

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

**APPLICATION OF ROCKWOOD RESOURCES, LLC, et al.,
TO REOPEN MEWBOURNE OIL COMPANY'S
POOLING CASE NO. 21391, LEA COUNTY, NEW MEXICO**

Reopen Case No. _____
Re: Case No. 21391; Order No. R-21528

APPLICATION TO REOPEN CASE

Rockwood Resources, LLC, Christine Brock, and Rebecca J. Babbitt (collectively referred to herein as “Rockwood Group”), through its undersigned attorneys, hereby files this Application to Reopen Case No. 21391 in which Mewbourne Oil Company (“Mewbourne”) sought and received a compulsory pooling order and operatorship from the Oil Conservation Division (“Division”) for a unit in the Bone Spring formation covering the S/2 N/2 of Sections 3 and 4, Township 18 South, Range 32 East, NMPM, Lea County, New Mexico (“Subject Lands”). In support of its Application to Reopen, the Rockwood Group states the following:

I. Procedural History and Background:

1. The basis of this Application is that a number of the nine working interest (“WI”) owners that Mewbourne represented as being “unlocatable,”¹ were, in fact, easily locatable through searches in publicly available databases. These nine WI owners owned an aggregate 9.729166% of the WI in the pooled unit, representing 31.1 net acres.² The only notice that the locatable WI Owners received was notice by publication, in violation of their fundamental due

¹ See, Mewbourne Exhibits A-7 and A-5.

² If one includes the acreage owned by the same allegedly unlocatable parties in Mewbourne’s Case No. 21390 for the N/2 N/2 of Sections 3 and 4, there are 61.1 net acres, in addition to these 31.1 net acres (a total of 92.2 net acres), the owners of which Mewbourne claimed to be unlocatable, including additional acreage in the N/2 N/2 owned by Christine Brock and Rebecca J. Babbitt, which Rockwood addresses in its Application to Reopen Case No. 21390.

process rights. Ignoring these basic constitutionally guaranteed rights, Mewbourne asked the Division to exercise its police powers to transfer these property interests without the benefit of the rightful owners having received proper notice and opportunity to exercise their rights in the pooling and election process. Rockwood Resources, LLC, (“Rockwood”) found that many of these owners were readily locatable, in particular the location of Christine Brock and Rebecca J. Babbitt, who have both granted to Rockwood the right to hire an attorney to represent their interests, including their rights under the forced pooling. *See* Exhibit A, attached hereto.

2. Rockwood was able to readily locate a number of the parties Mewbourne described as unlocatable. First, Rockwood located Christine Brock, whose interests constitute 3.125000% of the unit, or approximately 10 net acres. On December 15, 2021, Rockwood entered into an agreement to acquire her interests in the Subject Lands. Based on Rockwood’s experience of being able to locate Christine Brock through reasonable diligence, Rockwood respectfully submits that Mewbourne incorrectly described Christine Brock as unlocatable.

3. Second, Rockwood was also able to readily locate Rebecca J. Babbitt, who owns a 1.250000% WI in the unit. Rockwood entered into an agreement to acquire Babbitt’s interests. After entering the agreement with Ms. Babbitt, Rockwood, contacted Mewbourne on December 13, 2021, about participating in the unit with the acquired Babbitt interest. Mewbourne acknowledged to Rockwood that it had the right to participate with the WI and sent Rockwood an AFE and a Ratification and Joinder of Operating Agreement, which Rockwood executed under adequate consideration and promptly returned to Mewbourne.

4. On December 16, 2021, Rockwood contacted Mewbourne about the interest it had acquired from Christine Brock, expressing its intent to participate with that interest. After having allowed Rockwood’s participation with the Rebecca J. Babbitt interest, Mewbourne unexpectedly

refused Rockwood's election to participate with the Christine Brock interest and refused Rockwood's request to provide it with the AFE or a Ratification.

5. Rockwood has standing to submit this application to the Division as an owner of Christine Brock's and Rebecca Babbitt's interest who were both deprived of actual notice and proper opportunity for election and through Rebecca Babbitt's and Christine Brock's granting Rockwood the right to take measures to represent their interest. Accordingly, Rockwood, Brock and Babbitt are submitting this application collectively as the Rockwood Group.

