

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

**IN THE MATTER OF THE HEARING CALLED BY  
THE OIL CONSERVATION DIVISION TO  
CONSIDER:**

**CASE Nos. 16481 and 16482**

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

**CASE Nos. 20171 and 20202**

**IN THE MATTER OF THE AMENDED APPLICATION OF APACHE CORPORATION  
FOR COMPULSORY POOLING AND APPROVAL OF A HORIZONTAL SPACING  
UNIT AND POTASH DEVELOPMENT AREA, EDDY COUNTY, NEW MEXICO.**

**ORDER NO. R- 21258**

**ORDER**

The Director of the New Mexico Oil Conservation Division (“OCD”), having heard this matter through a Hearing Examiner on August 20, 2019, and after considering the testimony, evidence, and recommendation of the Hearing Examiner, issues the following Order.

**FINDINGS OF FACT**

1. Ascent Energy, LLC (“Ascent”) submitted applications (“Applications”) to compulsory pool the uncommitted oil and gas interests within the spacing units (“Unit(s)”) described in Exhibit A and B. The Units are expected to be standard horizontal spacing units. 19.15.16.15(B) NMAC. Ascent seeks to be designated the operator of the Units.
2. Ascent will dedicate the well(s) described in Exhibit A and B (“Well(s)”) to the Units.
3. Ascent proposes the supervision and risk charges for the Wells described in Exhibit A and B.
4. Ascent identified the owners of uncommitted interests in oil and gas minerals in the Units and provided evidence that notice was given.
5. The Application was heard by the Hearing Examiner on the date specified above, during which Ascent and Apache Corporation (“Apache”) presented evidence through

- live witnesses regarding the Applications. No other party presented evidence at the hearing.
6. Due public notice has been given and the OCD has jurisdiction of the cases and the subject matter.
  7. Ascent is the applicant in Cases No. 16481 and 16482. Apache is the applicant in Cases 20171 and 20202.
  8. In Case No. 16481, Ascent seeks to compulsory pool all uncommitted oil and gas interests within a proposed 320-acre horizontal oil spacing unit in the Bone Spring formation, Wildcat; Bone Spring Oil Pool, comprised of the W/2 W/2 of Sections 28 and 33, Township 20 South, Range 30 East, NMPM, Eddy County, New Mexico. Ascent proposes three (3) initial wells to be dedicated to the Unit.
  9. In Case No. 16482, Ascent seeks to compulsory pool all uncommitted oil and gas interests within a proposed 320-acre horizontal oil spacing unit in the Wolfcamp formation, Wildcat; Wolfcamp Oil Pool, comprised of the W/2 W/2 of Sections 28 and 33, Township 20 South, Range 30 East, NMPM, Eddy County, New Mexico. Ascent proposes two (2) initial wells to be dedicated to the Unit.
  10. In Case No. 20171, Apache seeks an order (1) to the extent necessary, approving the creation of a horizontal spacing unit and a potash development area, and (2) compulsory pooling all uncommitted oil and gas interests within a proposed 800-acre horizontal oil spacing unit in the Wolfcamp formation, Wildcat; Wolfcamp Oil Pool, comprised of 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 proposes three (3) initial wells to be dedicated to the Unit.
  11. In Case No. 20202, Apache seeks an order (1) to the extent necessary, approving the creation of a horizontal spacing unit and a potash development area, and (2) compulsory pooling all uncommitted oil and gas interests within a proposed 800-acre horizontal oil spacing unit in the Bone Spring formation, Wildcat; Bone Spring Oil Pool, comprised of 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 proposes five (5) initial wells to be dedicated to the Unit.
  12. EOG Resources Inc., Occidental Permian Limited Partnership (“Occidental”), and Mewbourne Oil Company each entered an appearance. Occidental indicated support for Apache’s applications. Apache and Ascent entered oppositions to the other’s cases. No other party appeared or otherwise opposed the cases.
  13. Ascent appeared through counsel and presented land ownership and technical testimony indicating the following:

