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

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

OCC Case No. 21902 (*de novo*)
OCD Case No. 21324
ORDER NO. R-21631-A

ORDER OF THE COMMISSION

THIS MATTER came before the New Mexico Oil Conservation Commission ("Commission") on the *de novo* Application of Tom M. Ragsdale ("Ragsdale"" or the "Applicant"). The Commission, having conducted a public merits hearing on January 13-14, 2022 and having convened for deliberation on February 22, 2022, both *via* the WebEx teleconferencing application and pursuant to the Governor's current Health Order, and having considered the testimony and the record in this case, as well as the arguments of the parties, and being otherwise fully advised, enter the following findings, conclusions and order.

FINDS THAT:

Procedural History

1. Proper notice was given of the application and the hearing of this matter, and the Commission has jurisdiction of the parties and the subject matter herein.

2. The Commission reviewed all admitted exhibits and considered all admitted testimony given in this matter prior to rendering its final decision. In particular, the Commission admitted all party exhibits for its consideration.

3. On or about May 20, 2019, Respondent Mewbourne Oil Company ("Mewbourne") filed an application for compulsory pooling with the New Mexico Oil Conservation Division ("OCD"), thereby opening OCD Case No. 20580. Specifically, Mewbourne sought to pool all mineral interests in the Bone Spring formation of the E2/E2 of Section 10 and the E2/E2 of Section 15, Township 23 South, Range 34 East, N.M.P.M., Lea County, New Mexico. OCD held a merits hearing in OCD Case No. 20580 on June 27, 2019 and rendered Order No. R-20924 on October 15, 2019, granting Mewbourne its sought-after pooling order. The only other party to OCD Case No. 20580 was COG Operating, LLC. Ragsdale was not a party to OCD Case No. 20580.

4. On or about September 4, 2019, Respondent Mewbourne Oil Company ("Mewbourne") filed an application for compulsory pooling with the New Mexico Oil Conservation Division

("OCD"), thereby opening OCD Case No. 20809. Specifically, Mewbourne sought to pool all mineral interests in the Bone Spring formation spacing unit comprised of the E2/E2 of Section 10 and the E2/E2 of Section 15, Township 23 South, Range 34 East, N.M.P.M., Lea County, New Mexico. OCD held a merits hearing in OCD Case No. 20809 on October 3, 2019 and rendered Order No. R-20924-A on February 19, 2020, granting Mewbourne its sought-after pooling order. Ragsdale was not a party to OCD Case No. 20809.

5. On or about June 6, 2020, Ragsdale filed an application with OCD, opening OCD Case No. 21324, seeking to have OCD revoke OCD Order Nos. R-20924 and R-20924-A on several grounds:

a. In OCD Case No. 20809, that Mewbourne failed to provide notice to Ragsdale of its intent to force pool all four wells covered by Mewbourne's application under one order;

b. That Mewbourne misrepresented its intentions to the Division in OCD Case No. 20809 by failing to inform the Division that Mewbourne intended to seek costs for failed attempts to drill in the pooled site.

c. That Mewbourne's imposition of costs on Ragsdale, whose mineral interests were pooled under OCD Order Nos. R-20924 and R-20924-A, for failed drilling attempts is contrary to New Mexico law.

6. Mewbourne subsequently and timely entered its appearance in OCD Case No. 21324.

7. The Division convened a merits hearing on September 11, 2020 in OCD Case No. 21324 and on March 18, 2021 issued OCD Order No. R-21631 denying Ragsdale his requested relief on the grounds that Ragsdale failed to establish that OCD should grant his application.

8. On April 19, 2021, Ragsdale filed his Application for Hearing *De Novo* with the Oil Conservation Commission ("OCC"), pursuant to § 70-2-13 NMSA, opening OCC Case No. 21902.

9. The OCC convened a merits hearing in OCC Case No. 21902 on January 13, 2022 which continued into January 14, 2022. The Parties filed respective Prehearing Statements, accompanied by exhibits.

10. Ragsdale's Prehearing Statement included the direct testimony of Ragsdale himself as his only witness in the case. Ragsdale also testified in-person and consistent with the submission of his written testimony.

11. Mewbourne presented two witnesses: Mitch Robb, a landman for Mewbourne, and Travis Cude, a reservoir engineer for Mewbourne. Mewbourne also submitted a Prehearing Statement that included an affidavit from Mr. Robb outlining key points of his anticipated, live testimony.