II. Legal Arguments:

A. Mewbourne incorrectly designated Christine Brock, among others, as unlocatable, and therefore, notice was defective and the pooling of her interest as an unlocatable party was improper.

6. Under Division Rules, Mewbourne was obligated to send notice to each owner of an interest in the mineral estate of the lands the applicant proposes to be pooled whose interest is evidenced by a written conveyance document either of record or known to the applicant. *See* NMAC 19.15.4.12. Christine Brock is the wife, and direct heir, of the original lessee on Federal Lease NMLC 0063345, and her name and an address for her are listed on the BLM Serial Register. In fact, Mewbourne identified and listed Brock as an actual owner of WI and testified to the Division that it attempted, but was unable, to mail Working Interest Unit and a Well Proposal to Christine Brock. The address on Mewbourne's Green Card is: P.O. Box 51, Montague, TX 76251. *See* Mewbourne's Exhibit A-9. In the case of Rebecca J. Babbitt, another party that Mewbourne incorrectly designated as unlocatable, Mewbourne included a green card that shows the address attempted: 2106 Hazard Street, Houston, TX 77019. *See id.*

7. Only "when an applicant has been unable to locate persons entitled to notice after exercising *reasonable diligence*" may the applicant rely on notice by publication. *See* NMAC

19.15.4.12B (emphasis added). Christine Brock is clearly listed on the BLM Serial Register for Lease NMLC 0063345 as a WI owner with the address of P.O. Box 51, Montague, TX 76251. It takes only a modicum of reasonable diligence to search the publicly available online White Pages and find that Christine Brock, who had lived in Montague, TX, now resides at 453 Marino Rd, Bryan, TX 77808, a listing that also identifies numerous relatives and current phone numbers for both Christine and her relatives. Same with Rebecca J. Babbitt: Mewbourne had a prior Houston address for her from the federal records, and it took only a reasonable amount of diligence to find her current address at 90 Paradise Valley Rd, Conroe, TX 77304, just 51 miles from Houston.

B. Reasonable diligence is an integral part of the due diligence and due process that must be afforded an owner entitled to notice before a pooling procedure can be valid.

8. In *Udden v. New Mexico Oil Conservation Comm'n*, 1991-NMSC-089, 112 N.M. 528, the New Mexico Supreme Court set forth the due process requirements of fairness and reasonableness for pooling proceedings, noting that “Administrative proceedings must conform to fundamental principles of justice and the requirements of due process of law.” *Id.* at ¶10. In accordance with these principles, the *Udden* court noted that New Mexico case law places “great emphasis” on “whether the identity and whereabouts of the person entitled to notice are reasonably ascertainable.” *Id.* at ¶13.

9. It is clear from the facts herein that Christine Brock was listed on the Serial Register Page for Federal Lease NMLC 0063345 as being a resident of Texas, and by searching the internet, with reasonable diligence, in particular the readily available public White Pages, that her current address and contact information were reasonably ascertainable prior to the pooling. As held by the *Udden* court, if a party’s identity and whereabouts are known or could be ascertained through due diligence, the due process clause of the New Mexico and United States Constitutions requires

the party who filed the application to provide notice of the pending proceeding by personal service to such parties whose property rights may be affected as a result. *Id.* Under these simple principles and clearly stated criteria, Christine Brock, whose interests represented 10 acres of the 320-acre unit, and Rebecca J. Babbitt, should not have been listed as unlocatable, and the pooling of their interests as such was invalid.

10. The importance of these principles was recently raised in the hearing for Case No. 22421, on January 6, 2021, during which the Division questioned whether the owners of 16 acres, which the Division noted was a sizable amount, should be considered unlocatable, as designated by the applicant, given that this was federal land and leads to the owners' whereabouts should be provided by federal records. The Rockwood Group respectfully submits that the Division's hesitancy in this case, and the additional questions regarding locatability, were warranted. In the subject Case No. 21391, the Rockwood Group respectfully requests that the Division raise the same questions in its consideration of this application to reopen the case and take into account as grounds for reopening the case that the location and whereabouts of Christine Brock, as well as Rebecca J. Babbitt, were readily determined through reasonable diligence.