- A. Ascent prefers to drill horizontal wells from already approved drill islands within or extending into the Potash area targetting the Bone Spring and Wolfcamp formations in a South to North direction. Ascent provided testimony to illustrate how South to North drilling would not result in stranded acreage.
  - B. Apache's East to West drilling plan could result in stranded acreage.
  - C. Ascent provided production data from seventy-two (72) proximal wells suggesting that the South to North drilling direction optimized production. Ascent also pointed out that XTO, the largest operator in the Delaware basin, is drilling wells in a North-South orientation near Ascent's proposed development area.
  - D. Ascent has approval of the surface locations and drill pads from the U.S. Bureau of Land Management ("BLM") and has the agreements necessary to market oil and gas and dispose of waste water.
  - E. Ascent currently owns 34 percent of the proposed spacing unit acreage.
  - F. Apache does not currently hold title to any acreage in the proposed spacing units and is therefore not being voluntarily or compulsory pooled into the Units.
  - G. Notice by certified mail was provided to all uncommitted interest owners in the proposed Units whose interests were evidenced by a conveyance instrument, either of record or known to Applicant when the Application was filed, and to heirs known to Applicant of deceased persons who appear as owners in such instrument.
  - H. Notice to certain affected parties was posted in a newspaper of general circulation in the county as provided in Rule 19.15.4.12.B NMAC.
14. Apache appeared through counsel and presented land ownership and technical testimony indicating the following:
- A. Apache has a plan to drill horizontal wells within or extending into the Potash area targetting the Bone Spring and Wolfcamp formations in an East to West orientation.
  - B. Apache provided production data purportedly suggesting that wells drilled in the East/West direction optimizes production as compared to wells drilled in a North/South direction.
  - C. Apache stated that the BLM has competing well proposals from Ascent and Apache and will let the OCD decide the preferred drilling orientation.

- D. Apache is still negotiating with owners within its proposed spacing unit areas for voluntary joinder and is not currently ready to utilize the OCD's compulsory pooling authority.
  - E. Apache has a much larger presence in the Delaware basin and has drilled many more wells than has Ascent.
  - F. Apache has the support of Occidental and has support letters from others.
  - G. Apache has the agreements necessary to market oil and gas and dispose of waste water.
  - H. Apache has withdrawn the portion of its applications asking for compulsory pooling. Apache has re-iterated its request for the OCD to decide the optimum well direction in this area and to deny Ascent's applications.
15. Neither party has drilling permits in hand from the BLM or from the OCD.
  16. The BLM has a large land ownership position within the Potash area, and is both charged and positioned to decide development schemes that are optimum for oil and gas development and for protecting potash reserves. The BLM may still decide the drilling direction in this area despite any decision by the OCD.
  17. The Oil Conservation Commission ("Commission") has recently amended the horizontal well rules to give operators the ability to form horizontal spacing units in whichever orientation the owners prefer by accretion of building blocks consisting for oil of 40-acre, quarter-quarter sections.
  18. There is no clear, geologic evidence allowing the OCD to decide the optimum drilling direction; experienced operators are drilling wells of both North to South and East to West orientation in the immediate area.
  19. Both parties appear capable to prudently operate and prevent waste. However, comparison of the parties' respective proposals suggests Apache's East to West orientation poses the risk of stranded acreage whereas Ascent's North to South orientation from already approved drill islands does not.
  20. The Authorization For Expenditures ("AFE's") of the respective parties do not substantially differ or allow the OCD to base its decision on the basis of cost.
  21. Ascent has made a good faith effort to obtain joinder in its proposed wells. Apache does not own an interest at the time of the hearing, and Apache has withdrawn its proposal to compulsory pool. The objections of Apache do not provide sufficient support to deny the Ascent Applications.