Testimony of Tom M. Ragsdale

12. Applicant Tom M. Ragsdale called himself as his first and singular witness.

13. Ragsdale testified that he is a petroleum engineer with substantial professional experience in the oil and gas field starting in 1985, including time spent as a consultant, and ultimately opening his own operation, Siana Oil, in 1994. Siana Oil began contract operation work in New Mexico starting in 1996 and continues to today. Ragsdale stated that he has 35 years of experience in the oil and gas sector. Based on these qualifications, the Commission designated Ragsdale as an expert witness.

14. Ragsdale testified that he holds a mineral interest at issue in this case, with that interest totaling 4.89% of the working interest in the subject spacing units and wells at issue.

15. Ragsdale explained his knowledge of the land and wells at issue in this case, reiterating the details from both of Mewbourne's pooling applications and Ragsdale's application that is currently before the OCC.

16. Ragsdale asserted that the issue in this case is "whether Mewbourne can allocate costs for the failed attempts to drill that 10/15 1H and a substitute well, the Ibex 10/15 B1AP Fed. Com. No. 2H, which were incurred prior to any related Forced Pooling Order in Mewbourne's estimated costs to drill the 15/10 2H."

17. Ragsdale admitted he did not enter an appearance in OCD Case No. 20580 because he did not object to the wells at issue in that case.

18. Ragsdale then explained that Mewbourne made two failed drilling attempts on the 10/15 2H prior to receiving a forced pooling order in OCD Case No. 20580. Further, Ragsdale claimed that Mewbourne then filed its forced pooling application for OCD Case No. 20809 seeking to pool the same lands so that Mewbourne could drill the 15/10 wells.

19. Regarding OCD Case No. 20809, Ragsdale testified that he never received a well proposal from Mewbourne and did not enter an appearance in OCD Case No. 20809 because he did not object to the wells Mewbourne proposed in its application. Ragsdale stated that the notice letter he received from Mewbourne in OCD Case No. 20809 only identified two wells, but understood that Mewbourne actually wanted to pool the 10/15 and 15/10 wells under one order. Ragsdale went on to say that Mewbourne never informed him that, in electing to participate in the 15/10 wells (OCD Case No. 20580) that he was also committing himself to pay the actual costs of Mewbourne's two failed drill attempts. Ragsdale further stated that, had he known that Mewbourne would seek to recoup costs from him as it ultimately did under the pooling order from OCD Case No. 20809, he would have entered an appearance and objected.

20. Ragsdale explained that he only learned of Mewbourne's designation of the 15/10 wells as "substitute wells" for the 10/15 wells when he received the AFE from Mewbourne that had what Ragsdale deemed to be inflated costs inclusive of two failed drilling efforts by Mewbourne.

21. Ragsdale testified that he was late in returning the AFE's to Mewbourne due to contesting the costs outlined in the AFE.

22. Ragsdale turned to the issue of spacing between the 10/15 2H and the 15/10 2H and referenced a map marked as Applicant's Exhibit 2. Ragsdale claimed that these maps were those submitted as exhibits by Mewbourne to the Division in OCD Case Nos. 20580 and 20809. Ragsdale stated that the subject maps did not indicate to him that Mewbourne intended to use this information to drill a substitute well for the 10/15 2H.

23. Ragsdale's counsel walked him through Applicant's Exhibits 2 and 3, additional maps submitted by Mewbourne as exhibits to its application in OCD Case Nos. 20580 and 20809, again claiming that these exhibits failed to demonstrate Mewbourne's intentions to drill a substitute well for the 10/15 2H.

24. Ragsdale, in reviewing Applicant's Exhibit 5, a letter election notice from Mewbourne to Ragsdale with an enclosed AFE for the 15/10 2H, testified that this particular AFE confirmed for him that Mewbourne was attempting to foist upon him the costs for the failed drill attempt. Ragsdale asserted that he checked the calculations in the AFE and they did not compute properly. In particular, Ragsdale identified an overall cost increase of 34%, or three-million dollars ($3,000,000.00) from the AFE submitted in OCD Case No. 20809. Ragsdale believes that Mewbourne, in not submitting the AFE with the additional costs to the Division, misled the Division about Mewbourne's plans.

