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. 21390, LEA COUNTY, NEW MEXICO

Reopen Case No. 22539
Re: Case No. 21390; Order No. R-12527

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

Reopen Case No. 22540
Re: Case No. 21391; Order No. R-12528

MEWBOURNE OIL COMPANY'S REPLY IN SUPPORT OF MOTION TO DISMISS APPLICATIONS

For its reply in support of its Motion to Dismiss Applications filed by Rockwood Resources, LLC, Christine Brock, and Rebecca J. Babbitt (collectively "Rockwood"), Mewbourne Oil Company ("Mewbourne") states as follows.

I. INTRODUCTION

Mewbourne's Motion to Dismiss ("Mewbourne Motion") established that Rockwood's Applications to reopen case Nos. 21390 and 21391 are subject to dismissal. Rockwood lacks standing, and Mewbourne complied with the Division's notice requirement. Rockwood's attempt to manufacture standing by relying on agreements granting Rockwood the ability to hire attorneys on behalf of Brock and Babbitt, and an unproduced "agreement to acquire" Babbitt and Brock's interest, are unavailing. Because Rockwood has not even attempted to address, nor dispute, Mewbourne's showing that Rockwood cannot show the injury, causation, or redressability

elements necessary for standing, Rockwood's Applications must be dismissed. Further, Mewbourne has met the Division's notice requirement.

II. ARGUMENT

A. Rockwood lacks standing to Reopen Case Nos. 22439 and 22540.

Rockwood has not shown in its Response to Mewbourne's Motion, nor pled in its Application, a concrete or cognizable interest sufficient for the Oil Conservation Division ("OCD" or "Division") to determine that Rockwood has standing to reopen Case Nos. 22439 and 22540. Rockwood's Response to Mewbourne's Motion fails to address any of the elements of standing and instead tries to distract the OCD from the lack of standing by using "The Way Back Machine" to attach additional unauthenticated and unreliable exhibits. Rockwood has not established that it suffered an "injury in fact," meaning "the invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *The ACLU of New Mexico v. Santillanes*, 546 F.3d 1313, 1318 (10th Cir. 2008). Moreover, Rockwood has failed to demonstrate "a causal connection between the injury and the conduct," and that it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id*.

Standing is a jurisdictional issue that is separate and distinct from the merits of the case. *See id*. at 1319; *Begay v. PNM*, No. CIV 09-0137 JB/RLP, 2010 WL 1781900, *13 (D.N.M. Apr. 15, 2010). "The burden of establishing standing rests upon the [applicant]." *Begay*, 2010 WL 1781900, at *13. Rockwood, Babbitt, and Brock[1] must demonstrate that they have standing in this instance by showing they have the right to participate in the wells that are subject to pooling Order Nos. R-12527 and R-12528. "[W]here the [opposing party] challenges standing, a court must presume

[1] Utter is not a party to Rockwood's Application and any dealings with Utter or his heirs are not currently before the Division. Rockwood cannot add parties through motions practice.

lack of jurisdiction 'unless the contrary appears affirmatively from the record.'" *Id*. (quoting *Renne v. Geary*, 501 U.S. 312, 315 (1991)).

1. *Rockwood fails to demonstrate a cognizable injury.*

The first element that a party must show to establish standing is "injury in fact." This means that Rockwood "must show that the conduct of which [it] complains has caused [it] to suffer an 'injury in fact' that a favorable judgment will redress." *The Wilderness Soc. v. Kane County, Utah*, 632 F.3d 1162, 1168 (10th Cir. 2011). To establish an injury in fact, Rockwood must have an ownership interest in the proceeds of the wells at issue in pooling Order Nos. R-12527 and R-12528. *See Duran v. Doe*, No. 1:11-CV-00279-MCA, 2012 WL 10759328, at *2 (D.N.M. Feb. 1, 2012); *Commonwealth Property Advocates, LLC v. Saxon Mortg. Services, Inc.*, No. 10–CV–01347–PAB–KMT, 2011 WL 2600987, at *3 (D. Colo. June 30, 2011) (dismissing the plaintiff's quiet title claim for lack of standing because the plaintiff had "no legally cognizable interest in the property"); *see also Gallegos v. Quinlan*, 1980-NMSC-065 (holding that a plaintiff lacks standing to pursue a quiet title action when he has "no title or interest in the property").