## **CONCLUSIONS OF LAW**

22. OCD has jurisdiction to issue this Order pursuant to NMSA 1978, Section 70-2-17.
23. Ascent is the owner of an oil and gas working interest within the Units.
24. Ascent satisfied the notice requirements for the Applications and the hearing as required by 19.15.4.12 NMAC.
25. OCD satisfied the notice requirements for the hearing as required by 19.15.4.9 NMAC.
26. Ascent has the right to drill the Wells to a common source of supply at the depth(s) and location(s) in the Units described in Exhibit A and B.
27. The Units contains separately owned uncommitted interests in oil and gas minerals.
28. Some of the owners of the uncommitted interests have not agreed to commit their interests to the Units.
29. The pooling of uncommitted interests in the Units will prevent waste and protect correlative rights, including the drilling of unnecessary wells.
30. This Order affords to the owner of an uncommitted interest the opportunity to produce his just and equitable share of the oil or gas in the pool.

## **ORDER**

31. The applications of Apache Corporation in Case Nos. 20171 and 20202, to the extent not already withdrawn, are hereby dismissed.
32. As per the application of Ascent Energy, LLC, in Case No. 16481, all uncommitted interests, whatever they may be, in the oil and gas within the spacing unit (or the portion thereof within the pooled vertical extent) described in Exhibit "A" are hereby pooled. Exhibit "A" hereto is incorporated herein by this reference and made a part of this order for all purposes.
33. As per the application of Ascent Energy, LLC in Case No. 16482, all uncommitted interests, whatever they may be, in the oil and gas within the spacing unit (or the portion thereof within the pooled vertical extent) described in Exhibit "B" are hereby pooled. Exhibit "B" hereto is incorporated herein by this reference and made a part of this order for all purposes.
34. The Units shall be dedicated to the Wells set forth in Exhibit A and B.
35. Ascent is designated as operator of the Units and the Wells.

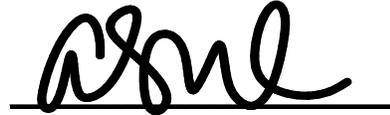
36. If the location of a well will be unorthodox under the spacing rules in effect at the time of completion, Operator shall obtain the OCD's approval for a non-standard location in accordance with 19.15.16.15(C) NMAC.
37. The Operator shall commence drilling the Well(s) within one year after the date of this Order, and complete each Well no later than one (1) year after the commencement of drilling the Well.
38. This Order shall terminate automatically if Operator fails to comply with Paragraph 37 unless Operator obtains an extension by an amendment of this Order for good cause shown.
39. The infill well requirements in 19.15.13.9 NMAC through 19.15.13.12 NMAC shall be applicable.
40. Ascent shall submit to each owner of an uncommitted working interest in the pool ("Pooled Working Interest") an itemized schedule of estimated costs to drill, complete, and equip the well ("Estimated Well Costs").
41. No later than thirty (30) days after Ascent submits the Estimated Well Costs, the owner of a Pooled Working Interest shall elect whether to pay its share of the Estimated Well Costs or its share of the actual costs to drill, complete and equip the well ("Actual Well Costs") out of production from the well. An owner of a Pooled Working Interest who elects to pay its share of the Estimated Well Costs shall render payment to Ascent no later than thirty (30) days after the expiration of the election period, and shall be liable for operating costs, but not risk charges, for the well. An owner of a Pooled Working Interest who fails to pay its share of the Estimated Well Costs or who elects to pay its share of the Actual Well Costs out of production from the well shall be considered to be a "Non-Consenting Pooled Working Interest."
42. No later than one hundred eighty (180) days after Ascent submits a Form C-105 for a well, Ascent shall submit to OCD and each owner of a Pooled Working Interest an itemized schedule of the Actual Well Costs. The Actual Well Costs shall be considered to be the Reasonable Well Costs unless OCD or an owner of a Pooled Working Interest files a written objection no later than forty-five (45) days after receipt of the schedule. If OCD or an owner of a Pooled Working Interest files a timely written objection, OCD shall determine the Reasonable Well Costs after public notice and hearing.
43. No later than sixty (60) days after the expiration of the period to file a written objection to the Actual Well Costs or OCD's order determining the Reasonable Well Costs, whichever is later, each owner of a Pooled Working Interest who paid its share of the Estimated Well Costs shall pay to Operator its share of the Reasonable Well Costs that exceed the Estimated Well Costs, or Ascent shall pay to each owner of a Pooled Working Interest who paid its share of the Estimated Well Costs its share of the Estimated Well Costs that exceed the Reasonable Well Costs.

