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

***de novo* Case No. 21902**
(Division Case No. 21324)

MEWBOURNE OIL COMPANY'S WRITTEN CLOSING

This written closing statement is submitted by Mewbourne Oil Company ("Mewbourne") as requested by the Commission.

FACTS.

1. Order No. R-20924 (entered in Case No. 20580) pooled the Bone Spring formation underlying the E2/E2 of Sections 10 and 15, Township 23 South, Range 34 East, NMPM, Lea County, New Mexico, for the purpose of drilling the Ibex 10/15 B1AP Fed. Com. Well No. 2H ("10/15 2H") and the Ibex 10/15 B3AP Fed. Com. Well No. 1H ("10/15 1H").[1]

2. There are about 50 working interest owners in the Bone Spring formation in the E/2E/2 of Sections 10 and 15, including Tom M. Ragsdale ("Mr. Ragsdale"). Most working interest owners are subject to a JOA, but about 10 owners had to be force pooled, including Mr. Ragsdale. **Transcript ("Tr.") at 148**. He received well proposals and notice of the application but did not enter an appearance in the case.

3. The application in Case No. 20580 was heard on June 13 and 27, 2019, and Order No. R-20924 was entered on October 15, 2019.

4. Due to deadlines in certain leasehold agreements, Mewbourne had to commence a well on the E2/E2 of Sections 10 and 15 in July 2019. **Testimony of M. Robb, Tr. at 149**. The following then occurred:

(a) Mewbourne commenced the Ibex 10/15 2H on July 7, 2019, but encountered lost circulation and other problems as explained in the testimony of Travis Cude. **Mewbourne Exhibit** 1. Given the circumstances, Mewbourne believed it was prudent to junk the initial wellbore and skid the rig and spud the 10/15 No. 2HY. **Tr. at 78-79.**

---

[1] "B1" refers to a First Bone Spring test, and "B3" refers to a Third Bone Spring test.

(b) The 10/15 2HY was commenced on July 26, 2019, several days after the plugging of the 10/15 2H. As explained in Mr. Cude's affidavit, Mewbourne planned an additional string of intermediate casing based on the lost circulation experienced in the 10/15 2H well. Mewbourne again encountered lost circulation and other problems. Mewbourne backed off the drill string and junked the 10/15 2HY. **Mewbourne Exhibit 2**.

5. Due to the drilling problems, Mewbourne decided to move the surface locations of both the wells to Section 15. It did stake locations for the 15/10 2H within 10 days of plugging the 10/15 2HY, However, because of the time for the Bureau of Land Management ("BLM") to approve APDs, it was impossible to commence a substitute or replacement well within 10 days after the 10/15 2HY was junked. **Mewbourne Exhibit 1 and Tr. at 79-80, 109-110**.

6. In Case No. 20809 Mewbourne again applied for the pooling of the Bone Spring formation underlying the E2/E2 of Sections 10 and 15, Township 23 South, Range 34 East, NMPM, Lea County, New Mexico, to also pool the Ibex 15/10 B1PA Fed. Com. Well No. 2H ("15/10 2H"), and the Ibex 15/10 B3PA Fed. Com. Well No. 1H ("15/10 1H"). The well unit and working interest owners in these wells are the same as in Case No, 20580. Mr. Ragsdale also received well proposals and notice of Case No. 20809 but did not enter an appearance in the case.

7. The application in Case No. 20809 was heard on October 3, 2019, and Order No. R-20924-A was entered on February 19, 2020. This order superseded the original order.

8. Mr. Ragsdale had knowledge of the status of the 10/15 wells and the 15/10 wells in 2019. **Tr. at 39**.

9. The Division's well file on the 15/10 2H reveals that the BLM approved the APD on March 30, 2020, and it was spudded on August 30, 2020.

10. On March 11, 2020, Mr. Ragsdale received an election letter and AFEs from Mewbourne under Order No. R20924-A for the 15/10 Wells. **Exhibit 2-G**. The election letter specifically discussed the 10/15 2H and @HY wells. As explained by Mitch Robb, an election to participate merely requires a party to sign an AFE and e-mail it to the operator, which takes a couple minutes. **Tr. at 147-148**.