Rockwood's Motion and Response to Mewbourne's Motion is not lacking in exhibits, but conspicuously absent from the record is any evidence that Rockwood has actually acquired the interests of Babbitt and Brock. All Rockwood attaches to its Applications are Amended Letter Agreements signed by Brock and Babbitt that grant Rockwood "the full authority…to hire an attorney to represent the Seller's interests in the lands and units force pooled…pursuant to Pooling Order No. R-21527, and…Pooling Order No. R-21528." *See* Exhs. A and B to Rockwood's Applications in Case Nos. 22439 and 22540. Indeed, Rockwood's Applications state only that it

has an agreement to acquire the interests – not that it has actually done so. *See* Applications at ¶¶ 2-3.

As an additional ground demonstrating Babbitt and Rockwood's failure to satisfy the injury in fact requirement – Babbitt has executed an agreement with Mewbourne to participate in and commit her interest to Mewbourne's Wells. Because Babbitt/Rockwood would no longer be subject to the pooling Orders for the Babbitt interest, there is no invasion of any potentially legally protected interest. It is unclear why Rockwood seeks to consume the Division's time and resources by raising unnecessary issues involving Babbitt.

With respect to the Brock interest, it is Mewbourne's understanding that Rockwood has not acquired that interest. *See* Supplemental Self-Affirmed Statement of M. Robb, attached as Exh. A. Rockwood lacks standing for that reason as well.

2. *Rockwood does not have an injury that is "likely" to be redressed by the OCD.*

As set out in Mitch Robb's Self-Affirmed Statement, Rockwood "executed an agreement with Mewbourne wherein Rockwood elected to participate in and commit the interests it acquired from Babbitt to Mewbourne's Wells, *subject to Rockwood's ability to resolve title defects*." Exhibit 2 to Mewbourne's Motion at ¶ 6 (emphasis added). Both the Babbitt and Brock interest involve unresolved title issues. *See* Exh. A. Babbitt and Brock may only convey such title, if any, as they had. *See Duran*, 2012 WL 10759328, at *2 (dismissing plaintiff's complaint because plaintiff did not have an ownership interest in the subject property). Conversely, an agreement to acquire Babbitt and Brock's interests within the pooled units conveys nothing if Babbitt and Brock do not actually have title or an interest within the units. *Id*. There is no indication in any of the briefing

or numerous exhibits submitted by Rockwood that the title defects have been cured and that Rockwood actually has an ownership interest in the subject units.

Rockwood may only participate in the well if two conditions are met: (1) Babbitt and Brock actually transfer their interests to Rockwood; and (2) Rockwood resolves the defects in title. Should the title defects be unable to be resolved, neither Rockwood, nor Babbitt, nor Brock would be eligible to participate in the Mewbourne Wells at issue. At best, Rockwood has made a "showing that the relief requested *might* redress" Babbitt and Brock's alleged injuries by not being given actual notice, despite Mewbourne's attempts, prior to the pooling Orders being issued. However, "[a] showing that the relief requested *might* redress the [party's] injuries is generally insufficient to satisfy the redressability requirement." *WildEarth Guardians v. Pub. Serv. Co. of Colorado*, 690 F.3d 1174, 1182 (10th Cir. 2012) (emphasis in original) (quoting *Utah v. Babbitt*, 137 F.3d 1193, 1213 (10th Cir. 1998)).

Rockwood makes no allegations in its Response to Mewbourne's Motion as to any actual or even hypothetical injury due to the pooling orders issued in Case Nos. 21390 and 21391. Nor does Rockwood provide any evidence that it, or Babbitt or Brock, have a legally protected right to participate in the wells. Because Rockwood has not shown it has standing to reopen Case Nos. 21390 and 21391, Rockwood's Applications should be dismissed.