44. The reasonable charges for supervision to drill and produce a well (“Supervision Charges”) shall not exceed the rates specified in Exhibit A and B, provided however that the rates shall be adjusted annually pursuant to the COPAS form entitled “Accounting Procedure-Joint Operations.”
45. No later than within ninety (90) days after Ascent submits a Form C-105 for a well, Ascent shall submit to OCD and each owner of a Pooled Working Interest an itemized schedule of the reasonable charges for operating and maintaining the well (“Operating Charges”), provided however that Operating Charges shall not include the Reasonable Well Costs or Supervision Charges. The Operating Charges shall be considered final unless OCD or an owner of a Pooled Working Interest files a written objection no later than forty-five (45) days after receipt of the schedule. If OCD or an owner of a Pooled Working Interest files a timely written objection, OCD shall determine the Operating Charges after public notice and hearing.
46. Ascent may withhold the following costs and charges from the share of production due to each owner of a Pooled Working Interest who paid its share of the Estimated Well Costs: (a) the proportionate share of the Supervision Charges; and (b) the proportionate share of the Operating Charges.
47. Ascent may withhold the following costs and charges from the share of production due to each owner of a Non-Consenting Pooled Working Interest: (a) the proportionate share of the Reasonable Well Costs; (b) the proportionate share of the Supervision and Operating Charges; and (c) the percentage of the Reasonable Well Costs specified as the charge for risk described in Exhibit A and B.
48. Ascent shall distribute a proportionate share of the costs and charges withheld pursuant to paragraph 47 to each Pooled Working Interest that paid its share of the Estimated Well Costs.
49. Each year on the anniversary of this Order, and no later than ninety (90) days after each payout, Ascent shall provide to OCD and each owner of a Non-Consenting Pooled Working Interest a schedule of the revenue attributable to a well and the Supervision and Operating Costs charged against that revenue.
50. Any cost or charge that is paid out of production shall be withheld only from the share due to an owner of a Pooled Working Interest. No cost or charge shall be withheld from the share due to an owner of a royalty interests. For the purpose of this Order, an unleased mineral interest shall consist of a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest.
51. Except as provided above, Ascent shall hold the revenue attributable to a well that is not disbursed for any reason for the account of the person(s) entitled to the revenue as provided in the Oil and Gas Proceeds Payment Act, NMSA 1978, Sections 70-10-1 *et seq.*, and relinquish such revenue as provided in the Uniform Unclaimed Property Act, NMSA 1978, Sections 7-8A-1 *et seq.*

52. The Units shall terminate if (a) the owners of all Pooled Working Interests reach a voluntary agreement; or (b) the well(s) drilled on the Unit are plugged and abandoned in accordance with the applicable rules. Operator shall inform OCD no later than thirty (30) days after such occurrence.

53. OCD retains jurisdiction of this matter for the entry of such orders as may be deemed necessary.

**STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION**



**ADRIENNE SANDOVAL  
DIRECTOR**

AES/sc,jag,ks,tw

Date: 4/14/2020

**Exhibit “A” Case No. 16481**

Applicant: Ascent Energy, LLC  
Operator: Ascent Energy, LLC (OGRID 325830)

Spacing Unit: Horizontal Oil  
Building Blocks: quarter-quarter section equivalents  
Unit Size: 320 acres (more or less)  
Orientation of Unit: South to North

Unit Description:

W/2 W/2 of Sections 28 and 33,  
Township 20 South, Range 30 East, NMPM, Eddy County, New Mexico

Pooling this Vertical Extent: Bone Spring Formation  
Depth Severance? (Yes/No): No

Pool: Wildcat Bone Spring Oil  
Pool Spacing Unit Size: quarter-quarter sections  
Horizontal Oil Well Rules Govern Well Setbacks

Proximity Tracts: None Included  
Proximity Defining Well: None

Monthly charge for supervision: While drilling: \$7000 While producing: \$700  
As the charge for risk, 200 percent of reasonable well costs.