11. Mr. Ragsdale's elections were due by April 10, 2020. However, Mewbourne did not receive the elections by the deadline. As a result, Mr. Ragsdale was deemed a non-consenting party to the proposals under Order No. R-20924-A. **Tr. at 146**.

12. Mr. Ragsdale has over 30 years of experience in the oil and gas business. He has been pooled by Mewbourne a number of times, and has knowledge of pooling applications. **Tr. at 17-18, 211**.

13. Mr. Ragsdale did not object to the costs of the 15/10 2H within 30 days after receipt of the election letter. Mr. Robb did not withhold any information from Mr. Ragsdale. **Mewbourne Exhibit 2, Tr. at 150**.

14. In a good-faith effort to work with Mr. Ragsdale, Mewbourne proposed certain stipulations under which it would allow Mr. Ragsdale to participate in the 15/10 Wells in lieu of being treated as non-consenting, for failure to make timely elections under Order No. R-20924-A. Mr. Ragsdale performed under the proposed stipulations for the 15/10 1H and was allowed participate with his interest. Mr. Ragsdale did not perform under the proposed stipulations for 15/10 2H, and remains a non-consenting interest owner.

15. No other working interest owners have objected to the AFE for the 15/10 2H. **Tr. at 150**. Mr. Ragsdale has raised no issue as to the reasonableness of the costs of the junked holes as incurred, only as to their inclusion in the 15/10 2H total well costs.

16. Even if the costs of the 10/15 2H and 2HY wells were disallowed, Mr. Ragsdale remains a non-consenting interest owner in the 15/10 2H well.

B. ARGUMENT.

1. Mewbourne had the right to commence the well before pooling and is entitled to recover reasonable well costs.

Compulsory pooling is permissible before, during, or after a well is drilled. **NMSA 1978 §70-12-17.C** (attached hereto as **Exhibit A**). The Division "shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit."

The only Division requirement for commencing a well prior to pooling is that the operator must own or control and interest in each quarter-quarter section in the well unit. **Commission Order No. R-12343-E at page 6** (attached hereto as **Exhibit B**).

In addition, the pooling applications filed by Mewbourne complied with Division Rules for initiating a hearing. **NMAC 19.15.4.8** (attached **as Exhibit C**) states:

The application shall include:

> **(1)** the applicant's name;
> **(2)** the applicant's address, or the address of the applicant's attorney, including an e-mail 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.

The applications complied with the Rule, and thus Mr. Ragsdale's claim of lack of notice must fail.

Mr. Ragsdale further asserted that Mewbourne "assumed the risk" by drilling before a pooling order was issued and thus he is not responsible for his proportionate share of the junked

holes. The pooling statute does not say that. In fact, the pooling statute states that the parties advancing the costs of the development and operation shall be entitled to recover the costs, "which shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable." **Exhibit A.**[2]

The New Mexico Supreme Court has also held that, absent an operating agreement, the operator of a well is entitled to reimbursement for well costs from non-consenting co-tenants so long as the costs are not "speculative." **Bellett v. Grynberg, 114 N.M. 690 (1992).** The costs incurred by Mewbourne were not speculative – they resulted in a commercial well.

Also, the pooling statute also states "In the event of any dispute relative to [well] costs, the division shall determine the proper costs after due notice to interested parties and a hearing thereon." Mr. Ragsdale always had the option to contest well costs, and so his due process argument is invalid.

2. <u>The junked hole costs are reasonable</u>.

Mr. Cude testified that in his opinion the junked hole costs were reasonable, and that they were the actual expenditures for the junked holes. **Tr. at 82.** There is no contrary testimony, so the junked hole costs are reasonable.

Mr. Ragsdale himself did not that the junked hole costs are unreasonable. He testified that if he had elected to join in the 10/15 2H and 2HY before they were commenced he would be responsible for his proportionate share of those costs. **Tr. at 34-35.** His contention is that the junked holes are for a different well than the 15/10 2H.