B. Mewbourne Has Complied with the Division's Notice Requirements.

Rockwood spends the majority of its Response to Mewbourne's Motion re-arguing what it already set out in its Motion and its Reply in support of its Motion, and a topic that was not the subject of Mewbourne's Motion – that Mewbourne's notices to Brock, Babbitt, and Utter were defective because Mewbourne did not "exercise reasonable diligence" to locate the individuals as required by 19.15.4.12(B) NMAC. Rockwood would like the OCD to adopt a new, heightened

notice standard that entails the following: (1) attempt personal service from information obtained from public land records; (2) search the internet and call all numbers and send letters to all addresses for *every* variation of a potential interest holder's name *and* potential relatives; and (3) notice publication. *See* Response at 5-7. The Division should decline Rockwood's invitation.

Rockwood relies on *T.H. McElvain Oil & Gas L.P., et al. v. Benson-Montin-Greer Drilling Corp., Inc.*, 2017-NMSC-004, to support its position that OCD should adopt a new standard for "reasonable diligence" in personal service to interest owners. However, *T.H. McElvain* found that after a diligent search and inquiry, the individual's "whereabouts were not readily ascertainable." 2017-NMSC-004, ¶ 37. In *dicta*, the New Mexico Supreme Court stated "[t]oday, with relatively easy access to the internet, social media, and numerous global search engines, it is often not difficult to find persons whose identity and whereabouts are necessary to effectuate personal service of process." *Id*. This does not, however, mean that "reasonable diligence" entails googling a potential interest holder's name, searching several different variations of the person's name (none of which are her actual name), and calling and sending letters to all potential phone numbers and next of kin.

Regardless, as explained by Mr. Robb in his Supplemental Self-Affirmed Statement, Mewbourne searched county and BLM Records, made numerous phone calls, and used the LexisNexis subscription search service, Accurint, in an attempt to locate Ms. Babbitt and Ms. Brock. *See* Exh. A. Accurint performs comprehensive searches of public records and is deemed more reliable than the various free "people finder" websites relied upon by Rockwood. Thus,

Mewbourne used reasonable diligence to attempt to locate Ms. Brock and Ms. Babbitt and complied with the Division's notice requirement.

While Luke Kittinger[2], Rockwood's associate attorney who admittedly has no expertise or experience regarding petroleum land matters, may have "spent a total of 40 minutes searching the online databases and f[inding] accurate addresses and contact information" for Babbitt and Brock, the amount of time it actually took to track down the individuals is still unknown. *See* Exh. A to Rockwood's Response. Perhaps most telling is that Mr. Kittinger completed his search *after* the submission of Rockwood's Applications and *after* the true identity and contact information for Brock and Babbitt was known by Rockwood. *See* Exh. A to Rockwood's Response at ¶¶ 8, 9. Of course it is easy to locate someone if you already know the correct variation of their name and location that will lead to the correct result.

Mewbourne has shown that it exercised "reasonable diligence" in giving notice to all interest owners in compliance with 19.15.4.12(A)(1)(a) and 19.15.4.12(B) NMAC. Mr. Robb testified that when Mewbourne was unable to locate Babbitt or Brock through the BLM Serial Register, it searched county records and made numerous phone calls in an attempt to locate them. *See* Exh. 2 to Mewbourne's Motion at ¶¶ 4-6. Mr. Robb also utilized a paid, reliable internet search

[2] An attorney cannot both be an advocate and a witness in the same matter. Rule 16-307(A) NMRA provides: "A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness unless: (1) the testimony relates to an uncontested issue; (2) the testimony relates to the nature and value of legal services rendered in the case; or (3) disqualification of the lawyer would work substantial hardship on the client." In this instance, Mr. Kettinger's testimony is directly related to a contested issue – whether Mewbourne exercised reasonable diligence in giving notice to all interest owners. Because Mr. Kettinger is now a witness for Rockwood, he cannot act as Rockwood's counsel.

service to locate the parties, to no avail. *See* Exhibit A. Neither the Division's notice requirement nor any requirement of New Mexico law required further action.