**There are 3 Proposed Well(s):**

**Anvil Federal Com Well No. 401H, API No. 30-015-Pending**

SHL: 165 feet from the North line and 925 feet from the East line,  
(Lot 1 or Unit A) of Section 4, Township 21 South, Range 29 East, NMPM.  
BHL: 330 feet from the North line and 340 feet from the West line,  
(Unit D) of Section 28, Township 20 South, Range 30 East, NMPM.

**Anvil Federal Com Well No. 501H, API No. 30-015-Pending**

SHL: 165 feet from the North line and 955 feet from the East line,  
(Lot 1 or Unit A) of Section 4, Township 21 South, Range 29 East, NMPM.  
BHL: 330 feet from the North line and 340 feet from the West line,  
(Unit D) of Section 28, Township 20 South, Range 30 East, NMPM.

**Anvil Federal Com Well No. 601H, API No. 30-015-Pending**

SHL: 210 feet from the North line and 925 feet from the East line,  
(Lot 1 or Unit A) of Section 4, Township 21 South, Range 29 East, NMPM.  
BHL: 330 feet from the North line and 993 feet from the West line,  
(Unit D) of Section 28, Township 20 South, Range 30 East, NMPM.

**All 3 Wells:**

Completion Target: Bone Spring Sands at TVD depths from approx. 7750 feet to 8760 feet.

Well Orientation: South to North

Completion Locations expected to be: standard

**Exhibit "B" Case No. 16482**

Applicant: Ascent Energy, LLC  
Operator: Ascent Energy, LLC (OGRID 325830)

Spacing Unit: Horizontal Oil  
Building Blocks: quarter-quarter section equivalents  
Unit Size: 320 acres (more or less)  
Orientation of Unit: South to North

**Unit Description:**

W/2 W/2 of Sections 28 and 33,  
Township 20 South, Range 30 East, NMPM, Eddy County, New Mexico

Pooling this Vertical Extent: Wolfcamp Formation  
Depth Severance? (Yes/No): No

Pool: Wildcat Wolfcamp Oil Pool  
Pool Spacing Unit Size: quarter-quarter sections  
Governing Well Setbacks: Horizontal Oil Well Rules Govern Well Setbacks

Proximity Tracts: None Included  
Proximity Defining Well: None

Monthly charge for supervision: While drilling: \$7000 While producing: \$700  
As the charge for risk, 200 percent of reasonable well costs.

**There are 2 Proposed Well(s):**

**Anvil Federal Com Well No. 701H, API No. 30-015-Pending**

SHL: 210 feet from the North line and 955 feet from the East line,  
(Lot 1 or Unit A) of Section 4, Township 21 South, Range 29 East, NMPM.  
BHL: 330 feet from the North line and 340 feet from the West line,  
(Unit D) of Section 28, Township 20 South, Range 30 East, NMPM.

**Anvil Federal Com Well No. 702H, API No. 30-015-Pending**

SHL: 210 feet from the North line and 895 feet from the East line,  
(Lot 1 or Unit A) of Section 4, Township 21 South, Range 29 East, NMPM.  
BHL: 330 feet from the North line and 993 feet from the West line,  
(Unit D) of Section 28, Township 20 South, Range 30 East, NMPM.

**Both Wells:**

Completion Target: Wolfcamp A at TVD depths from approx. 10000 feet to 10200 feet.  
Well Orientation: South to North  
Completion Location expected to be: standard