

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

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

**Case No. 21361  
Case No. 21362  
Case No. 21363  
Case No. 21364**

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

**Case No. 21393  
Case No. 21394**

**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 No. 21489  
Case No. 21490  
Case No. 21491  
Order No. R-21675**

**ASCENT ENERGY LLC'S (AMENDED) MOTION TO REPLACE FORMER  
DRILLING ENGINEER WITH NEW DRILLING ENGINEER  
AS AN EXPERT WITNESS**

Ascent Energy, LLC (“Ascent”) submits to the New Mexico Oil Conservation Division (“Division”) its Motion to Replace Former Drilling Engineer with New Drilling Engineer as an Expert Witness (“Motion”) to account for the extenuating circumstances involving Ascent’s loss

of its former drilling engineer. Ascent's replacement engineer, Joshua Mallery, has reviewed Ascent's testimony and exhibits of the former engineer, finds that they accurately reflect Ascent's proposed operations, and adopts them as his own testimony and exhibits in their unaltered form. The only language added to the Verified Statement is the inclusion of the background and qualifications of the new engineer and his adoption of the testimony and exhibits without alteration.

There is precedent in the Rules of Civil Procedure for such replacement, which is permitted providing that new opinions are not offered and the testimony of the former expert witness is not contradicted. *See Bui v. City & County of S.F.*, 2018, U.S. Dist. LEXIS 16017 (N.D. Cal. January 31, 2018); see also discussion of this case and criteria for replacement of expert witness at: (<https://www.forensisgroup.com/can-an-expert-be-replaced-if-hes-unavailable-for-trial/>). Ascent provides this as information for the Division's consideration and submits that its request satisfies the criteria of the *Bui* court; no material content of the testimony has been altered; the exhibits are the same; and the new engineer adopts them in whole; therefore, there should be no prejudice to the existing parties involved. Ascent has contacted opposing counsel to inform them of this request. Opposing counsel has been informed about this motion, and they do not object.

For the foregoing reasons, Ascent respectfully requests that the Division allow the replacement of Ascent's former expert witness with the new drilling engineer as proper expert witness in the above-referenced cases.

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 May 11, 2021:

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