25. Ragsdale then addressed the email exchanges between his support staff, Ms. Stanford, and Mewbourne, which focused on the cost issue about which Ragsdale previously testified. Ragsdale testified that Ms. Stanford reached out to Mr. Robb, with Mewbourne, about Mewbourne's failure to send a pooling order and election letter to Ragsdale, an issue Mr. Robb promptly remedied. Additionally, the emails indicate a good-faith effort by Ms. Stanford to resolve the cost dispute between the Parties.

26. Ragsdale then addressed his submission of a costs check to Mewbourne, but a check in the amount Ragsdale believed was proper to cover his costs under the two pooling orders and specifically omitting what Ragsdale believed to be the cost overage, but consistent with Mewbourne's AFE costs from OCD Case No. 20809. Ragsdale asserted that, in doing so, he properly consented and elected to participate in the wells governed by the OCD Case No. 20809 pooling order. Ragsdale further testified that the costs check he submitted to Mewbourne was subsequently rejected by Mewbourne. Mewbourne's rejection letter specified that Ragsdale could only participate provided he tendered the full cost amount to Mewbourne.

27. Ragsdale further testified that Mewbourne communicated to him subsequently that it would apply his submitted check to one well, but to be deemed a consenting party, Ragsdale would need to tender the remaining balance to cover Ragsdale's costs in full.

28. Ragsdale stated that, had Mewbourne's first drilling attempt been successful in spite of drilling issues resulting in an additional three-million ($3,000,000.00) in costs, that he would still be liable for those extra costs. Ragsdale likewise responded in the affirmative if Mewbourne junked its first hole and moved the drilling rig slightly to try again.

29. Ragsdale also confirmed that Mewbourne allowed him to participate in a well for which he did not timely elect to participate. Ragsdale also conceded that he tried to sell his interest in the 15/10 2H well, but was unable to do so, and now seeks to challenge the costs imposed on him for that same well.

30. Ragsdale was unable to specify when he learned of Mewbourne's two junked well.

31. Ragsdale confirmed that his offices were open in March 2020, when Mewbourne issued one of its election letters to Ragsdale.

32. Ragsdale reasserted that he was not notified of Mewbourne's pooling order governing the 10/15 wells, at least not before Mewbourne commenced drilling, for OCD Case No. 20580. Ragsdale then subsequently testified that he did have notice of Mewbourne's applications in OCD Case Nos. 20580 and 20809.

33. Ragsdale stated that he has concerns with Mewbourne's operating procedures, but did not explain why that prevented him from entering his appearance in OCD Case No. 20580, despite knowing how Mewbourne actually operates from prior experience with Mewbourne.

34. Ragsdale verified that he seeks one of two remedies: that OCD Order Nos. R-20924 and R-20924-A be revoked or that he should be relieved of the costs imposed upon him by Mewbourne. In particular, Ragsdale believes that since Mewbourne elected to drill the two failed wells absent a forced pooling order, Mewbourne should bear those costs.

35. With respect to the argument that the 15/10 wells were not substitute wells, Ragsdale testified that the 15/10 2H well was not within 330 feet of either of Mewbourne's failed wells and that Mewbourne did not commence drilling the 15/10 2H within ten (10) days of the failed wells' abandonment.

36. Ragsdale explained that, if given the opportunity, he would like to participate in the wells to which he has objected to costs, but only if the participation is retroactive.

37. Ragsdale stated that it is his view that, in drilling without a pooling order, Mewbourne cannot foist the costs of junked wells upon him and, in particular, if there is no JOA that binds himself and Mewbourne, which is the case here.

38. Ragsdale also opined that Mewbourne's junked well costs, totaling around three million dollars ($3,000.000.00) are unreasonable because Mewbourne assumed the risk of drilling absent a pooling order.

39. Ragsdale reiterated his position that in OCD Case No. 20809, Mewbourne filed a misleading AFE that misled both OCD and himself, which is why he never entered an appearance in OCD Case No. 20809 as Ragsdale was unaware of the two junked wells and the wells Mewbourne drilled to replace them.

Testimony of Travis Cude

40. Mewbourne called Travis Cude to testify on behalf of Mewbourne. Mr. Cude testified that he is a reservoir engineer for Mewbourne who had a role in drilling of the subject wells. Mr. Cude has prior experience testifying before the OCC as a designated expert witness and was so designated in this matter. Mr. Cude has worked Southeast New Mexico for the last eight years.

