

**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 FOR THE PURPOSE OF  
CONSIDERING:**

**CASE NO. 14763  
ORDER NO. R-13519**

**APPLICATION OF MACK ENERGY CORPORATION FOR COMPULSORY  
POOLING, LEA COUNTY, NEW MEXICO.**

**ORDER OF THE DIVISION**

**BY THE DIVISION:**

This case came on for hearing at 8:15 a.m. on January 5, 2012, at Santa Fe, New Mexico, before Examiner David K. Brooks.

NOW, on this 21<sup>st</sup> day of February, 2012, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

**FINDS THAT:**

(1) Due public notice has been given, and the Division has jurisdiction of this case and of the subject matter.

(2) Mack Energy Corporation ("Applicant"), seeks an order pooling all uncommitted interests from the surface to the base of the Abo formation in the SE/4 NW/4 of Section 32, Township 17 South, Range 33 East, NMPM, in Lea County, New Mexico, to form a standard 40-acre oil spacing and proration unit ("the Unit") for all formations or pools spaced on 40 acres within this vertical extent, which presently include, but are not necessarily limited to, the Corbin- Abo Pool (Pool Code 13150).

(3) The Unit is to be dedicated to Applicant's existing Cockburn A State Well No. 5 (API No. 30-025-25286), (the "well") located at a standard location 1980 feet from the North line and 1980 feet from the West line (Unit F) of Section 32.

(4) Applicant appeared at the hearing through counsel and presented evidence that:

Oil Conservation Commission  
Case No.   A    
Exhibit No.

(a) The well was drilled prior to 1988 as a deep gas well. At some point in time OXY USA Inc. acquired 100% working interest ownership.

(b) Applicant acquired the entire working interest in the well in 2004 from Siana Oil and Gas LLP (Siana), an affiliate of Respondent, Tom M. Ragsdale (Ragsdale) who had previously acquired the well from OXY. Since Siana had never been designated operator of record, operation was changed directly from OXY to Applicant.

(c) Pursuant to the agreement by which Applicant acquired its interest from Siana, Applicant assigned a 6.25% working interest to Ragsdale. No joint operating agreement exists with respect to the well or the Unit.

(d) Applicant re-completed the well in the Abo, and the well has been producing since 2004.

(e) Ragsdale has received his share of proceeds of production from the well. Ragsdale paid his share of operating expenses until October of 2010, at which time he ceased paying joint interest billings.

(f) On September 30, 2011, Applicant sent a proposed Authorization for Expenditures (AFE) to Ragsdale, proposing a fracture stimulation (fracing) of the Abo in order to increase production. There were additional contacts concerning this matter between representatives of Applicant and Ragsdale. However, Ragsdale did not agree to participate in the proposed operation.

(g) On November 7, 2011, five days after filing this Application, Applicant sent Ragsdale a proposed form of Joint Operating Agreement for the Unit. However, Ragsdale has not signed a Joint Operating Agreement.

(5) Tom M. Ragsdale appeared at the hearing through counsel and testified in opposition to the motion. However, Ragsdale's testimony concerning pertinent facts did not differ materially from the evidence presented by Applicant. Ragsdale testified that he believes some costs charged by Applicant for operation of the well were excessive and unreasonable, but he did not elucidate.

(6) Ragsdale's counsel filed a Motion to Dismiss this case on the ground that Applicant had not made a good faith effort to secure a voluntary agreement. This motion was argued by both counsel, and the examiner took the motion under advisement concurrently with the case.

Conclusions Regarding Motion to Dismiss

(7) By sending to Ragsdale an AFE proposing its intended operation two months before filing its Application, sending a proposed JOA when requested, and contacting Ragsdale's representative on several occasions to follow up, Applicant

complied with the minimum requirements for good faith negotiation delineated in Orders No. R-13155 and R-13165.

(8) There is no evidence that Applicant ever refused to discuss its proposal with Ragsdale or refused any request for information, or that Ragsdale made any proposal that Applicant rejected or did not consider.

(9) Accordingly, the Ragsdale's Motion to Dismiss should be denied.

Findings and Conclusions Regarding Compulsory Pooling

(10) There are undivided interests in oil and gas minerals in the Unit that are separately owned.

(11) An owner of an oil and gas working interest within the Unit has drilled the well to a common source of supply within the Unit.

(12) There are interest owners in the Unit that have not agreed to pool their interests. There are, however, no unlocated owners, and no evidence of a title dispute.

(13) Although the well was drilled at a remote date, and the operator has not obtained voluntary or compulsory pooling as required by NMSA 1978 Section 70-2-18, the provision of that statute that an interest owner is entitled to "the amount to which each interest owner would be entitled if pooling had occurred or the amount to which each interest is entitled in the absence of pooling, whichever is greater" does not apply, since Ragsdale, as owner of an undivided interest in the entire unit, would not have been entitled to any different or greater amount in the absence of pooling.

(14) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford to the owner of each interest in the Unit the opportunity to recover or receive without unnecessary expense its just and fair share of hydrocarbons, this application should be approved by pooling all uncommitted interests, whatever they may be, in the oil and gas within the Unit.

