

**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 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, and 21491

IN ITS RELATION TO THE FOLLOWING:

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

**OCD Case Nos. 16481 and 16482
OCC Case Nos. 21277 and 21278**

**AMENDED APPLICATIONS OF APACHE
CORPORATION FOR COMPULSORY POOLING
AND APPROVAL OF HORIZONTAL SPACING
UNIT AND POTASH DEVELOPMENT AREA,
EDDY COUNTY, NEW MEXICO**

**OCD Case Nos. 20171 and 20202
OCC Case Nos. 21279 and 21280**

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

**OCD Case Nos. 21361, 21362,
21363 and 21364**

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

OCD Case Nos. 21393 and 21394

ORDERS OF THE COMMISSION

**Order Nos. R-21454
and R-21454-A**

**ASCENT ENERGY LLC'S 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. Counsel for EOG Resources, Inc., has no objection. Other counsel has not responded as of this filing.

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

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