41. Mr. Cude adopted his affidavit regarding the basics of drilling the subject wells.

42. Mr. Cude testified that Mewbourne had other drilling obligations, aside from seeking OCD forced pooling orders, which required it to begin drilling prior to securing OCD Order Nos. R-20924 and R-20924-A. The subject wells, including the substitute wells, were on Bureau of Land Management ("BLM") land. Thus, Mr. Cude explained that Mewbourne had to drill prior to securing a pooling order lest Mewbourne need to go through a second application process with BLM, delaying action for another six to twelve months.

43. Mr. Cude explained that the original well drilled was subsequently junked due to loss of circulation, despite two recovery attempts.

44. Mr. Cude detailed that, for the 10/15 2HY well, Mewbourne moved the surface location about 30 feet and had the same outcome of a failed well.

45. Regarding the APD from BLM for the substitute wells, Mr. Cude testified that securing one can take six to twelve months which stands in contrast to OCD's requirement that a substitute well be drilled within 10 days of the junking of a failed well. Mr. Cude further commented that OCD's 10 day rule is not reasonable under the circumstances of this case.

46. Mr. Cude considers the replacement wells to be actual substitute wells because they were drilled within 330 feet of the junked wells. Further, Mr. Cude explained that Mewbourne has had no additional drilling issues with wells near the subject wells.

47. Mr. Cude testified that he believes, under the circumstances, that the costs imposed upon Ragsdale by Mewbourne for the junked wells are reasonable.

48. Mr. Cude further testified that the originally submitted AFE in OCD Case No. 20809 properly identified the costs of moving forward to drill and complete the subject well; additional costs already incurred were apparently not factored into that particular AFE despite the updated AFE adding an additional three-million dollars in costs being sent to participating parties. Mr. Cude admitted that Mewbourne did not seek OCD approval for the higher-cost AFE.

49. Mr. Cude confirmed that the 15/10 2H was and remains a producing well.

50. Mr. Cude believes that the Mewbourne's decision to junk the first two wells was reasonable and that Mewbourne acted like a prudent operator.

51. Mr. Cude admitted that, at the time when Mewbourne first attempted to drill the 10/15 2H well, Mewbourne possessed no forced pooling order. The same applied to the second attempt to drill the 10/15 2H well. Mr. Cude's understanding of the state of the law in New Mexico is that a forced pooling order is not required to commence drilling.

52. Mr. Cude testified that the substitute wells at issue are within the 330 foot requirement found in OCD regulations for a well to qualify as a substitute well, as calculated from wellbore-to-wellbore. Mr. Cude subsequently admitted, however, that Mewbourne did not commence drilling of substitute wells within the 10 days required by OCD regulations.

53. Mr. Cude stated that he knows of no other well drilled by Mewbourne for which Mewbourne had no forced pooling order at the time Mewbourne commenced drilling.

54. Ragsdale's counsel cross-examined Mr. Cude concerning Mewbourne's administrative processes and procedures, about which Mr. Cude knows little and provided nominal substantive testimony.

55. Mr. Cude admitted that the difference between the two AFE's for the 15/10 2H wells is explained by the costs for the two junked wells.

56. Mr. Cude stated that the current OCD rule that requires a substitute well to be drilled within 10 days of junking a failed well is outdated and does not contemplate modern horizontal drilling technology development. Mr. Cude further explained that horizontal drilling technology appeared in New Mexico around 2012.

57. Mr. Cude walked through with the OCC the relevant dates of spudding, plugging, and other well events, all of which demonstrated that Mewbourne proceeded to drill wells before it received its pooling order in OCD Case No. 20580.

58. Mr. Cude testified that, had Mewbourne ceased all drilling operations after the initial two failed wells, the costs of those failed wells would be passed on to participants subject to a pooling order. Mr. Cude further testified that he believes Mewbourne complied with all notice requirements found in New Mexico law for forced pooling orders.

59. Mr. Cude also noted that the AFE that contained the objected-to costs was created after Mewbourne received the applicable pooling order. Additionally, Mr. Cude stated that the OCD was notified that Mewbourne sought to recoup the costs for the junked well at the merits hearing.

60. When asked about the reasonableness of Mewbourne's junked well costs, Mr. Cude explained that Mewbourne did not set forth any costs that were not actual costs for the two junked wells.

Testimony of Mitchell Robb

61. Mewbourne then called its final witness, Mitch Robb, landman with Mewbourne.

62. Mr. Robb testified that he has testified before OCD in the past and has been qualified as an expert witness, with the OCC finding Mr. Robb an expert witness as a petroleum landman for purposes of this case. Mr. Robb then adopted his signed affidavit provided as an exhibit in this matter.

