

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

**APPLICATION OF TOM M. RAGSDALE TO REVOKE
ORDER NOS. R-20924 & R-20924-A OR, IN THE ALTERNATIVE,
TO DECLARE UNREASONABLE CERTAIN COSTS
IMPOSED BY MEWBOURNE OIL COMPANY**

Case No. _____

APPLICATION

Tom M. Ragsdale (“Applicant”) files this application pursuant to 19.15.4.12(A) NMAC, seeking an order revoking Order Nos. R-20924 and R-20924-A or, in the alternative, declaring certain costs unreasonable as imposed by Mewbourne Oil Company (“Mewbourne”) under the foregoing orders. In support, Applicant states as follows:

1. On or about May 20, 2019, Mewbourne filed an application in Case No. 20580, seeking to pool the Bone Spring formation underlying the E2/E2 of Sections 10 and 15, Township 23 South, Range 34 East, NMPM, in Lea County, New Mexico, for the purpose of drilling the Ibex 10/15 B1AP Fed. Com. Well No. 2H, API# 30-025-46188 (“10/15 2H”) and the Ibex 10/15 B3AP Fed. Com. Well No. 1H, API# 30-025-46189 (“10/15 1H”) (collectively, “10/15 Wells”).
2. On June 6, 2019, Applicant received notice of the application in Case No. 20580.
3. On June 13, 2019, Case No. 20580 was presented by affidavit.
4. On June 27, 2019, after notice by publication was complete, Case No. 20580 was taken under advisement.
5. On July 3, 2019, Mewbourne’s applications for permits to drill (“APD”) the 10/15 Wells were approved.

6. Sometime in July, Mewbourne spudded the 10/15 2H, had drilling issues and abandoned the operation.

7. On July 24, 2019, Mewbourne received approval from BLM to drill a substitute well, the Ibex 10/15 B1AP Fed Com No. 2Y (“10/15 2Y”).

8. On July 29, 2019, Mewbourne plugged and abandoned the 10/15 2H, due to drilling issues.

9. Upon information and belief, Mewbourne subsequently attempted to drill the substitute well 10/15 2Y, again had drilling issues and plugged and abandoned the well.

10. On August 27, 2019, Mewbourne applied for permits to drill the Ibex 15/10 B1PA Fed. Com. Well No. 2H, API# 30-025-47060 (“15/10 2H”), and the Ibex 15/10 B3PA Fed. Com. Well No. 1H, API# 30-025-46948 (“15/10 1H”) (collectively, “15/10 Wells”).

11. On September 3, 2019, Mewbourne filed its application in Case No. 20809, again seeking to pool the Bone Spring formation underlying the E2/E2 of Sections 10 and 15, Township 23 South, Range 34 East, NMPM, in Lea County, New Mexico, but for the purpose of drilling the 15/10 Wells.

12. On September 17, 2019, Applicant received notice of the application in Case No. 20809. The application did not reference the 10/15 Wells or Case No. 20580. As a result, Applicant assumed that the application in Case No. 20809 was unrelated to Case No. 20580 and the 10/15 Wells.

13. At no time did Mewbourne inform Applicant that Mewbourne intended to incorporate the 10/15 Wells in Case No. 20809, along with the 15/10 Wells.

14. On October 3, 2019, Case No. 20809 was presented by affidavit (“15/10 Hearing”). As explained further below at paragraph 22, Point II, Mewbourne made numerous misrepresentations at the 15/10 Hearing.

15. On October 15, 2019, Order No. R-20924 was entered in Case No. 20580, pooling the proposed unit for the purpose of drilling the 10/15 Wells.

16. Applicant never received a copy of Order No. R-20924.

17. On February 18, 2020, Applicant received a well proposal for the 15/10 Wells for an interest, in addition to their force-pooled interests, which was subject to the joint operating agreement (“Subsequently Acquired Interest”). Applicant timely elected to participate in the 15/10 Wells with respect to the Subsequently Acquired Interest. The AFEs tendered to Applicant for the Subsequently Acquired Interest did not impose the costs of failed attempts to drill the 10/15 Wells.

18. On February 19, 2020, Order No. R-20924-A was entered in Case No. 20809, pooling the proposed unit for the purpose of drilling both the 10/15 Wells and the 15/10 Wells. Order No. R-20924-A expressly superseded Order No. R-20924.

