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 RESPONSE IN OPPOSITION TO ASCENT ENERGY, LLC'S MOTION TO REHEAR ORDER NO. R-21454

Mewbourne Oil Company ("Mewbourne") submits the following response in opposition to Ascent Energy, LLC's ("Ascent") Motion to Rehear Order No. R-21454. The Oil Conservation Commission ("Commission") issued Order No. R-21454 ("Order") following extensive briefing by the parties, and its decision should stand. Ascent fails to raise any new issues, misstates the determinations made in the Order, disregards the requirements of the Oil and Gas Act ("the Act"), and ignores that a single hearing would protect correlative rights and conserve resources of the parties, the Oil Conservation Division ("Division"), and the Commission. In support of this response, Mewbourne states the following.

1. Ascent has failed to provide any new information that would warrant a re-hearing of Order No. R-21454. The issues raised by Ascent were addressed by the parties' prior briefing, which was extensive, and were correctly rejected by the Commission. There is no basis for the Commission to reconsider the Order.

2. Ascent misstates the requirements of the Order. Much of Ascent's argument is predicated on the incorrect claim that the Commission has ordered the Division to re-hear the above-captioned cases that are pending before the Commission. But Order No. R-21254 did not order a re-hearing – it stayed the above-captioned cases so the Division can hear Mewbourne's pooling applications in Division Case Nos. 21363-21364, Ascent's competing pooling applications in Division Case Nos. 21393 and 21394, and Apache's competing applications, which Mewbourne understands will be filed this week. In accordance with Order No. R-21454, the Division will have the opportunity to hear evidence from the parties and determine which applications should be granted and denied, and then the Commission will hold one *de novo* hearing on all of the competing applications. This result best conserves resources and comports with the Oil and Gas Act's mandate that the Commission and Division have concurrent jurisdiction to prevent waste and protect correlative rights. *See, e.g.,* NMSA 1978, §§ 70-2-11 and 70-2-6.

3. Ascent's argument that the Commission lacks authority to hold a *de novo* hearing on all of the pending competing applications after they have been addressed by the Division ignores the Oil and Gas Act's principal mandate that the Commission and Division prevent waste and protect correlative rights. Specifically, the Act requires the Commission and Division "to prevent waste prohibited by this act and to protect correlative rights, as in this act provided" and further provides that the Division and Commission are "empowered to make and enforce rules, regulations and orders, *and to do whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof.*" NMSA 1978, § 70-2-11 (emphasis added). If the Commission lacks authority to control its docket and decide whether to consolidate cases for hearing – as Ascent claims – it would not be able to effectively prevent waste and protect correlative rights. Several parties hold interests in the spacing units proposed by

Ascent, Mewbourne, and Apache, and a consolidated hearing on the competing applications will allow the Commission to evaluate all of the applications, and determine which ones should be granted and denied, to prevent waste and protect correlative rights in accordance with the Act. Ascent's argument that the Commission should bifurcate cases and implement a piecemeal review process should be rejected.

4. Ascent's claim that the Commission lacks authority to consolidate cases for hearing because Section 70-2-13 provides for the *de novo* hearing of a "matter" (instead of "matters") heard by the division violates New Mexico's canons of statutory construction. Where the interpretation of a statute leads to absurdities, or conflicts with the purpose of the statute when read as a whole, the interpretation does not reflect legislative intent and cannot be adopted. *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 15, 309 P.3d 1047. A statute cannot be construed to defeat its intended purpose. *Id.* ¶ 21. Ascent's narrow interpretation of Section 70-2-13 would lead to absurd results that are inconsistent with the requirements of the Oil and Gas Act, because Ascent seeks to preclude the Commission from consolidating for hearing cases that involve overlapping acreage to protect correlative rights and prevent waste. Ascent's unreasonably restrictive reading of Section 70-2-13 would tie the Commission's hands and preclude it from complying with its duties under the Act.

