

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

**APPLICATIONS OF ROCKWOOD RESOURCES, LLC, ET AL.,
TO REOPEN MEWBOURNE OIL COMPANY'S
POOLING CASE NOS. 21390 AND 21391,
LEA COUNTY, NEW MEXICO**

**Case No. 22539
Case No. 22540
Order No. R-22241**

ORDER ON MOTION TO DISMISS

This Order follows the Second Motion to Dismiss Rockwood's Applications to Reopen ("Motion") filed by Mewbourne Oil Company ("Mewbourne"). The Director ("Director") of the New Mexico Oil Conservation Division ("Division") enter the following findings and order.

FINDINGS

1. Rockwood Resources, LLC ("Rockwood"), Christine Brock ("Brock"), and Rebecca J. Babbitt ("Babbitt") (collectively referred to as "Rockwood Group") filed applications, on January 14, 2022 ("Applications"), to reopen Case Nos. 21390 and 21391 previously filed by Mewbourne ("Mewbourne Cases"). The Rockwood Group alleges that Mewbourne failed to exercise reasonable diligence in locating unlocatable parties in the Mewbourne Cases, including Brock and Babbitt, and requests that the unlocatable parties be given proper notice and the opportunity to participate in the wells.

2. After an initial hearing on March 3, 2022 to consider Mewbourne's first motion to dismiss and the Rockwood Group's request for continuance, the Division Hearing Examiner established a schedule for further briefing and hearing. Mewbourne filed the Motion on March 15, 2022 arguing that dismissal is necessary for several reasons.

3. Mewbourne Cases. The Mewbourne Cases were filed by Mewbourne in August 2020 and sought the compulsory pooling of uncommitted interests. The Division conducted hearings on the Cases and issued Order Nos. R-21527 and R-21528 ("Orders"), respectively, granting compulsory pooling of uncommitted interests.

4. The records in the Mewbourne Cases are incorporated into the record for Case Nos. 22539 and 22540 for the purpose of deciding the Motion.

5. In each Mewbourne Case, Mewbourne listed Brock and Babbitt as interest owners (Ex. A-3, A-5). In each Case, Mewbourne listed Brock and Babbitt as being among 9 interest owners that are unlocatable. (Ex. A-5). Mewbourne stated that it had mailed the well proposal to the unlocatable owners and made “multiple phone calls to various numbers” trying to reach the owners. (Ex. A-7).

6. In each Mewbourne Case, the affidavit of Mewbourne’s landman (Mitch Robb) stated that “Mewbourne conducted a diligent, good faith effort to identify the correct addresses of persons entitled to notice”. (Ex. A). Beyond that statement, Mewbourne did not provide any details on its efforts to identify the correct addresses.

7. Mewbourne’s landman affidavit states that letters were mailed to all the uncommitted interest owners notifying them of the hearing. (Ex. A, A-9). Mewbourne published a legal notice of the pending case in the Hobbs News-Sun in Lea County, New Mexico. The legal notice included a mention of both Brock’s and Babbitt’s names. (Ex. A-10).

8. A hearing was held on each Mewbourne Case on November 3, 2020. There was no opposition in either case. The Director issued the Orders on November 13, 2020. The interests of Brock and Babbitt were pooled under the Orders. (Orders, ¶15). No party appealed either Order to the Oil Conservation Commission (“Commission”).

9. In each Order, the Director concluded that Mewbourne had satisfied the notice requirements for the application and hearing. “Operator satisfied the notice requirements for the Application and the hearing as required by 19.15.4.12 NMAC.” (Orders, ¶8).

10. Applications. In the Applications, the Rockwood Group alleges that the current, correct addresses of Brock and Babbitt were readily discernable through proper diligence. Brock and Babbitt were therefore not unlocatable parties and notice in the Mewbourne Cases was defective. Mewbourne’s use of notice by publication is not acceptable according to the Rockwood Group, because Mewbourne failed to exercise reasonable diligence in locating the interest owners as required by rule. 19.15.4.12(B) NMAC. The Rockwood Group seeks to reopen the Cases to allow proper notice to the unlocatable owners and allow the parties the option to participate in the wells.