(15) Applicant should be designated the operator of the well and of the Unit.

(16) Both Applicant's expert witness and Ragsdale testified that Applicant's fracing proposal involves risk; however, the risk is less than the risk would be for drilling a new well. Applicant's witness further testified that the proposed operation would involve a high rate of return and a short payout.

(17) Accordingly, a pooled working interest owner who does not pay its share of estimated well costs associated with the proposed fracing operation should have withheld from production its share of reasonable fracing costs plus an additional 100% (rather than the usual 200%) thereof, as a reasonable charge for the risk involved in the proposed operation.

(18) Reasonable charges for supervision (combined fixed rates) should be fixed at \$6,500 per month while drilling and \$650 per month while producing, provided that these rates should be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "Accounting Procedure-Joint Operations."

**IT IS THEREFORE ORDERED THAT:**

(1) The Motion to Dismiss filed in this case by Respondents, Siana Oil and Gas LLP and Tom M. Ragsdale, is denied.

(2) Pursuant to the application of Mack Energy Corporation, all uncommitted interests, whatever they may be, in the oil and gas from the surface to the base of the Abo formation in the SE/4 NW/4 of Section 32, Township 17 South, Range 33 East, NMPM, in Lea County, New Mexico, are pooled to form a standard 40-acre oil spacing and proration unit for all formations or pools spaced on 40 acres within this vertical extent, which presently include, but are not necessarily limited to, the Corbin-Abo Pool. This paragraph shall be effective from and after the date of first production of the well described in Finding Paragraph 3.

(3) The Unit shall be dedicated to Applicant's Cockburn A State Well No. 5 (API No. 30-025-25286), located at a standard location 1980 feet from the North line and 1980 feet from the West line (Unit F) of Section 32, Township 17 South, Range 33 East.

(4) Upon final plugging and abandonment of the well and any other well drilled on the Unit pursuant to Division Rules 19.15.13.9 through 19.15.13.11, the pooled unit created by this Order shall terminate, unless this order has been amended to authorize further operations.

(5) Mack Energy Corporation (OGRID 13837) is hereby designated the operator of the well and of the Unit.

(6) After pooling, uncommitted working interest owners are referred to as pooled working interest owners. ("Pooled working interest owners" are owners of working interests in the Unit who are not parties to an operating agreement governing the Unit.) After the effective date of this order, the operator shall furnish the Division and each known pooled working interest owner in the Unit an itemized schedule of estimated costs of its proposed fracing re-completion operation ("fracing costs").

(7) Within 30 days from the date the schedule of estimated fracing costs is furnished, any pooled working interest owner shall have the right to pay its share of estimated fracing costs to the operator in lieu of paying its share of reasonable fracing costs out of production as hereinafter provided, and any such owner who pays its share of estimated fracing costs as provided above shall remain liable for operating costs but shall not be liable for risk charges. Pooled working interest owners who elect not to pay their share of estimated fracing costs as provided in this paragraph shall thereafter be referred to as "non-consenting working interest owners."

(8) The operator shall furnish the Division and each known pooled working interest owner (including non-consenting working interest owners) an itemized schedule of actual fracing costs within 90 days following completion of the proposed operation. The operator shall also furnish, within 90 days after completion of the proposed operation, an accounting of all costs charged to the joint account for the well (historical costs) since October 2010. If no objection to the actual fracing costs or historical costs is received by the Division, and the Division has not objected, within 45 days following receipt of the schedule, the actual fracing costs and historical costs shall be deemed to be the reasonable costs. If there is an objection to any actual costs within the 45-day period, the Division will determine reasonable costs after public notice and hearing.

(9) Within 60 days following determination of reasonable costs, any pooled working interest owner who has paid its share of estimated fracing costs in advance as provided above shall pay to the operator its share of the amount that reasonable fracing costs exceed estimated fracing costs and shall receive from the operator the amount, if any, that the estimated fracing costs it has paid exceed its share of reasonable fracing costs.

(10) Within 60 days following determination of reasonable historical costs, any pooled working interest shall pay to the operator the amount that its share of reasonable historical costs exceed the amount of historical costs it has paid, and shall receive from the operator the amount, if any, that the historical costs it has paid exceed its share of reasonable historical costs.

(11) The operator is hereby authorized to withhold the following costs and charges from production:

- (a) the proportionate share of reasonable fracing costs attributable to each non-consenting working interest owner; and
- (b) as a charge for the risk involved in fracing the well, 100% of the above costs.

(12) The operator shall distribute the costs and charges withheld from production, proportionately, to the parties who advanced the fracing costs.

(13) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$6,500 per month while drilling and \$650 per month while producing, provided that these rates shall be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "Accounting Procedure-Joint Operations." The operator is authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to pooled working interest owners.

(14) Should all the parties to this compulsory pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

(15) The operator of the well and Unit shall notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(16) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION



JAMI BAILEY  
Director



SEAL