

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

**IN THE MATTER OF THE HEARING CALLED  
BY THE OIL CONSERVATION DIVISION FOR  
THE PURPOSE OF CONSIDERING:**

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

**Case Nos. 21393 & 21394**

**APPLICATION OF MEWBOURNE OIL  
COMPANY FOR COMPULSORY POOLING,  
EDDY COUNTY, NEW MEXICO**

**Case Nos. 21361, 21362, 21363,  
& 21364**

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

**Case Nos. 21489, 21490, & 21491**

**AMENDED PREHEARING STATEMENT**

Ascent Energy, LLC, (“Ascent”), OGRID No. 325830, submits the following Prehearing Statement pursuant to the rules of the Oil Conservation Division (“Division”).

**APPEARANCES**

**APPLICANT**

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PARTIES IN COMPETITION

Mewbourne Oil Company

Apache Corporation

INTERESTED PARTY

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## APPLICANT'S STATEMENT OF CASES

In Case Nos. 16481 and 16482, the Division granted Ascent, pursuant to Order No. R-21258, operatorship of two units, and rights to the pooled interests, in the Bone Spring formation and in the Wolfcamp formation underlying the W/2 W/2 of Sections 28 and 33, Township 20 South, Range 30 East, NMPM, Eddy County, New Mexico (“W/2 W/2 Lands”). These cases were part of a contested hearing held August 20, 2019, during which Apache Corporation (“Apache”), presented unsuccessful competing applications in Case Nos. 20171 and 20202 to develop and operate a horizontal spacing unit in the Bone Spring formation and Wolfcamp formation underlying the N/2 of Sections 28 and 29, and the NE/4 of Section 30, Township 20 South, Range 30 East, NMPM, Eddy County, New Mexico (Apache’s “Laydown Plan”). Mewbourne Oil Company (“Mewbourne”) made an entry of appearance and attended the hearing as a party of record for Case Nos. 16481, 16482, 20171 and 20202.

After the Division issued Order No. R-21258, both Mewbourne and Apache requested a *de novo* hearing before the Oil Conservation Commission (“Commission”), pursuant to NMSA 1978 Section 70-2-13. However, in preparation for the *de novo* hearing, Mewbourne filed applications, Case Nos. 21362 and 21364, for the re-pooling of the W/2 W/2 Lands, and Case Nos. 21361 and 21363, for the pooling of the E/2 W/2 of Sections 28 and 33, Township 20 South, Range 30 East, NMPM, Eddy County, New Mexico (“E/2 W/2 Lands”). Along the same lines, having been granted its request to stay the *de novo* hearing, Apache took that opportunity to shore up its Laydown Plan for the N/2 of Sections 28 and 29, and the NE/4 of Section 30 by filing new applications for the same lands in Case Nos. 21489, 21490 and 21491, thereby reviving its original compulsory pooling request that Apache, on its own initiative, had dismissed during the original hearing in favor of pursuing its spacing application at that time, and revisiting its spacing request

for the lands, which the Division has already ruled against. With the re-submission of their requests at the Division-level, that directly challenge and re-litigate Ascent's standing order, Apache and Mewbourne have been able to obtain the enviable and unprecedented position in these proceedings of receiving "three bites at the apple" when these cases arrive at the Commission for the *de novo* hearing originally requested.

After extensive briefing on procedural matters and issues involving questions of the proper disposition of these cases, both at the level of the Division and the Commission, the Division has ruled to proceed with the cases and to: (1) re-litigate Apache's horizontal spacing application; (2) to re-litigate Mewbourne's pooling and spacing applications for the W/2 W/2 Lands, along with hearing its applications for the E/2 W/2 Lands; and (3) to hear Ascent's pooling and spacing applications for the E/2 W/2 Lands. This Division also decided not to re-hear Ascent's successful applications involving the W/2W/2 Lands (Case Nos. 16481 and 16482) despite the fact that Ascent's prevailing applications are mutually exclusive to those filed by Apache and by Mewbourne in Case Nos. 21362 and 21364.

Exercising its jurisdiction over this Potash area, the BLM has approved Ascent's Development Area encompassing the W/2 of Sections 28 and 33. Based on this approval, Ascent filed additional pooling applications for the E/2 W/2 Lands in Case Nos. 21393 and 21394 in an effort to pursue and complete its Development Plan and Area, a plan that Ascent originally conceived and is now executing. Ascent seeks to maintain its status as operator of its Anvil Fed Com Wells in the W/2 W/2 Lands pursuant to Division Order No. 21258 and BLM approval of its Development Plan for the W/2 W/2 Lands. In Case Nos. 21393 and 21394, Ascent seeks an order granting operatorship and the pooling of all uncommitted owners in the Bone Spring formation in the E/2 W/2 Lands, to which it proposes to dedicate the Anvil Fed Com 502H, 503H, and 602H

Wells, and an order granting operatorship and the pooling of all uncommitted owners in the Wolfcamp formation in the E/2 W/2 Lands, to which Ascent proposes to dedicate its Anvil Fed Com 703H Well.