63. Mr. Robb explained that he has worked for Mewbourne since 2014 and has handled many pooling applications, well proposals, and joint operating agreements ("JOA's") since joining Mewbourne.

64. Mr. Robb stated that he is familiar with Mewbourne's land matters that are the subject of this case.

65. As to Mr. Robb's affidavit, Mr. Robb acknowledged that his affidavit was prepared under his direction, as were the documents attached thereto.

66. Mr. Robb testified, regarding the two junked wells, that Mewbourne had to return to BLM to get approval for new drilling locations. Mr. Robb further testified that, when drilling on federal land, Mewbourne must first go to BLM for approval of Mewbourne's APD, after which OCD will review and approve Mewbourne's APD.

67. Mr. Robb detailed that, in modern petroleum drilling, the first take point is rarely the same as the surface hole. Mr. Robb then proceeded to explain in detail how to determine the take point for the 15/10 well.

68. Mr. Robb addressed his March 5, 2020 letter to Ragsdale seeking an election to participate from Ragsdale. Mr. Robb further explained that he spoke with Ragsdale's employee, Ms. Stanford, about the AFE and the costs to which Ragsdale objected, to which Mr. Robb responded by explaining that the AFE with increased costs contained those costs due to the junked wells. Mr. Robb asserted that Ms. Stanford did not seem to understand the concepts presented by Mr. Robb. Ms. Stanford did not contact Mr. Robb again.

69. Mr. Robb testified that the March 5, 2020 election letter set forth a deadline for response by Mr. Ragsdale of April 10, 2020, which Ragsdale did not meet. During the interim period between the date of the letter and the April deadline, Ragsdale did not communicate to Mr. Robb his dissatisfaction with the increased costs found in the AFE. It was only on April 15, 2020 that Ragsdale objected to the increased costs presented to him by Mewbourne. Mr. Robb also noted

that it was only in Ragsdale's applications to the OCD and appeal to the OCC that the topic of reasonableness of the costs arose.

70. Mr. Robb made clear that Mewbourne gave Ragsdale the opportunity to participate in OCD Case Nos. 20580 and 20809. However, Ragsdale did participate in a third well not at issue in the case, but in the same formation as the wells before the OCC.

71. Mr. Robb testified that Mewbourne tried to work with Ragsdale after the April 10, 2020 election deadline, particularly if Ragsdale paid the estimated costs sent to him. However, per Mr. Robb, Ragsdale did not meet the conditions to participate in the 15/10 2H well and so was deemed a non-participant.

72. Mr. Robb explained that all other working interest holders, numbering around fifty, are subject to a JOA and are bearing their costs for the junked wells. No other working interest holders have objected to these costs.

73. Mr. Robb stated that the obligations Mewbourne needed to meet that justified drilling prior to securing a pooling order involved term assignments from BLM, which meant Mewbourne could lose its interests if it did not drill before a certain date. Mr. Robb explained that the decision to drill absent a time-consuming pooling order was a management decision made under the circumstances. Mr. Robb further explained that drilling absent a pooling order is based on circumstances faced by Mewbourne and, in this case, the circumstances justified the earlier drilling.

74. Mr. Robb explained that he believes Mewbourne worked in good faith with Ragsdale to resolve Ragsdale's concerns. Mr. Robb further stated that, when Ragsdale, through Ms. Stanford, complained about the increased costs presented to Ragsdale, Mewbourne provided Ragsdale with the information sought by Ragsdale.

75. Mr. Robb confirmed that all working interest holders received the same AFE as Ragsdale, specifically the one to which Ragsdale objected. Every party who received that specific AFE elected to participate.

76. Mr. Robb acknowledged that Mewbourne's second application in OCD Case No. 20809 did not specify that Mewbourne sought to reopen the case to contend with the failed drilling attempts, however Mr. Robb believes Mewbourne complied with the notice requirements for such an application.

77. Mr. Robb reiterated Mr. Cude's testimony that the AFE submitted to the OCD in OCD Case No. 20809 only contained costs going forward, but not the costs of the junked wells, likely due to a delay in receiving the costs for the junked wells. Mr. Robb acknowledged that AFE's typically only list estimated, not incurred-to-date, costs. Further, Mr. Robb stated that he does not believe Mewbourne was obligated to notify the OCD in OCD Case No. 20809 of the AFE that set forth increased costs and about which Ragsdale complains.