Furthermore, the fact that the other 50 or so working interest owners have not objected to the cost of the 15/10 2H indicates that the costs are reasonable.

3. <u>The 15/10 2H is a substitute or replacement well for the 10/15 2H and 2HY</u>.

Mewbourne's position is that the drilling of the 10/15 2H, 10/15 2HY, and 15/10 2H is all part of a continuous process constituting a single well.

First, **NMSA 1978§70-2-17(C)** states "Each order shall describe the lands included in the unit designated thereby, identify the pool or pools to which it applies and designate an operator for the <u>unit</u>." Thus the lands are pooled, not a specific well in the unit. There is no dispute that the lands and well unit involved in this dispute are identical regardless of whether you look at the 10/15 2H, 10/15 2HY, or 15/10 2H. Thus the lands are pooled into a unit, not specific wells, and all reasonable costs in the well unit must be considered.

Second, the costs of failed attempts to drill a well can be recovered when a "substitute well" is drilled. **NMAC 19.15.13.8B (4) (Exhibit D** attached hereto) states:

---

[2] A pooling order itself does not approve of well costs. The Division only gets involved after a well is drilled to determine reasonable well costs if an interest owner files an objection.

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.

The purpose and language of NMAC 19.15.13.8 and the Oil and Gas Act establish that Mewbourne should be authorized to impute the costs of its attempts to drill the 10/15 2H and 2HY to the 15/10 2H.Under New Mexico law, statutes and regulations must be construed to effectuate intent and achieve reasonable results. *See* **Albuquerque Bernalillo County Water Util. Auth. v. N.M. Pub. Reg. Comm'n**, 2010-NMSC-013, ¶¶ 51-52, 148 N.M. 21**; Quynh Truong v. Allstate Ins. Co.**, 2010-NMSC-009, ¶ 29, 147 N.M. 583. To determine intent, courts look to the language used and "the purpose to be achieved and the wrong to be remedied." **Tolley v. Assoc. Elec. & Gas Ins. Services, Ltd (AEGIS)**, 2010-NMSC-029, ¶ 8, 148 N.M. 436; **see also Baker v. Hedstrom**, 2013-NMSC-043,¶¶ 11, 34-36, 309 P.3d 1047 (the plain language of a statute is the primary indicator of the Legislature's intent, but statutes must be construed in accordance with their "obvious spirit or reason").

The Oil and Gas Act delegates to the Commission and Division the authority to prevent waste and protect correlative rights. *See* **NMSA 1978 § 72-2-11**. The Division's regulations, including NMAC 19.15.13.8, must be construed to effectuate this result.

Although surface location of the 15/10 2H is not located within 330 feet of the 10/15 2H and 10/15 2HY, Mewbourne submits that the 15/10 2H is a substitute or replacement well. Also, the Form C-102s for the wells (**Mewbourne Exhibit 2-H**) shows that the wellbores of the 10/15 2H, 10/15 2HY, and 15/10 are or were to be located 450 feet from the east lines of Sections 10 and 15. As stated, they are mirror locations.

Mewbourne notes that the regulation was enacted in 2008 (**Exhibit D** attached hereto), when virtually all wells were vertical holes. Also, it does not address surface hole locations for horizontal wells. In this case, Mewbourne simply switched surface hole locations and drilled south to north rather than north to south. That was due to the drilling issues in Section 10. Mewbourne switched surface hole locations and drilled successful wells. It was a prudent decision.

The APDs for the 15/10 wells took eight months to obtain from the BLM, which prevented Mewbourne from drilling commencing the 15/10 2H within 10 days of junking the 10/15 2HY. Mewbourne's activities in staking and surveying the location, applying for and receiving a permit to drill the 15/10 2H, and beginning to prepare and build the well location constituted drilling operations. **Johnson v. Yates, 127 N.M. 355 (1999)**. Thus, the drilling of the 10/15 2H, 10/15 2HY, and 15/10 2H well are one continuous operation. Therefore, even if the 15/10 2H well is not, strictly speaking, a substitute well, it is a replacement well under industry custom. **Tr. at 80-81**.

