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 SECOND MOTION TO DISMISS ROCKWOOD'S APPLICATIONS TO REOPEN

For its reply in support of its Second Motion to Dismiss Rockwood's Applications to Reopen, Mewbourne Oil Company ("Mewbourne"), states the following.

I. INTRODUCTION

Mewbourne established in its Second Motion to Dismiss Rockwood' Applications to Reopen ("Motion"), and Rockwood has failed to refute, that Rockwood's Applications are subject to dismissal for the following reasons:

1) Rockwood's attempt to challenge the pooling orders violates public policy and is contrary to the Oil and Gas Act;
2) Rockwood lacks standing to re-open Case Nos. 21390 and 21391; and
3) Rockwood's bases for challenging Order Nos. R-12527 and R-12528 necessarily require the Division to alter the notice requirements set out in 19.15.4.12 NMAC and should be addressed in a rulemaking.

I. ARGUMENT

A. Rockwood's attempt to challenge pooling orders over a year after they were issued, when it knowingly acquired interests that were pooled as unlocatable, is contrary to the Oil and Gas Act.

Rockwood only attempts to address Mewbourne's arguments that Rockwood's Application is contrary to the Oil and Gas Act through its broad, unsupported statement that "any Division Order that was obtained by a party who failed to exercise reasonable diligence in locating an uncommitted WI lacks certainty and finality by its very nature." *See* Response at 15. Rockwood's failure to address the substance of Mewbourne's argument and authority concerning policy under the Oil and Gas Act acts as a concession to Mewbourne's position. *See Lymon v. Aramark Corp.*, 728 F.Supp.2d 1222, 1263 (D.N.M. 2010) (dismissing one of plaintiff's counts when plaintiff failed to address defendant's argument in its motion to dismiss). For that reason alone, Mewbourne's Motion should be granted.

As set out in Mewbourne's Motion, the Division should dismiss the application, as Rockwood's request conflicts with the Division's obligation under the Oil and Gas Act to protect correlative rights and prevent waste. *See* NMSA 1978, § 70-2-11. While Babbitt and Brock may have not consented to pool their interests, the Division was well within its authority to pool the interests to ensure the prevention of waste and protection of correlative rights. Speculators should not be permitted or encouraged to gamble on the hope that they might be able to track down unlocatable parties and then seek to nullify pooling orders on that basis.

Rockwood has chimed in after the time has run for Mewbourne to begin drilling its Wells to be in compliance with Order Nos. R-21527 and R-21528. Permitting parties to scour the Division's database, find cases with unlocatable parties, then attempt to locate those parties and purchase their interests to participate in the proceeds of a well they otherwise had no right to

participate in would call into question any pooling order that involves unlocatable parties. Given the significant number of cases that involve unlocatable parties, there would be no end to the challenges that would be filed with the Division and pooling orders would be rendered meaningless. This result is inconsistent with the Division's obligation to prevent waste and protect correlative rights because it would thwart pooling and, thereby, oil and gas development in New Mexico.

Without time limitations like those set out in Section 70-2-13, parties could challenge the Division's orders at any time, regardless of the age of the order. This result would lead to a lack of certainty and finality of the orders issued by the Division. There is no support for Rockwood's position that any Order involving unlocatable parties "lacks certainty and finality by its very nature." To accept that position would lead to an outcome that is untenable for the Division and the parties who rely on its orders, including parties who have drilled wells the Division has approved.

B. Rockwood lacks standing to re-open Case Nos. 21390 and 21391.

Rockwood admits in its response that the Commission has no jurisdiction to determine title to any interest in real property. *See* Response at 5. As set out in its Motion, Mewbourne established that Rockwood may only participate in the wells if two conditions are met: (1) Babbitt and Brock transfer their interests to Rockwood; and (2) Rockwood resolves the defects in title. Should the title defects remain unresolved, neither Rockwood, nor Babbitt, nor Brock would be eligible to participate in Mewbourne's wells. Rockwood claims in its Response that it will incur over $1.5 million in injuries due to the risk penalties authorized by the Pooling Orders. However, Rockwood still fails to provide any evidence that it, or Babbitt or Brock, have a legally protected right to

participate in the wells because the title defects have not yet been resolved, and the Division is not the proper forum to address title issues.

As stated in Mewbourne's Motion, Rockwood has made a "showing that the relief requested *might* redress" Rockwood, Babbitt, Brock's alleged injuries should the title defects be cured. 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)).

Because Rockwood has not shown it has standing to reopen Case Nos. 21390 and 21391, Rockwood's Applications should be dismissed as required by 19.5.4.8(A) NMAC.

C. Rockwood's Applications should be dismissed because they require the adoption of a new, heightened notice standard.

As set out in Mewbourne's Motion, the Division's rules and "reasonable diligence" do not require the type of search undertaken by Rockwood's counsel to locate Brock and Babbitt. Rockwood invites the Division 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. The Division should decline Rockwood's invitation. Essentially, Rockwood seeks to circumvent the Oil and Gas Act and Division rules regarding rulemaking. *See* NMSA 1978, § 70-2-12.2(A) ("No rule shall be adopted pursuant to the Oil and Gas Act until after a hearing by the commission."); 19.15.3.1 – 15 NMAC (setting out detailed "procedures for division rulemaking proceedings"). The changes to the notice requirements that Rockwood proposes necessitate a rulemaking so that all interested parties have an opportunity to participate and comment prior to a change taking place. *See*

19.15.3.10 (comments on rulemaking). Applications to re-open existing pooling orders are not the proper venue to request that the Division adopt new notice requirements.

Further, 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 Babbitt and Brock. *See* Exh. 2 at ¶ 3. Accurint performs comprehensive searches of public records and is deemed more reliable than the various free "people finder" websites relied upon by Rockwood. *See id*. Thus, even assuming the more intensive internet research was required, Mewbourne performed that research.

Because the Division should not alter its notice requirements in the absence of a rulemaking and Mewbourne complied with the notice requirements set out in 19.15.4.12 NMAC, Rockwood's applications should be dismissed.

II. CONCLUSION

For the reasons set forth herein, and in its Motion, Mewbourne respectfully requests the Division dismiss Rockwood's applications.

Respectfully submitted,

HINKLE SHANOR LLP

/s/ Dana S. Hardy

Dana S. Hardy
Jaclyn M. McLean
P.O. Box 2068
Santa Fe, NM 87501
(505) 982-4554
dhardy@hinklelawfirm.com
jmclean@hinklelawfirm.com

Certificate of Service

I hereby certify that on April 1, 2022, I caused a true and correct copy of the foregoing to be emailed to:

Darin C. Savage
William E. Zimsky
Paula M. Vance
Andrew D. Schill
darin@abadieschill.com
bill@abadieschill.com
paula@abadieschill.com
andrew@abadieschill.com

/s/ Dana S. Hardy
Dana S. Hardy