11. Reopening. The threshold issue is whether the Division can, and should, reopen a compulsory pooling case because of notice inadequacies after a final order has been issued and time has passed. The Division has the authority to reopen cases as provided in its orders and in the Commission rules. Each Order provides that the Division “retains jurisdiction of this matter for the entry of such orders as may be deemed necessary”. (Orders, ¶35). The Commission’s Rules specifically provide that the failure to provide adequate notice for a compulsory pooling

application is grounds for reopening a case. “Evidence of failure to provide notice as 19.15.4.9 NMAC requires may, upon proper showing, be considered cause for reopening the case.” 19.15.4.12(D) NMAC. In these cases, the Rockwood Group seeks to reopen the Mewbourne Cases due to alleged failures to provide adequate notice. Mewbourne seeks to dismiss the Applications and prevent a reopening of the cases.

12. Motion to Dismiss. In the Motion, Mewbourne argues that the Applications should be dismissed because the Applications were untimely and contrary to the Oil and Gas Act; because Rockwood lacks standing to file the Applications; and because Rockwood seeks to alter the notice requirements set forth in the rules of the Commission.

13. The Rockwood Group filed a response to the Motion and Mewbourne filed a reply to the response. The parties presented oral arguments before the Division on April 7, 2022.

14. Standing. Mewbourne argues that Rockwood, or the Rockwood Group¹, lacks standing to re-open the Mewbourne Cases because Rockwood has not established that it has acquired the interests of Brock and Babbitt, and Brock and Babbitt have not established that they have title to the interests.

15. The Commission’s Rules require an applicant to provide notice to each mineral interest owner “whose interest is evidenced by a written conveyance document either of record or known to the applicant at the time the applicant filed the application”. 19.15.4.12(A)(1) NMAC. (emphasis added). In the evidence submitted for each Mewbourne Case, Mewbourne listed Brock and Babbitt as interest owners. (Ex. A-3, A-5). Mewbourne now claims, with no support, that Brock and Babbitt may not actually have title to the interests.

16. In the records of the Mewbourne Cases, Brock and Babbitt are classified as interest owners, and, as such, are entitled to notice and, therefore, are classified as parties under the Commission’s Rules. 19.15.4.10(A) NMAC. Thus, Brock and Babbitt have standing under the Commission’s Rules to initiate an adjudicatory hearing to reopen a case based on an alleged failure to provide adequate notice. 19.15.4.8(A) NMAC. In the Motion, Mewbourne has offered claims, but not provided evidence, to overturn Mewbourne’s earlier designation of Brock and Babbitt as interest owners. Rockwood, which has provided evidence in the Application that it is a successor in interest to Brock and Babbitt’s interests, would also have standing.

17. Untimeliness. Mewbourne argues the Applications are untimely and therefore violate the Oil and Gas Act and the Commission’s Rules. Mewbourne argues that its correlative rights to develop the acreage as provided in the Orders is impaired by untimely claims.

¹ In the Motion, Mewbourne appears to use the term “Rockwood” to apply to both Rockwood and the Rockwood Group so it is difficult to decipher which meaning is intended in any sentence.

“Speculators should not be permitted or encouraged to track down unlocatable parties months or years after pooling orders were issued and then seek to nullify the orders.” (Motion, p. 4). Mewbourne notes the Orders, as with all compulsory pooling orders, have deadlines for the drilling and completion of wells.

18. The Commission’s Rules allow for the reopening of a case if there is evidence of failure to provide notice as required under the Rules. 19.15.4.12(D) NMAC. The Rules do not provide a time limit for such reopening and only require a “proper showing”. *Id.*

19. Mewbourne also argues that a party wishing to challenge a Division order must file a case with the Commission within 30 days after the order is issued.