78. Mr. Robb, similar to Mr. Cude, knows of no situations similar to the one before the OCC that involve or involved Mewbourne. Mr. Robb also admitted that, while Ragsdale was not a party to the JOA for the subject wells, Mewbourne did and does communicate with all JOA parties when drilling issues arise. Further, Mr. Robb stated that Mewbourne can and does drill prior to acquiring a pooling order, which in part stems from the historical delay in OCD issuing orders post-hearing.

79. Mr. Robb explained the differences between a JOA and pooling order, in particular pointing out that both documents are what allow oil and gas development.

80. Mr. Robb testified about how costs are allocated to participating interest holders, namely on percentage held by the interest owner.

81. The Commission closed the evidentiary record on January 14, 2022 at approximately 10:33 AM. At that time, that Commission elected to defer deliberation until February 22, 2022. Additionally, the Commission ordered the Parties to submit closing arguments in written format no less than seven days after the Parties receive the transcript for this merits hearing. The Commission further instructed counsel that written closings shall be no longer than ten pages of written argument, with an addition of fifteen pages for exhibits, totally twenty-five pages. The Parties complied with this Order and the Commission reviewed the written closings in advance of deliberation.

82. On February 22, 2022 at 9:00 AM, the Commission convened for its regular, monthly meeting, which was properly noticed and included this matter on the Commission's agenda. On that same date, the Commission entered closed session by motion at 9:24 AM. The Commission reentered open session, again by motion, at 11:51 AM and rendered its decision.

Exhibits admitted into evidence

83. During the course of Ragsdale's presentation, the Commission admitted Applicant's Exhibits 1 through 3 and 5 through 10, as follows:

a. Exhibit 1 – Maps submitted by Mewbourne in support of its applications in OCD Case No. 20809;
b. Exhibit 2 – C-102 Forms;
c. Exhibit 3 – Exhibits submitted by Mewbourne in OCD Case Nos. 20580 and 20809;
d. Exhibit 4 – *was not moved for admission*.
e. Exhibit 5 – Election letter issued by Mewbourne dated March 5, 2020 with revised AFE enclosed;
f. Exhibit 6 – Email chain between Karen Stanford and Mitch Robb;
g. Exhibit 7 – Handwritten notes prepared by Karen Stanford;
h. Exhibit 8 – Letter dated April 15, 2020 from Mr. Ragsdale to Mr. Waits;
i. Exhibit 9 – May 15, 2020 letter from Mr. Insalaco to Mr. Ragsdale;
j. Exhibit 10 – Response letter from Mr. Insalaco to Mr. Ragsdale, April 23, 2020

84. During the course of Mewbourne's presentation, the Commission admitted Mewbourne's Exhibit 1 and 2, as follows:

    a. Exhibit 1 – Affidavit of Travis Cude;
    b. Exhibit 2 – Affidavit of Mitch Robb.

CONCLUSIONS

85. The Commission has jurisdiction over the parties and the subject matter of this case.

86. Proper public notice has been given for the merits hearing in this matter.

87. The Oil and Gas Act, NMSA 1978 Sections 70-2-1 et seq. (Act), prohibits the waste of oil and gas and delegates to the Division the authority to prevent waste and protect correlative rights.

88. Section 70-2-17(C) of the Act provides that when the owners of the interests in a spacing unit "have not agreed to pool their interests, and where one such separate owner, or owners, who has the right to drill has drilled or proposes to drill a well on said unit to a common source of supply, the division, to avoid the drilling of unnecessary wells or to protect correlative rights, or to prevent waste, shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit."

89. With the entry of a compulsory pooling order, "well costs shall include the reasonable costs of drilling, reworking, diverting, deepening, plugging back and testing the well; completing the well in a formation pooled by the order; and equipping the well for production." Section 19.15.13.8(B) NMAC.

90. The costs of failed attempts to drill can be recovered when a "substitute well" is drilled; see Section 19.15.13.8(B)(4) NMAC:

> 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.

91. Section 19.15.4.8, Initiating an Adjudicatory Hearing, requires an application to include: (1) the applicant's name; (2) the applicant's address, or the address of the applicant's attorney, including an email address and fax number if available; (3) the name or general description of the common source or sources of supply or the area the order sought affects; (4) briefly, the general nature of the order sought; (5) a proposed legal notice for publication; and (6) any other matter division rules or a division order requires.