Currently, Ascent holds a 34.1% interest in its proposed spacing units and in the spacing units proposed by Mewbourne. Mewbourne claims a 62.5% interest in its proposed spacing units and in the spacing units proposed by Ascent, a claim which Ascent disputes. Apache claims a 38.42% interest in its proposed spacing unit. Ascent claims a 16.4% interest in the spacing unit proposed by Apache. Based on the Amended Joint Statement of Dispute and Undisputed Facts, Mewbourne is claiming a 5% interest in the spacing units proposed by Apache. The remainder of disputed facts and issues relate to which of the three competing proposed development plans best prevent waste, protect correlative rights, and avoids the drilling of unnecessary wells. The Division has already adjudicated these criteria with respect to the W/2 W/2 Lands and concluded that Ascent's development plan best met these criteria, with a major consideration being Ascent's prevention of stranded acreage. The BLM also expressed its approval of Ascent's proposed development of the W/2 W/2 Lands by granting Ascent's Development Area encompassing the W/2 of Sections 28 and 33.

**UPDATE OF ASCENT'S GROUNDWORK TOWARD DEVELOPMENT  
DURING THE CONTINUATION PERIOD IN THE RE-LITIGATION**

When the parties filed their exhibits in these cases, on or about February 11, 2021, the BLM had not yet granted any of the parties' applications for permit to drill wells in this Potash Development Area. However, after reviewing Ascent's plan of development, the BLM has since

approved all of Ascent’s five drilling permits for Anvil wells in the W/2 W/2 Lands,<sup>1</sup> finding them to be in the public’s best interest. The BLM’s approval of Ascent’s APDs and drilling islands evidences BLM’s preference for Ascent’s north-south development plans in this Potash Development Area.

Because the BLM has already vetted and approved Ascent’s requested drilling islands and permits in this Potash Development Area, Ascent will be able to immediately proceed with drilling operations upon the Commission’s approval of Ascent’s applications.

**APPLICANT’S PROPOSED EVIDENCE**

WITNESS	ESTIMATED TIME	EXHIBITS
Lee Zink - Landman See Exhibit A in Hearing Packet for E/2 W/2 for credentials	Approx. 2 hrs	Approx. 20
Ben Metz – Geologist See Exhibit B in Hearing Packet for E/2 W/2 for credentials	Approx. 2 hrs	Approx. 23
Joshua Mallery – Drilling Engineer See Exhibit D in Hearing Packet for E/2 W/2 for credentials	Approx. 1 hr	Approx. 4
Jamie Hecht – Reservoir Engineer See Exhibit E in Hearing Packet for E/2 W/2 for credentials	Approx 1 hr	Approx. 9

**PROPOSED EVIDENCE OF OPPOSING PARTIES**

To be provided by opposing parties.

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<sup>1</sup> The approved APDs are for the Anvil Federal Com 401H, 501H, 601H, 701H and 702H Wells (API Nos. 30-015-48631, 30-015-49630, 30-015-48629, 30-015-48628, 30-015-48627, respectively).

## **PROCEDURAL MATTERS**

Ascent respectfully submits that this hearing should incorporate the record of the original Division hearing held on August 20, 2019, for Case Nos. 16481, 16482, 20171 and 20202, as it involves the same cases, lands, and parties. Furthermore, Ascent respectfully requests that the motions and pleadings filed in Commission Case Nos. 21277, 21278, 21279 and 21280 and in Division Case Nos. 21361, 21362, 21363, 21364, 21489, 21490, and 21491, as well as Commission Order Nos. R-21454 and R-21454-A, be incorporated by reference and made a part of the record of the hearing for the above-reference cases, as the pleadings form the material foundation to the hearing of the above-referenced cases since they developed and described the underlying procedural issues and basis of the support, in the case of Apache and Mewbourne, and objections, in the case of Ascent, expressed by the parties involved in these proceedings.

Although the Division has removed Ascent's applications for the W/2 W/2 Lands, Case Nos. 16481 and 16482, from the caption, Ascent respectfully submits that essential elements from these two cases should be heard and considered in the contested hearing given that Apache's re-applications conflict with Ascent's north-south development, and Mewbourne's post-hearing applications for the W/2 W/2 Lands (Case Nos. 21362 and 21364) conflict with Ascent's applications in Case Nos. 16481 and 16482. Otherwise, Ascent would be prejudiced if not allowed to address the content of Case Nos. 16481 and 16482, to the extent they are relevant and pertain to the competing applications of Apache and Mewbourne, to demonstrate that the Division's Order No. R-21258 was factually and substantially correct as issued, especially given the fact that BLM has issued Ascent five APDs for its proposed development in the Potash Development Area.

