L. PADILLA

ERNEST L. PADILLA

PO Box 2523

Santa Fe, NM 87504

(505) 988-7577

padillalaw@qwestoffice.net

### CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading was electronically mailed to the following:

James Bruce  
Attorney at Law  
PO Box 1056  
Santa Fe, NM 87504  
505-982-2043  
jamesbruc@aol.com

Earl E. DeBrine, Jr.  
Zoe E. Lees  
PO Box 2168  
Albuquerque, NM 87103  
505-848-1800  
edebrine@modrall.com  
sel@modrall.com

J.E. Gallegos  
Michael J. Condon  
Gallegos Law Firm, P.C.  
460 St. Michael's Drive, Bldg. 300  
Santa Fe, NM 87505  
[jeg@gallegoslafirm.net](mailto:jeg@gallegoslafirm.net)  
[mjc@gallegoslafirm.net](mailto:mjc@gallegoslafirm.net)

Dalva L. Moellenberg  
Gallagher & Kennedy, PA  
1239 Paseo de Peralta  
Santa Fe, NM 87501-2758  
[dln@gknet.com](mailto:dln@gknet.com)

on this 7th day of January, 2019.

/s/ ERNEST L. PADILLA  
ERNEST L. PADILLA