92. A "general description of the common source or sources of supply or the area the order sought affects" does not require a specific statement that take points on a horizontal well will be flipped following the junking of the earlier drilling efforts. Nor does "the general nature of the order sought."

93. Section 19.15.4.9, Adjudicatory Hearing Notice, requires the Division to publish notice with the following information: (1) the adjudicatory hearing's time and place; (2) whether the case is set for hearing before the commission or a division examiner; (3) the applicant's name and address, or address of the applicant's attorney, including an e-mail address and fax number if available; (4) a case name and number; (5) a brief description of the hearing's purpose; (6) a reasonable identification of the adjudication's subject matter that alerts persons who may be affected if the division grants the application; (7) if the application seeks to adopt, revoke or amend special pool orders; establish or alter a non-standard unit; permit an unorthodox location or establish or affect a well's or proration unit's allowable, the notice shall specify each pool or common source of supply that the division or commission's granting the application may affect; and (8) if the application seeks compulsory pooling or statutory unitization, the notice shall contain a legal description of the spacing unit or geographical area the applicant seeks to pool or unitize.

94. Mewbourne complied with 19.15.4.9 NMAC and the notice requirements found therein. Ragsdale failed to provide sufficient evidence to the Commission to demonstrate that Orders R-20924 & R-20924-A were entered into unlawfully or improperly. Therefore, the Commission declines to revoke Orders R-20924 & R-20924-A, as requested by Ragsdale.

95. Regarding Ragsdale's participation in the 15/10 wells, the Commission finds that Ragsdale received Mewbourne's election letters, that Ragsdale failed to make a timely reply, and that submission of a check for purported costs is not adequate to show participation in and of itself. Additionally, Ragsdale had the option to petition the OCD for relief from Mewbourne's costs in OCD Case Nos. 20580 and 20809, but did not do so.

96. Regarding the costs imposed upon Ragsdale by Mewbourne concerning the wells, such costs were not unreasonable and were appropriate under the circumstances. Ragsdale provided no evidence to refute Mewbourne's imposed costs nor did Ragsdale otherwise demonstrate the unreasonableness of the costs. Mewbourne, on the contrary, maintained that its costs for the junked wells were reasonable because those costs were actual costs incurred by Mewbourne for the two junked wells.

97. The Commission does not address the wisdom of drilling wells prior to securing a valid Compulsory Pooling Order, but finds no issue with Mewbourne proceeding to drill the 10/15 wells absent a valid Compulsory Pooling Order. Further, the Commission finds that, in doing so, Mewbourne bore exclusively the risks of drilling absent a valid Compulsory Pooling Order. *See Bellet v. Grynbert*, 1992-NMSC-063, ¶¶ 16-19, 114 N.M. 690.

98. Because Mewbourne proceeded to drill absent a valid Compulsory Pooling Order and pursuant to 19.15.13.8 NMAC and § 70-2-17(C) NMSA. The Commission further finds that 19.15.13.8 NMAC applies only to wells subject to a valid Compulsory Pooling Order, which is not the case here, and, therefore, the Commission grants relief to Ragsdale from the costs of Mewbourne's two initial, junked 10/15 wells.

99. As the Applicant in this matter, Ragsdale bears the burden of proof in establishing that the earlier orders should be revoked or that Mewbourne should be compelled to recognize him as a consenting owner without paying his share of the earlier junked well costs. Ragsdale failed to carry his burden concerning revocation of the underlying Division Orders. Ragsdale also failed to carry his burden demonstrating he is entitled to participate as a consenting owner. Ragsdale did carry his burden in demonstrating that Mewbourne should bear its own costs for the two junked wells.

100. Finally, based on the above, the Commission finds that it will not reopen Case Nos. 20580 and 20809.

101. Jurisdiction over this case is retained for the entry of such further orders as the Commission may deem necessary.

ORDER

102. Ragsdale's application to revoke OCD Order Nos. R-20294 and R-20294-A is **DENIED**.

103. Ragsdale's alternative requires for relief that OCD declare certain well costs imposed by Mewbourne as unreasonable is **DENIED.**

IT IS SO ORDERED.

DONE at Santa Fe, New Mexico, on the 10th day of March 2022.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

DR. WILLIAM AMPOMAH, PhD MEMBER

GREG BLOOM, MEMBER

Gregory B. Bloom 3/10/22

ADRIENNE SANDOVAL, M.E., CHAIR

SEAL