Ascent also respectfully requests that the Division take judicial notice of the proceedings in Commission Case No. 21744, in which analogous legal issues are being considered regarding

the proper forum for competing applications in a *de novo* hearing when a standing order, issued by the Division, is still valid. In the Motion Hearing held July 8, 2021, in Case No. 21744, the Commission expressed a strong interest in ensuring that hearings are held in the proper forum and appeared reluctant to return a matter, as described under NMSA 1978 Sec. 70-2-13, to the Division-level for re-litigation when a valid order deciding the matter remains in effect. *See* Transcript of Case No. 21744, dated July 8, 2021, Agenda Item No. 5, p. 28, 17-25; p. 29, 1-15, a copy of which is attached as Exhibit 1. Since an unopposed motion to continue has recently been filed by Mewbourne to move the scheduled September 8, 2021, hearing at the Division-level to a later date, mostly likely in November or December 2021, Ascent would not object if the Division assessed, *sua sponte*, the proper forum for hearing all of the above-referenced competing cases in light of the consideration of this issue currently taking place in similarly situated proceedings.

Finally, Ascent respectfully requests that the parties in the above-referenced cases be provided the opportunity to submit a closing brief in support of their applications and cases, not to exceed fifteen pages.

Respectfully submitted,

ABADIE & SCHILL, PC

/s/ Darin C. Savage

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was filed with the New Mexico Oil Conservation Division and was served on counsel of record via electronic mail on August 27, 2021:

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

IN THE MATTTER OF THE HEARING CALLED  
BY THE OIL CONSERVATION COMMISSION FOR  
THE PURPOSE OF CONSIDERING:

Application of Cimarex Energy Company  
for Hearing De Novo of Case 21429  
Eddy County, New Mexico

Case No. 21744

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

THURSDAY, JULY 8, 2021

AGENDA ITEM NO. 5

BEFORE: ADRIENNE SANDOVAL, COMMISSION CHAIR  
GREG BLOOM, COMMISSIONER  
TERRY WARNELL, COMMISSIONER

This matter came on for hearing before the  
New Mexico Oil Conservation Commission on  
Thursday, July 8, 2021, Via the Webex Virtual  
Conferencing Platform, hosted by the New Mexico  
Energy, Minerals and Natural Resources Department

Reported by: Mary Therese Macfarlane  
New Mexico NM CCR #122  
PAUL BACA COURT REPORTERS  
500 Fourth Street NW, Suite 105  
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1 if this goes beyond, I would like to exhaust  
2 administrative remedies. We can go back to argue 7-2-13  
3 and whether or not it's appropriate to grant a de novo  
4 hearing in the first place under the circumstances that  
5 the Commission did. So going back to consider factual  
6 allegations would just simply delay Colgate's ability to  
7 exhaust administrative remedies if we decide to go there.

8 COMMISSIONER BLOOM: Okay. Thank you. I don't  
9 have any further questions on this point. At some point I  
10 might like to return to the issue of the Motion to Dismiss  
11 and issues with BLM and the Potash raised by Colgate.

12 COMMISSION CHAIR SANDOVAL: Mr. Warnell, do you  
13 have any additional questions of the parties?

14 COMMISSIONER WARNELL: Madam Chair, I appreciate  
15 both Mr. Padilla and Mr. Savage's comments, and I have  
16 nothing at this time.

17 COMMISSION CHAIR SANDOVAL: Okay. Well, we now  
18 have to figure out what to do.

19 I guess I'm sort of -- I'm struggling with  
20 sending it back down to the Division. And why I say that  
21 is because I think, you know, the Commission has heard  
22 enough information and enough on the record from the  
23 previous hearings that there is a question as to whether  
24 or not that good faith effort was -- you know, was gone  
25 through on Colgate's side. But I would want additional,

1 like, testimony, evidence, et cetera, to make that -- you  
2 know, make like a sort of official ruling on that, or, you  
3 know, to invalidate the Order.

4 I'm not in a place where I feel like  
5 there's enough, we've heard enough evidence and  
6 testimony -- well, we haven't heard any testimony -- to  
7 invalidate that Order, which leaves us, I think, at the  
8 place where we have the Order stayed, the Order was stayed  
9 at the last hearing, and I do think that de novo appeal is  
10 the place where all of that comes out, where the evidence  
11 and testimony should be made and the Commission would then  
12 make that decision.

13 So I don't think the Order at this point  
14 should be invalidated. Now, that may be something that we  
15 come to at the de novo hearing, but I'm not there today.

16 MR. MOANDER: And I just want to note for the  
17 benefit of the parties and the Commission, in the second  
18 paragraph of Order 21679-A that the effect of the Order  
19 has Colgate ceasing operations pursuant to the underlying  
20 Division Order, and then in the third paragraph, the  
21 matter -- that this stays in effect either until the  
22 Commission reaches a resolution or the parties settle out.

23 So the impact of the Order is  
24 long-reaching, essentially through the end of this de novo  
25 appeal, or if the parties come to some mutual agreement.