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

APPLICATION OF ASCENT ENERGY, LLC FOR COMPULSORY POOLING, EDDY COUNTY, NEW MEXICO	**Case Nos. 21277 and 21278 (Division Case Nos. 16481 and 16482)**
AMENDED APPLICATIONS OF APACHE CORPORATION FOR COMPULSORY POOLING AND APPROVAL OF A HORIZONTAL SPACING UNIT AND POTASH DEVELOPMENT AREA, EDDY COUNTY, NEW MEXICO	**Case Nos. 21279 and 21280 (Division Case Nos. 20171 and 20202)**

MEWBOURNE OIL COMPANY'S REPLY TO ASCENT ENERGY, LLC'S RESPONSE IN OPPOSITION TO APACHE CORPORATION'S MOTION TO STAY THE *DE NOVO* HEARING IN CASE NOS. 21277-21280

Mewbourne Oil Company ("Mewbourne") submits the following reply to Ascent Energy, LLC's Response in Opposition to Apache Corporation's Motion to Stay the *De Novo* Hearing in Case Nos. 21277-21280. Ascent's arguments disregard the fact the competing applications filed by Mewbourne, Apache Corporation ("Apache"), and Ascent Energy, LLC ("Ascent") involve overlapping acreage and that it would protect correlative rights and benefit the parties, the Oil Conservation Division ("Division"), and the Oil Conservation Commission ("Commission") for the Commission to hold one *de novo* hearing on all of the applications rather than review them at different times through a piecemeal process. In support of this reply, Mewbourne states the following.

1. Ascent's Response unduly complicates the procedural issues that relate to the pending applications, as well as the nature of the applications. Although there will ultimately be

12 competing applications, they involve overlapping acreage, and the Commission could efficiently address them in one *de novo* hearing. Ascent and Mewbourne have filed four competing applications regarding the W/2 W/2 of Sections 28 and 33 (Division Case Nos. 16481, 16482, 21362, and 21364) and four competing applications regarding the E/2 W/2 of Sections 28 and 33, Township 20 South, Range 30 East in Eddy County (Division Case Nos. 21361, 21363, 21393, and 21394). Apache has filed two applications regarding spacing units in the N/2 of Sections 28 and 29 and the NE/4 of Section 30 (Division Case Nos. 20171 and 20202) and has expressed an intent to file two more that request pooling of that same acreage. Thus, the only acreage at issue is the W/2 of Sections 28 and 33 and the N/2 of Sections 28 and 29 and the NE/4 of Section 30. This type of a conflict is not unusual and could be efficiently addressed in one Commission hearing.

2. Ascent's argument that the Division should delay a decision on the applications that Mewbourne and Ascent have filed regarding the E/2 W/2 of Sections 28 and 33 until after the *de novo* hearing would result in an inefficient and piecemeal review process that will not protect the parties' correlative rights. Because the applications involving the E/2 W/2 of Sections 28 and 33 conflict with Apache's applications that are pending before the Commission, the applications should be evaluated collectively and addressed at one Commission hearing. Ascent's new applications in Division Case Nos. 21393 and 21394 also recognize that the applications are part of Ascent's plan to develop the entire W/2 of Sections 28 and 33, confirming that one Commission hearing should be held on all of the applications.

3. Further, Ascent's argument that the Commission should hear the cases involving the W/2 W/2 lands separately from the cases involving E/2 W/2 lands because Ascent is entitled to some type of credit for ownership interests under its pooling order in Case Nos. 16481 and 16482 lacks merit. *See* Ascent Response at ¶ 29. Order No. R-10731-B, on which Ascent relies,

analyzed how ownership interests should be credited in a competing pooling scenario and allocated the interests of one party (Diamond Head Properties) to one of the applicants (Medallion) and the interests of others to the competing applicant (Yates). Although the Commission credited Medallion with Diamond Head's interest, Diamond Head had remained neutral with respect to the competing applications. The Commission also credited Yates with the interest of owners who supported its application. Here, the interests of the Hudson entities that were addressed in Ascent Case Nos. 16481 and 16482 have assigned their interests to Mewbourne.[1] In accordance with Division precedent, including Order No. R-10731-B, there would be no basis to credit Ascent with their interests and there is no basis for Ascent's argument that the ownership interests in the W/2 W/2 of Sections 28 and 33 differ from those in the E/2 W/2 of Sections 28 and 33. This is especially true given that Ascent chose not to acquire the Hudson interests from Mewbourne under the trade agreement Mewbourne and Ascent had reached. And even if the ownership interests did differ, that would not justify the inefficient and piecemeal process that Ascent advocates here.