In addition, **NMAC 19.15.13.8.B(1)** (**Exhibit D**) allows the Division to determine if the allowance of reasonable well costs "of all or some portion of historical costs of drilling is just and reasonable due to particular circumstances" for wells "previously abandoned without completion." That situation applies in this case.

Finally, **NMAC 19.15.13.8.B(3)** states that if an interest owner elects not to pay its share of well costs in advance, "well costs shall include costs of a subsequent operation undertaken to secure or enhance production from a formation pooled by the order… . The costs shall include expenses for reworking, diverting, deepening, plugging back, testing, completion or recompletion and equipping for production, but not ordinary operating expenses."

The costs of the 10/15 2H and 2HY wells should be deemed reasonable well costs under the pooling statute and Division Rules, and be allowed to be recovered by Mewbourne.

4. Mr. Ragsdale failed to timely elect on the 15/10 2H well.

Mr. Robb testified that Mr. Ragsdale filed to make a timely election on either the 15/10 2H or the 15/10 1H. Nevertheless he was granted the option to join in the wells late. That was fair of Mewbourne.

Mr. Ragsdale also claims that he should be given another election on the 15/10 2H well, basically claimg an "Act of God" caused his failure to timely elect. However, it was simply negligence, and he should not be excused from that. He is asking for equitable relief, and the Commission is not a court of equity.

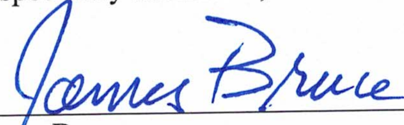
C. CONCLUSIONS.

(a) No reason has been shown by Mr. Ragsdale justifying revocation of Order No. R-20924-A, so the sole issue is the reasonableness of well costs for the 15/10 2H well and its predecessor wells.

(b) The costs Mewbourne incurred for the 15/10 2H, including the junked hole costs, are fair and reasonable under NMAC 19.15.13.8.B(4), NMAC 19.15.13.8.B(1), and the pooling statute.

WHEREFORE, Mewbourne respectfully requests the Division to deny Mr. Ragsdale's application.

Respectfully submitted,



James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

Attorney for Mewbourne Oil Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 7th day of February, 2022 by e-mail:

Sharon Shaheen
sshaheen@montand.com

James Bruce

70-2-17. Equitable allocation of allowable production; pooling; spacing.

A. The rules, regulations or orders of the division shall, so far as it is practicable to do so, afford to the owner of each property in a pool the opportunity to produce his just and equitable share of the oil or gas, or both, in the pool, being an amount, so far as can be practically determined, and so far as such can be practicably obtained without waste, substantially in the proportion that the quantity of the recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for this purpose to use his just and equitable share of the reservoir energy.

B. The division may establish a proration unit for each pool, such being the area that can be efficiently and economically drained and developed by one well, and in so doing the division shall consider the economic loss caused by the drilling of unnecessary wells, the protection of correlative rights, including those of royalty owners, the prevention of waste, the avoidance of the augmentation of risks arising from the drilling of an excessive number of wells, and the prevention of reduced recovery which might result from the drilling of too few wells.

C. When two or more separately owned tracts of land are embraced within a spacing or proration unit, or where there are owners of royalty interests or undivided interests in oil and gas minerals which are separately owned or any combination thereof, embraced within such spacing or proration unit, the owner or owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owner or owners 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.

All orders effecting such pooling shall be made after notice and hearing, and shall be upon such terms and conditions as are just and reasonable and will afford to the owner or owners of each tract or interest in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil or gas, or both. Each order shall describe the lands included in the unit designated thereby, identify the pool or pools to which it applies and designate an operator for the unit. All operations for the pooled oil or gas, or both, which are conducted on any portion of the unit shall be deemed for all purposes to have been conducted upon each tract within the unit by the owner or owners of such tract. For the purpose of determining the portions of production owned by the persons owning interests in the pooled oil or gas, or both, such production shall be allocated to the respective tracts within the unit in the proportion that the number of surface acres included within each tract bears to the number of surface acres included in the entire unit. The portion of the production allocated to the owner or owners of each tract or interest included in a well spacing or proration unit formed by a pooling order shall, when produced, be considered as if produced from the separately

EXHIBIT A

owned tract or interest by a well drilled thereon. Such pooling order of the division shall make definite provision as to any owner, or owners, who elects not to pay his proportionate share in advance for the prorata reimbursement solely out of production to the parties advancing the costs of the development and operation, which shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable, but which shall include a reasonable charge for supervision and may include a charge for the risk involved in the drilling of such well, which charge for risk shall not exceed two hundred percent of the nonconsenting working interest owner's or owners' prorata share of the cost of drilling and completing the well.