5. Ascent also appears to claim that the doctrine of *res judicata* precludes consideration of the new applications that are pending before the Division because the Division issued Order No. R-21258 on the above-captioned applications. This assertion has no merit. The doctrine of *res judicata* only precludes the litigation of a subsequent claim when: (1) the parties are the same; (2) the cause of action is the same; (3) there was a final decision in the first suit; and (4) the first decision was on the merits. *See, e.g., City of Sunland Park v. Macias,* 2003-NMCA-

098, ¶ 18, 134 N.M. 216. None of the applications pending before the Division have previously been heard, and the Division has not considered evidence or issued any ruling on whether Mewbourne's requests to pool the W/2 of Sections 28 and 33 and be designated as the operator of that acreage should be granted. Thus, the requests for relief and "causes of action" are not the same and no order has been issued. Also, the Division's pooling order regarding the above-captioned applications that are pending before the Commission is not final because it is subject to a *de novo* hearing, and the Division retains jurisdiction to modify its orders when it is necessary to do so. *See* 1978 NMSA § 70–2–11(B); Order No. R-21258. The doctrine of *res judicata* is inapplicable.

6. Further, the doctrine of *res judicata* is intended to protect a party from liability on the same claim brought by the same person – not to preclude an administrative agency from issuing new orders or hearing new evidence. *See, e.g., Property Tax Dept. v. Molycorp., Inc.,* 1976-NMSC-072, 89 N.M. 603 (Agency had inherent authority to revise prior order and doctrine of *res judicata* did not preclude it from doing so); *Petroleum Club Inn Co. v. Franklin,* 1963-NMSC-133, 72 N.M. 347 (same). This is especially true here, where the Oil and Gas Act requires the Commission and Division to prevent waste and protect correlative rights.

7. Ascent's reliance on *City of Socorro v. Cook,* 1918-NMSC-072, 24 N.M. 202, is misplaced. In that case, the Supreme Court gave preclusive effect to land-ownership determinations in the Spanish Land Grants under a specific statute. The court did not discuss or apply the elements of *res judicata*, and the case does not stand for the principle that *res judicata* applies to administrative proceedings of the kind at issue here.

8. Ascent's claim that the Division and Commission lack jurisdiction over Mewbourne's pooling applications because they raise contract issues is false. Mewbourne's

applications in Case Nos. 21361-21364 request orders: (a) pooling all uncommitted mineral interests in the spacing units; (b) designating Mewbourne as the operator of the wells; (c) authorizing Mewbourne to recover its costs of drilling, equipping, and completing the wells and allocating the costs among the wells' working interest owners; (d) approving the actual operating charges and costs of supervision during drilling and after completion, together with a provision for adjusting the rates pursuant to the COPAS accounting procedure; and (e) imposing a 200% penalty for the risk assumed by Mewbourne in drilling and completing the wells. *These requests are the same as those requested by Ascent's applications in Case Nos. 21393 and 21394.* None of Mewbourne's applications mention contract issues or request relief related to a contract. The applications are no different from the other pooling applications that are heard by the Division and Commission on a regular basis. Mewbourne's briefing has discussed the agreement between Ascent and Mewbourne because it provides background information and is relevant to Ascent's obligation to negotiate in good faith prior to pooling. Ascent's argument on this issue ignores the facts and the law and should be rejected. *See, e.g.,* NMSA 1978, § 70-2-17(C) (stating that interests shall be pooled "to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste.").

9. For the reasons discussed above, Ascent's motion should be denied and the Commission's stay order should stand. It would be inefficient, and waste resources of the Commission and the parties, for the Commission to hold multiple hearings on the competing applications. A joint hearing will also protect correlative rights and prevent waste in accordance with the requirements of the Oil and Gas Act by allowing the Commission to evaluate the competing proposals in one hearing and issue one decision.

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CERTIFICATE OF SERVICE

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