4. Ascent's claims that extensive delay would result from the proposed stay are unfounded. There is no reason to believe that a stay could result in a two-year delay, as Ascent claims. In addition, Ascent's request that the Division hear the cases involving the E/2 W/2 of Sections 28 and 33 after the *de novo* hearing would only exacerbate the delay of which Ascent complains.

5. Ascent misstates Mewbourne's position regarding the referral of applications to the Commission. Contrary to Ascent's statements, Mewbourne never asked the Division to refer all of

[1] These interests were identified in Ascent's Hearing Exhibits A-5 and A-6, which were attached to Mewbourne's Referral Motion as Exhibit B, and include: Delmar Lewis Living Trust, Lindy's Living Trust, Javelina Partners, Zorro Partners, LLC, Ard Energy Group, Moore & Shelton Company Ltd., and the Josephine T. Hudson Testamentary Trust. Collectively, these entities have assigned to Mewbourne approximately 55% of the working interest in Ascent's proposed spacing units, which exceeds Ascent's 34% interest.

the competing applications (including Ascent's new applications and Apache's prospective pooling applications) to the Commission. *See* Ascent Response at ¶ 21. Rather, Mewbourne's Motion for Referral of Applications to the New Mexico Oil Conservation Commission for Hearing in Conjunction with *De Novo* Hearing in Case Nos. 21277-21280 ("Referral Motion") requested that the Division Director refer Mewbourne's four applications (in Division Case Nos. 21361-21364) to the Commission because they involve overlapping acreage with Ascent's and Apache's four applications that will be heard by the Commission, and a joint hearing would protect correlative rights and promote efficiency. When Mewbourne filed its motion, Ascent's new applications had not been filed and Mewbourne was not aware that Apache intended to file additional applications.

6. With respect to Mewbourne's position on Apache's Motion for Stay, Mewbourne has not asked the Division to hear all of the competing applications that are pending before it. Rather, Mewbourne's Referral Motion remains pending. The grounds for referral of Mewbourne's applications still exist, and Ascent has agreed that Mewbourne's applications involving the W/2 W/2 of Sections 28 and 33 should be referred to the Commission. However, if the Division determines that it should review the pending applications instead of referring them to the Commission, the *De Novo* hearing should be stayed so that the Commission can address all of the pending applications in one hearing after the Division's review is complete.

7. For the reasons discussed above and in Mewbourne's Response to Apache's Motion for Stay, the Commission should ultimately hold one *de novo* hearing on the competing applications that are pending before the Commission (Commission Case Nos. 21277-21280) and the Division (Division Case Nos. 21361-21364 and 21393-21394). The applications involve conflicting development proposals, as Mewbourne and Ascent's applications cover the W/2 of

Sections 33 and 28, and Apache's applications cover the N/2 of Sections 28 and 29 and the NE/4 of Section 30. Thus, Mewbourne's and Ascent's applications overlap entirely and conflict with Apache's applications.

8. If Mewbourne's, Ascent's, and Apache's competing applications are not consolidated for a *de novo* hearing, there is a risk of inconsistent decisions, and multiple *de novo* hearings may be required. It would be inefficient, and waste resources of the Commission and the parties, for the Commission to hold multiple hearings on the pending applications when they all involve competing proposals. A joint hearing would also ensure that the parties' correlative rights are protected in accordance with the requirements of the Oil and Gas Act by allowing the Commission to evaluate all of the competing proposals in one hearing and issue one decision.

For the foregoing reasons, the *de novo* hearing should be stayed pending the Division's determination regarding treatment of the pending competing applications. If the Division proceeds to hear the competing applications that are pending before it instead of referring them to the Commission, the *de novo* hearing should be stayed until the applications are resolved by the Division so that one *de novo* hearing can be held on all of the competing applications. The stay is appropriate, would protect the parties' correlative rights, and would conserve resources of the parties and the Commission.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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