In the event of any dispute relative to such costs, the division shall determine the proper costs after due notice to interested parties and a hearing thereon. The division is specifically authorized to provide that the owner or owners drilling, or paying for the drilling, or for the operation of a well for the benefit of all shall be entitled to all production from such well which would be received by the owner, or owners, for whose benefit the well was drilled or operated, after payment of royalty as provided in the lease, if any, applicable to each tract or interest, and obligations payable out of production, until the owner or owners drilling or operating the well or both have been paid the amount due under the terms of the pooling order or order settling such dispute. No part of the production or proceeds accruing to any owner or owners of a separate interest in such unit shall be applied toward the payment of any cost properly chargeable to any other interest in said unit.

If the interest of any owner or owners of any unleased mineral interest is pooled by virtue of this act, seven-eighths of such interest shall be considered as a working interest and one-eighth shall be considered a royalty interest, and he shall in all events be paid one-eighth of all production from the unit and creditable to his interest.

D. Minimum allowable for some wells may be advisable from time to time, especially with respect to wells already drilled when this act takes effect, to the end that the production will repay reasonable lifting cost and thus prevent premature abandonment and resulting waste.

E. Whenever it appears that the owners in any pool have agreed upon a plan for the spacing of wells, or upon a plan or method of distribution of any allowable fixed by the division for the pool, or upon any other plan for the development or operation of such pool, which plan, in the judgment of the division, has the effect of preventing waste as prohibited by this act and is fair to the royalty owners in such pool, then such plan shall be adopted by the division with respect to such pool; however, the division, upon hearing and after notice, may subsequently modify any such plan to the extent necessary to prevent waste as prohibited by this act.

F. After the effective date of any rule, regulation or order fixing the allowable production, no person shall produce more than the allowable production applicable to him, his wells, leases or properties determined as in this act provided, and the allowable

30. In *Application of Pride Energy Company, etc.* the Commission found that an operator could file an application for permit to drill before it filed a pooling application. It did not find that an operator could actually drill a well on acreage in which it had no interest before the Division or Commission decided a pooling application.

31. In this matter Chesapeake drilled a well on acreage it did not have an interest in before the Division or Commission decided on the pooling application.

32. As such, since it is within the Commission's discretion whether to allow a risk charge for drilling the well, the Commission finds that Chesapeake should not be allowed a risk charge for drilling the KF 4 well on acreage it did not have an interest in prior to the Division or Commission deciding on the pooling application.

33. To prevent further misunderstandings in the interpretation of the Commission's orders, particularly in Case No. 13153, *Application of Pride Energy Company, etc.*, Order No. R-12108-C and *Application of TMBR/Sharp, Inc.*, Order R-11700-B, the Commission approves of the language on Division Form C-102, field 17, concerning the operator's certification and asks the Division to continue its use and to notify the Commission if it plans to discontinue its use. That certification states "I hereby certify that the information contained herein is true and correct to the best of my knowledge and belief and that the organization either owns a working interest or unleased mineral interest in the land, including the proposed bottomhole location, or has a right to drill this well at this location pursuant to a contract with an owner of such mineral or working interests or in a voluntary pooling agreement or compulsory pooling order hereto entered by the Division".

34. Chesapeake indicated that it no longer intends to drill a well at the location of its proposed Cattlemen 4 State Com Well No. 1. See Order No. R-12343-B, page 20.

35. Accordingly, the application of Samson et al, in Case No. 13492, for cancellation of the permit to drill for the Cattleman 4 State Com Well No. 1 should be approved.