20. The Division does not reject the argument that, at some point, an application to reopen a case may be untimely. In this case, the time period between the issuance of the Orders and the filing of the Applications was 14 months. The Orders were signed and dated on November 13, 2020. The Applications were filed on January 14, 2022. Rockwood claims that it notified Mewbourne in December 2021 after Rockwood had located previously unlocatable parties.

21. The remedy sought by the Rockwood Group in these cases is for “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.” (Application, p. 6). The Rockwood Group does not seek to void the compulsory pooling approval but to reset the time frame for Mewbourne to submit the Estimated Well Costs to the uncommitted interest owners under the Order and therefore trigger the 30 day period to participate in the well(s). (Orders, ¶¶22 and 23).

22. Given the remedies sought by the Rockwood Group, the Division concludes that the time period elapsed since the issuance of the Orders is not sufficient to dismiss the Applications to reopen the Cases to determine if notice was adequate.

23. Reasonable Diligence. The Rules require that an applicant exercise “reasonable diligence” in attempting to locate persons entitled to notice, and only after exercising such diligence and failing to locate a person, can the applicant use notice by publication. (“When an applicant has been unable to locate persons entitled to notice after exercising reasonable diligence, the applicant shall provide notice by publication”, 19.15.4.12(B) NMAC). Mewbourne argues that it did exercise reasonable diligence in seeking to locate the parties entitled to notice, but now the Rockwood Group is urging the Division to adopt a new standard for “reasonable diligence”.

24. The reasonable diligence standard must be met before an applicant can employ notice by publication as constructive notice. In a recent opinion, the New Mexico Supreme Court

took a narrow view of when notice by publication is acceptable to meet the fundamental requirements of due process. *T.H. McElvain Oil & Gas Ltd. P’ship v. Benson-Montin-Greer Drilling Corp.* 2017-NMSC-004. (“Notice by publication, then, is proper in some circumstances as a last resort.” ¶28). “[W]e make clear that constructive service of process by publication satisfies due process if and only if the names and addresses of the defendants to be served are not ‘reasonably ascertainable.’” *McElvain* ¶31 (quoting *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 800).

25. The *McElvain* case provides no specific guidance because the Court was having to determine what reasonable diligence was in 1948. The Court did note that “[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.” ¶37.

26. In the compulsory pooling cases before the Division today, the applicants provide expert testimony from ‘landmen’ who are well versed in searching records to determine interest owners and their locations, and who have access to various tools for searching records including subscription search services. In any case where the applicant is unable to locate a person who is entitled to service, the Division expects the applicant to document the efforts to locate that person.

27. In the original hearing on the Mewbourne Cases, Mewbourne did not provide details on its efforts to locate persons entitled to notice. The current Applications, attached to its two motions to dismiss, Mewbourne provided sworn affidavits from a landman, Mitch Robb, who was the landman in the original Mewbourne Cases. (Case No. 21390, ex. A). Robb provided some details on the searches that Mewbourne performed to locate persons entitled to notice in the Mewbourne Cases. In the first affidavit, Robb stated that Mewbourne searched government records and made “numerous” phone calls. In the second affidavit, Robb stated that Mewbourne also used a subscription search service.

28. Rockwood disputes the efforts made by Mewbourne. Included with its response to the Motion, Rockwood provided a statement from a private investigator that provided the results from the subscription search service locating additional addresses for Brock and Babbitt.

CONCLUSIONS

29. The Director concludes that there are factual issues in dispute concerning whether Mewbourne exercised reasonable diligence in attempting to locate persons entitled to notice, and that granting a motion to dismiss would be inappropriate..

ORDER

IT IS HEREBY ORDERED THAT Mewbourne's Second Motion to Dismiss Rockwood's Applications to Reopen is denied. An evidentiary hearing will be held to determine whether Mewbourne exercised reasonable diligence in attempting to locate persons entitled to notice in the Mewbourne Cases. This issue will determine whether Dillard's Application to Reopen will be granted.

**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**



**ADRIENNE SANDOVAL
DIRECTOR
AES/bb**

Date: 8/29/2022