19. On February 27, 2020, Mewbourne received approval of its APD for the 15/10 1H.

20. On March 11, 2020, Applicant received notice of Order No. R-20924-A and AFEs for only 2 of the 4 wells pooled under the Order, being the 15/10 Wells. The AFE for the 15/10 2H included an additional \$3,102,500 attributed to Mewbourne’s failed attempts to drill the 10/15 2H and the 10/15 2Y. The AFE for the 15/10 2H submitted by Mewbourne to the Division at the 15/10 Hearing did not include this additional cost and was not the same AFE Applicant received with the notice of the Order. Applicant received no notice of Mewbourne’s

intent to piggyback the costs of failed drilling attempts for any 10/15 Wells with the costs for the 15/10 Wells.

21. When Applicant brought this improper charge to Mewbourne's attention, Mewbourne relied on Order No. 20924-A in support of its position. Applicant elected to participate in the 15/10 Wells, paying Mewbourne his share of the Estimated Wells Costs for the 15/10 Wells but declining to pay his share of the improper charge for the failed attempts to drill the 10/15 2H and 10/15 2Y. Mewbourne subsequently deemed Applicant non-consent in the 15/10 2H as a result, but has acknowledged Applicant as a pooled working interest owner who has paid its share of the Estimated Well Costs under Order No. 20924-A for the 15/10 1H.

22. Mewbourne's efforts to shoehorn costs for its failed drilling attempts related to the 10/15 2H and 10/15 2Y into the costs for the 15/10 2H are improper for several reasons:

I. Mewbourne failed to provide notice of its intent to force pool all four wells under one order.

The application filed by Mewbourne in Case No. 20809 fails to alert the Division and, consequently, any interest owner in the spacing unit, of Mewbourne's intent to recover costs for the 10/15 2H and 10/15 2Y in Case No. 20809. The notice letter to Applicant similarly failed to adequately inform him as to the nature of the proceeding. *See* 19.15.4.8(A)(4) NMAC (requiring the application to include "the general nature of the order sought"). For this reason alone, Mewbourne's demand under the 15/10 2H AFE, for payment of costs for failed attempts to drill the 10/15 2H and 10/15 2Y, is contrary to New Mexico law, and the Division should reopen Case Nos. 20580 and 20809 to correct this failure of notice. *See, e.g.*, 19.15.4.12(E) NMAC; Order No. R-14877.

II. Mewbourne Misrepresented the Status of the 10/15 Wells in the 15/10 Hearing.

Mewbourne did not reference the 10/15 Wells in the application for the 15/10 Wells. It was not until Mewbourne filed its prehearing statement on September 25, 2019, that it first asked the Division to include the 10/15 Wells in the order for Case No. 20809. Mewbourne provided no explanation to the Division about the basis of this request, other than to state that “[t]his case is related to Case No. 20580, previously heard, in which no order has been issued.” Case No. 20809, Pre-hearing Statement (Sept. 25, 2019). Mewbourne failed to inform the Division at that time, however, that it had already twice attempted to drill the 10/15 2H, and both attempts had failed.

Subsequently, at the 15/10 Hearing, Mewbourne asked the Division to include “all four wells, the two 10/15 wells and the two 15/10 wells, because they may still drill the original two wells.” No. 20809, Hearing Transcript 4:1-4 (Oct. 3, 2018); *see* No. 20809, Verified Statement of Mitch Robb ¶ 2(c) (Oct. 2, 2019) (averring that the unit would be dedicated to both the 10/15 Wells and the 15/10 Wells). Mewbourne further represented to the Division that “[t]he AFEs for the wells – actually the south to north wells are cheaper than, slightly cheaper than the original wells.” *Id.* 4:16-18. Notably, neither AFE admitted into the record for the 15/10 Wells at the October 3 hearing included the costs for failed attempts that are now included in the AFE for the 15/10 2H. However, the AFE received by Applicant for the 15/10 2H was *not* the AFE that was entered into the record by the Division at Mewbourne’s request.

Mewbourne led the Division to believe that Mewbourne might drill all four wells and that each well had a separate AFE. *See id.* 5:16-24. At no time did Mewbourne inform the Division that Mewbourne would seek to recover costs incurred under one AFE, for failed attempts to drill the 10/15 2H and the 10/15 2Y, under another AFE for the 15/10 2H. *See generally id.* Indeed,

this would be directly contrary to the Division's understanding that a force-pooled party will have the opportunity to elect under each well. *See* NMSA 1978, § 70-2-17 (1977) (expressly referring to costs of drilling and completing *the* well," i.e. a singular well (emphasis added)); *see* 19.15.13.8 NMAC ("Well costs shall include the reasonable costs of drilling . . . *the* well," i.e. a singular well (emphasis added)); *see also* No. 20468, Hearing Transcript 8:2-16 (May 2, 2019).