WHEREFORE, the Rockwood Group respectfully submits that, based on the foregoing, its Application to Reopen be set, with proper notice, for hearing before an Examiner of the Oil Conservation Division on March 3, 2022, in order to determine whether the parties listed as unlocatable, in particular that of Christine Brock and Rebecca J. Babbitt, were in fact unlocatable given that Brock's and Babbitt's locations and whereabouts have been readily ascertainable through reasonable diligence. Furthermore, the Rockwood Group requests that the case be reopened so that Mewbourne's failure of notice can be addressed, that the parties entitled receive proper notice, and the working interest owners, or their successors, who did not receive notice

through Mewbourne's failure to exercise due diligence, be provided opportunity under the pooling to exercise their rights, including their rights of participation.

Respectfully submitted,

ABADIE & SCHILL, PC

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Attorneys for Rockwood Resources, LLC

Application of Rockwood Resources, LLC, et al. (“Rockwood Group”) to Reopen Case No. 21391 (Order No. R-21528), Lea County, New Mexico. Applicant in the above-styled cause seeks to reopen Case No. 21391 (R-21528) in order to determine whether certain parties, including Christine Brock, designated as unlocatable, should be deemed locatable under standards of due process and due diligence to cure failures and defects of notice in the pooling of interests in the Bone Spring formation underlying the S/2 N/2 of Sections 3 and 4, Township 18 South, Range 32 East, NMPM, Lea County, New Mexico. The lands are located approximately 5.5 miles southwest of Maljamar, New Mexico.

Rockwood Resources, LLC

Po Box 2250 Sulphur Springs, Tx 75483

Amended Letter Agreement

Roy L. Patterson, Attorney in Fact for Viola Christine Brock, aka Christine Brock, as the Seller of the Working Interest described herein, grants, by execution of this agreement, to **Rockwood Resources, LLC** as Buyer, the full authority, during the pendency of that certain Letter of Agreement between the parties dated December 15th, 2021 ("LOA"), to hire an attorney to represent the Seller's interests in the lands and units force pooled in New Mexico Oil Conservation Division ("NMOCD") Case No. 21390, pursuant to NMOCD Pooling Order No. R-21527, and in NMOCD Case No. 21391, pursuant to NMOCD Pooling Order No. R-21528, the lands and units being the N/2 N/2 and the S/2 N/2 of Sections 3 and 4, Township 18 South, Range 32 East, Lea County, New Mexico, which include Seller's interests. Seller's grant of authority to Buyer to hire an attorney to represent Seller's interests in said lands and units includes the authority to pursue and litigate all rights and interests provided to Seller as a pooled party by the NMOCD under Pooling Order Nos. R-21527 and R-21528. In exchange for the grant of this authority, Buyer releases the Seller of any and all liability of attorney's fees in pursuit of the representation of the Seller's interests regardless of whether the contract for the purchase of said Working Interest closes.

AGREED AND ACCEPTED BY:

Christine Brock

By: Roy L. Patterson

Name: Roy L. Patterson

Title: Attorney in Fact for

Viola Christine Brock, aka

Christine Brock

Date: 1/1/2022

EXHIBIT

A

Rockwood Resources, LLC

PO Box 2250 Sulphur Springs, Tx 75483

Amended Letter Agreement

Rebecca J. Babbitt, as the Seller of the Working Interest described herein, grants, by execution of this agreement, to **Rockwood Resources, LLC** as Buyer, the full authority, during the pendency of that certain Letter of Agreement between the parties dated **December 2nd, 2021** ("LOA"), to hire an attorney to represent the Seller's interests in the lands and units force pooled in New Mexico Oil Conservation Division ("NMOCD") Case No. 21390, pursuant to NMOCD Pooling Order No. R-21527, and in NMOCD Case No. 21391, pursuant to NMOCD Pooling Order No. R-21528, the lands and units being the N/2 N/2 and the S/2 N/2 of Sections 3 and 4, Township 18 South, Range 32 East, Lea County, New Mexico, which include Seller's interests. Seller's grant of authority to Buyer to hire an attorney to represent Seller's interests in said lands and units includes the authority to pursue and litigate all rights and interests provided to Seller as a pooled party by the NMOCD under Pooling Order Nos. R-21527 and R-21528. In exchange for the grant of this authority, Buyer releases the Seller of any and all liability of attorney's fees in pursuit of the representation of the Seller's interests.

AGREED AND ACCEPTED BY:

Rebecca J. Babbitt

By: 

Name: Rebecca J. Babbitt

Title: Seller

Date: December 31, 2021