C. Rockwood's Exhibits Are Inadmissible and Should be Stricken.

Instead of attempting to correct the issues with its exhibits, Rockwood doubles down on its submission of unauthenticated, unreliable documents by stating that the rules of evidence do not control and should not be considered when determining whether the OCD should admit the voluminous exhibits attached to Rockwood's Motion. Rockwood fails to provide an affidavit so that it may offer evidence through exhibits. Moreover, the exhibits that Rockwood attaches to its Motion are not time-stamped or dated, which further leads to their unreliability. This is especially concerning given Mr. Kettinger's testimony that: he conducted his internet search *after* Rockwood had filed its Applications; he is not a landman; and he has no experience with petroleum land matters. Rockwood's exhibits should be stricken.

III. CONCLUSION

Mewbourne's Motion demonstrated that Rockwood lacks standing and that Mewbourne satisfied the Division's notice requirement. Rockwood's Response generally ignores the standing argument, claiming that it is "irrelevant" and "moot." Because Rockwood does not have standing and cannot argue that it does, it uses its Response to Mewbourne's Motion to re-argue the "reasonable diligence" argument set out in its Motion to Establish Facts and Legal Conclusions for the Purpose of Holding an Evidentiary Hearing on March 3, 2022. Those arguments lack merit and should be rejected. For the reasons set forth herein, and in Mewbourne's Motion, Mewbourne requests that the OCD dismiss Rockwood's Applications.

Respectfully submitted,

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Certificate of Service

I hereby certify that on March 2, 2022, I caused a true and correct copy of the foregoing to be emailed to:

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APPLICATIONS OF ROCKWOOD RESOURCES, LLC, et al., TO REOPEN MEWBOURNE OIL COMPANY'S POOLING CASE NO. 21390, LEA COUNTY, NEW MEXICO. **CASE NO. 22539**

APPLICATIONS OF ROCKWOOD RESOURCES, LLC, et al., TO REOPEN MEWBOURNE OIL COMPANY'S POOLING CASE NO. 21391, LEA COUNTY, NEW MEXICO. **CASE NO. 22540**

SUPPLEMENTAL SELF-AFFIRMED STATEMENT OF MITCH ROBB

1. I am a landman for Mewbourne Oil Company ("Mewbourne"). I am over 18 years of age, have personal knowledge of the matters addressed herein, and am competent to provide this Self-Affirmed Statement. I have previously testified before the Division, and my qualifications as an expert in petroleum land matters were accepted.

2. I previously provided a self-affirmed statement in this matter on February 18, 2022 and am providing this supplemental self-affirmed statement to address issues raised by Rockwood Resources, LLC, Christine Brock, and Rebecca Babbitt in response to Mewbourne's Motion to Dismiss.

3. Mewbourne used due diligence to attempt to locate all affected owners subject to compulsory pooling in Mewbourne's applications, including Christine Brock ("Brock") and Rebecca J. Babbitt ("Babbitt"). This due diligence consisted of searching county and BLM Records, making numerous phone calls, and using the LexisNexis subscription search service, Accurint. Accurint performs comprehensive searches of public records and is deemed far more reliable than the various free websites relied upon by Rockwood. None of these searches resulted in a correct address for Brock or Babbitt.

4. As I stated in my initial statement, Mewbourne has agreed to include Babbitt's interest in the wells.

5. As I previously informed Rockwood, the Brock interest also has unresolved title issues. In addition, it is my understanding that the letter agreement between Rockwood and Brock has expired and that Brock's interest has not been assigned to Rockwood. As a result, it is my understanding that Rockwood has not actually acquired Brock's interest.

6. I understand this Self-Affirmed Statement will be used as written testimony in these cases. I affirm that my testimony in paragraphs 1 through 5 above is true and correct and is made under penalty of perjury under the laws of the State of New Mexico. My testimony is made as of the date identified next to my signature below.

Mitch Robb

03/02/2022
Date