III. Mewbourne's Imposition of Costs for Failed Attempts to Drill the 10/15 Wells Is Otherwise Contrary to Law

Mewbourne's efforts to recover costs for its attempts to drill the 10/15 2H and 10/15 2Y are improper for a number of other reasons. **First**, Applicant never had the opportunity to elect to participate in the 10/15 Wells prior to Mewbourne's attempts to drill. Mewbourne thus assumed the risk of drilling the 10/15 2H by drilling before a force-pooling order was entered. *See* Order No. R-11327 at 6, ¶ 28; *cf.* Order No. R-12343-E at 6, ¶ 32.

Second, even if Applicant had had the opportunity to elect, the costs of drilling an abandoned well are not considered to be "well costs." Rule 19.15.13.8(B)(1) NMAC addresses well costs "[i]f . . . a well . . . was previously abandoned without completion":

Well costs as to that well shall mean only the reasonable costs of reentering, reworking, diverting, deepening, plugging back or testing the well; completion in the pooled formation or formations and; if necessary, reequipping the well for production, unless the division determines that allowance of all or some portion of historical costs of drilling is just and reasonable due to particular circumstances.

Third, contrary to Mewbourne's position, it is not entitled to recover these costs on the basis that the 15/10 Wells are substitute wells for the 10/15 Wells. The 15/10 Wells do not satisfy the requirements for a substitute well under Rule 19.15.13.8(B)(4):

Well costs shall also include reasonable costs of drilling, testing, completing and equipping a substitute well *if*, in the drilling of a well pursuant to a compulsory pooling order, the operator loses the hole or encounters mechanical difficulties rendering it impracticable to drill to the objective depth and *the substitute well is*

located within 330 feet of the original well and the operator commences drilling within 10 days of the original well's abandonment.

(Emphasis added.) Mewbourne's 15/10 Wells satisfy neither of the requirements of Rule 19.15.13.8(B)(4) NMAC. Thus, costs of the failed attempts to drill the 10/15 2H and 10/15 2Y cannot be imposed under an AFE for the 15/10 2H.

Fourth, contrary to Mewbourne's position, Order No. R-20924-A does *not* incorporate 19.15.13.8(1)NMAC; nor does it provide that all of the wells proposed in two different force-pooling cases have the same election. Again, this would be directly contrary to the Division's understanding that each force-pooled party will have the opportunity to elect to participate in each separate well.

Fifth, contrary to Mewbourne's position, Paragraph 27 of Order No. R-20924-A does *not* provide that the only election available to a pooled working interest is to elect and render payment of the estimated well cost for all three attempts to drill the First Bone Spring well, along with the Third Bone Spring test. Paragraph 27 of the Order simply states the unremarkable proposition that an owner of a pooled working interest has the opportunity to elect to pay costs "for *the* well." (Emphasis added.) Thus, paragraph 27 of the Order specifically recognizes that a force-pooled party has the opportunity to elect whether it will participate in *each* well. The Order does not provide that an election for one well is an election for all or that somehow Mewbourne's novel request to include all four wells in one Order would allow it to impose costs for one well through an AFE for another well. *See* Hearing Transcript 6:15-16 ("And, by the way, that's the first time I've ever asked for that type of Order in 37 years.").

WHEREFORE, Applicant respectfully requests (1) that this matter be heard before the Division on the July 9, 2020, docket; (2) that the Division reopen Case Nos. 20580 and 20809, for Mewbourne's failure to provide notice, *see, e.g.*, 19.15.4.12(E) NMAC; Order No. R-14877;

(3) that, after notice and hearing, the Division enter an order revoking or substantially modifying Order Nos. 20934 and 20934-A or, in the alternative, declaring that Mewbourne cannot recover costs for failed attempts to drill the 10/15 Wells by including them in costs for the 15/10 Wells; and (4) that the Division require Mewbourne to allow Applicant to participate without being charged for the improper costs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2020, a true and correct copy of the foregoing was served by electronic mail on the following counsel:

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