CONCLUSIONS REGARDING TECHNICAL ISSUES

36. The isopach maps (maps of the oil and gas producing layers that estimate the location and depth of those layers) created by the geologists of each party support their respective positions on what should be the correct orientation of the spacing unit. Each was bound by his interpretation of the existing well control (other existing wells in the vicinity that are drilled in the same formation that have production from that formation or did not have production) and was free to project contours into areas void of data based on an overall interpretation of general trends,

37. Both Chesapeake and Samson et al presented logical interpretations of the data in these cases. No effective well control exists either to the north or to the west that could preclude projection of the Osudo 9/KF 4 reservoir in either of those directions.

EXHIBIT B

19.15.4.8 INITIATING AN ADJUDICATORY HEARING:

A. The division, attorney general, an operator or producer or other person with standing may file an application with the division for an adjudicatory hearing. The director, upon receiving a division examiner's recommendation, may dismiss an application for an adjudicatory proceeding upon a showing that the applicant does not have standing. The person applying for the hearing or an attorney representing that person shall sign the application requesting an adjudicatory hearing. The application shall include:

(1) the applicant's name;

(2) the applicant's address, or the address of the applicant's attorney, including an e-mail 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.

B. Applicants for adjudicatory hearings shall file written applications with the division clerk at least 30 days before the application's scheduled hearing date.

[19.15.4.8 NMAC - Rp, 19.15.14.1206 NMAC, 12/1/2008]

EXHIBIT C

19.15.13.8 CHARGE FOR RISK:

A. General rule. Compulsory pooling orders the division enters pursuant to NMSA 1978, Section 70-2-17, as amended, may provide for the recovery, out of the share of production allocable to the working interest of a party that elects not to pay its proportionate share of well costs in advance, in addition to reasonable well costs and costs of supervision and management, of a charge for risk associated with the drilling, completion or working over and re-completion of each unit well for which the order provides. Unless otherwise ordered pursuant to Subsection D of 19.15.13.8 NMAC, the charge for risk is 200 percent of well costs.

B. 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.

(1) If, however, a well was previously completed in another formation or bottom hole location, or was previously abandoned without completion, well costs as to that well shall mean only the reasonable costs of re-entering, reworking, diverting, deepening, plugging back or testing the well; completion in the pooled formation or formations and; if necessary, reequipping the well for production, unless the division determines that allowance of all or some portion of historical costs of drilling is just and reasonable due to particular circumstances.

(2) If a well is completed in two or more formations having diverse ownership or a different risk charge percentage, the order shall provide for allocation of well costs between the formations.

(3) As to an interest owner who elects not to pay its share of well costs associated with a specific well in advance, as provided in the applicable order, well costs shall include costs of a subsequent operation undertaken to secure or enhance production from a formation pooled by the order prior to the time that the entire amount of the non-consenting owner's share of well costs and applicable risk charge have been recovered from the non-consenting owner's share of the well's production. The costs shall include expenses for reworking, diverting, deepening, plugging back, testing, completion or recompletion and equipping for production, but not ordinary operating expenses.

(4) 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.

C. An applicant for compulsory pooling is not required to present technical evidence justifying the risk charge provided in Subsection A of 19.15.13.8 NMAC.

EXHIBIT D

D. Exceptions. A person responding to a compulsory pooling application who seeks a different risk charge than that provided in Subsection A of 19.15.13.8 NMAC shall so state in a timely pre-hearing statement filed with the division and served on the applicant in accordance with 19.15.4.13 NMAC, and shall have the burden to prove the justification for the risk charge sought by relevant geologic or technical evidence. The hearing examiner may allow a responding party who has not filed a pre-hearing statement, but who appears in person or by attorney at the hearing, to offer evidence in support of a different risk charge than that Subsection A of 19.15.13.8 NMAC provides, but in such cases the hearing examiner shall allow a continuance of the hearing, if requested, to enable the applicant to present rebuttal evidence.

[19.15.13.8 NMAC - Rp, 19.15.1.35 NMAC, 12/1/08]